

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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**Nov 13 2024**

**S.C. SUPREME COURT**

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Certiorari to Hampton County

Honorable Roger M. Young, Circuit Court Judge  
\_\_\_\_\_

DANIEL LEE FLUDD,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2024-000375  
\_\_\_\_\_

APPENDIX  
\_\_\_\_\_

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1 shovel. You know, it's a shovel case; it's not a necklace  
2 case.

3 That's -- that's the problem, is that no shovel is  
4 swung. Now, that's the difficulty. That's the serious  
5 bodily injury. I guess I'll skip now to serious bodily  
6 injury, in fear of serious -- danger of serious bodily  
7 injury, a reasonable fear of imminent bodily injury, serious  
8 bodily injury.

9 Pick up that shovel, you know, that -- that flat end of  
10 that shovel. Don't swing it at anybody back there to test  
11 this out, because that will -- you can kill somebody with  
12 that. This is a -- it's in pieces now, because it was  
13 broken over my client, but a baseball bat, a shovel, I mean  
14 it's heavy on that end. It's rusty, it's pointy, it's  
15 sharp.

16 I mean, if somebody swings that at you, you're in  
17 danger, imminent danger, of serious bodily injury. If  
18 somebody's holding a jagged piece of shovel in their hand  
19 because the -- they broke the rest of it off over you, and  
20 you're just left with a pointy stick, you're also in danger  
21 of serious bodily injury.

22 So we've got without fault, we've got serious bodily  
23 injury. The -- the no other way to avoid the danger, and  
24 you know, a reasonable person has to agree. You hear the  
25 statements. He's like, what am I supposed to do? He slams

1 me with the shovel and says he's going to go get a gun, and  
2 what am I supposed to do? I don't have a choice, I can't --  
3 you can't outrun a bullet. You're not going to, you know,  
4 there's nothing you can do. What are you -- I mean, -- and  
5 he -- okay. Well, here, let me sit here and think about it.  
6 Let me sit here and think about what I'm supposed to do.  
7 You just hit me two times with a shovel and broke it, got a  
8 pointy thing, says he's going to go get a gun. And well,  
9 you know, I'm a pro. I might be able to avoid the danger.  
10 That's not how it works in the world. You know, that's not  
11 how it works in the world. That's not how it works in the  
12 world. And you know, she made the point about, well, you  
13 know, the injuries to Mr. Atkins are reflective of evil. Do  
14 you know what those injuries are? That kind of -- if  
15 there's -- there's the degree to which, you know, deadly  
16 force was used in self-defense, that's fear. That is fear.  
17 The emotion that drives that is that fight or flight fear  
18 reflex that you get. And it comes in an instant, and you  
19 don't have time to process it.

20 I mean, like I said, imagine -- I mean, you'll have  
21 this shovel -- I'm not going to do a demonstration. I  
22 dropped it; that was enough. You know, that's -- oh, snap.  
23 You know, and you heard him say it. And so, you know, we do  
24 have his statement, and it's at first, you know, not  
25 forthcoming. I mean, I was there, and I was there, there,

1 and there; and they're like, "Now, Daniel, now, Daniel, you  
2 know, we know that's not right." "Okay, okay, okay, he  
3 swung the shovel, I was scared, and I punched him and I  
4 ran." And then, it's like, "Okay, Daniel, you know." And  
5 then, you just see it spill. It spilled in a flood of,  
6 just, emotion.

7       It's just unlocked right there, and it's just all over  
8 the table, what he's -- oh, no, I mean, I can't -- I'm --  
9 just, this is so crazy. I can't believe this happened.  
10 It's -- you know, obviously, malice aforethought is not  
11 there, but you can see it. And you know, oh, he -- I  
12 thought -- I'm -- you can think what you want, you know.  
13 You've got an experience with watching T.V. or whatever, but  
14 you know, we hear about these interrogations where they're  
15 up on the defendant, and they're just dragging it out of him  
16 and all these things. Really, all they're doing is like,  
17 now, "Daniel, we're not going to lie to you, but that  
18 doesn't make sense." And then, he just comes with it. He  
19 just lets it out.

20       So, we've got the -- that statement is back there for  
21 you to review. I think we put in a transcript. And so, you  
22 can see those parts and the -- and how it changes, you know,  
23 where he's like, oh, I don't know what you're talking about.  
24 I mean, there's really no evidence in the record that Daniel  
25 knew that Mr. Atkins was dead until he visits with the

1 police.

2       So, I mean, when he's -- he's -- I mean, if you look at  
3 it in that perspective, how it all went down, there's really  
4 not a way for him to have known that Mr. Atkins was dead.  
5 And so, all of a sudden, he finds out that the person that  
6 he got into the fight with last night is dead. And I mean,  
7 we've seen the injuries in there. You know, obviously,  
8 they're the type of injuries that -- that could cause death.  
9 But it's a quick, chaotic moment, you know. And you know, I  
10 think she acted it out, and I'm not going to do it, but it's  
11 fast. It's not just okay, one, two. It's just -- it's a  
12 reflexive -- that's what it is, it's a reflex. Okay. All  
13 right.

14       So, what I've described is a situation where Mr. Fludd  
15 -- and I don't believe they've disproven this beyond a  
16 reasonable doubt -- where that Mr. Fludd is -- approaches  
17 Champ about the necklace, and that Champ is the first one to  
18 throw a physical blow. I think that that is not -- I mean,  
19 I think Zane said maybe they started fighting first, or  
20 something like that.

21       Mr. Fludd's statement is, you know, "I was mad that he  
22 took my necklace, but not to the point where I wanted to put  
23 my hands on him." But then, boom, "He hits me with a  
24 shovel, and here we go," right? So, we've got -- like I  
25 told you in the beginning, we've got the battling

1 statements.

2 We've got Zaneh Garvin, and we've Daniel Fludd. I  
3 mean, they're both in a biased situation. But I mean, to  
4 sit here -- they've got the burden here. We're presumed  
5 innocent. The -- you know, the bedrock foundation to -- to  
6 what we're doing here.

7 The main principles that you have to apply in order for  
8 anybody to get a fair trial is the presumption of innocence  
9 and proof beyond a reasonable doubt. And so, when you've  
10 got these conflicts between what Daniel says and what Zaneh  
11 says, and they're the only two people who could know, it  
12 can't be proven, you have to resolve that in favor of the  
13 defendant. That's just the rule.

14 Listen to the judge as he delivers it. That's just the  
15 rule. Okay. So, what led up to this point? Because, you  
16 know, is it -- is it this moving fight; or is it something a  
17 little bit more like what Daniel describes in his -- in his  
18 statement, where, okay -- I mean, I tried to flush out any  
19 inconsistencies in what Zaneh had said before. And you  
20 know, those will be for you to -- to remember if -- if that  
21 was effective or not. But she described this situation  
22 where she's -- they're going to Bummy's house for the  
23 purpose of her doing prostitution, to get money for -- for  
24 Bobby's crack, right? That was -- that was the -- that was  
25 the purpose for being there. That her position is that

1 Daniel has given Bobby the necklace to sell for Daniel.

2 Like, what's going to happen is that Bobby's just  
3 going to go to some other person, make the transaction, and  
4 give Daniel back the money, whether he keeps some for  
5 himself, or whatever. All right. What's funny about all  
6 those other visits is that the way she set it up. Well, you  
7 know -- well, you know, Rivy can't see Daniel because he's  
8 just right around the corner, and the drug dealer that they  
9 went to, you know, he's not going to be able to see Daniel,  
10 either.

11 It's just so convenient that we have to trust Zaneh  
12 that Daniel's even tagging along on this -- this walk all  
13 over town. You know, like, boom, boom, all over the place.  
14 It got kind of confusing. But what they're doing, okay, is  
15 they're going from place to place to get money, to sell the  
16 necklace, to sell Zaneh's body, to go buy crack. That's why  
17 they go to -- I mean, this is what's going on. I mean, I --  
18 to pretend like they're just, oh, we're out trying to get a  
19 few dollars one night, or whatever.

20 This is a crack hunt, is what it is. And what it looks  
21 like is that Champ steals Daniel's necklace and goes to try  
22 and sell it for crack. The problem is, Daniel ran back into  
23 them at the cut, at the path, before they had a chance to  
24 sell it for crack. Okay. All right. And this sounds like  
25 reality.

1           I kind of am reminded of the picture that they have  
2 that's in evidence of the church. It's like common sense is  
3 a flower that doesn't grow -- it's in the evidence -- it  
4 doesn't grow and everybody starves, or something like that.  
5 I'm like, oh, okay, common sense comes in now. Now we know  
6 how crack -- how pimps, I guess, also, he -- I mean, that  
7 qualify him as a -- as a pimp/prostitute relationship that's  
8 going on here. That how this works -- I mean, they're out  
9 at night, trying to get crack. I mean, it's sad. I mean,  
10 it is sad, but this is kind of what -- just human nature,  
11 and we know how people are when they need that crack; or  
12 they've got that crack, or when that crack takes over their  
13 life.

14           And I mean, maybe Zaneh's not using crack, and I don't  
15 know if she is or if she isn't. It just seems a little  
16 weird that you'd be out there, you know, selling your body,  
17 giving all the crack to the other -- I mean, all the money  
18 for the crack to the other person. It's just, she's broken,  
19 at best. It's sad. I mean, it's sad, but, you know, as a  
20 result of this lifestyle, she's rendered herself not  
21 reliable.

22           I mean, how would you -- I mean, how -- how could  
23 anybody be convicted on her word? That -- that -- don't let  
24 that happen here. Don't let that happen here, because  
25 that's just -- that's not what proof beyond a reasonable

1 doubt is.

2       So, we've got, I think, some behaviors that seem a lot  
3 more like reality in that, oh, hey, I got sticky fingers.  
4 Champ gets a hold of the necklace, goes all over town to try  
5 and sell it and get money. Rivy is even nice enough to give  
6 him the twenty dollars, and then where do they go with the  
7 twenty dollars? Straight to the drug dealer's house. Oh,  
8 we didn't get any drugs, but you know, the -- the  
9 pathologist said, you know, the cocaine has not been  
10 metabolized yet in his system. So, I mean, it's still kind  
11 of right there. And you know, that can make people  
12 aggressive, you know. I mean, you know, the guy is -- the  
13 guy is -- I mean, you can't count on a crack head, either  
14 under the influence, or even in a drug-seeking state, to be  
15 -- to be logical.

16       Okay. So, if you listen to the statement or read the  
17 transcript of what Daniel says to the police: I caught up to  
18 him at the church by the cut. I think she showed you the  
19 picture of the cut there. It's like, oh, we're by the brick  
20 house. I think the brick house he's describing might even  
21 be -- you decide -- might even be the -- the 408 Gordon. I  
22 don't -- I mean, there's nothing in evidence that says why  
23 Daniel would ever know where Champ's mama lives. You know,  
24 it says Gordon on the front. He doesn't even probably know  
25 Champ as anything other than Champ. And he goes over, you

1 know -- that's where he sees them. Hey! Do they stop? No.  
2 Did he run after them? No. I walked them down. And he  
3 says when he walks them down, he's at the "T", and we're  
4 talking about Godbold Street, and here we are in the stack.  
5 This little "T" right here, dirt road, "T".

6       You know, the State -- I mean, I -- if their -- if  
7 their case is built around the fact that this had to happen  
8 in Champ's mama's yard, then they've got a real problem.  
9 Okay? Because the -- the blood trail, the -- Daniel says  
10 it's out in the road -- the blood trail, you know -- but not  
11 to say that Champ wouldn't have had a chance to go past  
12 where the -- where the shovel is at that point. I mean, he  
13 does pass -- would have had to pass the shovel, go in the  
14 carport, shovel. Where, in the carport, is the shovel to  
15 begin with? You know, nobody's seen it for awhile, but he  
16 does come back and could get the shovel at that point. And  
17 you know, it doesn't make any sense that somebody who had  
18 just had their necklace returned would still be on such a --  
19 you know, I got my necklace back, you know, I'm still mad.  
20 You know, you just didn't give it back fast enough. Like,  
21 that's not really how it is.

22       You know, what it seems like is when they, you know,  
23 like what -- you know, the way Zane described it, it didn't  
24 make sense, you know. Oh, I'm running faster than Daniel,  
25 and Daniel doesn't overtake towards the end. This traveling

1 fight thing is just -- sounds like a lie. It sounds like a  
2 lie to me, or hopefully it sounds like a lie to you.

3 That, you know, obviously, you know, I mean, if they  
4 keep the necklace, then that's at least one less trick I  
5 guess, that Zaneh would have to turn in order to get Bobby  
6 his crack money, you know. I mean, that she's oh, just give  
7 it to him, Bobby. I tell Bobby what to do. He tells me I,  
8 you know -- the -- the -- sort of, the pimp/prostitute  
9 relationship doesn't usually include the prostitute telling  
10 the pimp what to do. That's usually not how it works.

11 So, at any rate, I think I got waylaid out of did it  
12 happen in the yard or not. Okay. A fact I want you to  
13 think about on this one. The blood trail, right? You know,  
14 when the police get there, they never really look for a  
15 blood trail outside of the yard. So, if one existed and  
16 it's dark, they didn't see it.

17 But that first spot of blood is right over by the post,  
18 right there by the post. And I made the point, and I think  
19 -- I mean, hopefully it's a good one, that if that's where  
20 the blood hits the ground, that's not where the person is  
21 when they start bleeding. That's oh, ah, I can gather, you  
22 know, that, you know, there was some testimony from the  
23 doctor about how far it could -- how long could somebody  
24 make it, or how long could somebody live after that injury  
25 and, you know, make it around.

1           So anyway, that's just the start of it. And then, this  
2 is the thing that, you know, that bothers me is the shovel  
3 issue. Okay. We swing the shovel, it breaks in three  
4 places. We've got these pictures in evidence where they put  
5 it up on the screen, right? Pictures from that night, and  
6 they said, "Well, where did you find the shovel?" He puts  
7 his laser pointer right in the spot, and there's no shovel  
8 there. Like, you look at these pictures and there's no  
9 shovel there that night.

10           You know, the scene gets unsecured. They leave -- you  
11 know, they take the tape down and return it to the private  
12 owners of the place. You know, not -- not having a problem  
13 with that. But you know, then to come back some hours later  
14 and find the shovel, a broken shovel, hey! I was like, you  
15 thought the headphones were a big deal. What about the  
16 broken shovel? So, you look at those pictures and can't  
17 look for a broken shovel laying there in the spot where they  
18 say that it was. Anyway, it's not anywhere near, really,  
19 where the -- it's not really -- because if it had been along  
20 the blood trail, they would've found that. I mean, that  
21 would've been a little bit more obvious, I guess.

22           It's not anywhere near the blood trail, and you know --  
23 and so, it doesn't really make any sense that this -- this  
24 shovel -- and you know what? Because Zaneh, you know, when  
25 asked, is there anything else that you need to tell me, she

1 doesn't say anything about the shovel to the police. She's  
2 hiding the fact that there's a shovel involved. Why is she  
3 hiding the fact that there's a shovel involved? Because she  
4 knows Bobby did wrong. That's why she won't tell about the  
5 shovel. Because she says, "Oh, Daniel just killed Bobby for  
6 no reason," over a necklace? No, but they're not talking  
7 about the shovel, because otherwise, you know, it doesn't  
8 make sense.

9       He hit -- you know -- oh, yeah, there's the shovel. I  
10 mean, anybody who, you know -- so, I mean, that's -- that's  
11 the problem with the shovel, is that it kind of magically  
12 moves, and the -- and sure, it would be nice -- I mean, the  
13 State has the burden of proof -- it sure would be nice if  
14 there was a picture when they find the shovel; any sort of  
15 documentation that says, this is where we find the shovel.  
16 I mean, they tell us where they find the crack pipe and the  
17 lighter, but we have no idea where they find the shovel.

18       Okay. All right. So, we've got the issue of, you  
19 know, okay, well, it doesn't -- I mean, I can look at the --  
20 the shovel, and you know, is this -- was the shovel -- did  
21 the shovel cause the injuries on Mr. Atkins. And I'm  
22 looking at -- I mean, it seems like there would be more  
23 blood and -- and whatnot. I mean, I think that the -- the  
24 pathologist gave her opinion. It couldn't have been --  
25 couldn't have been -- couldn't have been the shovel you

1 would expect to be something on the shovel. I mean,  
2 definitely.

3 So, it's as it is. It's as if the solicitor is telling  
4 you that you can't defend yourself with a knife? If it's  
5 self-defense, it's self-defense, whether it's a shovel or a  
6 knife. It's -- it doesn't make a difference. You can  
7 defend yourself with a knife, you know?

8 It's just, you know, the fact that -- that, you know --  
9 and there's not a rule that says if you defend yourself it  
10 has to be with a shovel. You know, if you're -- if there's  
11 nothing wrong with carrying a knife when you live in a  
12 country town, right? And there's nothing wrong with  
13 defending yourself with it when somebody hits you with a  
14 shovel. Okay.

15 All right. So, that's where we are with this case.  
16 You know, I think I've gone over the evidence as much as I  
17 can. I'm not going to keep yelling about it and everything,  
18 but I do want you to kind of think about what was described  
19 here, and look at it through that lens of what I was  
20 proposing, which is okay, that the stolen necklace, you  
21 know, from, you know, crack hunt, to I'm -- you know,  
22 unpredictable behavior by -- by a crack head, and -- and  
23 that whether or not they've proven that Daniel wasn't  
24 defending himself beyond a reasonable doubt. Because  
25 that's, again, what I'm going to finish with, is that the

1 State has the burden of disproving self-defense beyond a  
2 reasonable doubt. And in order for them to do that, they --  
3 they've got to take as given things that don't make sense;  
4 things that the only source is Zaneh Garvin; and things that  
5 don't really match up with -- with, you know, common sense  
6 or what we know about human behavior.

7 I asked you in the beginning, let's not decide this on  
8 emotion. We've got to be critical, logical; all that talk  
9 about emotion. There were some aspects, I think, that did  
10 appeal to emotion. I think some aspects of what the  
11 solicitor said in her presentation were designed to appeal  
12 to emotion. Think about this logically. That's what we  
13 want.

14 We want you to decide this case on the evidence and the  
15 facts and the law, as the judge gives it to you, and  
16 especially, especially, we need you to use that presumption  
17 of innocence, and hold the State to their burden of proof  
18 beyond a reasonable doubt, because they did not meet it  
19 here. They did not meet it here. And so, that's why I'm  
20 here, just like I said I would, asking you for that verdict  
21 of not guilty.

22 THE COURT: All right. Mr. Foreperson.

23 FOREPERSON: Yes, sir.

24 THE COURT: Ladies and gentlemen of the jury.

25

1 JURY CHARGE

2 BY THE COURT:

3 Ladies and gentlemen of the jury, it's now my duty to  
4 charge you on the law of this case. The State of South  
5 Carolina has charged the defendant, Daniel Fludd, with two  
6 indictments: Indictment Number 2017 at 160, for the offense  
7 of murder; and Indictment 2017-GS-25-00161, for possession  
8 of a weapon during the commission of a violent crime.

9 I remind you that the fact that the defendant was  
10 arrested, the fact that the defendant was charged, the fact  
11 that the defendant was indicted in this case, is not  
12 evidence in this case, nor does it create any presumption of  
13 innocence or guilt. The indictments are simply for formal  
14 written instruments which contain the charges made against  
15 the defendant. The indictments are the document by which  
16 this case is brought into this court, the Court of General  
17 Sessions.

18 Now, I remind you that during this trial, you and I  
19 have had certain duties to perform. As the trial judge,  
20 it's been my responsibility to preside over the trial of the  
21 case, and I also have the duty to rule on the admissibility  
22 of evidence offered during the trial. You are to consider  
23 only the competent evidence before you.

24 If there was any evidence or testimony stricken from  
25 the record during this trial, you must disregard that

1 testimony. You are to consider only testimony which has  
2 been presented from the witness stand, any exhibits which  
3 have been introduced into evidence and made a part of the  
4 record in this case, and any stipulations of counsel which  
5 may have occurred during the course of the trial of the  
6 case.

7 I also, as the trial judge, have the additional duty to  
8 charge you the law that applies to this case. As the  
9 presiding judge, I'm the sole judge of the law of this case,  
10 and it is your duty, as jurors, to accept and to apply the  
11 law as I now state it to you.

12 If any of you have any preconceived ideas or opinions  
13 about what the law is, or what you think the law ought to  
14 be, and it does not agree with what I now tell you the law  
15 is, you must put aside any of your preconceived opinions,  
16 and decide this case on the law, and accept the law as I  
17 give it to you. So, you must abandon any of your  
18 preconceived opinions or ideas, because you gave us an oath.  
19 And in that oath you said that you would accept the law and  
20 apply the law exactly as I now state it to you.

21 In every case tried in this courtroom before a jury,  
22 the jury becomes the sole and exclusive judges of the facts  
23 in the case, based on evidence introduced during the trial  
24 of the case. A trial judge, such as myself, cannot  
25 intimate, state, comment on, or make any kind of statement

1 to a trial jury about the facts in a case. Since you, the  
2 jury, ladies and gentlemen, are the sole judges of the facts  
3 in this case, you are not to infer from what I've said  
4 during the progress of this trial in ruling upon the  
5 admissibility of evidence, or on an objection, or anything;  
6 or anything that I say now during this charge to you on the  
7 law, that I have any opinion whatsoever about the facts in  
8 this case. The law does not allow me to have an opinion  
9 about the facts in the case. This is a matter solely for  
10 you, the jury, to determine from evidence introduced during  
11 the trial of the case.

12 As jurors, it becomes your duty to determine from the  
13 evidence the effect, the value, the weight, and ultimately  
14 the truth, of any evidence that's been presenting during the  
15 trial of this case.

16 Now, the defendant, Daniel Fludd, has pled not guilty  
17 to the indictments in this case, and as I told you at the  
18 outset, that plea of not guilty puts the burden on the State  
19 of South Carolina to prove the defendant guilty beyond a  
20 reasonable doubt. A person charged with committing a  
21 criminal offense in South Carolina is never required to  
22 prove himself innocent.

23 I charge you, ladies and gentlemen, that it is an  
24 important rule of the law that the defendant in a criminal  
25 trial in South Carolina, no matter what the seriousness of

1 the charge may be, will always be presumed to be innocent  
2 for the crime in which the indictment was issued, unless  
3 guilt has been proven by evidence satisfying you of that  
4 guilt beyond a reasonable doubt.

5       This presumption of innocence does not end when you  
6 begin your deliberations, but it accompanies the defendant  
7 throughout the trial until you, as a jury, reach a verdict  
8 of guilt based on evidence satisfying you of that guilt  
9 beyond a reasonable doubt. The presumption of innocence is  
10 not just a legal theory. It is not just a legal phrase. It  
11 is a substantial right to which every defendant in this  
12 court, every criminal defendant, is entitled to, unless you,  
13 the jury, are satisfied from the evidence of the defendant's  
14 guilt beyond a reasonable doubt.

15       Now, what is a reasonable doubt in the law? A  
16 reasonable doubt, ladies and gentlemen, is the kind of doubt  
17 that would cause a reasonable person to hesitate to act.  
18 The State has the burden of proving the defendant guilty  
19 beyond a reasonable doubt. Some of you may have served in  
20 the past in a civil case where you were told that the burden  
21 of proof is that -- only necessary to prove that a fact is  
22 more likely true than not true. We call that burden of  
23 proof in a civil case, like a wreck case or a contracts  
24 case, by the greater weight, or preponderance of the  
25 evidence.

1           In a criminal case, such as the case here, the State's  
2 proof must be more than that. It must be beyond a  
3 reasonable doubt. Proof beyond a reasonable doubt, ladies  
4 and gentlemen, is proof that leaves you firmly convinced of  
5 the defendant's guilt.

6           Now, there are very few things in the world that we  
7 know with absolute certainty, and in criminal cases, the law  
8 does not require proof that overcomes every possible doubt.  
9 If, based on your consideration of the evidence, you are  
10 firmly convinced that the defendant is guilty of the crime  
11 in the indictments charged, you must find the defendant  
12 guilty.

13           On the other hand, if you think there's a real  
14 possibility that the defendant is not guilty, you must give  
15 the defendant the benefit of the doubt and find the  
16 defendant not guilty. Now, there are two types of evidence  
17 that are generally presented during a trial, and like many  
18 things in the law, we have names for those types of  
19 evidence. We call the two general types of evidence direct  
20 evidence and circumstantial evidence.

21           Direct evidence is evidence that proves that -- direct  
22 evidence directly proves the existence of a fact, such as an  
23 eyewitness to an event. It does not require any deduction.  
24 Circumstantial evidence is proof of a chain of facts and  
25 circumstances indicating the existence of a fact. Crimes

1 may be proven by either direct or circumstantial evidence.  
2 The law makes no distinction between the weight or the value  
3 to be given to either direct or circumstantial evidence.  
4 The State has the burden of proving the defendant guilty  
5 beyond a reasonable doubt. This burden rests with the State,  
6 regardless of whether the State relies on direct evidence,  
7 circumstantial evidence, or a combination of the two.

8       As I told you at outset, part of your job, ladies and  
9 gentlemen, necessarily, is going to be that you're going to  
10 have to determine the credibility, which means the  
11 believability, of the witnesses who have testified during  
12 the trial of this case. It becomes your duty as jurors to  
13 analyze. It becomes your duty as jurors to evaluate the  
14 evidence, and determine which evidence convinces you of its  
15 truth.

16       In determining the believability of a witness who has  
17 testified in this case, you may believe one witness over  
18 several witnesses, or several witnesses over one witness.  
19 You may believe a part of the testimony of a witness, and  
20 reject the remaining part of the testimony of that same  
21 witness. You may believe the testimony of a witness in its  
22 entirety, or you may reject the testimony of a witness in  
23 its entirety. You may consider, in deciding about the  
24 believability or credibility of witness, you may consider  
25 whether any witness has exhibited to you any interest in the

1 outcome in the case, any bias, any prejudice, or other  
2 motive in the case.

3 I told you earlier, and I repeat, you may also consider  
4 the appearance, the manner of the witness while the witness  
5 is on the witness stand. We call that the demeanor of the  
6 witness. Anything that is in evidence, you, as the jury,  
7 have the right to consider in deciding upon the credibility  
8 or believability of the witnesses who have testified during  
9 the trial of this case.

10 Now, I charge you, ladies and gentlemen, that the fact  
11 that the defendant did not testify in this case is not a  
12 factor to be considered by you in any way in your  
13 deliberations and in your consideration on the question of  
14 the guilt or innocence of the defendant. It must not be  
15 considered by you in any manner whatsoever. Every criminal  
16 defendant has the constitutional right to remain silent, and  
17 the assertion of that right must not be considered by you in  
18 your deliberations.

19 I repeat, under that oath which each of you took, you  
20 are to draw no conclusion as a jury whatsoever from the fact  
21 that the defendant in this case did not testify. The fact  
22 that the defendant did not testify should not even be  
23 discussed by any of you in your jury room. The burden of  
24 proof, as I've stated to you, is on the State of South  
25 Carolina. The defendant is not required to prove his

1 innocence. The burden of proof remains on the State.

2 I charge you, ladies and gentlemen, that when a witness  
3 takes the witness stand, a witness' general reputation for  
4 truth and veracity is placed in issue before you, and that  
5 decision will be yours, ladies and gentlemen. When the  
6 witness takes the witness stand, their reputation for truth  
7 and veracity becomes an issue for you.

8 You may consider evidence of a conviction for any crime  
9 involving dishonesty or false statement if you conclude from  
10 the evidence it is true. But you may only consider that in  
11 deciding whether the witness' testimony is believable or  
12 not, and for no other purpose.

13 I charge you, ladies and gentlemen, that the Rules of  
14 Evidence ordinarily do not permit a witness, as I've told  
15 you during the trial, to get on the witness stand and say,  
16 let me tell you my opinion. The witnesses are not  
17 permitted, normally, to give you a conclusion or opinion,  
18 but an exception to that rule exists when witnesses we call  
19 expert witnesses, a witness who, by education, training, or  
20 experience, claims to have become an expert in some art,  
21 science, or profession, may, if qualified by the Court, give  
22 an opinion as to the subject in which the witness claims to  
23 be an expert; and may also give the reasons for his or her  
24 opinion.

25 You should consider any expert opinion given by any

1 expert witness as just like any other witness. You can give  
2 it the weight you think it deserves. If you decide that an  
3 expert witness' opinion is not based on sufficient  
4 education, experience, or training, or if you decide that  
5 the reasons given for the opinion are not sound, or that the  
6 opinion is outweighed by other evidence in the case, you may  
7 disregard the expert opinion entirely.

8 An expert witness' testimony is to be given no greater  
9 weight than that of other witnesses, simply because the  
10 witness is an expert.

11 I charge you, ladies and gentlemen, and remind you,  
12 that the burden of proof in this case, in the trial, is on  
13 the State, and the burden of proof beyond a reasonable doubt  
14 extends to every element of the crimes charged; and this  
15 specifically includes the burden of proving beyond a  
16 reasonable doubt the identity of the defendant as the person  
17 who committed the crime. Identification testimony is an  
18 expression of belief, an expression of impression, by a  
19 witness.

20 You, as a jury, must determine the accuracy of the  
21 identification of the defendant. You, as a jury, must  
22 consider the believability of any identification witness the  
23 same way as any other witness. You must be satisfied beyond  
24 a reasonable doubt of the accuracy of the identification of  
25 the defendant before you may find the defendant guilty.

1           On the other hand, after examining the testimony, if  
2 you have a reasonable doubt as to the accuracy of the  
3 identification, you must find the defendant not guilty. I  
4 charge you, ladies and gentlemen, you've heard the term,  
5 stipulation, during this trial.

6           A stipulation is an agreement, an admission, or a  
7 concession made in the judicial proceeding by the parties in  
8 the proceeding, or by their attorneys. Stipulations, when  
9 published and agreed upon by the attorneys or the parties,  
10 are binding upon those who make them. A stipulation is an  
11 agreement, an understanding. The Court and the jury must  
12 accept stipulations as binding upon the parties, and  
13 therefore not necessary to be proved.

14           If counsel for the parties in this trial have  
15 stipulated to any fact, or if any fact has been admitted by  
16 counsel, you must regard that fact, or facts, as having been  
17 conclusively proved as to the party or parties making the  
18 stipulation.

19           I charge you, ladies and gentlemen, that a statement  
20 alleged to have been made by the defendant has been admitted  
21 into evidence in this case. While the Court has determined  
22 that the statement is admissible as a matter of law, I  
23 instruct you, ladies and gentlemen of the jury, that you  
24 make the ultimate decision of whether or not the defendant  
25 made the statement. If the defendant did make the

1 statement, you must determine whether the statement was made  
2 by the defendant voluntarily, and of his own free will.

3 This means that the statement was not caused by pressure,  
4 force, fear, threats, coercion, intimidation, or by hope of  
5 a promise of leniency, or a reward of any kind.

6 In determining whether the statement was voluntary, you  
7 should consider both the characteristics of the defendant  
8 and the details of the questioning. Some of the factors you  
9 may consider if proved by the evidence are the age of the  
10 defendant; the background of the defendant's mental ability  
11 or capacity in the background; the defendant's I.Q or  
12 intelligence; the defendant's background and environment;  
13 the place and length of detention; the nature of the  
14 questioning; the advice, or the lack thereof, of the  
15 defendant's constitutional rights, including but not limited  
16 to the right to remain silent; that any statement could be  
17 used against him in a court of law; the right to have a  
18 lawyer present; that if he could not afford a lawyer, a  
19 lawyer would be appointed to represent him without any cost;  
20 and that he could stop making a statement at any time.

21 You, as the jury, must carefully, from the evidence,  
22 consider all of the surrounding circumstances before you  
23 give any weight to any alleged statement. The State has the  
24 burden of proving beyond a reasonable doubt that the alleged  
25 statement was voluntary.

1        If you determine the statement was voluntary, you may  
2 give to the statement any further consideration you deem  
3 proper. You must decide what weight, if any, to be given to  
4 the alleged statement.

5        If you determine the alleged statement was not the free  
6 and voluntary statement of the defendant, you should not  
7 consider the statement at all.

8        I charge you, ladies and gentlemen, that the defendant  
9 has raised the issue of self-defense. Self-defense is a  
10 complete defense, and if it is established you must find the  
11 defendant not guilty. The State has the burden of  
12 disproving self-defense by proof beyond a reasonable doubt.

13        If you have a reasonable doubt of the defendant's guilt  
14 after considering all of the evidence of self-defense, then  
15 you must find the defendant not guilty. On the other hand,  
16 if you have no reasonable doubt of the defendant's guilt  
17 after considering all the evidence in this case, including  
18 the evidence of self-defense, then you must find the  
19 defendant guilty. The following elements, ladies and  
20 gentlemen, are required to establish self-defense.

21        Number one, first, the defendant must be without fault  
22 in bringing on the difficulty. If the defendant's conduct  
23 was the type, from the evidence, which was reasonably  
24 calculated to and did provoke a deadly assault, the  
25 defendant would be at fault for bringing on the difficulty,

1 and would not be entitled to an acquittal based on self-  
2 defense.

3 Two, or the second element, and they are all required  
4 of self-defense, is that the defendant was actually in  
5 imminent danger of death or serious bodily injury; or that  
6 the defendant actually believed he was imminent danger of  
7 death or serious bodily injury.

8 If the defendant was actually in imminent danger, it  
9 must be shown from the circumstances that a person of  
10 ordinary firmness and courage would have had to strike the  
11 fatal blow to prevent death or serious bodily injury.

12 If the defendant believed he was in imminent danger of  
13 death or serious bodily injury, it must be shown that a  
14 reasonably prudent person of ordinary firmness and courage  
15 would've had the same belief. In deciding whether the  
16 defendant actually was or believed he was in imminent danger  
17 of serious bodily injury or death, you, as a jury, should  
18 consider all the facts and circumstances surrounding the  
19 crime, including the physical condition and characteristics  
20 of the defendant and the victim, based on evidence  
21 introduced during the trial of the case.

22 The defendant does not have to show that he was  
23 actually in danger. It is enough if the defendant believed  
24 he was in imminent danger, and reasonably prudent person of  
25 ordinary firmness and courage would've had the same belief.

1 The defendant has the right to act on appearances, even  
2 though the defendant's belief may have been mistaken.

3 It is for you, ladies and gentlemen of the jury, to  
4 decide whether the defendant's fear of immediate danger or  
5 death or serious bodily injury was reasonable, and would've  
6 been felt by an ordinary person if faced with the same or  
7 similar circumstances. The third element, and our final  
8 element of self-defense is that the defendant had -- well,  
9 first of all, let me say this. Words alone are not enough.  
10 Words must be accompanied by a hostile act. But if words  
11 are accompanied by a hostile act, they may, depending on the  
12 evidence, establish self-defense.

13 The final element of self-defense -- I told you that  
14 element number one was would be without fault in bringing on  
15 the difficulty. Element number two, either the defendant  
16 was actually in imminent danger of death or serious bodily  
17 injury, or that the defendant actually believed he was in  
18 imminent danger of death or serious bodily injury.

19 The final element of self-defense was that the  
20 defendant had no other probable way to avoid the danger of  
21 death or serious bodily injury, other than to act as the  
22 defendant did in this particular instance. A person cannot  
23 be required to make an exact calculation as to the degree or  
24 manner of force which may be needed to avoid death or  
25 serious bodily injury.

1           Therefore, in self-defense, the defendant has the right  
2 to use of force, if the elements are present, needed to  
3 avoid death or serious bodily injury. The force used in  
4 self-defense does not have to be limited to the degree or  
5 amount of force used by the victim. The defendant has the  
6 right to use so much force as appears to be necessary for  
7 complete self-protection, in which a person of ordinary  
8 reason and firmness would have believed to be needed to  
9 prevent death or serious bodily harm.

10           If the defendant is justified in defending himself,  
11 then the defendant is also justified in continuing to fight  
12 until it is apparent that the fear or death or serious  
13 bodily injury has completely ended. I now have charged you  
14 the elements of self-defense.

15           I charge you that when a person voluntarily  
16 participates in mutual combat for purposes other than  
17 protection, he cannot justify or excuse the killing of his  
18 adversary in the course of such conflict on the grounds of  
19 self-defense. Regardless of what extremity or imminent  
20 peril he may be reduced to in the progress of the combat,  
21 unless before the homicide is committed, he withdrew and  
22 endeavored in good faith to the decline further conflict,  
23 either by words or actions, and made that fact known to the  
24 victim, the Mutual Combat Doctrine, ladies and gentlemen of  
25 the jury, is triggered when both parties, based on the

1 evidence, contribute to the resulting fight. Self-defense  
2 is available only when the defendant is without fault in  
3 bringing on the difficulty. Mutual combat acts as a bar to  
4 self-defense, because it requires mutual agreement to fight  
5 on equal terms, for purposes other than protection. If the  
6 defendant is engaged in mutual combat, self-defense is  
7 unavailable. Unless the defendant withdraws from the  
8 conflict before the killing occurs. If, before the killing  
9 occurs, the defendant withdrew and tried, in good faith, to  
10 avoid further conflict, either by words or actions, and made  
11 that fact known to the victim, he would be without fault in  
12 bringing on the difficulty.

13       Thus, if after -- and I'll use this as an example --  
14 after commencing an assault or initiating in an encounter,  
15 the defendant withdrew in good faith from the conflict, and  
16 announced to his adversary his intention to retire and  
17 withdraw from the conflict, then he would be restored to his  
18 right of self-defense; so that, if his adversary then  
19 pursues him, the defendant may, upon a reasonable belief  
20 that he is in danger, injure or kill his adversary. Such  
21 communication to the adversary or withdrawal by the  
22 defendant may be explicit and verbal, where you actually  
23 say, I'm withdrawing, I want no more, and such as by use of  
24 those words; or it may be implicit in conduct, such as  
25 retiring, or attempting to retire from the scene and

1 abandoning the conflict.

2 Now, in this case I told you there were two different  
3 offenses charged: murder and possession of a weapon during  
4 the commission of a violent crime. Each charge is a  
5 separate and distinct offense, and you must decide each  
6 charge separately on the evidence and the law that applies  
7 to it. And I'm going to explain to you in this case the  
8 relationship between the two.

9 You will be charged, though, to either find the  
10 defendant guilty or not guilty of the offense of murder; or  
11 guilty or not guilty, depending on your finding on murder,  
12 of the offense of voluntary manslaughter, and I have  
13 prepared a verdict form for you, Mr. Foreman, which I'll go  
14 over with you; or guilty or not guilty of possession of a  
15 weapon during the commission of a violent crime. I will now  
16 define the offenses for you.

17 First of all, you should know this. In order to  
18 establish criminal liability, criminal intent is required.  
19 Let me give you some examples. That is the mental state  
20 required to be proven by the State. And examples of  
21 criminal intent would be things like purpose, intent,  
22 knowledge, recklessness, and even in some cases criminal  
23 negligence. Those are just examples of criminal intent.

24 Criminal intent must be proven by the State beyond a  
25 reasonable doubt. Criminal intent is always a matter that

1 has to be determined by the jury from the circumstances  
2 surrounding the situation, based on evidence introduced  
3 during the trial of the case. Why? There is no way, ladies  
4 and gentlemen, that medical science can dissect a person's  
5 brain and determine what that person had in mind. So, the  
6 law says, ladies and gentlemen, that criminal intent may be  
7 inferred from the circumstances shown to have existed. This  
8 is how you make the determination of any element required in  
9 criminal intent, and whether or not it was present.

10 In other words, it is not necessary to establish  
11 criminal intent by direct or positive evidence. But intent  
12 may be established by inference in the same way as any other  
13 fact, by taking into consideration the acts of the parties  
14 and all the facts and circumstances of the case, based on  
15 evidence introduced during the trial of the case.

16 Criminal intent is a mental state. It is a conscious  
17 wrongdoing. It is up to you, ladies and gentlemen of the  
18 jury, from the evidence, to determine what the defendant  
19 intended to do, based on the circumstances shown to have  
20 existed from evidence introduced during the trial of the  
21 case.

22 I charge you, ladies and gentlemen, that the defendant,  
23 Daniel Lee Fludd, is charged in one indictment with the  
24 offense of murder. For this offense, the State must prove  
25 beyond a reasonable doubt that the defendant killed another

1 person with malice aforethought. Malice is a form of  
2 criminal intent. Malice is hatred, malice is ill-will,  
3 malice is hostility towards another person. It is the  
4 intentional doing of a wrongful act, without just cause or  
5 excuse, and with an intent to inflict an injury, or serious  
6 bodily harm or death.

7 Malice aforethought does not require that malice exist  
8 for any particular period of time before the act is  
9 committed. But malice, or evilness or wickedness or  
10 hostility, must exist in the mind of the defendant just  
11 before and at the time the act is being committed.  
12 Therefore, there must be a combination of this previous evil  
13 intent and the act itself.

14 Malice aforethought may be express or implied. These  
15 terms, express or implied, do not mean different kinds of  
16 malice, but merely the manner in which malice may be shown  
17 to exist. That is either by direct evidence or by inference  
18 from the facts and circumstances which are proven, based on  
19 evidence introduced during the trial of the case.

20 Express malice is shown when the person speaks words  
21 which express hatred, or express hostility or ill will  
22 towards another. Malice may be inferred from conduct  
23 showing a total disregard for human life.

24 Malice may also be inferred, or may arise, when the  
25 deed is done with a deadly weapon. A deadly weapon is any

1 article, instrument, or substance which is likely to cause  
2 death or serious bodily harm. Whether an instrument has  
3 been used as a deadly weapon depends on the facts and  
4 circumstances of each case, based on the evidence.

5 The law says if one intentionally kills another with a  
6 deadly weapon, the implication of malice may arise if facts  
7 are proven beyond a reasonable doubt sufficient to raise an  
8 inference of malice to your satisfaction. This malice would  
9 simply be an evidentiary fact to be taken into consideration  
10 by you, the jury, along with other evidence in the case.  
11 And you may give it such weight as you determine it should  
12 receive, and it can be rebutted by evidence in the case,  
13 based on your review of the evidence.

14 If you find, ladies and gentlemen, that the State has  
15 failed to prove beyond a reasonable doubt that the defendant  
16 committed murder, you may consider whether the State has  
17 proved beyond a reasonable doubt that the defendant  
18 committed the lesser-included offense of voluntary  
19 manslaughter. Included within the offense of murder is the  
20 lesser offense of voluntary manslaughter. To prove  
21 voluntary manslaughter, the State must prove beyond a  
22 reasonable doubt that the defendant took the life of another  
23 in the sudden heat of passion on sufficient legal  
24 provocation. Both heat of passion and sufficient legal  
25 provocation must be present at the time of the killing to

1 constitute voluntary manslaughter. Sudden heat of passion  
2 may, for a time, affect a person's self-control, and  
3 temporarily disturb a person's reason. The sudden heat of  
4 passion must be the type that would make an ordinary person  
5 unable to coolly reflect on his actions, and would produce  
6 an uncontrollable impulse to do violence.

7       Sufficient legal provocation must be the type that  
8 would make a person of ordinary reason, ordinary caution, to  
9 become enraged and to lose control temporarily. This  
10 provocation needed for voluntary manslaughter must come from  
11 some act of, or be related to, the victim. Words alone,  
12 however vulgar, however insulting, are not enough to be  
13 legal provocation. The exercise of a legal right, no matter  
14 how offensive it is to another, is never sufficient legal  
15 provocation for voluntary manslaughter.

16       I'll also charge you that if the heat of passion had  
17 cooled, or if there was enough time between the provocation,  
18 if any, and the killing, for the passion of a reasonable  
19 person to cool, the killing would not be voluntary  
20 manslaughter.

21       In deciding whether a reasonable person would've had  
22 enough time to cool off, you should consider all of the  
23 circumstances surrounding the killing. You may consider the  
24 nature of the provocation, if any; the defendant's mental  
25 and physical state; and the circumstances and relationships

1 between the parties, based on evidence introduced during the  
2 trial of the case.

3 I charge you, ladies and gentlemen, the defendant is  
4 also charged with the possession of a weapon during the  
5 commission of a violent crime. The State must prove beyond  
6 a reasonable doubt the defendant was in possession of a  
7 weapon, or visibly displayed what appeared to be a weapon,  
8 during the commission of a violent crime.

9 In order to find the defendant guilty of possession of  
10 a weapon during the commission of a violent crime, you must  
11 first find the defendant guilty of a violent crime. I  
12 charge you, ladies and gentlemen, that under the laws of the  
13 State of South Carolina, both murder and voluntary  
14 manslaughter are violent crimes, under the laws of the State  
15 of South Carolina.

16 The State must prove beyond a reasonable doubt that the  
17 weapon furthered, advanced, or helped in the commission of  
18 the crime.

19 Now, Mr. Foreman and ladies and gentlemen, I told you I  
20 would prepare a verdict form for you. First of all, pay  
21 absolutely no attention to the order in which I wrote the  
22 forms of verdict. We obviously had to write one before the  
23 other, so the order has no significance whatsoever. I have  
24 placed the heading of this case at the top of your verdict  
25 form. It says, State of South Carolina, County of Hampton,

1 Court of General Sessions. It has the indictment numbers.  
2 It says, State of South Carolina versus Daniel Lee Fludd,  
3 defendant. It has the words, Verdict Form. You have  
4 possibly three questions, you might not have to answer all  
5 three, and I've given you instructions, Mr. Foreman, on the  
6 verdict form.

7 Question one: we, the jury, by unanimous consent, find  
8 Daniel Lee Fludd, on the charge of murder, in Indictment  
9 2017-GS-25-00160. The first form of verdict under question  
10 one is guilty of murder. If that be your form of verdict,  
11 Mr. Foreman, you would check on the line beside that form of  
12 verdict. The second form of verdict under question one is  
13 not guilty of murder. If that be your form of verdict, Mr.  
14 Foreman, you would check on the line beside that form of  
15 verdict. You must find for Question One, one form of  
16 verdict or the other. You cannot find both. It has to be  
17 either guilty or not guilty of murder.

18 Question two -- and I wrote you instruction -- if you  
19 find the defendant, Daniel Lee Fludd, guilty of murder, you  
20 do not answer Question Two. If you find the defendant,  
21 Daniel Lee Fludd, not guilty of murder, you must answer  
22 Question Two. Question Two: we, the jury, by unanimous  
23 consent, find the defendant, Daniel Lee Fludd; and the first  
24 form of verdict under Question Two, if you answer it, guilty  
25 of the lesser-included offense of voluntary manslaughter.

1 If that be your form of verdict, you would check on the line  
2 beside that form of verdict.

3 The second form of verdict under Question Two is not  
4 guilty of the lesser-included offense of voluntary  
5 manslaughter. If that be your form of verdict you would  
6 check on the line beside that form of verdict. You must, if  
7 you answer Question Two, find one or the other, and not  
8 both. It's either guilty or not guilty of voluntary  
9 manslaughter.

10 And that brings us to your last question. If you find  
11 the defendant, Daniel Lee Fludd, guilty of either murder or  
12 guilty of voluntary manslaughter -- my law clerk wrote  
13 "and", but it's or, and I'm going to change that. You can  
14 find him not guilty of murder, but if you find him guilty of  
15 voluntary manslaughter, you have to answer Question Three.  
16 And I apologize, because he's got it right. If you find the  
17 defendant, Daniel Lee Fludd, not guilty of murder and not  
18 guilty of voluntary manslaughter -- and I'll put the "and"  
19 back in -- you do not answer Question Three, because you  
20 have to find the defendant guilty of a violent crime in  
21 order to convict the defendant for possession of a weapon  
22 during the commission of a violent crime.

23 So if you find him not guilty of both murder and  
24 voluntary manslaughter, then you would not answer Question  
25 Three. But, as I just told you a minute ago, if you find

1 the defendant, Daniel Lee Fludd, guilty of either murder or  
2 voluntary manslaughter, you must answer Question Three,  
3 because both murder and voluntary manslaughter are violent  
4 crimes under the laws of the State of South Carolina.

5 Question Three: we, the jury, by unanimous consent,  
6 find Daniel Lee Fludd, on the charge of possession of a  
7 weapon during the commission of a violent crime, in  
8 Indictment Number 2017-GS-25-00161, the first form of  
9 verdict it guilty of possession of a weapon during the  
10 commission of a violent crime. If that be your form of  
11 verdict you would check on the line beside that, if you have  
12 to answer Question Three.

13 Or the second form of verdict under Question Three is  
14 not guilty of possession of a weapon during the commission  
15 of a violent crime. If that be your form of verdict, you  
16 would check on the line beside that form of verdict.

17 Then, Mr. Foreman, you would sign your name on the line  
18 where it says, Foreperson, and you would fill in today's  
19 date. I've already written December and 2018, so you only  
20 have to write in today's date. Your signature certifies  
21 that it is the verdict of the entire jury. Your verdict,  
22 ladies and gentlemen, must be unanimous. That is, it must  
23 be the verdict of each and every one of you. All twelve of  
24 you must agree on a verdict. When you have reached a  
25 verdict you will knock on your jury room door, tell the

1 bailiff you have reached a verdict. We will then bring you  
2 back out into the courtroom to publish your verdict.

3 Mr. Foreman, do not leave -- whatever you write on the  
4 verdict form I prepared, and I scratched through and wrote  
5 back, and, for you. If you can't read my writing, that's  
6 and, a/n/d. Whatever you write on the verdict form, you're  
7 going to write it right here where it says, verdict, before  
8 you leave, and sign your name and date it, just like the  
9 verdict form on the indictments, both of them. And David  
10 will be coming to you for that.

11 Now, Mr. Foreman and ladies and gentlemen of the jury,  
12 I've now charged you the law in order to help guide you to a  
13 fair and just result in this case. You're the judges of the  
14 facts of this case, from the evidence, and based on your  
15 determination of the facts in this case and the law as I've  
16 just explained it to you, you're going to soon begin your  
17 deliberations.

18 Now, each of you were selected as fair and impartial  
19 jurors. You have no friends to reward, you have no enemies  
20 to punish. You must base your decision solely on the  
21 evidence which has been introduced during the trial of this  
22 case. We selected you by you telling us, I don't know  
23 anything about this case. I hadn't heard about it, I hadn't  
24 read about it, I hadn't talked to anybody about it. You  
25 took an oath and you swore that you would fairly and

1 impartially try and determine the facts in this case, and  
2 when you comply with that oath, no one can criticize your  
3 verdict.

4       You are to decide the case based on the evidence you've  
5 heard from the witness stand, the exhibits, and any  
6 stipulations. You must decide the case, and you must decide  
7 it without any bias or prejudice toward either party. You  
8 cannot allow yourself to be governed by prejudice for or  
9 against any person. You can't allow yourself to be governed  
10 by public opinion. You can't allow yourself to be governed  
11 by emotion. You must base your decision solely and only on  
12 the evidence which has been introduced during the trial of  
13 the case.

14       Both the State of South Carolina and the defendant have  
15 the absolute right to expect that each of you on this jury  
16 will carefully and impartially consider all of the evidence  
17 in this case, and that you will follow the law as I have  
18 instructed it to you to be in reaching your verdict in this  
19 case. All right. Now, ladies and gentlemen of the jury,  
20 I'm going to ask you to retire to your jury room. Do not  
21 begin your deliberations. I know you're anxious, and I'm  
22 going to be right with you. I have to go through -- I might  
23 have to charge you some additional law. I don't know yet.  
24 If not, I'm going to send in the verdict form and all the  
25 exhibits which have been introduced into evidence during the

1 trial of the case, and have the bailiff tell you, you may  
2 then commence your deliberations. So, do not begin until I  
3 instruct you to do so. Please retire to your jury room.  
4 Alternate jurors, remain in the courtroom.

5 (JURY EXITS COURTROOM AT 4:08 P.M.)

6 THE COURT: First of all, to my alternate jurors, I  
7 want to thank you. All a judge can ask -- I do this after  
8 every case when I keep you for three days -- this concludes  
9 your service for the entire week. I send you home with my  
10 thanks. All a judge can ask is that you listen. Thank you  
11 very much, ma'am. Thank you, ma'am, very much. Now, you  
12 can't go back to the jury room. Does everybody have all of  
13 their belongings? You didn't leave anything in there?

14 (ONE JUROR REPLIES.)

15 THE COURT: You left what? What? Your sandwich. You  
16 think, Coach, you can find her sandwich?

17 BAILIFF: I'll find it, Judge.

18 THE COURT: Now, Melinda's going to be mailing you a  
19 check for -- how much per day?

20 MADAM CLERK: Twenty dollars a day.

21 THE COURT: Twenty dollars a day for your jury service.  
22 We thank you. Did we treat you all right?

23 JURORS: Yes, oh, yes.

24 THE COURT: Did we take good care of you? Anybody got  
25 -- I'm always looking for a way to make it better. Anything

1 we can do to improve on the way we did it? Did you  
2 understand what was going on? Was it clear to you?

3 JURORS: Yes.

4 THE COURT: Well, we appreciate that. Now, I'm going  
5 to ask you, if you would -- we're going to get your sandwich  
6 and bring it to you, because you can't go back in the jury  
7 room -- you're going to get your check where we mail -- here  
8 it comes right now.

9 THE COURT: Your check's going to be mailed to the  
10 address where your subpoena is. Does anybody need a work  
11 excuse from serving on the jury this week? Everybody okay  
12 on that? With my thanks, you are now excused from the  
13 courtroom. You may leave at this time, or if you wish you  
14 can remain with us, and seated in the public area of the  
15 courtroom. Whatever you desire, but you're excused.

16 (ALTERNATE JURORS RELEASED.)

17 THE COURT: Time to go now. I've got to go back to  
18 work. Any exceptions or additions to the charge from the  
19 State of South Carolina?

20 ASST. SOLICITOR LEGETTE: Your Honor, I think we may  
21 need to re-charge them on the State v. Belcher.

22 THE COURT: On what?

23 ASST. SOLICITOR LEGETTE: The deadly weapon inference,  
24 where -- I think you might need to re-charge them on the  
25 deadly weapon inference.

1           THE COURT: I told them it was an evidentiary fact that  
2 could be rebutted.

3           ASST. SOLICITOR LEGETTE: Okay. All right. I just  
4 wanted to make sure we ---

5           THE COURT: And I -- I've never charged it as an  
6 inference just because of the deadly weapon.

7           ASST. SOLICITOR LEGETTE: Okay. Okay. Yes, sir. All  
8 right.

9           THE COURT: Yes, I charged them that the fact could be  
10 rebutted by the evidence in the case, based on your view of  
11 the evidence. The implication is just an evidentiary fact  
12 that must be proven beyond a reasonable doubt, and just  
13 because it's sufficient to raise an inference of malice, the  
14 inference would be simply an evidentiary fact to be taken  
15 into consideration by you, along with the other evidence in  
16 the case; and you may give it such weight as you determine  
17 it should receive, and it can be rebutted by the evidence in  
18 the case, based on your view of the evidence.

19          ASST. SOLICITOR LEGETTE: Okay.

20          THE COURT: You satisfied?

21          ASST. SOLICITOR LEGETTE: Yes, your Honor.

22          THE COURT: Anything else?

23          ASST. SOLICITOR LEGETTE: Not from the State.

24          THE COURT: Any exceptions or additions to the charge  
25 from the defendant?

1 MR. DEYSACH: No, Your Honor.

2 THE COURT: All right. Now, counsel, this is going to  
3 be the hardest thing you do in the trial. You're going to  
4 have to come forward with court reporter and I want you to  
5 certify that the court reporter has all the exhibits, and  
6 that you have -- I want you all to look at what I wrote on  
7 the verdict form. I wrote -- where I scratched through  
8 because I thought he had made a mistake on the first line.  
9 I thought it was "or"; and it is "and" for this. And I  
10 wrote "and" and put my initials. Is that okay with you all?

11 MR. DEYSACH: I think you made it clear.

12 ASST. SOLICITOR LEGETTE: I think it's fine.

13 THE COURT: All right. Let the record reflect, Becky,  
14 the attorneys are satisfied with my writing on the verdict  
15 form. All right. Take a look at the exhibits.

16 THE COURT: All right. Let's come to order. We're on  
17 the record. Is the State satisfied that the court reporter  
18 has all the exhibits?

19 ASST. SOLICITOR LEGETTE: Yes, Your Honor.

20 THE COURT: State have any objection to the bailiff  
21 taking the verdict form and the exhibits in to the jury, and  
22 telling the jury they may now commence their deliberations?

23 ASST. SOLICITOR LEGETTE: The State has no objection,  
24 your Honor.

25 THE COURT: Is the defendant satisfied that the court

1 reporter has all the exhibits?

2 MR. DEYSACH: Yes, your Honor.

3 THE COURT: Does the defendant have any objection to  
4 the bailiff taking the verdict form and the exhibits in to  
5 the jury, and telling the jury they may now commence their  
6 deliberations?

7 MR. DEYSACH: No, Your Honor.

8 THE COURT: All right, Coach, you get it all. You got  
9 the verdict form, get the exhibits. Tell the jury they may  
10 commence their deliberations.

11 (VERDICT FORM AND EXHIBITS TO JURY AT 4:20 P.M.)

12 (WHEREUPON, THE COURT TURNS TO OTHER NON-JURY GENERAL  
13 SESSIONS MATTERS. THEREFORE, AT 4:25 P.M., A NOTE IS  
14 RECEIVED FROM THE JURY AND MADE A COURT'S EXHIBIT AND THE  
15 FOLLOWING IS STATED BY THE COURT.)

16 THE COURT: All right. Let the record reflect that at  
17 4:20 this afternoon, I received a note from the jury that  
18 says, first line says, "Where is the necklace -- question  
19 mark." Then, explain the time difference in 9-1-1 call and  
20 body cam. I've related both of those questions to counsel  
21 for the State and Defendant. They agree the answer to both  
22 of those is, you must decide this case based on the evidence  
23 presented. I have written that on the note the jury sent  
24 me, and signed my name as Perry Buckner, presiding judge.  
25 That is, you must decide this case based on the evidence

1 presented. I will tell them that orally when they come out,  
2 because this will be made a court's exhibit.

3 The third question is, explain voluntary manslaughter.  
4 It is my intention to re-charge the jury on the lesser-  
5 included offense of voluntary manslaughter in light of their  
6 question. And both counsel for the State and counsel for  
7 the defendant agree that that is the appropriate responses.  
8 However, I will ask the foreperson, after I have provided  
9 the answers and provided the charge, if that answers the  
10 jury's question. If they have other questions, they'll have  
11 to express them in writing and let us deal with them. Is  
12 that correct, from the State?

13 ASST. SOLICITOR LEGETTE: That's correct, from the  
14 State, your Honor.

15 THE COURT: Is that correct, from the defendant?

16 MR. DEYSACH: Yes, your Honor.

17 THE COURT: Bring us the jury, please.

18 (WHEREUPON, JURY ENTERS COURTROOM AT 5:10 P.M. AND THE  
19 FOLLOWING IS PLACED ON THE RECORD IN THE PRESENCE OF THE  
20 JURY.)

21 THE COURT: Mr. Foreman and ladies and gentlemen of the  
22 jury, I received your note, and I'm going to deal with it in  
23 reverse order. You asked me to explain voluntary  
24 manslaughter. I'll ask you to please listen carefully. If  
25 you find -- let me get my microphone. Can everybody hear me

1 all right? If you can't I know that I -- I'm so used to  
2 talking up in a courtroom -- if you can't hear me, just  
3 raise your hand.

4 If you find the State has failed to prove beyond a  
5 reasonable doubt that the defendant committed murder, you  
6 may consider whether the State has proven beyond a  
7 reasonable doubt that the defendant committed voluntary  
8 manslaughter. Included within the offense of murder is the  
9 lesser-included offense of voluntary manslaughter.

10 Voluntary manslaughter is a lesser-included offense of  
11 the offense of murder. To prove voluntary manslaughter, the  
12 State must prove beyond a reasonable doubt that the  
13 defendant took the life of another in the sudden heat of  
14 passion, based on sufficient legal provocation. Both heat  
15 of passion and sufficient legal provocation must be present  
16 at the time of the killing to constitute voluntary  
17 manslaughter.

18 And when we say heat of passion, sudden heat of  
19 passion, sudden heat of passion may, for a time, affect a  
20 person's self-control and temporarily disturb a person's  
21 ability to reason rationally. The sudden heat of passion  
22 must be the type that would make an ordinary person unable  
23 to coolly reflect on his actions, and would produce an  
24 uncontrollable impulse to do violence.

25 Sufficient legal provocation must be the type that

1 would make a person of ordinary reason, ordinary caution,  
2 become enraged and lose control temporarily.

3       The provocation that we're talking about here, legal  
4 provocation, needed for voluntary manslaughter, must come  
5 from some act of, or related to the victim. It can't come  
6 from some third party. Words alone, however vulgar, however  
7 insulting, are not enough to be legal provocation for  
8 voluntary manslaughter.

9       The exercise of a legal right, no matter how offensive  
10 it is to another, is never sufficient legal provocation for  
11 voluntary manslaughter. If the heat of passion had cooled,  
12 or if there was enough time between the provocation, if any,  
13 and the killing, for the passion of a reasonable person to  
14 cool, the killing would not be voluntary manslaughter.

15       In deciding whether a reasonable person would have  
16 enough time to cool off, you should consider all the  
17 circumstances surrounding the killing, based on the evidence  
18 that's been introduced during the trial of the case.

19       You may consider the nature of the provocation, if any;  
20 the defendant's mental and physical state, based on the  
21 evidence and the circumstances, and relationships between  
22 the parties, based on evidence introduced during the trial  
23 of the case.

24       Mr. Foreman, have I now answered the jury's question on  
25 voluntary manslaughter?

1 FOREPERSON: Yes, Your Honor.

2 THE COURT: Any other questions, you will have to write  
3 down for me and send out to me, if you're going to ask  
4 another question. I need to know whether or not I've  
5 answered your question on voluntary manslaughter.

6 FOREPERSON: Yes, Your Honor.

7 THE COURT: All right. You also asked me two other  
8 questions, and I need to emphasize this. One is, where is  
9 the necklace? And the other is, explain the time difference  
10 in the 9-1-1 call and the body cam. I charge you, ladies  
11 and gentlemen, that you must decide this case based on the  
12 evidence presented. I cannot make any comment to you about  
13 the evidence.

14 Mr. Foreman, I believe I've answered now all three of  
15 the questions you raised on your note to me. I'm going to  
16 ask you to retire to your jury room and continue your  
17 deliberations.

18 (JURY EXITS COURTROOM AT 5:16 P.M. AND THE FOLLOWING IS  
19 PLACED ON THE RECORD.)

20 THE COURT: Any exceptions to the Court's supplemental  
21 charge and comments to the jury, from the State?

22 ASST. SOLICITOR LEGETTE: None, your Honor.

23 THE COURT: From the defendant?

24 MR. DEYSACH: No, Your Honor.

25 THE COURT: Any objection to making the jury's notes

1 and my written response on two of the questions and my oral  
2 response, which is on the record, to the other question,  
3 making the jury's original note a Court's exhibit? Any  
4 objection from the State?

5 ASST. SOLICITOR LEGETTE: No, Your Honor.

6 THE COURT: Any objection from the defendant?

7 MR. DEYSACH: No, Your Honor.

8 THE COURT: What number is it, Becky?

9 COURT REPORTER: Two.

10 THE COURT: Court's Exhibit Number 2, without  
11 objection.

12 (COURT'S EXHIBIT NUMBER 2, IDENTIFIED AND MARKED,  
13 ADMITTED.)

14 THE COURT: All right. Counsel, hopefully we'll be  
15 awaiting the jury.

16 (WHEREUPON, THE COURT TURNS ATTENTION BACK TO NON-JURY  
17 GENERAL SESSION MATTERS. THEREFORE, AT 5:40 P.M., THE COURT  
18 IS INFORMED THAT THE JURY HAS REACHED A VERDICT AND THE  
19 FOLLOWING IS PLACED ON THE RECORD.)

20 THE COURT: Ladies and gentlemen, I've just been told  
21 that the jury has reached a verdict. Now, I'm happy for all  
22 of you to stay in the courtroom when I publish a verdict,  
23 but I do not allow any outbursts, any show of emotion. If  
24 you cannot control your emotions, step out now, because I'm  
25 not going to have this jury embarrassed by your reaction to

1 a verdict. I've kept them working here now for three  
2 straight days. It's dark out now and they're going home.  
3 They deserve respect for their service. I will enforce that  
4 with the contempt powers of this Court. So if you can't  
5 control your emotions, no matter how you may feel about this  
6 case, step out of the courtroom right now.

7 THE COURT: Is the State of South Carolina ready to  
8 proceed?

9 ASST. SOLICITOR LEGETTE: No, your Honor.

10 THE COURT: Is the defendant ready to proceed?

11 MR. DEYSACH: Yes, Your Honor.

12 THE COURT: Bring us the jury, please.

13 (JURY RE-ENTERS THE COURTROOM AT 5:44 P.M.)

14 MADAM CLERK: Mr. Foreman, have you reached a verdict?

15 FOREPERSON: Yes, ma'am, we have.

16 THE COURT: Will the defendant and the defense counsel  
17 please rise? On Indictment 2017-GS-25-00160, we, the jury,  
18 by unanimous consent, find Daniel Lee Fludd, on the charge  
19 of murder, not guilty of murder.

20 On Indictment 2017-GS-25-00160, we, the jury, by  
21 unanimous consent, find the defendant, Daniel Lee Fludd,  
22 guilty of the lesser-included offense of voluntary  
23 manslaughter.

24 On Indictment 2017-GS-25-00161, the offense of  
25 possession of a weapon during the commission of a violent

1 crime, we, the jury, by unanimous consent, find the  
2 defendant, Daniel Lee Fludd, guilty of possession of a  
3 weapon during the commission of a violent crime.

4 Mr. Foreman and ladies and gentlemen of the jury, if  
5 that be your verdict, as published by the Court, please  
6 raise your right hand at this time. Let the record -- thank  
7 you. Let the record reflect, twelve hands were raised. Mr.  
8 Deysach, anything further from the jury before I excuse the  
9 jury, from the defendant?

10 MR. DEYSACH: I'd ask that the jury be polled, your  
11 Honor.

12 THE COURT: Madam Clerk, I'm going to ask you to poll  
13 the jury. You may please be seated, Mr. Deysach and Mr.  
14 Fludd.

15 The Clerk is going to call your name. As your name is  
16 called, you will stand. The Clerk is going to ask you two  
17 questions. Was that your verdict, and you say yes or no.  
18 And then she's going to ask, is that still your verdict, and  
19 you will answer yes or no. Madam Clerk, please poll the  
20 jury as requested by Counsel for the defendant.

21 MADAM CLERK: Desmond Elmore. Was this your verdict?

22 JUROR: Yes, ma'am.

23 MADAM CLERK: Is it still your verdict?

24 JUROR: Yes, ma'am.

25 MADAM CLERK: Thaddeus Speaks. Is this your verdict?

1 JUROR: Yes, ma'am.

2 THE COURT: Is it still your verdict?

3 JUROR: Yes, ma'am.

4 MADAM CLERK: Louise Bryant. Is this your verdict?

5 JUROR: Yes, ma'am.

6 MADAM CLERK: Is it still your verdict?

7 JUROR: Yes, ma'am.

8 MADAM CLERK: Sharon Forrester. Is this your verdict?

9 JUROR: Yes, ma'am.

10 MADAM CLERK: Is it still your verdict?

11 JUROR: Yes, ma'am.

12 MADAM CLERK: Jamal Edwards. Is this your verdict?

13 JUROR: Yes.

14 MADAM CLERK: Is it still your verdict?

15 JUROR: Yes, ma'am.

16 MADAM CLERK: Brandy Heape. Is this your verdict?

17 JUROR: Yes, ma'am.

18 MADAM CLERK: Is it still your verdict?

19 JUROR: Yes, ma'am.

20 MADAM CLERK: Sharon Haynes. Is this your verdict?

21 JUROR: Yes, ma'am.

22 MADAM CLERK: Is it still your verdict?

23 JUROR: Yes, ma'am.

24 MADAM CLERK: Amber Gruber. Is this your verdict?

25 JUROR: Yes, ma'am.

1 MADAM CLERK: Is it still your verdict?

2 JUROR NUMBER: Yes, ma'am.

3 MADAM CLERK: Jeanette Dobson. Is this your verdict?

4 JUROR: Yes, ma'am.

5 MADAM CLERK: Is it still your verdict?

6 JUROR: Yes, ma'am.

7 MADAM CLERK: Sheila Anderson. Is this your verdict?

8 JUROR NUMBER: Yes, ma'am.

9 MADAM CLERK: Is it still your verdict?

10 JUROR NUMBER: Yes, ma'am.

11 MADAM CLERK: Melanecia Wright. Is this your verdict?

12 JUROR NUMBER: Yes, ma'am.

13 MADAM CLERK: Is it still your verdict?

14 JUROR NUMBER: Yes, ma'am.

15 MADAM CLERK: Marvin Pyles.

16 JUROR NUMBER: Yes, ma'am.

17 MADAM CLERK: Is this your verdict?

18 JUROR NUMBER: Yes, ma'am.

19 MADAM CLERK: Is it still your verdict?

20 JUROR NUMBER: Yes, ma'am.

21 THE COURT: Mr. Deysach, the jury has been polled, the  
22 verdict stands. Anything else from the jury, from the  
23 defendant, before I excuse the jury?

24 MR. DEYSACH: No, your Honor.

25 THE COURT: Mr. Foreman and ladies and gentlemen of the

1 jury, first of all, all a judge can ask is that you listen  
2 during the trial. And I watched the twelve of you  
3 throughout the past three days, and I want to thank you for  
4 listening, for observing. That's all a judge can ask of you.  
5 There was clear evidence to support your verdict in this  
6 case. I don't have a quarrel with the jury's verdict,  
7 because I find that juries, because they come from all walks  
8 of life, different backgrounds, they usually get it right.  
9 So, when people talk to you about the jury system and they  
10 say, oh, we ought to change it, I tell you it's the best  
11 system in the world. I'm with juries every week of my life.  
12 I see what they do, and I'm thankful for them. I'm thankful  
13 for your service.

14 Now, we're going to mail you your check, the exorbitant  
15 amount of money that we pay, twenty dollars a day, for your  
16 jury service. Now, that's not Mylinda's fault, that's set  
17 by County Council. We'll blame them since none of them, I  
18 don't believe, are in here. I wish it was more. Now, if it  
19 -- does anybody need a work excuse from serving on the jury?  
20 One, two, three, four, five.

21 MADAM CLERK: They are prepared, and they are at the  
22 security desk when they get ready to leave.

23 THE COURT: All right. When you go downstairs to the  
24 security desk, we've already prepared them. You can pick up  
25 your work excuse from serving on the jury this week down

1   there. We want to make sure your employer knows where you  
2   are. Did we treat you okay?

3           JURY: Yes.

4           THE COURT: Anybody got any complaints? I've got thick  
5   skin. Believe me, I'm always looking to try to make it  
6   better.

7           JUROR: I'm trying to get orange juice and bagels, but  
8   it was just ---

9           THE COURT: I understand. Believe me, I'll try -- and  
10   let me tell you how good your clerk is here. First of all,  
11   the food you got from Coconuts is where I eat every time I  
12   come to Hampton. She knows that. I think it's -- I like it  
13   better than any other place in Hampton. We try to be very  
14   mindful of your time. We appreciate your time very much,  
15   and we hope we treated you fine.

16          Now, sentencing in this case is going to take place in  
17   just a moment. You're invited, if you want to, you can stay  
18   in the jury box, because I'm going to let you leave, with  
19   the assistance from my bailiffs. They'll escort you,  
20   because it's dark out there, to your car. Or you can leave  
21   and go home, or you can leave, go downstairs, get your work  
22   excuse, come back up and sit in the public area of the  
23   courtroom. We invite you to stay for sentencing if you  
24   would like to. Sentencing in the Court's province; not the  
25   jury's province. You've done your job. Your verdict has

1    been polled, and it stands. I thank you for your service to  
2    Hampton County and the State of South Carolina. For those  
3    people that wish to leave, you may leave the courtroom at  
4    this time.

5           (JURY EXITS COURTROOM AT 5:50 P.M.)

6           THE COURT: Mr. Deysach, are there any post-verdict  
7    motions from the defendant?

8           MR. DEYSACH: Yes, your Honor. At this time we would  
9    renew all objections that were overruled during the course  
10   of the trial, and pretrial. We would ask for -- renew our  
11   motion for a directed verdict that was made at the end of  
12   the State's case. And we would also ask Your Honor to set  
13   aside the verdict, and we'd also ask your Honor to consider  
14   our motion for a new trial.

15          THE COURT: For the reasons I enunciated on the record  
16   pretrial, we had three lengthy pretrial motions. One was  
17   protection of property, sometimes known as the Castle  
18   Doctrine statute, hearing, in which I found that you had  
19   failed to convince me by a preponderance of the evidence  
20   that your client was immune to the criminal prosecution.

21          Next, was the Jackson/Denno hearing, and if you recall  
22   I ruled in your favor, in part, in the Jackson/Denno  
23   hearing, and I overruled your objection, in part, on the  
24   Jackson/Denno hearing.

25          Next, was the Neil vs. Biggers hearing, for

1 identification, which I'm not sure you ever enunciated the -  
2 - yeah, you did. You objected because of the photo lineup  
3 content. And he testified that it could've come from mug  
4 shots or a driver's license. He later testified -- another  
5 witness testified it came from driver's license. I examined  
6 that photo lineup. There was no evidence that I felt  
7 indicated a mug shot, and therefore, I found it was  
8 admissible; and charged the jury, it was ultimately their  
9 decision as to whether or not the State had proven a  
10 reasonable doubt about the identity of the defendant,  
11 because it's ultimately their decision regardless of whether  
12 I admitted it or not.

13 There were numerous objections made during the trial,  
14 including a motion for a directed verdict at the close of  
15 the State's case. And Mr. Deysach, to protect you, because  
16 the way we did it, because of time, we worked straight  
17 through, almost, yesterday and today, and took shorter lunch  
18 breaks.

19 I'm going to note on the record, and Becky, I want you  
20 to put it on it, that Mr. Deysach contacted me during the  
21 break, and I told him I would give him an opportunity to  
22 renew his motion for directed verdict as if made at the  
23 close of all the evidence. We did not put that on the record  
24 because we went straight into closing argument after Mr.  
25 Deysach rested.

1           I now put on the record that Mr. Deysach timely made a  
2 motion on behalf of Mr. Fludd at the close of all the  
3 evidence. It is -- and he made it on the same grounds that  
4 he made at the close of the State's case, and I respectfully  
5 deny that motion. Mr. Deysach, I also respectfully deny  
6 your motion for a new trial.

7           Solicitor, I'm going to ask you to come forward. Mr.  
8 Deysach, I'm going to ask you and Mr. Fludd to come forward  
9 for sentencing. Counsel, approach.

10          (Whereupon, a bench conference is held off the record  
11 and out of the hearing of the courtroom.)

12          THE COURT: I realize I have -- I don't know if I've  
13 got any jurors in the courtroom. Do I have any jurors in  
14 the courtroom?

15          BAILIFF: You have two, Judge.

16          THE COURT: I'm going to explain to you so you have  
17 some idea what's going on. We don't talk to juries about  
18 sentencing because that's not your province. We don't let  
19 lawyers argue about it to the jury. That's the province for  
20 the Court.

21          For voluntary manslaughter, the sentence is not less  
22 than two years, nor more than thirty years. And the  
23 sentence for possession of a weapon during the commission of  
24 a violent crime is five years. It's a mandatory five-year  
25 sentence, but it can be concurrent or consecutive to the

1 voluntary manslaughter charge. I wanted my jurors to  
2 understand what we were checking on.

3 All right, Solicitor. Let me hear from you. I'm very  
4 familiar with the evidence in this case, Solicitor, but if I  
5 have any member of the family that wishes to address me, or  
6 you want to tell me anything else, I'm happy to hear from  
7 you.

8 ASST. SOLICITOR LEGETTE: Thank you, your Honor. Your  
9 Honor, his prior record, which we discussed in chambers,  
10 includes a 2012 shoplifting, a 2014 obstruction of law  
11 enforcement officer, as well as a 2012, I believe,  
12 defrauding a restaurant. I believe that was in  
13 Massachusetts. The victim's family, your Honor, they were  
14 here yesterday, but it was just too much, and they became  
15 overwhelmed and could not come back today. Ms. Grill, from  
16 our office, our victims' advocate, our beloved Ms. Grill,  
17 will speak on their behalf, please.

18 THE COURT: Peggy, I'm happy to hear from you.

19 MS. GRILL: Yes, sir. The Gordon's attended Monday and  
20 Tuesday, and yesterday was very, very taxing for them. They  
21 realize that nobody wins in a murder case. And ---

22 THE COURT: They didn't ask you to take any position on  
23 sentencing. Is that correct?

24 MS. GRILL: That's correct.

25 ASST. SOLICITOR LEGETTE: They didn't have a position

1 on sentencing, your Honor. However, the State does ask --  
2 we had a plea offer in this case. The original plea offer  
3 was twenty-five years. The second plea offer was twenty  
4 years, and we discussed some more issues in chambers. We  
5 would ask the Court to sentence him to twenty-five years,  
6 and to run the weapons charge concurrent, your Honor.

7 THE COURT: Very well. Anything else from the State  
8 before I hear from the defendant?

9 ASST. SOLICITOR LEGETTE: No, Your Honor.

10 THE COURT: Mr. Deysach, I'm happy to hear from you.

11 MR. DEYSACH: Thank you very much. Daniel is twenty-  
12 four years old. You heard his record, which is certainly  
13 minimal, and certainly includes nothing of hurting a fly,  
14 really. Just property-types of offenses. And so, does not  
15 have a history of any violence that I'm aware of, certainly  
16 meeting with him. His sister's been in the courtroom, twin  
17 sister, the whole time. Daniel was actually adopted. I've  
18 been in contact with his parents, who live in Georgia. You  
19 could hear during the trial that there was -- he had -- he  
20 had gone to school in Estill as a child, and then moved  
21 away. Had been in Georgia before coming back to Estill with  
22 his sister, and I think there was evidence in there, if you  
23 listen, that he's -- he is -- he was trying to work his way  
24 up to living in the projects with his sister, that he was  
25 just trying to -- he was -- I think it was a trailer where

1 the lights had been turned off and rent was tough to pay.  
2 And you could hear on some of the statement that was  
3 admitted this frustration of not being able to -- to just  
4 try to better himself in a way.

5 And this, you know, obviously, from what we heard the  
6 last few days, this was not something -- and I think the  
7 jury's verdict reflects this -- that it was not some sort of  
8 a planned attack; that there was the circumstances of the  
9 necklace and how that resolved itself. Whether it was a  
10 self-defense case or whether it was a fight over the  
11 necklace that got more serious than Mr. Fludd ever really  
12 would've wanted it to be, you could tell, really, from the  
13 emotion that poured out during his statement that -- that  
14 Mr. Atkins was not somebody that he had ill-will for, that  
15 he had thought -- he thought he was a good guy. That it was  
16 -- for him to steal was a surprise to him.

17 And so there was this -- this, you know, the jury found  
18 heat of passion. I characterized it as fear in a self-  
19 defense type of situation. Obviously, an unfortunate  
20 situation, and you know -- you know, here we are, and it's -  
21 - it's, like I said, it's unfortunate. I want to see him  
22 come back from it, you know? So, that -- that's -- you  
23 know, we throw around these years, you know. Let's  
24 hopefully be easy -- go easy on him.

25 THE COURT: Mr. Fludd, is there anything you want to

1 tell me prior to sentencing? I'd be happy to hear from you.

2 DEFENDANT FLUDD: Yes, sir. To the family, I apologize  
3 to both ---

4 THE COURT: Talk to me, now. They're not here. I'll  
5 see to it that they get whatever message you want to convey.

6 DEFENDANT FLUDD: Well, I apologize for taking his  
7 life. I didn't -- I was unaware. It wasn't intended. I  
8 don't -- I don't want to go away forever.

9 THE COURT: Well, let me -- I'm glad Mr. Pyles is still  
10 here and I've got two of my jurors back there. I first want  
11 to say this. Clearly, this jury listened. Clearly, this  
12 jury deliberated. Clearly, Mr. Deysach, they found your  
13 client not guilty of murder, but they found that there was  
14 sufficient legal provocation and sudden heat of passion, and  
15 found him guilty of voluntary manslaughter, and there was  
16 clear evidence in the record to support that verdict, and I  
17 want my jurors to know that.

18 I completely understand why the jury reached the  
19 verdict that they did in this case. And I'll tell you, I  
20 don't fight with juries over verdicts, but I listen to the  
21 evidence at the same time the jury does. Mr. Fludd, you do  
22 have a little bit of a record. Not -- I mean, your lawyer  
23 wants me to say it's not a violent record, but you have a  
24 record of some dishonesty, regardless of the severity of the  
25 offense. I have to take that into consideration.

1 I also have to take into consideration, not necessarily  
2 what the State offered, because I'm sure, just like with  
3 many things in life, I don't always agree with the State's  
4 offers as to what I think an appropriate sentence is. I  
5 take into consideration your age. You're twenty-four years  
6 old.

7 DEFENDANT FLUDD: Yes, sir.

8 THE COURT: I take into consideration, however the  
9 family is not here, the Gordon family, the loss of the  
10 member of their family.

11 DEFENDANT FLUDD: Yes, sir.

12 THE COURT: We cannot restore human life. Anything  
13 further from the State?

14 ASST. SOLICITOR LEGETTE: No, Your Honor.

15 THE COURT: Anything further from the Defendant?

16 MR. DEYSACH: No, Your Honor.

17 THE COURT: Mr. Fludd, on Indictment 2017-GS-25-00160,  
18 you've been found guilty of the lesser-included offense of  
19 voluntary manslaughter. The sentence of this Court is, the  
20 defendant is committed to the State Department of  
21 Corrections for a term of twenty years.

22 On Indictment 2017-GS-25-00161, possession of a weapon  
23 during the commission of a violent crime, sentence of the  
24 Court is, defendant is committed to the State Department of  
25 Corrections for a term of five years. I will give you

1 credit for the time that you served in jail. That credit is  
2 pursuant to South Carolina code section, which is 24-13-40.  
3 That is to be calculated and applied by the South Carolina  
4 Department of Corrections. Sentences are to run concurrent  
5 to each other. Good luck to you, sir.

6 MR. DEYSACH: Thank you, your Honor.

7 ASST. SOLICITOR LEGETTE: Thank you, your Honor.

8 THE COURT: Solicitor, thank you for a job well done.  
9 Mr. Deysach, thank you for a job well done. It's a pleasure  
10 to have both of you in my courtroom. Solicitor, also, thank  
11 law enforcement, and particularly the poor gentleman that  
12 you made run all your exhibits during this trial, because  
13 you just about ran him completely crazy trying to keep up  
14 with you.

15 ASST. SOLICITOR LEGETTE: Yes, Your Honor. I will.

16 THE COURT: Members of my jury, thank you so much for  
17 your time and your patience this week.

18 (END OF TRIAL.)

19

20

21

22

23

24

25

STATE OF SOUTH CAROLINA    )  
                                                  )  
COUNTY    OF    COLLETON    )                    CERTIFICATE

I, REBECCA H. HILL, Official Court Reporter for the Judicial Department 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 in the hearing of the captioned case, in the Court of General Sessions for Hampton County, South Carolina, on the 3rd day of December 2018.

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

April 1<sup>st</sup>, 2019

Rebecca H. Hill

Rebecca H. Hill,  
Official Court Reporter

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

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

The State, Respondent,

v.

Daniel Lee Fludd, Appellant.

Appellate Case No. 2018-002201

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Appeal From Hampton County  
Perry M. Buckner, III, Circuit Court Judge

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Unpublished Opinion No. 2021-UP-165  
Submitted April 1, 2021 – Filed May 12, 2021

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**AFFIRMED**

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Appellate Defender David Alexander, of Columbia, for  
Appellant.

Attorney General Alan McCrory Wilson and Senior  
Assistant Deputy Attorney General William M. Blicht,  
Jr., both of Columbia; and Solicitor Isaac McDuffie  
Stone, III, of Bluffton, all for Respondent.

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**PER CURIAM:** Daniel Lee Fludd appeals his convictions for voluntary  
manslaughter and possession of a weapon during the commission of a violent  
crime, for which he received concurrent sentences of twenty years' imprisonment

and five years' imprisonment, respectively. Fludd argues the trial court erred by instructing the jury that malice could be implied from the use of a deadly weapon when he received charges on self-defense and voluntary manslaughter.

Because Fludd did not object to the jury charge at trial, the issue is not properly preserved for appellate review. We therefore affirm Floyd's convictions pursuant to Rule 220(b), SCACR, and the following authorities: *State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 693-94 (2003) ("In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial [court]. Issues not raised and ruled upon in the trial court will not be considered on appeal."); *State v. Simmons*, 423 S.C. 552, 561, 816 S.E.2d 566, 571 (2018) ("There are four basic requirements to preserving issues at trial for appellate review." (quoting *S.C. Dep't of Transp. v. First Carolina Corp. of S.C.*, 372 S.C. 295, 301-02, 641 S.E.2d 903, 907 (2007))); *id.* ("The issue must have been (1) raised to and ruled upon by the trial court, (2) raised by the appellant, (3) raised in a timely manner, and (4) raised to the trial court with sufficient specificity."); *State v. Sheppard*, 391 S.C. 415, 421, 706 S.E.2d 16, 19 (2011) (noting our courts have routinely held the plain error rule does not apply in South Carolina state courts, a party must make a contemporaneous and specific objection to preserve an issue for appellate review, and failure to properly object renders an issue unpreserved).<sup>1</sup>

**AFFIRMED.**<sup>2</sup>

**WILLIAMS, THOMAS, and HILL, JJ., concur.**

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<sup>1</sup> Although Fludd argues this court should consider the issue in the interest of judicial economy, we find this case does not present an exceptional circumstance that would warrant this court's consideration of an unpreserved issue. *But cf. State v. Johnston*, 333 S.C. 459, 463-64, 510 S.E.2d 423, 425 (1999) (holding that when the State has conceded that the trial court committed error by imposing an excessive sentence, an exceptional circumstance exists that allows the appellate court to remand for resentencing even though the issue was not properly preserved).

<sup>2</sup> We decide this case without oral argument pursuant to Rule 215, SCACR.

2022-CP-25-144

STATE OF SOUTH CAROLINA )

County of Hampton )

IN THE COURT OF COMMON PLEAS

Daniel Lee Fudd 378414 )

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

v. )

FILED

AM/PM

APPLICATION FOR

State of South Carolina )

POST-CONVICTION RELIEF

MAY 20 2022

MYLINDA D NETTLES  
CLERK OF COURT  
HAMPTON COUNTY, SC**INSTRUCTIONS - READ CAREFULLY**

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

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

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

1. Place of detention Lieber Correctional Institution
2. Name and location of Court which imposed sentence Hampton County Court House 14<sup>th</sup> Judicial Circuit 1 Elm St. W Hampton SC
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
  - (a) 2017-GS-25-00160-Voluntary manslaughter
  - (b) 2017-GS-25-00161-Poss. of a weapon During the Commission of Violent Crime

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

- (a) Disposition Date 12/5/18  
(b) 20 yrs 85%  
(c) \_\_\_\_\_

6. Check whether a finding of guilty was made:

- (a) after a plea of guilty \_\_\_\_\_  
(b) after a plea of not guilty ✓  
(c) after a plea of nolo contendere \_\_\_\_\_

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

yes

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

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

- i. SC Courts of Appeal 1220 Senate St.  
ii. Columbia SC 29201  
iii. \_\_\_\_\_

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

- i. Affirmed the judgment of the lower Courts  
ii. \_\_\_\_\_  
iii. \_\_\_\_\_

(c) the date of each such result:

- i. MAR. 13, 2020  
ii. \_\_\_\_\_  
iii. \_\_\_\_\_

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

- i. N/A  
ii. \_\_\_\_\_  
iii. \_\_\_\_\_

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

- (a) N/A  
(b) \_\_\_\_\_

(c) \_\_\_\_\_

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

- (a) Ineffective Assistance of Counsel  
 (b) Failing to preserve a issue for Appeal  
 (c) Failing to object to a jury Charge

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

- (a) See States Brief to support PCR  
 (b) \_\_\_\_\_  
 (c) \_\_\_\_\_

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

- (a) any petition in a State Court under South Carolina Law? NO  
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO  
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO  
 (d) any other petitions, motions or applications in this or any other Court? NO

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

(a) the specific nature thereof:

- i. N/A  
 ii. \_\_\_\_\_  
 iii. \_\_\_\_\_  
 iv. \_\_\_\_\_

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

- i. N/A  
 ii. \_\_\_\_\_  
 iii. \_\_\_\_\_  
 iv. \_\_\_\_\_

(c) the disposition thereof:

i.

N/A

ii.

iii.

iv.

(d) the date of each such disposition:

i.

N/A

ii.

iii.

iv.

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

i.

N/A

ii.

iii.

iv.

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

NO

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

(a) which grounds have been presented:

i.

N/A

ii.

iii.

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

i.

N/A

ii.

iii.

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

(a) Initial PCR  
 (b) Initial PCR  
 (c) Initial PCR

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

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

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

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

i. MR Ian Deylach Fourteenth Circuit  
Public Defender Office Hampton SC 29924  
 ii. MR David Alexander SCCID PO Box 1158  
Columbia SC 29211  
 iii. \_\_\_\_\_

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

i. MR Deylach - Arraignment, plea,  
Trial, Sentencing  
 ii. MR Alexander - Appeal  
 iii. \_\_\_\_\_

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

Vacate Conviction & Sentence and remand for a new Trial or Vacate the Sentence & Conviction & Charges against my person on the equities & meri

20. Are you now under sentence from any other court that you have not challenged? ~~NO~~

NO

STATE OF SOUTH CAROLINA )

County of Hampton )

VERIFICATION

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

Daniel Fludd

SWORN to and subscribed before me this 11<sup>th</sup> day of May, 2022.

Ludwina Bryant (L.S.)  
Notary Public

My Commission Expires: March 31, 2031

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

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

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

Daniel Fudd  
Applicant

SWORN or affirmed to and subscribed before me this  
11<sup>th</sup> day of May, 2022.

Ludhean Bryant  
Notary Public

My Commission Expires: March 31, 2031



ALAN WILSON  
ATTORNEY GENERAL

September 13, 2022

The Honorable Mylinda D. Nettles  
Clerk of Court - Hampton County  
Post Office Box 7  
Hampton, South Carolina 29924-0007

**Re: Daniel Fludd, #378414 v. State of South Carolina**  
**Case No.: 2022-CP-25-00144**

**FILED**  
**AM/PM**

**SEP 14 2022**

**MYLINDA D NETTLES**  
**CLERK OF COURT**  
**HAMPTON COUNTY, SC**

Dear Ms. Nettles:

Enclosed for filing please find Respondent's original Return to the Application for Post-Conviction Relief and Motion for More Definite Statement of the above-captioned case. Please let me know if anything additional is needed at this time.

Sincerely,

Samantha J. Weidauer  
Assistant Attorney General

SJW/jj  
Enclosure

cc: The Honorable Bentley Price, Chief Administrative Judge  
James K. Falk, Esquire

|                                 |   |                                     |
|---------------------------------|---|-------------------------------------|
| STATE OF SOUTH CAROLINA         | ) | IN THE COURT OF COMMON PLEAS        |
| COUNTY OF HAMPTON               | ) | FOR THE FOURTEENTH JUDICIAL CIRCUIT |
|                                 | ) |                                     |
| Daniel Lee Fludd, SCDC #378414, | ) | FILED Case No. 2022-CP-25-00144     |
|                                 | ) | AM/PM                               |
| Applicant,                      | ) | <b>RETURN TO THE APPLICATION</b>    |
|                                 | ) | <b>FOR POST-CONVICTION RELIEF</b>   |
| v.                              | ) | <b>AND MOTION FOR A MORE</b>        |
|                                 | ) | <b>DEFINITE STATMENT</b>            |
| State of South Carolina,        | ) | (Counsel Already Appointed)         |
|                                 | ) |                                     |
| Respondent.                     | ) |                                     |
|                                 | ) |                                     |

Respondent the State of South Carolina, making its return to the application for post-conviction relief filed by Applicant Daniel Lee Fludd<sup>1</sup> on May 20, 2022, and received by the State of South Carolina Attorney General's Office on June 15, 2022, would respectfully show this Court:

### **I. Procedural History**

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Hampton County Clerk of Court. During its August 2017 term, the Hampton County Grand Jury indicted Applicant for murder (2017-GS-25-00160) and possession of a weapon during a violent crime (2017-GS-25-00161). On December 3-5, 2018, Applicant proceeded to a jury trial before the Honorable Perry M. Buckner and a jury. Ian Deysach, Esquire, represented Applicant. Tameaka Legette of the Fourteenth Circuit Solicitor's Office prosecuted the case.

At the conclusion of trial on December 5, 2018, the jury found Applicant guilty of the lesser-included offense of voluntary manslaughter and guilty of the weapons charge. Judge

---

<sup>1</sup> Applicant filed this post-conviction relief application *pro se*. Counsel, James K. Falk, Esquire, has since been appointed.

Buckner sentenced Applicant to concurrent sentences of twenty years' for voluntary manslaughter and five years' for the weapons charge.

Applicant filed a timely notice of appeal, which was perfected by Appellate Defender David Alexander of the South Carolina Commission on Indigent Defense – Division of Appellate Defense. On appeal, Applicant raised one (1) issue:

Whether the trial court erred in charging the jury that malice could be implied from the use of a deadly weapon in a case where the defendant received charges on self-defense and voluntary manslaughter?

Following further briefing, the South Carolina Court of Appeals affirmed Applicant's convictions and sentences by unpublished opinion finding Applicant's issue was not properly preserved for appellate review. *State v. Fludd*, 2021-UP-165 (S.C. Ct. App. filed May 12, 2021). The case was remitted back to the circuit court on June 4, 2021.

## **II. Allegations Raised and Relief Sought in Post-Conviction Relief Application**

Applicant timely commenced this PCR action on May 20, 2022. In his application, Applicant asserts he is being held in custody unlawfully, alleging:

1. Ineffective assistance of counsel
  - a. "Failing to preserve a[n] issue for appeal" and
  - b. "Failing to object to a jury charge."<sup>2</sup>

Applicant requests relief as follows:

"vacate conviction + sentence and remand for a new trial or vacate the sentence + conviction + charges against my person on the equities + merits."

Attached to this return and incorporated by reference are the Hampton County Clerk of Court records regarding the subject convictions; Applicant's records from the South Carolina

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<sup>2</sup> In response to Question 11, requesting Applicant set forth facts supporting his allegations, Applicant states, "see States Brief to support PCR." Additionally, Applicant attached the Final Brief of Respondent filed in his appellate case to his application.

Department of Corrections; the records from Applicant's appeal, including the trial transcript; and the records of the current PCR action. The State reserves the right to amend this return upon receipt of any relevant materials.

### **III. Response to Allegations of Ineffective Assistance of Counsel**

Applicant alleges he is entitled to post-conviction relief because counsel was ineffective for failing to preserve an issue for appeal and because counsel was ineffective for failing to object to a jury charge. Without more definite facts and circumstances to support Applicant's claims, it is impossible for Respondent to respond specifically to these vague allegations. Instead, Respondent responds generally and moves for Applicant, through appointed counsel, to file an amended application with specific allegations.

#### ***Ineffective Assistance of Counsel, Generally***

The Sixth and Fourteenth Amendments to the United States Constitution guarantee Applicant—like all other defendants—the right to “assistance by an attorney, whether retained or appointed, who plays the role necessary to ensure that the trial is fair.” *Strickland v. Washington*, 466 U.S. 668, 685 (1984). Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive *effective* assistance of counsel guaranteed by the Sixth Amendment. *See generally* S.C. Code Ann. § 17-27-20(A) (enumerating allegations cognizable in PCR actions). The allegation of denial of such representation sets forth a *prima facie* violation of this constitutional right and raises a question of fact that can only be determined by an evidentiary hearing. *Rogers v. State*, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence. *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The reviewing court applies the two-part test outlined in *Strickland* to determine whether counsel's conduct “was so ineffective as to require reversal” of the applicant's conviction. 466 U.S. at 687.

To obtain relief, a PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel's deficient performance. *Id.* at 687–88; *Cherry v. State*, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. *Strickland*, 466 U.S. at 700; *see also Bell v. Cone*, 535 U.S. 685, 695 (2002) (explaining that “[w]ithout proof of both deficient performance and prejudice to the defense, . . . it could not be said that the sentence or conviction resulted from a breakdown in the adversary process that rendered the result of the proceeding unreliable” (citation and internal quotation marks omitted)).

The first prong—constitutional deficiency—is “necessarily linked to the practice and expectations of the legal community.” *Padilla v. Kentucky*, 559 U.S. 356, 366 (2010). An applicant making a claim of ineffective assistance “must identify the acts or omissions of counsel that are alleged *not* to have been the result of reasonable professional judgment.” *Strickland*, 466 U.S. at 690 (emphasis added). The reviewing court must then “determine whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance” demanded of attorneys in criminal cases. *Id.* Because of the difficulties inherent in making such an evaluation, the reviewing court must indulge in a “strong presumption that counsel’s conduct falls within the wide range of reasonably professional assistance.” *Butler*, 286 S.C. at 445, 334 S.E.2d at 816. The applicant must overcome this presumption to receive relief. *Cherry*, 300 S.C. at 118, 386 S.E.2d at 625.

Review of counsel’s actions is hallmarked by deference, as “it is all too tempting for a defendant to second-guess counsel’s assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel’s defense after it has proved unsuccessful, to conclude

that a particular act or omission of counsel was unreasonable.” *Strickland*, 466 U.S. at 689; *see also Yarborough v. Gentry*, 540 U.S. 1, 6 (2003) (“The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight.”). No particular set of detailed rules for counsel’s conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant. *Strickland*, 466 U.S. at 688–89; *see id.* at 691 (“Representation is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another.”). Thus, a fair assessment of attorney performance requires every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel’s challenged conduct, and to evaluate the conduct from counsel’s perspective at the time. *Id.* at 689. The ultimate question is not whether counsel’s actions were reasonable, but whether there is any reasonable argument counsel satisfied *Strickland*’s deferential standard.

The second, or “prejudice” prong of *Strickland* is rooted in the very purpose of the Sixth Amendment guarantee of counsel—to ensure a defendant has the assistance necessary to justify reliance on the outcome of the proceeding. 466 U.S. at 691–92. In order to prove prejudice, an applicant must demonstrate counsel’s deficient performance prejudiced the applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Cherry*, 300 S.C. at 117-18, 386 S.E.2d at 625. A reasonable probability is a probability “sufficient to undermine confidence in the outcome.” *Strickland*, 466 U.S. at 694. *See id.* at 695 (Where a defendant challenges his conviction, he must show that there exists “a reasonable probability that, absent the errors, the factfinder would have had a reasonable doubt respecting guilt”).

In determining prejudice, the reviewing court must consider the totality of the evidence

before the jury. *Id.* at 695. It is not sufficient “to show [counsel’s] errors had some conceivable effect” on the outcome of the proceeding—counsel’s errors must be “so serious as to *deprive the defendant of a fair trial.*” *Id.* at 687 (emphasis added). “An error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment.” *Id.* at 691. Moreover, the South Carolina Supreme Court has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice. *Bannister v. State*, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998).

The *Strickland* standard must be applied with scrupulous care, lest “intrusive post-trial inquiry” threaten the integrity of the very adversary process the right to counsel is meant to serve. 466 U.S. at 689-690. Courts must be wary of second guessing counsel’s trial tactics; and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel. *Whitehead v. State*, 308 S.C. 119, 417 S.E.2d 529 (1992). The applicant’s burden of proving both *Strickland* components is heavy in light of the strong presumption that counsel’s conduct fell within the range of reasonable professional legal assistance. 466 U.S. at 690. Representation is constitutionally ineffective only if counsel’s conduct “so undermined the proper functioning of the adversarial process” that the defendant was denied a fair proceeding. *Strickland*, 466 U.S. at 686; see *Nix v. Whiteside*, 475 U.S. 157, 175 (1986) (noting that under *Strickland*, the “benchmark” of the right to counsel is the “fairness of the adversary proceeding”).

***Allegation Counsel was Ineffective for Failing to Object to a Jury Charge***

Applicant contends counsel was ineffective for failing to object to a jury charge.<sup>3</sup> However, Applicant fails to state specifically which part of the jury charge was objectionable, why counsel was ineffective for failing to object, or how Applicant was prejudiced. Without more definite facts and circumstances to support Applicant's claims, it is impossible for Respondent to respond specifically to these vague allegations. Instead, Respondent responds generally and moves for Applicant, through appointed counsel, to file an amended application with specific allegations.

The law to be charged is determined by the evidence presented at trial. *State v. Holland*, 385 S.C. 159, 165, 682 S.E.2d 898, 901 (Ct. App. 2009). "Ordinarily, the trial court has the duty to give requested instructions which correctly state the law applicable to the issues and which are supported by the evidence." *State v. Peer*, 320 S.C. 546, 553, 466 S.E.2d 375, 380 (Ct. App. 1996). "A trial judge is required to charge the jury on a lesser-included offense if there is evidence from which it could be inferred the lesser, rather than the greater, offense was committed." *State v. Green*, 397 S.C. 268, 289, 724 S.E.2d 664, 674 (2012). "The mere contention that the jury might accept the State's evidence in part and reject it in part is insufficient to satisfy the requirement that some evidence tends to show the defendant was guilty only of the lesser offense." *State v. Geiger*, 370 S.C. 600, 608, 635 S.E.2d 669, 674 (Ct. App. 2006). In reviewing a trial judge's jury instructions, the court must view the jury charge as a whole and in light of the evidence and issues from trial. *State v. Simmons*, 384 S.C. 145, 178, 682 S.E.2d 19, 36 (Ct. App. 2009).

Applicant's claim is likely without merit. However, the record likely does not refute or disprove Applicant's allegations of ineffective assistance counsel; therefore, the State requests an evidentiary hearing to fully resolve the issues. See *Sharper v. State*, 279 S.C. 264, 265, 305 S.E.2d

---

<sup>3</sup> In Applicant's Final Brief of Appellant, filed in his direct appeal, Applicant argued "the trial court erred in charging the jury that malice could be implied from the use of a deadly weapon".

247, 248 (1983) (providing an evidentiary hearing shall be held when a PCR application “alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court”).

***Allegation Counsel was Ineffective for Failing to Object and Preserve Issues for Appellate Review***

Applicant contends counsel was ineffective for failing to object and preserve issues for appellate review. However, Applicant fails to state specifically what counsel failed to object to or how Applicant was prejudiced. Without more definite facts and circumstances to support Applicant’s claims, it is impossible for Respondent to respond specifically to these vague allegations. Instead, Respondent responds generally and moves for Applicant, through appointed counsel, to file an amended application with specific allegations.

Leaving an issue unpreserved does not automatically constitute ineffective assistance of counsel. *See Millidge v. State*, 422 S.C. 366, 374, 811 S.E.2d 769, 800-01 (2018) (stating an applicant must prove both deficiency and prejudice to establish ineffective assistance of counsel for failing to preserve an issue); *see also id.* at 380, 811 S.E.2d at 804 (“[T]he proper inquiry for determining prejudice ... is whether there is evidence in the record to support the trial court’s finding. . . . If so, an appellate court would necessarily have affirmed the trial court’s [ruling]”).

Similarly, “[a]n ineffective assistance claim based on a failure to object is tied to the admissibility of the underlying evidence.” *Hough v. Anderson*, 272 F.3d 878, 898 (7th Cir. 2001). “If evidence admitted without objection was admissible, then the complained of action fails both prongs of the *Strickland* test: failing to object to admissible evidence cannot be a professionally ‘unreasonable’ action, nor can it prejudice the defendant against whom the evidence was admitted.” *Id.*; *see Miller v. Keeney*, 882 F.2d 1428, 1434 (9th Cir. 1989) (noting that if a petitioner challenges

a futile objection, he fails both *Strickland* prongs); *U.S. ex rel. Link v. Lane*, 811 F.2d 1166, 1170 (7th Cir. 1987) (finding there is no prejudice from failure to object unless there is a legally supportable argument for exclusion of the evidence).

For the above-reasons, Applicant cannot satisfy either requirement of *Strickland*, or show trial counsel was ineffective. However, the record likely does not refute or disprove Applicant's allegations of ineffective assistance of trial counsel; therefore, the State requests an evidentiary hearing to fully resolve the issues. *See Sharper v. State*, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (providing an evidentiary hearing shall be held when a PCR application "alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court).

#### **IV. Motion for a More Definite Statement**

The State submits Applicant's allegations of ineffective assistance of counsel for failing to preserve an issue for appeal and failing to object to a jury charge are without merit. However, it is impossible for the State to adequately respond to this claim because Applicant has failed to explain with specificity the facts upon which his claim is based. S.C. Code Ann. § 17-27-50 (requiring an applicant to "specifically set forth the grounds upon which the application is based"); *see also Welch v. MacDougall*, 246 S.C. 258, 260, 143 S.E.2d 455, 456 (1965) (stating it is incumbent upon an applicant to make at least a prima facie showing entitling him to relief before an evidentiary hearing will be scheduled and held); *Sharper v. State*, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (providing an evidentiary hearing shall be held when a PCR application "alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court"); Rule 8(a)(2), SCRPC (requiring all civil pleadings to include "a short and plain statement of the facts showing that the pleader is entitled to relief"); Rule 71.1(d),

SCRCP (“Counsel shall insure that all available grounds for relief are included in the application and shall amend the application if necessary.”).

Accordingly, the State moves for Applicant, through appointed counsel, to amend his application to provide specific claims and facts to support this vague allegation pursuant to Rule 12(e), SCRCP, and the Post-Conviction Procedure Act.

**V. Any Future Amendments and Invocation of Discovery Process**

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, not Applicant, is the only individual authorized to file amendments to this application. *See* Rule 11, SCRCP. *Pro se* filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State pursuant to *Love v. State*, 428 S.C. 231, 834 S.E.2d 196 (2019), or, alternatively, the State will request a continuance in the matter. *Id.*, 428 S.C. at 245, 834 S.E.2d at 203 (Kittredge, J., dissenting) (“If, however, the proposed amendment . . . would truly prejudice the State, the better course of action would be to continue the matter and thus remove any possibility of prejudice resulting from the belated amendments.”).

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

Pursuant to S.C. Code Ann. § 17-27-150, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, the State requests that all potential exhibits

and materials used to produce potential expert witness testimony be sent to the State well in advance of the evidentiary hearing. As noted above, the State reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to the State. *See Love*, 428 S.C. 231, 834 S.E.2d 196.

#### **VI. Response to Any and All Other Allegations**

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

#### **VII. Conclusion**

WHEREFORE, the State moves for a more definite statement and the opportunity to respond to the more definite statement if necessary. Once a more definite statement is provided, the State requests an evidentiary hearing be held on the allegations of ineffective assistance of counsel.

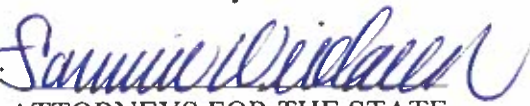
Respectfully submitted,

ALAN WILSON  
Attorney General

W. JEFFREY YOUNG  
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON  
Senior Assistant Deputy Attorney General

SAMANTHA J. WEIDAUER  
Assistant Attorney General

By:   
ATTORNEYS FOR THE STATE  
Office of the Attorney General  
P.O. Box 11549  
Columbia, S.C. 29211

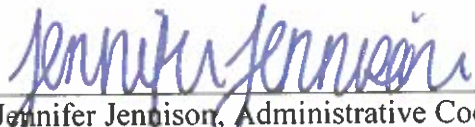
September 13, 2022

|                         |   |                                |
|-------------------------|---|--------------------------------|
| STATE OF SOUTH CAROLINA | ) | IN THE COURT OF COMMON PLEAS   |
| COUNTY OF HAMPTON       | ) | FOR THE FOURTEENTH JUDICIAL    |
|                         | ) | CIRCUIT                        |
| Daniel Fludd, #378414   | ) |                                |
|                         | ) | Case No.: 2021-CP-18-02044     |
| Applicant,              | ) |                                |
|                         | ) | FILED                          |
|                         | ) | AM/PM                          |
| v.                      | ) | Certificate of Service by Mail |
|                         | ) | SEP 15 2022                    |
| State of South Carolina | ) |                                |
|                         | ) | MYLINDA D NETTLES              |
| Respondent,             | ) | CLERK OF COURT                 |
|                         | ) | HAMPTON COUNTY, SC             |

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 to the Application for Post-Conviction Relief and Motion for More Definite Statement in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

**James K. Falk, Esquire**  
**Falk Law Firm, LLC**  
**Post Office Box 1058**  
**Charleston, SC 29402**

DATED this 13<sup>th</sup> day of September, 2022.

  
 Jennifer Jenson, Administrative Coordinator  
 For Respondent

STATE OF SOUTH CAROLINA <sup>FILED</sup> ) IN THE COURT OF COMMON PLEAS  
COUNTY OF HAMPTON <sup>AM/PM</sup> ) FOR THE FOURTEENTH JUDICIAL CIRCUIT  
NOV 15 2023 )  
Daniel Fludd, #378414, ) Case No.: 2022-CP-25-00144  
Applicant, MYLINDA D NETTLES )  
v. CLERK OF COURT )  
HAMPTON COUNTY, SC ) **APPLICANT'S AMENDED APPLICATION**  
State of South Carolina, )  
Respondent. )  
\_\_\_\_\_ )

NOW COMES Applicant, Daniel Fludd, amending his application filed May 20, 2022. In addition to the allegations raised in his initial application, Mr. Olalde-Gonzalez, through PCR Counsel, submits the following:

**Amended Application Issues**

In a PCR action, the applicant bears the burden of proving allegations contained in the application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant asserts ineffective assistance of counsel as a ground for relief, the applicant must show “counsel’s conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result.” *Strickland v. Washington*, 466 U.S. 668, 686 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. Ineffective assistance of counsel is governed by the Sixth Amendment, as explained by the United States Supreme Court in *Strickland v. Washington*.

Pursuant to the first prong of the *Strickland* analysis, the applicant must prove defense counsel’s performance was deficient. *Id.* at 686; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). To show deficiency, the applicant must prove by a preponderance of the evidence that counsel’s actions fell outside of the zone of “reasonableness under prevailing professional norms.” *Strickland*, 466 U.S. at 688. See also Rule 71.1(e), SCRCP (“The applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence.”).

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

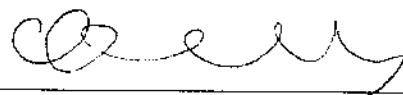
Second, counsel’s deficient performance must have prejudiced the applicant so that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Cherry*, 300 S.C. at 117-18. “A reasonable probability is a probability sufficient to undermine confidence in the outcome.” *Strickland*, 466 U.S. at 694. The court makes this determination based upon the totality of the evidence. *Id.* at 695. The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. *Strickland*, 466 U.S. at 696.

Mr. Fludd submits that Counsel was constitutionally ineffective based upon the following grounds:

1. Counsel was constitutionally ineffective for failure to object to “search for the truth” comments in the Court’s opening comments to the jury. (Tr. 149).
2. Counsel was constitutionally ineffective for erroneously telling Mr. Fludd not to testify when the defense at trial was self-defense.
3. Counsel was constitutionally ineffective for failure to properly communicate with Mr. Fludd.
4. Counsel was constitutionally ineffective for failure to properly impeach Bummy’s, the deceased’s, and Ms. Garvin’s character.
5. Counsel was constitutionally ineffective for failure to investigate the backgrounds of the lay witnesses more thoroughly.
6. Counsel was constitutionally ineffective for failure to object to the Solicitor’s leading questions.
7. Counsel was constitutionally ineffective for failure to personalize Mr. Fludd more throughout the trial.
8. Counsel was constitutionally ineffective for failure to object to the Court charging the jury that malice can be inferred from use of a deadly weapon.
9. Counsel was constitutionally ineffective for failure to flesh out both opening and closing arguments more. Specifically, Counsel failed to personalize Mr. Fludd in argumentation and failed to challenge Bummy’s, Ms. Garvin’s, and the deceased’s character sufficiently.
10. Counsel was constitutionally ineffective for failure to discuss the defense and trial strategy with Mr. Fludd.
11. Counsel was constitutionally ineffective because of inadequate preparation time before trial.

**Conclusion**

Based upon the above, Mr. Fludd requests that this Court grant relief, vacate the convictions, and remand the case to the court of general sessions for a new trial.



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Attorney at Law  
S.C. Bar No. #104191

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**For Applicant Daniel Fludd**

November 10, 2023

STATE OF SOUTH CAROLINA  
COUNTY OF HAMPTON

FILED IN THE COURT OF COMMON PLEAS  
AMENDED FOR THE FOURTEENTH JUDICIAL CIRCUIT

NOV 15 2023

Daniel Fludd, #378414,  
Applicant,

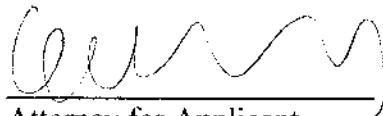
) Case No.: 2022-CP-25-00144

v.  
State of South Carolina,  
Respondent.

MYLINDA D NETTLES  
CLERK OF COURT  
HAMPTON COUNTY, SC  
Affidavit of Service by Mail

1. I am the attorney for Applicant in the above-captioned matter.
2. Regular communication by mail exists throughout the state of South Carolina and this is a proper circumstance of service by mail.
3. I have this day served a copy of the Amended Application on the above-captioned matter on the following person by depositing the same in the United States mail with the proper postage affixed thereto:

**Office of the Attorney General**  
**Attn: Danielle Dixon, Esquire**  
**PCR Division**  
**P.O. Box 11549**  
**Columbia, SC, 29211**

  
Attorney for Applicant

November 10, 2023

# *The Law Office of Chelsey F. Marto*

November 10, 2023

The Honorable Mylinda Nettles  
Hampton County Courthouse  
Attn: Common Pleas Division  
P.O. Box 7  
Hampton, SC, 29924

**Daniel Fludd, #378414, v. State of South Carolina – 2022-CP-265-00144**

Dear Ms. Nettles,

Attached please find the amended application in above-captioned case.

If you have any questions or concerns, please do not hesitate to contact my office. My mailing address is PO Box 8795, Columbia, SC, 29201, email is [info@chelseymarto.com](mailto:info@chelseymarto.com), and my phone number is (864)-404-5583.

Sincerely,

A handwritten signature in black ink, appearing to read 'Chelsey Marto', with a stylized, flowing script.

Chelsey Marto

CC: Danielle Dixon, Esquire  
Daniel Fludd, #378414

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS  
FOURTEENTH JUDICIAL CIRCUIT

COUNTY OF COLLETON

**2022-CP-25-00144**

Daniel Fludd,

)

)

Plaintiff,

)

)

vs.

)

**TRANSCRIPT OF HEARING**

)

State of South Carolina,

)

)

Defendant.

)

----- )

November 27, 2023

Colleton, South Carolina

B E F O R E:

The Honorable Roger Young, Judge Presiding

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

For the Plaintiff -

Chelsey Marto, Esquire

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Columbia, South Carolina 29201

864-404-5583

For the State -

Danielle Dixon, Esquire

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Columbia, South Carolina 29211

803-734-3737

Cathy L. Young, CVR-M  
Official Circuit Court Reporter  
Post Office Box 4604  
Beaufort, South Carolina 29903

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## P R O C E E D I N G S

\* \* \* \* \*

THE COURT: We ready?

MS. DIXON: May it please the Court? I'm Danielle Dixon, Assistant Attorney General for the State of South Carolina. This is the case of Daniel Fludd v. State. Mr. Fludd is currently serving a 20-year sentence. In August of 2017, he was indicted by the Hampton County Grand Jury for murder and possession of a weapon during a violent crime. Those are indictment numbers 2017-GS-25-160 and 161. December 3rd through 5th, 2018, he proceeded to a jury trial before the Honorable Perry M. Buckner. He was represented by Ian Deysach and Assistant Solicitor Tameaka Legette prosecuted the case. Your Honor, he was acquitted of murder, but he was convicted of the lesser included offense of voluntary manslaughter and sentenced to 20 years for voluntary manslaughter and a concurrent five-year charge for the weapon charge. He filed a Notice of Appeal which was perfected by Appellate Defender David Alexander who raised an issue as to whether the Court erred in charging the jury that malice could be implied from the use of a deadly weapon. That was affirmed based on preservation and the

1 remitter was sent June 4, 2021. He timely filed  
2 this PCR application and, Your Honor, more recently  
3 he has filed an Amendment raising 11 allegations and  
4 I believe we sent you a copy of this.

5 THE COURT: I don't know if I have it all.  
6 Is it with the packet of stuff?

7 MS. DIXON: It should be. Vickie's very  
8 good about updating things, so, and it is our  
9 understanding that they are proceeding on the 11  
10 grounds in the amended application. Yes, Your  
11 Honor?

12 THE COURT: Did you do your file to go  
13 forward on what?

14 MS. MARTO: The 11 allegations listed in  
15 our most recent application dated November 10,  
16 2023.

17 THE COURT: Just that one?

18 MS. MARTO: Just that one amended.

19 THE COURT: Okay.

20 MS. MARTO: Yes, Your Honor.

21 THE COURT: You ready?

22 MS. MARTO: Yes, Your Honor. And with that  
23 we'll call Daniel Fludd to the stand.

24 (WHEREUPON WITNESS IS SWORN)

25 THE COURT: So he went to trial on murder

1 and got convicted on voluntary?

2 MS. MARTO: Yes, sir.

3 THE COURT: Did you tell him about ---

4 MS. MARTO: I informed him -- initially, I  
5 informed him that he might be facing murder  
6 again. It's my understanding he won't be since  
7 he was acquitted. And so, he would go back on  
8 voluntary and I did explain that he would be  
9 facing up to 30 years, Your Honor.

10 THE COURT: Okay.

11 MS. DIXON: And I did clarify that.

12 THE COURT: You still want to go forward,  
13 even though you might get more time? You have  
14 to say it out loud.

15 MR. FLUDD: Yes, sir.

16 THE COURT: Okay.

17 Daniel Fludd,

18 having been duly sworn testifies as follows:

19 DIRECT EXAMINATION OF DANIEL FLUDD

20 BY MS. MARTO:

21 Q So, sir, you went to trial for voluntary,  
22 correct?

23 A. Yes, ma'am.

24 Q. And who were you represented by?

25 A. Ian Deysach.

1 Q. And how do you feel he did in representing you?

2 A. Not well.

3 Q. Did you discuss the defensive trial strategy  
4 with you?

5 A. Not really.

6 Q. Did you know what strategy you would be using  
7 going to trial?

8 A. No.

9 Q. Did you feel that he was adequately prepared for  
10 trial?

11 A. No.

12 Q. Do you feel like he personalized you throughout  
13 the trial?

14 A. No.

15 Q. And how do you wish he did that?

16 A. By way of making my character more known outside  
17 of the charge that I was facing.

18 Q. Okay. And what specifically do you wish he did?

19 A. Specifically, I wish he would have created more  
20 grounds for my self-defense other than what I was  
21 facing.

22 Q. So explain to me who were the other people in  
23 this case are. Who is Bummy, and Miss Garvin and  
24 her then boyfriend?

25 A. Bummy would be a witness that the State called

1 forward by way of placement, being at his home, by  
2 what was said by Miss Garvin and her deceased  
3 boyfriend, victim really, outside of that there's  
4 really nothing more to say.

5 Q. Now, did these people have, I guess,  
6 questionable characters or credibilities?

7 A. Yes.

8 Q. And what specifically can you tell me about them  
9 that kind of brought their credibility into  
10 question?

11 A. Well, Bummy, seeing that it was the placement  
12 that Miss Garvin placed me there, he was  
13 questionable about personal by way of his addictions  
14 and things of that nature. Miss Garvin on the other  
15 hand, seeing that she would be the State's key  
16 witness in this case, she was questionable by way of  
17 being abused by him and used as a way of supplying  
18 his habits and her own, so.

19 Q. And was Miss Garvin's narrative of what happened  
20 consistent?

21 A. No.

22 Q. And how was it inconsistent?

23 A. By way of she didn't explain everything as a  
24 whole, like it consisted with what I was saying  
25 which everyone seen, but she didn't explain

1 everything as a whole. She didn't explain how the  
2 exact events went. She was led by way of State's  
3 attorney.

4 Q. And then did it also come out at trial that her  
5 boyfriend who passed away, was he pimping her out?

6 A. Yes.

7 Q. Okay. And did he have a drug habit?

8 A. Yes, ma'am.

9 Q. All right. Okay. So, do you wish counsel  
10 cross-examined Miss Garvin and other witnesses on  
11 those points more thoroughly?

12 A. Yes, ma'am.

13 Q. And do you wish counsel pointed out her  
14 inconsistencies in what she told different police  
15 officers more?

16 A. Yes, ma'am.

17 Q. Okay. Now do you feel like counsel properly  
18 communicated with you?

19 A. No, not really.

20 Q. How did he not properly communicate with you?

21 A. By way of just letting objections, things that  
22 he should have objected to, slide away. He didn't  
23 really raise certain things for the Court to at  
24 least deem me credible as a person, outside of what  
25 it is that I was charged with.

1 Q. So are you saying that counsel didn't object to  
2 leading questions?

3 A. No, he didn't.

4 Q. Do you feel like that negatively impacted you at  
5 trial?

6 A. Yes.

7 Q. And how do you feel like his opening and closing  
8 arguments were?

9 A. They weren't the best. It seemed like they were  
10 unprepared. They was just all over the place. They  
11 didn't give a full view of me as a victim myself,  
12 seeing that during this situation, I was injured as  
13 well. There was no -- none of that. There was no  
14 medical records brought up. There was none of that,  
15 so, yeah.

16 Q. So you wish counsel had basically argued you  
17 were acting in self-defense?

18 A. Yes, ma'am.

19 Q. Do you feel like counsel did that?

20 A. No, ma'am.

21 Q. Now, your argument at trial was self-defense  
22 right?

23 A. Yes, ma'am.

24 Q. But did you testify in your own defense at  
25 trial?

1 A. No, ma'am.

2 Q. And why didn't you testify in your own defense  
3 at trial?

4 A. Because I was told not to.

5 Q. Why were you told not to?

6 A. Because it was stated to me that the State could  
7 discredit everything I said which, I mean ---

8 Q. Do you feel like if you testified at trial, you  
9 would have gotten a different outcome?

10 A. Yes, ma'am.

11 Q. Now, I'm looking at page 149 of the trial  
12 transcript, and I get -- yeah, you don't have this  
13 in front of you, and so, I'll read out a portion  
14 talking about -- but mainly what happened from my  
15 understanding was counsel didn't object to the Court  
16 charging that, you know, that their duty is to  
17 search for the truth, correct?

18 A. Correct.

19 Q. And you recall the Court telling the jury that  
20 that's their job?

21 A. Yes, ma'am.

22 Q. And do you think that that should have been  
23 objected to by counsel?

24 A. Yes, ma'am.

25 Q. And then you had an Appeal on this case,

1 correct?

2 A. Yes, ma'am.

3 Q. Do you recall what the issue was that was raised  
4 on appeal?

5 A. Not fully, but sort of.

6 Q. I think the issue that was raised on appeal in  
7 your case was that the Court charged that malice can  
8 be inferred from use of a deadly weapon, right?

9 A. That's right.

10 Q. And that was incorrect based upon the law at the  
11 time, correct?

12 A. Yes, ma'am.

13 Q. Because you -- again, you have a self-defense  
14 argument at trial, right?

15 A. Yes, ma'am.

16 Q. And so, the controlling law at that time said if  
17 you raised a self-defense defense, you know, you  
18 cannot charge that. Is that your understanding?

19 A. Yes, ma'am.

20 Q. And that's what your appellate counsel raised on  
21 appeal, right?

22 A. Yes, ma'am.

23 Q. And do you recall what the Court's decision was?

24 A. They affirmed it. They said it was, they said  
25 it wasn't really considered merit able.

1 Q. Do you recall if the Court found that it wasn't  
2 preserved because counsel didn't object?

3 A. Yes, ma'am.

4 Q. Is that what happened?

5 A. Yes, ma'am.

6 Q. So do you think counsel should have objected?

7 A. Yes, ma'am.

8 MS. MARTO: One moment, Your Honor.

9 Nothing further, Your Honor.

10 THE COURT: Cross?

11 MS. DIXON: Yes, sir, quickly.

12 **CROSS-EXAMINATION OF DANIEL FLUDD**

13 BY MS. DIXON:

14 Q. Now you admit that you did in fact kill the  
15 victim, correct?

16 A. In self-defense, yes.

17 Q. In self-defense, yes. Okay. And then in terms  
18 of the testifying, do you recall the Judge advising  
19 you that that was your decision whether or not to  
20 testify?

21 A. No, I don't recall.

22 Q. You don't recall, but if it's in the transcript  
23 you would agree with that?

24 A. Yes.

25 Q. Okay. Nothing further.

1 THE COURT: Redirect?

2 MS. MARTO: No, Your Honor.

3 THE COURT: You may step down.

4 MS. MARTO: Judge, we would call Ian  
5 Deysach.

6 (WHEREUPON WITNESS IS SWORN)

7 Ian Deysach,

8 having been duly sworn testifies as follows:

9 DIRECT EXAMINATION OF IAN DEYSACH

10 BY MS. MARTO:

11 Q. Good afternoon, sir. Thank you for your patience  
12 today.

13 A. You're welcome.

14 Q. So, you represented Mr. Fludd at trial, right?

15 A. I did.

16 Q. How many times did you meet with him?

17 A. I don't recall how many times. He was housed at  
18 Charleston instead of the actual jurisdiction where  
19 he was, so I probably visited Charleston, I would  
20 say, four times, I'm not sure. Each time staying a  
21 long time, because it was a long ride to get there  
22 and a long ride out so each time would have been at  
23 least probably around two hours. And anytime that  
24 he was brought back to Hampton for any sort of pre-  
25 trial hearings, I would take that opportunity to

1 meet with him because otherwise it's such a long  
2 drive.

3 Q. And what did you communicate to Mr. Fludd during  
4 those meetings?

5 A. I mean, the whole gamut of the elements of the  
6 offense, potential consequences, going over  
7 discovery. Obviously, you know, a murder case, it's  
8 pretty voluminous but reviewing discovery, reviewing  
9 plea offers, all the things that will be ---  
10 answering questions but basically starting with  
11 you're looking at the indictments, what you're  
12 charged with, what the elements are, what they have  
13 to prove, what it carries, and what the evidence is  
14 to support those allegations.

15 Q. Do you feel like there's anything you didn't  
16 communicate with Mr. Fludd on?

17 A. I don't. I feel like we communicated fully.

18 Q. And did you discuss trial defense and strategy  
19 with him?

20 A. Yes.

21 Q. And what was the defense at trial?

22 A. It was self-defense.

23 Q. And did you feel like you had enough time to  
24 prepare for trial?

25 A. I did.

1 Q. Now one of his allegations is that you didn't  
2 personalize him more as a person. Is there anything  
3 that was stated now that you otherwise stumbled upon  
4 that you feel like you should have presented at  
5 trial?

6 A. Not really, I don't know what it was what fact  
7 or what evidence I would have presented that would  
8 have made it more personal. I think his -- I  
9 believe his sister was there at the trial. I mean I  
10 talked to his mom, and it seemed like in preparation  
11 for the trial that she wasn't having the type of  
12 regular contact that you would expect between a  
13 mother and a son, and so they were not as close as I  
14 had hoped. I believe he was -- and I could be  
15 wrong, I believe he may have been adopted and so he  
16 did have that unique background, but that wasn't --  
17 you're focusing on the facts and the allegations,  
18 not to go into his personal life. It can go good or  
19 it can go bad.

20 Q. That was when it comes to Bummy, the deceased  
21 and Miss Garvin, would you agree that their  
22 characters were problematic?

23 A. Yeah, they were not pillars of the community.

24 Q. And so, what did you do to kind of highlight  
25 their credibility issues?

1 A. Well, I mean, the first thing when you start  
2 attacking people's credibility is figuring out what  
3 it is that they're saying that you don't want the  
4 jury to believe. So just going around and attacking  
5 people's character or credibility, especially if  
6 you're attacking the character of people that are --  
7 that my client's associating with, you can get some,  
8 I guess, a little shrapnel on your own client if you  
9 sit there and say, oh, these people that he's  
10 hanging out with are terrible people and here he is  
11 right there with them. As far as what Bummy would  
12 have said that we were trying to say that it wasn't  
13 true, I'm not sure there was a visit -- as part of  
14 the evidence was a visit with Bummy earlier that  
15 night, something to do with a necklace, but I mean  
16 there wasn't a dispute of fact between the Defendant  
17 and Bummy that he was there, and that's not where  
18 the crime occurred. And so, I'm not sure what it  
19 was that Bummy would have said or -- just dirty and  
20 Bummy doesn't further the case. Now when it came to  
21 Miss Garvin, I mean, the main way that I impeached  
22 her was that she -- the solicitor had bought like a  
23 hotel room and bought her new clothes to make her  
24 look more special than she really did. And when I  
25 started questioning her about that, then she acted

1 like she knew she was doing something wrong, it was  
2 pretty effective and then it was after that witness  
3 that there was discussions about -- a plea -- plea  
4 discussions came after that witness was impeached,  
5 their credibility was impeached. And so those  
6 didn't end up going anywhere, but there was  
7 definitely some movement on the other side. Oh  
8 gosh, this isn't going very well after that witness.  
9 So I did a good job with her I felt like.

10 Q. Did the first narrative change depending upon  
11 who she talked to, is that your recollection?

12 A. That detail is a difficult one for me to  
13 remember from the trial. So I mean it's possible.  
14 I mean I would doubt that she'd give 100 percent  
15 consistent.

16 Q. Are you aware of anything that you should have  
17 cross-examined her on but did not?

18 A. I don't think so. I thought it was pretty  
19 effective.

20 Q. Now, did you do anything to investigate the  
21 backgrounds of Bummy, the deceased, and Miss Garvin?

22 A. Yes. I mean, we had -- it's Hampton County.  
23 We've got investigators, you know, Champ, of course  
24 was the victim, was his nickname and who his family  
25 was and the type -- I mean, he was, you know,

1 problematic character I think known to have a drug  
2 problem. They had records that were turned over.  
3 Like I said, just dirtying him to dirty him to beat  
4 up on him, to say, okay these are terrible people  
5 and my client's their friend is not exactly, it  
6 could -- like I said, it could hurt as much as help.

7 Q. Now is there anything concerning their  
8 credibility you wished you had raised in opening or  
9 closing that but did not?

10 A. Not that I can think of.

11 Q. Is there anything in Mr. Fludd's defense that  
12 you can think of that you should have raised in  
13 opening or closing?

14 A. No.

15 Q. On page 149 of the trial transcript, the Court  
16 says starting with line 21, "it is a search for the  
17 truth in an effort to make sure that justice is done  
18 between the parties before the Court. In searching  
19 for the truth, I'm trying to make sure that justice  
20 is done is often slow, it is often deliberative, it  
21 is often repetitive." Now, would you agree that  
22 that's objectionable?

23 A. Yeah, I mean I think that it sounds like -- the  
24 search for the truth stuff sounds like a burden  
25 shift.

1 Q. Okay. But you did not object, correct?

2 A. I didn't. You know it's something the Judge is  
3 saying. I'm about to get in an argument with the  
4 Judge about what he's saying, and my position would  
5 be in front of the jury, we're not worried about  
6 something that they might take as we're not worried  
7 about the truth, you know, and I don't want to be  
8 the one that -- I wouldn't want -- it was a tough  
9 decision, maybe I should have, I don't know, maybe I  
10 should have objected, but it's just a quick decision  
11 you have to make and I think that's sort of what was  
12 sort of going through my head at that time. Wait,  
13 is this objectionable? Wait a second, do I want to  
14 object to it, and by that time, the moment kind of  
15 passes.

16 Q. Do you feel that you should have objected in  
17 retrospect?

18 A. I don't know. I mean, it's hard, nobody has a  
19 crystal ball to know if it would have made any sort  
20 of a difference. It's hard to believe that that  
21 comment would have made a difference, and I think  
22 that I addressed where the burden was supposed to be  
23 when I spoke to the jury as opposed to getting into  
24 an argument with the Judge about it.

25 Q. Now you stated that the defense at trial was

1 self-defense, correct?

2 A. It was.

3 Q. Is there a particular reason why Mr. Fludd did  
4 not testify?

5 A. Well, we got the self-defense instruction  
6 without him having to testify, so I felt like I was  
7 like -- he was -- a lot of times that doesn't  
8 happen. And so, I sort of -- usually in a self-  
9 defense issue like when guy has to testify in order  
10 to get the instruction, with his statement and what  
11 was let in, I didn't have to do that, so now it's  
12 just a question is this going to be good or is this  
13 going to be bad. He had testified in a Stand Your  
14 Ground hearing, and so I'd had a chance to do it  
15 with him one time. The big issue in the case was,  
16 or that I thought it was, was that Mr. Fludd was  
17 saying he defended himself with the broken shovel  
18 handle, a piece of garden lawn equipment broken  
19 handle that had been broken over his arm, but the  
20 pathologist showed the wound, and you could see that  
21 flat edge on the wound, and so, she was very  
22 compelling when she said that it had to have been a  
23 knife. And the garden tool thing, the broken handle  
24 was recovered and tested and there was no sign that  
25 it had been used to stab somebody with. And so, he

1 was going to get up there and stick with it was the  
2 shovel handle. And so, I was concerned that if he's  
3 confronted with this impossibility of what -- he's  
4 given a story and what happens when he's -- well  
5 that's impossible and what -- how does that work in  
6 front of the jury. That was a concern, but of  
7 course, I did not tell him to testify, tell him not  
8 to testify, definitely give a recommendation, and I  
9 mean, it's quite possible that my recommendation was  
10 to lean against testifying. I mean I definitely try  
11 and see if there's consensus. I didn't get the idea  
12 that Mr. Fludd was dying to testify or was super  
13 interested in testifying. It's certainly a  
14 discussion I'm open to having and taking the time  
15 even at that time, I think asking the Judge for a  
16 little extra time, say, hey, look, we need -- we  
17 really need to decide, but I mean, my recommendation  
18 was not to testify probably with already having the  
19 instruction -- although I wouldn't have known that  
20 at the time, but it's possible that I had had just  
21 through in chambers discussions understood that that  
22 was going to be the case, but, so, that's how that  
23 went down. That's how that happened. I certainly  
24 didn't control his decision to testify. It might  
25 have been my opinion that it was better not to

1    though.

2    Q.   In most self-defense cases, the best not only  
3    witness available to establish that defense is the  
4    defendant, right?

5    A.   Yeah, that was true in this case.

6    Q.   Okay.  So he would have been in the best  
7    position to defend himself, right?

8    A.   To defend himself against the attack or to  
9    defend himself as a defendant in the jury trial?

10   Q.   By testifying.

11   A.   Yeah, his statement came in.  I mean that's  
12   where we got -- his statement was there.  His  
13   statement -- what he said upon getting arrested, he  
14   basically would have re-stated that.  So, he -- that  
15   way his -- and we got some of his statement out, but  
16   his statement of what he was going to say pretty  
17   much happened was in front of the jury and yet he  
18   didn't have to get -- that statement can't be cross  
19   examined by the prosecutors though.  I don't know if  
20   you're trying to get me to admit that he needed to  
21   testify just because it was a self-defense case, I  
22   don't think I would probably agree with you on that.

23   Q.   Do you think it would have strengthened that  
24   defense?

25   A.   It could have weakened it or it could have

1 strengthened it. It could have made it -- it could  
2 have -- the way I think about it is maybe it could  
3 have strengthened it. He could have reinforced what  
4 was said in his statement, but if something goes bad  
5 during that testimony, we're not talking about being  
6 a little bit -- I could sort of strengthen or I  
7 could cause disaster. And so, when you make that  
8 cost benefit analysis, it's a little -- it's just  
9 you're trying to do the right thing. Nobody like I  
10 said has a crystal ball or -- it's a tough decision  
11 to make. And you can always like I said second  
12 guess it. I definitely would second guess myself,  
13 I'm not afraid to do that.

14 Q. Do you recall the Judge charging the jury that  
15 malice can be inferred from use of a deadly weapon?

16 A. I don't recall it, but obviously if it was said  
17 and written down, it was mentioned.

18 Q. Okay. And do you think that should have been  
19 objected to?

20 A. Yeah, it should of -- yes, definitely should  
21 have. Of course, the jury didn't find malice, so it  
22 wasn't like they got that instruction and then they  
23 found that there was malice. So I guess even though  
24 that instruction was given and it wasn't right, it  
25 didn't end up being, I don't know, something that

1 the jury decided.

2 MS. MARTO: No further questions, Your  
3 Honor.

4 THE COURT: Cross?

5 MS. DIXON: Just briefly, may it please the  
6 court?

7 **CROSS-EXAMINATION OF IAN DEYSACH**

8 BY MS. DIXON:

9 Q. Can you just kind of explain succinctly what the  
10 State's evidence was?

11 A. The statement by the Defendant, the -- like I  
12 said, he said how it happened with the stick, the  
13 pathologist said it happened with the knife, they  
14 had been hanging out all night. I think, I don't  
15 know, I mean basically -- I don't know what else  
16 you're aiming for, but I'm going to stays succinct  
17 and that's basically it.

18 Q. And then in terms of where this occurred, do you  
19 recall that it occurred on the property of the  
20 victim's parents?

21 A. That's right.

22 Q. And were there any eyewitnesses other than Miss  
23 Garvin?

24 A. Not to the actual fight itself, just when Champ  
25 or I don't remember the victim's name right now,

1 when he -- shortly after he's at the door of his  
2 parents' house, and they -- everybody's there.

3 Q. And then just to clarify, Bummy did not witness  
4 this killing, right?

5 A. No.

6 Q. So he really had nothing material to add other  
7 than they were together that day?

8 A. Correct.

9 Q. And is that something y'all had pretty much  
10 already acknowledged through your self-defense  
11 strategy?

12 A. Yeah, I think it was in his statement that he  
13 had spent time at Bummy's house.

14 Q. And then in terms of meeting, do you believe you  
15 had adequate time to meet with him and discuss  
16 everything? Did you ever have any -- I'm sorry,  
17 would you say that for the record?

18 A. Yes.

19 Q. Okay. And then did you ever have any concerns  
20 about his ability to understand your conversations?

21 A. I did not.

22 Q. Okay. And in terms of an allegation that you  
23 didn't make all the objections, is there ever a  
24 strategy that you wouldn't object to everything that  
25 may be objectionable?

1 A. Yeah, I mean if we're talking about leading,  
2 only if it's material. If they're really leading on  
3 a material issue, I -- it is important and  
4 appropriate to object. If they're leading on  
5 something that's just pushing the trial forward, if  
6 you object to that in front of the jury, you can  
7 look like you're being difficult and wasting their  
8 time when it -- I can explain the thing about search  
9 for the truth and what might have been going through  
10 my head.

11 MS. DIXON: Nothing further.

12 MS. MARTO: No redirect, Your Honor.

13 THE COURT: You may step down.

14 MS. MARTO: No additional witnesses.

15 THE COURT: Anything from the State?

16 MS. DIXON: Nothing further from the State,  
17 just a real quick argument, Your Honor.

18 THE COURT: All right. Go ahead.

19 MS. MARTO: Yes, Your Honor.

20 **CLOSING STATEMENTS BY MS. MARTO**

21 BY MS. MARTO:

22 If it pleases the Court? We have raised 11  
23 allegations today. We are not by any means  
24 abandoning any of them, but I would just like to  
25 highlight a few. First, search for the truth

1 language, and the Court's opening comments that  
2 was burden shifting. I think it's an issue that  
3 the appellate courts have brought up quite  
4 frequently, and we would just hold that counsel  
5 did not have a reason for not objecting to that,  
6 and it was prejudicial to my client.

7 Additionally, I disagree with counsel's  
8 assertion that his -- the decision to not have  
9 my client testify at trial, I would argue that  
10 that was prejudicial, and I would argue that my  
11 client stated that Mr. Deysach encouraged him  
12 not to testify at trial, even though it was a  
13 self-defense case, and he was really the only  
14 witness that could of testified in support of  
15 that defense. And I think counsel did testify  
16 that he thought he recommended that he not  
17 testify. And so, I would argue that that was  
18 ineffective assistance of counsel when it came  
19 down to trial strategy.

20 And then finally, Your Honor has the briefs  
21 and the Court's decision before it when it came  
22 to the Court of Appeals, we would just argue  
23 that Belcher clearly applied in this case, that  
24 because this was a self-defense case, Belcher  
25 long preceded this trial coming about. To the

1 law the attorney that he could not charge that  
2 malice could be inferred from the use of a  
3 deadly weapon, and yet it was. Counsel didn't  
4 have a reason for not objecting to that. And  
5 so, for all of these reasons, we would just  
6 request that the Court take this matter under  
7 advisement tonight, but ultimately decide that  
8 relief should be granted in this case on those  
9 grounds. Thank you so much.

10 **CLOSING STATEMENTS BY MS. DIXON**

11 BY MS. DIXON: May it please the Court?  
12 Like the last case, I think a lot of these  
13 allegations come down to the credibility, who do  
14 you believe, who do you not believe in terms of  
15 the amount of time that they met and what they  
16 discussed during those meetings. In terms of  
17 issue number one, the failure to object to the  
18 search for the truth language, we would assert  
19 that there is no prejudice from that failure to  
20 object, and we would direct the Court to two  
21 cases. First of all, *State v. Aleksey* and that  
22 is 343 S.C. 20, and this is a 2000 case. And at  
23 that time they made the argument about the  
24 burden shifting and that actually was part of  
25 the Judge's charge to the jury. And the Supreme

1 Court of South Carolina found that there was no  
2 prejudice because that search for the truth  
3 language did not occur as part of the reasonable  
4 doubt jury charge. It was part of the  
5 credibility charge. Therefore, it was not  
6 reversible error, it was not prejudicial, it was  
7 not burden shifting. Here we have search for  
8 the truth language that not only is not a part  
9 of the reasonable doubt charge, but it's not  
10 even part of the charge. These are the Court's  
11 pretrial statements that he made to the jury.  
12 The other case I would direct Your Honor to is  
13 *State v. Beaty*, and that is a more recent case,  
14 423 S.C. 26. That's a 2018 Supreme Court case  
15 where they did say that the Judge's preliminary  
16 remarks to the jury about searching for the  
17 truth was improper, but the Court ultimately  
18 determined that it did not warrant reversal.  
19 And again, that was based on the fact that it  
20 was not given as part of the reasonable doubt  
21 jury instruction. So here we would contend  
22 there has been no prejudice from any failure to  
23 object to that language.

24 Moving on to the self-defense, he had an  
25 opportunity to testify here today. I didn't

1 hear any testimony about what happened that I  
2 believe would reasonably change the outcome of  
3 the trial. So, at this point, whether or not  
4 his testimony would have been persuasive to a  
5 jury is really just speculative at best. Let's  
6 see, moving on. I think this stuff about the  
7 impeachment, if Your Honor reviews the  
8 transcript, that is probably the best evidence  
9 of what was done during cross-examination and  
10 during closing argument, but we would submit  
11 that there was plenty of impeachment there where  
12 it could be done and also lots of references  
13 during closing argument. In terms of -- let's  
14 see -- the last one that I wanted to mention,  
15 his failure to object to the inferred malice  
16 charge. Your Honor, again, he was acquitted of  
17 murder which by its very definition means that  
18 the jury did not find malice, so there cannot be  
19 any prejudice from his failure to object to that  
20 charge.

21 THE COURT: All right. I tell you what.  
22 I'm going take it under advisement and let me  
23 have both sides submit orders within 30 days.

24 MS. MARTO: Thank you, Judge.

25 THE COURT: Thank you. All right.

1 (WHEREUPON HEARING WAS CONCLUDED.)

2 - - -END OF TRANSCRIPT- - -

3

4 CERTIFICATE OF REPORTER

5

6 I, Cathy L. Young, CVR-M, for the  
7 Fourteenth Judicial Circuit of the State of South  
8 Carolina, do hereby certify that the foregoing is a  
9 true, accurate and complete Transcript of Record of  
10 introduced in the hearing of the captioned case,  
11 relative to appear, in the Circuit Court for  
12 Colleton County, South Carolina, on the 27th day of  
13 November, 2023.

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

16

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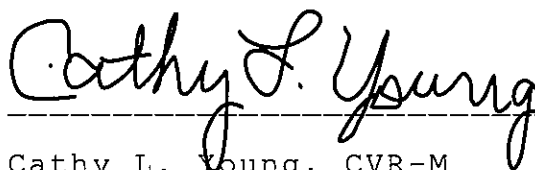
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Cathy L. Young, CVR-M

Court Reporter and Notary

Public in and for South Carolina

My Commission expires: 3-28-2029

|                                 |   |                              |
|---------------------------------|---|------------------------------|
| STATE OF SOUTH CAROLINA         | ) | IN THE COURT OF COMMON PLEAS |
| COUNTY OF HAMPTON               | ) | FOURTEENTH JUDICIAL CIRCUIT  |
|                                 | ) |                              |
| Daniel Lee Fludd, SCDC #378414, | ) | Case No. 2022-CP-25-00144    |
|                                 | ) |                              |
| Applicant,                      | ) | ORDER OF DISMISSAL           |
|                                 | ) |                              |
| v.                              | ) |                              |
|                                 | ) |                              |
| State of South Carolina,        | ) |                              |
|                                 | ) |                              |
| Respondent.                     | ) |                              |

FILED  
 AM/PM  
 FEB 26 2024  
 MYLINDA D NETTLES  
 CLERK OF COURT  
 HAMPTON COUNTY, SC

This matter is before the Court by way of an application for post-conviction relief (PCR) filed by Daniel Lee Fludd (Applicant) on May 20, 2022. On November 27, 2023, an evidentiary hearing convened before the Honorable Roger M. Young, Sr. Applicant was present and represented by Chelsey F. Marto, Esquire. Assistant Attorney General Danielle Dixon represented Respondent. Applicant and trial counsel Ian C. Deysach testified at the hearing. Following a thorough review of the records before this Court and the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant did not meet his burden of proof. Thus, this Court denies relief and dismisses this application with prejudice.

#### PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections serving an aggregate thirty-year sentence. In August 2017, the Hampton County Grand Jury indicted Applicant for murder (2017-GS-25-00160) and possession of a weapon during a violent crime (2017-GS-25-00161). On December 3-5, 2018, Applicant proceeded to a jury trial before the Honorable Perry M. Buckner. Ian Deysach, Esquire, represented Applicant, and Assistant Solicitor Tameaka Legette prosecuted the case. The jury acquitted Applicant of murder but convicted him of the lesser-included offense of voluntary manslaughter and the weapon charge.

Judge Buckner sentenced him concurrently to twenty years for voluntary manslaughter and five years for the weapon charge.

Applicant filed a timely notice of appeal, which was perfected by Appellate Defender David Alexander. On appeal, Applicant argued the trial court erred in charging the jury that malice could be inferred from the use of a deadly weapon. The Court of Appeals affirmed, finding this issue was not preserved. State v. Fludd, 2021-UP-165 (S.C. Ct. App. filed May 12, 2021). The remittitur was sent June 4, 2021.

#### **SUMMARY OF PERTINENT TRIAL TESTIMONY**

Prior to trial, Applicant moved for immunity pursuant to the Protection of Persons and Property Act. At the pretrial immunity hearing, he testified that the evening of the incident, he was at “Bummy’s” house along with Bobby Atkins (Victim) and Victim’s girlfriend Zaneh Garvin. Applicant stated he gave Victim a gold chain to see if Victim could fix it. Shortly thereafter, Victim and Garvin left, and Applicant realized they had stolen his chain. (Tr. 13-16).

Applicant testified he went after Victim and Garvin and asked for his necklace back, and Victim struck him with a shovel. He stated Victim hit him twice, and the shovel broke. Applicant testified he believed Victim was going to kill him, so he picked up a piece of the shovel and stabbed Victim in the chest. Thereafter, he ran away. (Tr. 16-18).

In contrast, Garvin testified Applicant gave the necklace to Victim to see if Victim could sell it, but Victim could not find anyone to buy it. Applicant and Victim began arguing over the necklace, and Garvin told Victim to give it back. She stated she took the necklace from Victim and returned it to Applicant. (Tr. 33-40). The men continued to argue; she and Victim ran toward Victim’s parents’ house, and Applicant ran after them. Once on his parents’ property, Victim picked up a shovel and hit Applicant. Victim and Applicant continued fighting, and Applicant



pulled out a knife and stabbed Victim in the stomach. (Tr. 43-45).

The trial court denied immunity. At trial, Garvin provided similar testimony. (Tr. 285-331). The pathologist testified Victim had six stab wounds, including a fatal one to the chest. (Tr. 449, 462). She opined the wounds were likely caused by a knife with a blunt edge and a sharp edge, and it was unlikely the wounds were caused by the shovel or a box cutter that was found at the scene. (Tr. 458-59). Applicant did not testify at trial. The jury acquitted him of murder but convicted him of the lesser-included offense of voluntary manslaughter.

#### CURRENT APPLICATION

On May 20, 2022, Applicant timely commenced this PCR action alleging:

1. Ineffective assistance of counsel
  - a. "Failing to preserve a[n] issue for appeal" and
  - b. "Failing to object to a jury charge."

Respondent filed a return requesting an evidentiary hearing. On November 14, 2023, Applicant filed an amended application alleging trial counsel was ineffective for:

1. Failing to object to "search for the truth" comments in the Court's opening statement;
2. Advising Applicant not to testify when his defense was self-defense;
3. Failing to properly communicate with Applicant;
4. Failing to properly impeach the characters of "Bummy," the deceased victim, and Ms. Garvin;
5. Failing to investigate the backgrounds of the lay witnesses more thoroughly;
6. Failing to object to the solicitor's leading questions;
7. Failing to personalize Applicant more throughout trial;
8. Failing to object to the Court charging the jury that malice can be inferred from the use of a deadly weapon;

9. Failing to flesh out both opening and closing arguments more. Specifically, counsel failed to personalize Applicant in argument and failed to sufficiently challenge the characters of Bummy, Ms. Garvin, and the deceased victim;

10. Failing to discuss defense and trial strategy with Applicant;

11. Inadequate preparation time before trial.

At the PCR hearing, Applicant proceeded on the allegations raised in his amended application.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This Court has had the opportunity to review the records before it, including the Hampton County Clerk of Court records of the underlying convictions; Applicant's records from the South Carolina Department of Corrections; Applicant's appellate records, including the trial transcript; and the records of this PCR action. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility, and weigh their testimony accordingly. After a careful review based on the Strickland standard set forth below, this Court finds Applicant has failed to carry his burden of proof. Below are this Court's findings of fact and conclusions of law as required by section 17-27-80 of the South Carolina Code (2017).

#### ***Ineffective Assistance of Counsel***

The Sixth Amendment to the United States Constitution guarantees a defendant the right to effective assistance of counsel. U.S. Const. amend. VI; Strickland v. Washington, 466 U.S. 668 (1984); Lomax v. State, 379 S.C. 93, 665 S.E.2d 164 (2008). In a PCR action, an applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). When the application alleges ineffective assistance of counsel, the applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland, 466 U.S. 668. Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668. First, an applicant must prove counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, a PCR applicant must prove that counsel's deficient performance prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

*Search for truth language*

Applicant first contends counsel was ineffective for not objecting to "search for truth" language in the Court's opening comments to the jury.<sup>1</sup> This Court finds Applicant did not prove counsel was ineffective in this regard.

The South Carolina Supreme Court has found it improper for trial courts to use truth-seeking language when addressing the jury. See State v. Beaty, 423 S.C. 26, 34, 813 S.E.2d

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<sup>1</sup> Prior to opening statements, the trial judge commented, "[A]n actual trial, ladies and gentlemen, is not for entertainment. It is a fundamental part of our democracy. It is a search for the truth, in an effort to make sure that justice is done between the parties before the Court. Search for the truth and trying to make sure that justice is done is often slow, it is often deliberate, it is often repetitive. It took me twenty minutes just to get a lunch order this morning. It's the exact opposite of what you may have seen on television or read in a book or seen in a movie." (Tr. 149-50).

502, 506 (2018) (“[A] trial judge should refrain from informing the jury, whether through comments or through a charge on the law, that its role is to search for the truth, or to find the true facts, or to render a just verdict. These phrases could be understood to place an obligation on the jury, independent of the burden of proof, to determine the circumstances surrounding the alleged crime and from those facts alone render the verdict the jury believes best serves its perception of justice. We instruct trial judges to avoid these terms and any others that may divert the jury from its obligation in a criminal case to determine whether the State has proven the defendant's guilt beyond a reasonable doubt.”); State v. Aleksey, 343 S.C. 20, 27, 538 S.E.2d 248, 251 (2000) (“[W]e have urged trial courts to avoid using any ‘seek language when charging jurors on either reasonable doubt or circumstantial evidence . . . . (emphasis added)); State v. Daniels, 401 S.C. 251, 256, 737 S.E.2d 473, 475 (2012) (“[W]e instruct the trial judge to remove any suggestion from his general sessions charges that a criminal jury's duty is to return a verdict that is “just” or “fair” to all parties.” (emphasis added)).

However, this Court finds it is not reasonably likely an objection to these comments would have changed the outcome. Under the rationale of Aleksey and Beatty, it is not reasonably likely these comments—which were made *before* trial and not as part of the jury charge—shifted the burden of proof and made the jury believe Applicant had to disprove the State’s case. See Aleksey, 343 S.C. at 20, 538 S.E.2d at 248 (finding that although truth-seek language by the court was not appropriate, it did not shift the burden of proof when it was not given in conjunction with the charge on the State’s burden of proof); id. at 28-29, 538 S.E.2d at 252-53 (“There is not a reasonable likelihood the jury applied the challenged instruction in a manner inconsistent with the burden of proof beyond a reasonable doubt. The trial court's instructions concerning seeking the truth were given in the context of the jury's role in determining the credibility of witnesses. The

remarks were prefaced by a full instruction on reasonable doubt and followed by an additional exhortation to bear in mind the State's heavy burden of proof.” (footnote omitted)); Beatty, 423 S.C. at 32-34, 813 S.E.2d at 505-06 (finding defendant not prejudiced by court’s pretrial comments that a trial is a search for the truth and the jury’s role is to render true and just verdict and determine true facts when these comments “were a mere statement to the jury and not a charge on the law” and “the remarks were not linked to either the reasonable doubt or the circumstantial evidence charges”). Further, the jury charge itself properly explained the burden of proof and did not use truth-seeking language in the context of the reasonable doubt charge or the circumstantial evidence charge.<sup>2</sup> (R. 519-24). Based on the foregoing, this Court finds the Court’s preliminary comments did not shift the burden of proof, and it is not reasonably likely an objection to these preliminary statements would have changed the outcome of trial. Thus, Applicant did not prove prejudice, and this claim is denied.

*Advice regarding testifying*

Applicant next contends counsel was ineffective for erroneously telling him not to testify when his defense was self-defense. Applicant did not prove counsel was ineffective in this regard.

At the PCR hearing, Applicant testified he proceeded on self-defense but did not testify because counsel advised him not to. Specifically, counsel told him the State would discredit everything he said. Although he admitted during cross-examination that he killed Victim, he did not otherwise testify to his version of the events at the PCR hearing.

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<sup>2</sup> When charging credibility, the Court charged the jury that it would decide the “truth and veracity” of each witness’s testimony. This language, however, was similar to the language in Aleksey, which our supreme Court found did not shift the burden of proof. (R. 522). See Aleksey, 343 S.C. at 27, 538 S.E.2d at 251-52 (“While we have urged trial courts to avoid using any ‘seek’ language when charging jurors on either reasonable doubt or circumstantial evidence, the ‘seek’ language here did not appear in either the reasonable doubt or circumstantial evidence charge, but in the instructions on juror credibility.” (internal citation omitted)); Beatty, 423 S.C. 26, 34, 813 S.E.2d 502, 506 (2018) (finding appellant could not demonstrate prejudice from court’s truth-seeking remarks when they “were not linked to either the reasonable doubt or the circumstantial evidence charges as was condemned in Aleksey”).

Trial counsel agreed they proceeded on a theory of self-defense, and he was able to get a self-defense charge without having Applicant testify. He stated Applicant's testimony at the immunity hearing was refuted by the pathologist. Specifically, whereas Applicant claimed he hit Victim with a shovel, the pathologist testified Victim's injuries appeared to be from a knife. Counsel believed the pathologist was a compelling witness. He also stated law enforcement tested the shovel but did not find any evidence that suggested it was the weapon used to kill Victim. Counsel testified he probably advised Applicant not to testify but it was ultimately Applicant's decision, and counsel did not get the impression that Applicant wanted to testify. Although he agreed that Applicant's testimony could have strengthened his claim of self-defense, he stated it also could have weakened it, and if it went bad it would go very bad.

This Court finds counsel's foregoing testimony credible. This Court further finds counsel articulated a valid reason as to why he may have advised Applicant not to testify—that Applicant's testimony at the pretrial hearing was refuted by the pathologist,<sup>3</sup> and counsel was able to enter evidence of self-defense without Applicant testifying. Based on the foregoing, this court finds counsel's advice was reasonable under prevailing professional norms and not deficient. Likewise, Applicant did not prove prejudice. The trial court advised Applicant of his right to testify and that it was his decision, and Applicant chose not to testify. (Tr. 474-76). Further, counsel stated he did not get the impression that Applicant wanted to testify. Finally, Applicant did not offer any testimony at the PCR hearing of what he would have testified to about the incident that would have reasonably changed the outcome of trial.<sup>4</sup> Thus, Applicant did not prove deficiency or prejudice,

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<sup>3</sup> This Court has reviewed Applicant's pretrial testimony and agrees his testimony that he struck the victim with a shovel was refuted by the pathologist, who stated it was unlikely a shovel caused the victim's stab wounds. (Tr. 13-18, 457-59). Applicant's pretrial testimony was also inconsistent with Gavin's testimony, who stated Applicant pulled out a knife and stabbed the victim. (Tr. 44, 319, 326).

<sup>4</sup> This Court further finds that due to the inconsistencies between Applicant's pretrial testimony and the pathologist's and Garvin's testimony, it is not reasonably likely the outcome would have been different had Applicant provided testimony similar to his pretrial testimony at trial.



and this claim is denied.

*Failure to communicate and discuss defense and trial strategy<sup>5</sup>*

Applicant contends counsel was ineffective for failing to properly communicate with him. He also avers counsel was ineffective for failing to discuss with him the defense and trial strategy. This Court finds Applicant did not prove counsel was ineffective in this regard.

At the PCR hearing, Applicant testified counsel did not discuss trial strategy or properly communicate with him. In contrast, counsel testified he met with Applicant for hours, and they discussed the charges and the elements of the charges, discovery, and plea offers. Counsel stated Applicant was detained in Charleston County, and he probably met with Applicant four times at the Charleston Detention Center. He stated he also met with Applicant when Applicant was transported to Hampton County. Counsel testified that when he traveled to Charleston to meet with Applicant, he stayed a long time at those visits. He averred they communicated fully.

This Court finds counsel's foregoing testimony credible. This court further finds that counsel met with Applicant a sufficient amount of time and adequately communicated with him, including his strategy. Thus, Applicant did not prove deficiency. Likewise, Applicant did not set forth what would have been different had counsel met with him more that would reasonably have changed the outcome of trial and thus did not prove prejudice. Thus, this claim is denied.

*Impeachment<sup>6</sup>*

Next, Applicant contends counsel was ineffective for failing to properly impeach Bummy, Victim, and Garvin. Applicant did not prove counsel was ineffective in this regard.

At the PCR hearing, Applicant asserted Bummy and Garvin had questionable characters, and he wished counsel had cross-examined them more. Specifically, he stated they were addicted

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<sup>5</sup> This section addresses allegations three and ten of the amended application.

<sup>6</sup> This section addresses allegation four of the amended application.

to drugs, and Victim used and abused Garvin. He also stated Garvin's testimony was inconsistent, she did not explain everything, and she was led by the solicitor. He stated Victim was "pimping" Garvin, and Garvin had a drug habit. Applicant averred counsel should have cross-examined the witnesses more and pointed out inconsistencies.

Counsel agreed that Bummy, Victim, and Garvin were not "pillars of the community." He explained, however, that in attacking credibility, he first determines what testimony he doesn't want the jury to believe. He further explained that Applicant was hanging out with these people, which could lead the jury to believe that Applicant was hanging out with bad people. Counsel clarified the incident did not occur at Bummy's house and Bummy did not witness it; thus, dirtying Bummy's character would not help Applicant's case. He stated he cross-examined Garvin about the prosecutor paying for her hotel during trial, and after Garvin's cross-examination, the solicitor began discussing a plea offer. Counsel believed he did a good job cross-examining her. Regarding Victim, counsel testified he hired investigators to look into Victim's background. He agreed Victim was a problematic character but explained Applicant was his friend, so bringing out problems with Victim's character could hurt as much as it could help.

This Court finds counsel's foregoing testimony credible. This Court further finds counsel articulated a valid reason for not further cross-examining Bummy in that Bummy was not an eyewitness, making his testimony not material to whether Applicant was acting in self-defense. Likewise, this Court finds counsel articulated a valid reason for not further "dirtying" these witnesses because Applicant had been hanging out with them, which could affect the jury's perception of Applicant. Finally, this Court has reviewed counsel's cross-examination of Garvin and Bummy and finds it was reasonable under prevailing professional norms.<sup>7</sup> Thus, Applicant

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<sup>7</sup> Applicant has framed this allegation as an allegation of failure to impeach. Because Victim did not testify, counsel cannot be ineffective for not impeaching him.



did not prove deficiency.

Likewise, Applicant did not set forth what more counsel should have cross-examined these witnesses on that would have reasonably changed the outcome. Specifically, counsel *did* elicit testimony that Victim was “pimping” Garvin in exchange for money to use to purchase drugs. (Tr. 341-42). Applicant has not shown what more counsel should have done that counsel did not already do; thus, Applicant did not prove prejudice, and this claim is denied.

*Failure to investigate<sup>8</sup>*

Applicant asserts counsel was ineffective for failing to investigate the backgrounds of the lay witnesses more thoroughly. This Court finds Applicant did not prove counsel was ineffective in this regard. Initially, this Court finds credible counsel’s testimony that he hired an investigator to look into Victim’s background. Likewise, this Court finds counsel adequately brought out questionable information about Victim and Garvin’s character by questioning Garvin about whether Victim was “pimping” her for drug money. This Court thus finds counsel’s investigation was reasonable under prevailing professional norms and not deficient. Likewise, Applicant did not set forth what more counsel would have learned up on further investigation that reasonably would have changed the outcome. At the hearing, Applicant focused on the fact that Victim abused Garvin and used her to supply his drug habit—information that was in fact before the jury. Thus, Applicant did not prove prejudice, and this claim is denied.

*Failure to object – Leading<sup>9</sup>*

Applicant contends counsel was ineffective for failing to object to the Solicitor’s leading questions. This Court finds Applicant did not prove counsel was ineffective in this regard. At the hearing, Applicant generally alleged counsel let certain objections slide away and did not object

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<sup>8</sup> This section addresses allegation five of the amended application.

<sup>9</sup> This section addresses allegation six of the amended application.

to leading, which impacted his trial. However, Applicant did not point to any specific pages of the transcript (other than the court's pretrial "truth" language) that he believed counsel should have objected to. Ultimately, it is counsel's burden to prove the allegations in his application. Here, where he merely made a general allegation of "failure to object to leading" without specifying what leading questions he believed counsel should have objected to, Applicant did not meet his burden of proof. Thus, this claim is denied.

*Failure to personalize Applicant*<sup>10</sup>

Applicant argues counsel was ineffective for failing to personalize Applicant more throughout trial. This Court finds Applicant did not prove counsel was ineffective in this regard.

At the PCR hearing, Applicant testified counsel should have made his character "more known." Counsel testified Applicant's mother was not as close to Applicant as trial counsel would have hoped. He averred delving into Applicant's character more could have gone good or bad.

This Court finds Applicant did not set forth specifically what counsel should have discussed about Applicant's character and thus did not prove deficiency in this regard. This Court further finds counsel articulated a valid reason for not further delving into Applicant's character in that doing so could go good or bad. Specifically, had counsel delved into Applicant's character, it would have opened the door for the State to rebut that with any potential bad character evidence. See Rule 404(a)(1) (providing evidence of a character trait is not admissible unless "offered by an accused, or *by the prosecution to rebut the same*" (emphasis added)). Thus, Applicant did not overcome the presumption that counsel's decisions were reasonable under prevailing professional norms. Likewise, Applicant did not set forth with any specificity what counsel should have done to personalize him more that would have likely changed the outcome and thus did not prove

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<sup>10</sup> This section addresses allegation seven of the amended application.



prejudice. Thus, this claim is denied.

*Failure to object -Inferred malice charge*<sup>11</sup>

Applicant contends counsel was ineffective for failing to object to the Court's charge that malice can be inferred from the use of a deadly weapon. (Tr. 533-34). This Court agrees the charge was not proper because evidence of mitigation (to voluntary manslaughter) and self-defense was presented. See State v. Belcher, 385 S.C. 597, 612, 685 S.E.2d 802, 810 (2009) ("[W]here 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.", overruled by State v. Burdette, 427 S.C. 490, 503, 832 S.E.2d 575, 582 (2019) ("A 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.")).<sup>12</sup>

However, this Court finds Applicant cannot prove prejudice from counsel's failure to object to this charge. The jury convicted Applicant of voluntary manslaughter, which does not include malice aforethought. Thus, the jury found the State did not prove malice aforethought beyond a reasonable doubt. Because the jury—in convicting Applicant of voluntary manslaughter but acquitting him of murder—determined the State did not prove malice aforethought, it is not reasonably likely the outcome would have been different had the Court not given this inferred malice charge. Thus, Applicant did not prove prejudice, and this claim is denied.

*Opening / closing arguments*<sup>13</sup>

Applicant contends counsel was ineffective for failing to flesh out both opening statement

<sup>11</sup> This section addresses allegation eight of the amended application.

<sup>12</sup> Burdette was decided *after* Applicant's trial. Nonetheless, the inferred malice charge was improper under Belcher because Applicant proceeded to trial on self-defense.

<sup>13</sup> This section addresses allegation nine of the amended application.

and closing argument more. Specifically, he contends counsel failed to personalize Applicant and failed to sufficiently challenge the characters of Bummy, Garvin, and the deceased victim. This Court finds Applicant did not prove counsel was ineffective in this regard.

At the CPR hearing, Applicant testified counsel's opening and closing seemed unprepared, and counsel did not give a full view of Applicant as a victim. Counsel testified he was not sure what more he could have raised in opening and closing.

As set forth above, this Court finds Applicant did not prove counsel was not for failing to further personalize Applicant because (1) Applicant did not set forth specifically what counsel should have said or done to further personalize him and (2) counsel articulated a valid reason for not further delving into Applicant's character as doing so could go bad. Further, this Court finds counsel *did* portray Applicant as a victim. Specifically, during closing argument, counsel framed it as "a shovel case; . . . not a necklace case" and focused on the fact that Victim began the altercation by swinging a shovel at Applicant. (R. 501-04). Counsel also argued Applicant was responding to "unpredictable behavior by . . . a crack head." (R. 513). Finally, counsel attacked both Victim and Garvin's characters as well as Garvin's credibility throughout his closing argument. Overall, this Court finds counsel's opening statement and closing argument were reasonable under prevailing professional norms and not deficient. Likewise, Applicant did not set forth what more counsel should have done during opening or closing that would reasonably change the outcome, and thus did not prove deficiency or prejudice. Therefore, this claim is denied.

*Inadequate preparation time*

Finally, Applicant contends counsel had inadequate preparation time before trial. This Court finds Applicant did not prove counsel was ineffective in this regard. Specifically, this Court finds credible counsel's testimony that he met with Applicant for hours and discussed the charges,

discovery, and plea offers. This Court further finds credible counsel's testimony that he had sufficient time to prepare for trial. Based on the foregoing testimony and this court's review of the trial transcript itself, counsel's preparation was reasonable under prevailing professional norms and not deficient. Likewise, Applicant did not set forth what more counsel would have presented with additional preparation time that would have reasonably changed the outcome of trial and thus did not prove prejudice.

### CONCLUSION

Based on the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant relief. Thus, this application is denied and dismissed with prejudice.

Should Applicant wish to secure appellate review, he must file and serve a notice of appeal within thirty days of receipt by counsel of written notice of entry of judgment. See Rule 203, SCACR. Applicant has the right to an appellate counsel's assistance on appeal. Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). If Applicant wishes to appeal, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Rule 71,1(g), SCRCP. Attention is directed to Rule 243, SCACR, for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. This application for PCR is denied and dismissed with prejudice; and
2. Applicant shall be remanded to and remain in the custody of the State.

AND IT IS SO ORDERED THIS 13 day of February, 2023.

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 ROGER M. YOUNG, SR.  
 Presiding Judge  
 Fourteenth Judicial Circuit

Chambers, South Carolina



ALAN WILSON  
ATTORNEY GENERAL

February 21, 2024

The Honorable Mylinda D. Nettles  
Clerk of Court - Hampton County  
Post Office Box 7  
Hampton, South Carolina 29924-0007

**Re: Daniel Lee Fludd, #378414 v. State of South Carolina**  
**Case No.: 2022-CP-25-00144**

Dear Ms. Nettles:

Enclosed please find the original Order of Dismissal signed by the Honorable Roger M. Young, Sr., in the above-captioned case, for filing in your office. Please forward a time-stamped copy back to our office for our file.

Sincerely,

Danielle Dixon  
Assistant Attorney General

DD/vh

cc: Chelsey F. Marto, Esquire

**WITNESSES**

Michael G. Thomas - Estill Police  
Department

DOCKET NO. 2017GS2500160

**The State of South Carolina**

**County of Hampton**

**COURT OF GENERAL SESSIONS**

**August Term 2017**

**THE STATE**

**vs.**

**Daniel Lee Fludd**

**Indictment For**

**Murder**

SC Code: 16-3-10

CDR Code: 0116

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

Defendant

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

Defendant

Witness:

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

**ARREST WARRANT NUMBER**

2017A2520200027

**TRUE BILL**

*[Signature]*  
Foreperson of Grand Jury  
Date: AUG 17 2017

**VERDICT**

*Voluntary Man-Slaughter*  
*Guilty*

*[Signature]*  
Foreperson of Petit Jury  
Date: Dec-5-2018  
**INDICT**

644  
STATE OF SOUTH CAROLINA  
COUNTY OF HAMPTON

)  
)  
)

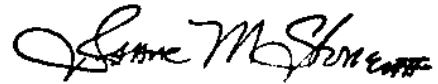
INDICTMENT  
2017GS2500160

At a Court of General Sessions, convened on August 17, 2017, the Grand Jurors of Hampton County present upon their oath:

**Murder**

That in Hampton County, South Carolina, on or about March 22, 2017, the Defendant, Daniel Lee Fludd, did, with malice aforethought, kill Bobby Atkins and Bobby Atkins did die as a proximate result of Daniel Lee Fludd's actions, all in violation of Section 16-3-10, et al. of the Codes of Law of South Carolina.

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



Solicitor

TRUE BILL

**WITNESSES**

Michael G. Thomas - Estill Police  
Department

DOCKET NO. 2017GS2500161

**The State of South Carolina**

**County of Hampton**

**COURT OF GENERAL SESSIONS**

**August Term 2017**

**THE STATE**

**vs.**

**Daniel Lee Fludd**

**Indictment For**

**Possession of Weapon During  
Violent Crime**

SC Code: 16-23-490

CDR Code: 0549

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

Defendant

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

Defendant

Witness:

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

**ARREST WARRANT NUMBER**

2017A2520200028

**TRUE BILL**

*[Signature]*  
Foreperson of Grand Jury  
Date: Aug 17 2017

**VERDICT**

*Guilty*

*[Signature]*  
Foreperson of Petit Jury  
Date: Dec-5-2018  
INDICT

646  
STATE OF SOUTH CAROLINA  
COUNTY OF HAMPTON

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)  
)  
)

INDICTMENT  
2017GS2500161

At a Court of General Sessions, convened on August 17, 2017, the Grand Jurors of Hampton County present upon their oath:

**Possession of Weapon During Violent Crime**

That in Hampton County, South Carolina, on or about March 22, 2017, the Defendant, Daniel Lee Fludd, did possess a firearm, visibly displayed what appeared to be a firearm, or visibly displayed a knife during the commission of a violent crime and Daniel Lee Fludd was convicted of committing or attempting to commit a violent crime as defined in Section 16-1-60, all in violation of Section 16-23-490, et al. of the Codes of Law of South Carolina.

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



Solicitor

TRUE BILL



1  
00:00:03,870 --> 00:00:08,74  
<b>Thomas: Alright Mr. Fludd, my name is Lt. Thomas. I'm  
an investigator with the Estill Police Department.</b>

2  
00:00:08,74 --> 00:00:16,82  
<b>This is Lt. Alex Williams. Um, we would like to talk  
to you about an incident that occurred, um, in the</b>

3  
00:00:16,82 --> 00:00:19,19  
<b>latter part of last night.  
Fludd: Okay.</b>

4  
00:00:22,389 --> 00:00:26,92  
<b>Thomas: Is there anything off hand that you just  
want to tell us?</b>

5  
00:00:26,92 --> 00:00:29,796  
<b>Fludd: No sir.  
Thomas: Alright. But you know why you're here?</b>

6  
00:00:29,796 --> 00:00:33,466  
<b>You know why you're in handcuffs?  
Fludd: No they just said I have a warrant for my arrest.</b>

7  
00:00:33,466 --> 00:00:37,370  
<b>That was it.  
Thomas: I'll be, I'll be, um, just straight to the point.</b>

8  
00:00:37,370 --> 00:00:40,206  
<b>The reason why you're here, you're under arrest for  
murder, okay?</b>

9  
00:00:40,206 --> 00:00:42,742  
<b>That's why you're here for murder.  
Fludd: What?</b>

10  
00:00:42,742 --> 00:00:50,183  
<b>Thomas: Yes sir. Um, do you want to talk to us, and...  
You know, tell us your side of the story?</b>

11  
00:00:50,183 --> 00:00:53,987

<b>Fludd: As far as, what, what's going on? How am I here for murder?</b>

12

00:00:53,987 --> 00:00:57,624

<b>Thomas: We have an arrest warrant for you for murder.

Fludd: Okay.</b>

13

00:00:57,624 --> 00:01:02,996

<b>Thomas: Okay, um... I would like to give you the opportunity to give me your side of the story.</b>

14

00:01:02,996 --> 00:01:08,802

<b>I don't want you to be judged just based on eyewitnesses or my story or the Lieutenant's story.</b>

15

00:01:08,802 --> 00:01:13,873

<b>I want to give an opportunity to hear your side of the story because we are all aware things happen.</b>

16

00:01:13,873 --> 00:01:15,508

<b>You know? Before it escalated.

Fludd: Yeah.</b>

17

00:01:15,508 --> 00:01:18,44

<b>Fludd: Okay, well...

Thomas: Well hold on... hold on. Do you want to tell</b>

18

00:01:18,44 --> 00:01:20,780

<b>me your side of the story?

Fludd: If that's the case, yes.</b>

19

00:01:21,81 --> 00:01:24,584

<b>Thomas: First and foremost, so, I want you to understand your rights. Okay?</b>

20

00:01:24,584 --> 00:01:26,219

<b>Fludd: Understood.

Thomas: I don't want to cheat anybody their civil</b>

21

00:01:26,219 --> 00:01:29,89

<b>rights, their liberties. I don't want to cheat myself and I don't want to cheat you, okay?</b>

22

00:01:29,89 --&gt; 00:01:30,990

&lt;b&gt;Fludd: Understood.

Thomas: So what I'm going to do is I'm going to read&lt;/b&gt;

23

00:01:30,990 --&gt; 00:01:36,763

<b>you some rights, okay? Um, after I read you the rights  
you can say yes or no. No head nods. I need to hear</b>

24

00:01:36,763 --&gt; 00:01:40,934

&lt;b&gt;clearly. Yes I understand. No I don't understand. Okay?

Fludd: Yes sir.&lt;/b&gt;

25

00:01:40,934 --&gt; 00:01:44,137

<b>Thomas: The first right, it states you have the  
right to remain silent. Do you understand?</b>

26

00:01:44,337 --&gt; 00:01:47,741

&lt;b&gt;Fludd: Yes.

Thomas: Anything you say can, can and will be used&lt;/b&gt;

27

00:01:47,741 --&gt; 00:01:50,110

&lt;b&gt;against you in a court of law. Do you understand?

Fludd: Yes.&lt;/b&gt;

28

00:01:50,844 --&gt; 00:01:54,214

<b>Thomas: You have the right to speak with an attorney  
and have him or her present with you while you're</b>

29

00:01:54,214 --&gt; 00:01:56,449

&lt;b&gt;being questioned. Do you understand?

Fludd: Yes sir.&lt;/b&gt;

30

00:01:56,449 --&gt; 00:02:01,54

<b>Thomas: If you cannot afford to hire an attorney,  
one will be appointed to represent you before any</b>

31

00:02:01,54 --&gt; 00:02:03,823

&lt;b&gt;questions if you so wish. Do you understand?

Fludd: Yes sir.&lt;/b&gt;

32

00:02:03,823 --> 00:02:07,494

<b>Thomas: You may decide at any time to exercise these rights and not answer any questions or make any</b>

33

00:02:07,494 --> 00:02:09,396

<b>statements. Do you understand?

Fludd: Yes sir.</b>

34

00:02:09,396 --> 00:02:13,967

<b>Thomas: Okay. Having been read your rights you fully understand each of these rights and with these</b>

35

00:02:13,967 --> 00:02:17,737

<b>rights in mind you are willing to waive these rights and you're willing to provide a statement.</b>

36

00:02:17,737 --> 00:02:21,775

<b>Fludd: Yes sir.

Thomas: Okay. At this point in time, is your name</b>

37

00:02:21,775 --> 00:02:23,977

<b>Daniel Lee Floyd?

Fludd: Fludd.</b>

38

00:02:23,977 --> 00:02:28,948

<b>Thomas: Fludd. I'm sorry. Daniel Lee Fludd? Alright Mr. Fludd I'm going to need you initial each one</b>

39

00:02:28,948 --> 00:02:32,452

<b>of these points and initial here.</b>

40

00:02:33,153 --> 00:02:41,695

<b>Thomas: The time now is 9:04. Today's date is 3/23/2017. My name is Lt. Michael Thomas.</b>

41

00:02:41,695 --> 00:02:46,499

<b>I'm here with uhh, Lt. Alex Williams and we're here at the Estill Police Department.</b>

42

00:02:51,971 --> 00:02:54,674

<b>Fludd: And then right here?

Thomas: Yes sir.</b>

43

00:02:55,775 --&gt; 00:03:01,848

&lt;b&gt;Thomas: Alright. And... (inaudible)

Fludd: Oh I'm sorry.&lt;/b&gt;

44

00:03:01,848 --&gt; 00:03:08,988

&lt;b&gt;Thomas: It's okay. I'll put the time. Um, I need you to print your name and sign your name.&lt;/b&gt;

45

00:03:09,255 --&gt; 00:03:11,991

&lt;b&gt;Thomas: Print and sign.&lt;/b&gt;

46

00:03:33,546 --&gt; 00:03:41,921

&lt;b&gt;Thomas: Okay. Uhh, now I just have to ask you a few questions, umm, are you under the influence of any&lt;/b&gt;

47

00:03:41,921 --&gt; 00:03:43,223

&lt;b&gt;alcohol?

Fludd: No sir.&lt;/b&gt;

48

00:03:43,223 --&gt; 00:03:45,191

&lt;b&gt;Thomas: Legal or illegal medications?

Fludd: No sir.&lt;/b&gt;

49

00:03:45,191 --&gt; 00:03:47,694

&lt;b&gt;Thomas: Narcotics or synthetic substances?

Fludd: No sir.&lt;/b&gt;

50

00:03:49,562 --&gt; 00:03:57,37

&lt;b&gt;Thomas: I'm going to let Lt. Williams sign as a witness that you signed, then I signed.&lt;/b&gt;

51

00:04:03,610 --&gt; 00:04:08,515

&lt;b&gt;Thomas: That must be the judge. He'll probably start calling you next.&lt;/b&gt;

52

00:04:20,160 --&gt; 00:04:22,462

&lt;b&gt;Thomas: Fludd, I'm going to provide you with a copy, okay?&lt;/b&gt;

53

00:04:22,462 --&gt; 00:04:24,698

<b>Fludd: Yes sir.</b>

54

00:04:26,533 --> 00:04:28,301

<b>Fludd: Thank you.

Thomas: Yes sir.</b>

55

00:04:30,870 --> 00:04:39,813

<b>Thomas: Okay Mr. Fludd you are getting ready to um, explain to myself and Lt. Williams... what happened.</b>

56

00:04:40,914 --> 00:04:48,888

<b>Fludd: Yeah, I really, like I said. As far as being or having a warrant for murder I have never like...</b>

57

00:04:48,888 --> 00:04:55,995

<b>It's kinda scaring me like, and I know exactly where I was last night, you know what I'm saying?</b>

58

00:04:55,995 --> 00:05:02,35

<b>Thomas: Let's talk about where you were at.

Fludd: I went to Country Craft Rd. last night</b>

59

00:05:02,35 --> 00:05:10,577

<b>to try to get my stuff from 150 Country Craft Rd. We are, me and my twin sister are currently in the</b>

60

00:05:10,577 --> 00:05:11,978

<b>process of moving.

Thomas: Okay.</b>

61

00:05:11,978 --> 00:05:18,718

<b>Fludd: She is living with her boyfriend right now at the moment and I'm not too much living with</b>

62

00:05:18,718 --> 00:05:25,625

<b>nobody. I just go stay the night at people's houses until I'm able to get my notarized stamp and get</b>

63

00:05:25,625 --> 00:05:28,762

<b>our two bedroom apartment in the projects.

Thomas: Okay.</b>

64

00:05:28,762 --&gt; 00:05:34,734

<b>Fludd: Umm... As far as last night, uhh...</b>

65

00:05:37,704 --&gt; 00:05:41,574

<b>I really don't know the story. It's like...

Williams: Walk us through your night then. Tell us</b>

66

00:05:41,574 --&gt; 00:05:43,510

<b>what you did last night. You said you know where you were right?</b>

67

00:05:43,510 --&gt; 00:05:45,412

<b>Fludd: Yeah.

Williams: Well walk us through your night.</b>

68

00:05:45,412 --&gt; 00:05:52,719

<b>Fludd: Well, my night, like I said, I, after I linked up with my sister which was around three o'clock</b>

69

00:05:52,719 --&gt; 00:05:58,692

<b>in the evening. Umm...we went to my homeboys house.</b>

70

00:05:58,692 --&gt; 00:06:06,32

<b>we sat and talked for almost four hours. You know what I'm saying? And then I walked her to the top of the</b>

71

00:06:06,32 --&gt; 00:06:14,507

<b>road and I left. And I went to the library. After coming from the library, I went and talked to my sister</b>

72

00:06:14,507 --&gt; 00:06:24,84

<b>She, we was on uhh, Messenger together. I was talking to her. Umm, I said so what's the word with our close</b>

73

00:06:24,84 --&gt; 00:06:33,560

<b>or moving our close. She said Tia has to call me, she has to call me so she can know what time we're coming</b>

74

00:06:33,560 --&gt; 00:06:40,367

<b>in and make sure it's daylight outside so we can see all our stuff because she turned the power off in the trailer</b>

75

00:06:40,367 --&gt; 00:06:50,377

<b>So I'm like okay. That's fine. You know what I'm saying?  
Then afterwards, she walked home. I walked to...</b>

76

00:06:50,977 --&gt; 00:06:57,417

<b>My homeboys house before I went back to Country  
Craft to try to talk to Tia. Tia wasn't there. Umm...</b>

77

00:06:57,417 --&gt; 00:07:02,489

<b>Which is our landlord. Umm... Well was. Umm...</b>

78

00:07:04,190 --&gt; 00:07:09,796

<b>Uhh... After that umm...</b>

79

00:07:10,497 --&gt; 00:07:16,703

<b>I went to my homeboys house and we stayed for a few.  
Thomas: Around what time was that?</b>

80

00:07:16,703 --&gt; 00:07:26,913

<b>Fludd: Like 9 to like 12. And then I left his house around  
like 1:30 to see if one of the stores was open so I could</b>

81

00:07:26,913 --&gt; 00:07:29,516

<b>get a cigarette or a bootleg.  
Thomas: You said you left about 1:30?</b>

82

00:07:29,516 --&gt; 00:07:38,258

<b>Fludd: Mmm hmmm. I left about 1:30. And then once I  
went to uhh, where did I go? I went to the 3-Way first.</b>

83

00:07:38,725 --&gt; 00:07:46,266

<b>And then I went to uhh, Nicklepumpers to see if they  
was still open and they weren't. And then after that</b>

84

00:07:46,266 --&gt; 00:07:51,671

<b>I went to the bootleg which was down the street and I  
bought a cigarette. Then I went back to my homeboys</b>

85

00:07:51,671 --&gt; 00:07:53,773

<b>house.

Thomas: Okay. Where does your homeboy stay at?</b>

86

00:07:53,773 --> 00:07:56,509

<b>Fludd: Uhh...</b>

87

00:07:57,110 --> 00:08:04,384

<b>Okay, you know the back side of the school? Like the back, the very ending road? Not, not, umm not that</b>

88

00:08:04,384 --> 00:08:11,391

<b>dirt road, but okay, you know the back side of the school? Where the auditorium is?</b>

89

00:08:11,391 --> 00:08:13,893

<b>Thomas: Right.

Fludd: You know that road? Leading straight up...</b>

90

00:08:13,893 --> 00:08:18,398

<b>He lives straight down on the end on the right.

Thomas: What's his name?</b>

91

00:08:18,398 --> 00:08:20,767

<b>Fludd: Bummy.

Thomas: Okay.</b>

92

00:08:21,668 --> 00:08:24,137

<b>Thomas: On 5th street?

Fludd: Mmm.</b>

93

00:08:25,305 --> 00:08:27,640

<b>Thomas: So you went down to Bummy's house on 5th?

Fludd: Mmm hmm.</b>

94

00:08:27,640 --> 00:08:34,280

<b>Thomas: And... How long you stay there?

Fludd: Til one and then after I went to bootleg</b>

95

00:08:34,280 --> 00:08:40,920

<b>and got me a cigarette, I stayed for another, what, two hours and then I went to this girls house and</b>

96

00:08:40,920 --> 00:08:45,759  
<b>you know what happened from there.  
Thomas: Alright, Mr. Fludd.</b>

97  
00:08:45,759 --> 00:08:48,595  
<b>Fludd: Mmm hmm.  
Thomas: I don't want you to keep sinking yourself,</b>

98  
00:08:48,595 --> 00:08:56,336  
<b>but your story is not making sense because you told  
me that you left to go get a cigarette, or you went</b>

99  
00:08:56,336 --> 00:08:59,706  
<b>to the 3-Way and the Nicklepumpers at 1:30. That's  
why I take notes like that.</b>

100  
00:08:59,706 --> 00:09:02,275  
<b>Fludd: Yeah I know.  
Thomas: That's, that's what you said... So now is we</b>

101  
00:09:02,275 --> 00:09:08,148  
<b>back to one o'clock. So here's what we can do. I'm only  
going to be honest with you. I'm not going to shoot</b>

102  
00:09:08,148 --> 00:09:13,787  
<b>you any BS cause I wouldn't want anyone to lie to me.  
And I'm a man and you're a man and that's a man.</b>

103  
00:09:13,787 --> 00:09:19,125  
<b>So we're not going to play any games. We're not  
going to shoot any BS. We want to get to the point.</b>

104  
00:09:19,759 --> 00:09:25,598  
<b>Do you know Bobby Atkins?  
Thomas: No. I don't know a Bobby Atkins. I know</b>

105  
00:09:25,598 --> 00:09:30,370  
<b>somebody named Champ.  
Thomas: You know Champ? So you don't know Bobby</b>

106  
00:09:30,370 --> 00:09:32,72  
<b>Atkins, but you know Champ.

Fludd: Mmm hmm.</b>

107

00:09:32,72 --> 00:09:36,843

<b>Thomas: How do you know Champ?

Fludd: Uhh, I met him, I met him through this girl I</b>

108

00:09:36,843 --> 00:09:42,182

<b>went to school with. That's her boyfriend. I believe.

Thomas: Okay. How long ago you met him?</b>

109

00:09:43,83 --> 00:09:46,319

<b>Fludd: Mmm...</b>

110

00:09:48,188 --> 00:09:52,92

<b>I moved down here in November.

Thomas: So you just moved, you just moved to Estill?</b>

111

00:09:52,92 --> 00:10:00,700

<b>Fludd: Yeah. Recently moving. Like, like last November

I had just moved down here. Umm...</b>

112

00:10:02,302 --> 00:10:09,342

<b>When I met Champ. Probably around February. I think  
it was around February cause...</b>

113

00:10:09,342 --> 00:10:10,944

<b>Thomas: Last month?

Fludd: Mmm hmm.</b>

114

00:10:10,944 --> 00:10:15,148

<b>Thomas: You met him last month.

Fludd: Or either, or...</b>

115

00:10:15,749 --> 00:10:20,820

<b>Fludd: No. No, In December at the ending of December.  
the beginning of January is when I met Champ.</b>

116

00:10:20,820 --> 00:10:30,96

<b>Thomas: When was the last time you saw him?

Fludd: Umm, when him and Zane was going to...</b>

117

00:10:30,96 --> 00:10:33,500  
<b>my homeboy Rock house. That was the last time I  
seen him.</b>

118  
00:10:33,500 --> 00:10:38,238  
<b>Thomas: How long ago was that?  
Fludd: Wait. That was yesterday. Yeah that was</b>

119  
00:10:38,238 --> 00:10:40,974  
<b>yesterday.  
Thomas: Around what time?</b>

120  
00:10:46,680 --> 00:10:55,922  
<b>Fludd: I been on my phone, on my phone. Let me  
see. I think it was like. Should have been like...</b>

121  
00:10:55,922 --> 00:11:00,660  
<b>12 something probably. I believe.  
Thomas: 12 in the afternoon? 12 in the morning?</b>

122  
00:11:00,660 --> 00:11:03,663  
<b>Fludd: No, 12 at night.  
Thomas: That's the last time you saw him?</b>

123  
00:11:03,663 --> 00:11:05,765  
<b>Fludd: Mmm hmm.  
Thomas: Where were they at?</b>

124  
00:11:05,765 --> 00:11:10,303  
<b>Fludd: They were going to Rock's house. They passed  
Bummy's house and I was sitting on the porch.</b>

125  
00:11:10,303 --> 00:11:13,6  
<b>And they was going to Rock house.  
Thomas: Rock who?</b>

126  
00:11:13,907 --> 00:11:18,244  
<b>Fludd: I, I don't know his like, his full name. I just  
know they call him Rock.</b>

127  
00:11:18,244 --> 00:11:19,879  
<b>Thomas: Was this on 5th Street?

Fludd: Mmm hmm.</b>

128

00:11:19,879 --> 00:11:21,715

<b>Thomas: That's where you saw him the last time.

Fludd: Mmm hmm.</b>

129

00:11:21,715 --> 00:11:23,583

<b>Thomas: And then you didn't see him anymore that night?</b>

130

00:11:23,583 --> 00:11:27,53

<b>Fludd: No sir.

Thomas: And that's around 12, 12 AM this morning?</b>

131

00:11:27,53 --> 00:11:32,125

<b>Fludd: Mmm hmm.

Thomas: Okay. The problem that we have is that</b>

132

00:11:32,125 --> 00:11:38,765

<b>we have an eyewitness that you had some type of altercation with Champ.</b>

133

00:11:39,666 --> 00:11:43,536

<b>Okay? Like I said I'm going to be straight forward and honest with you and I hope you'd be straight</b>

134

00:11:43,536 --> 00:11:48,608

<b>forth.. Forth and honest with me. Did you get into any type of altercation with Champ?</b>

135

00:11:48,608 --> 00:11:51,911

<b> Fludd: We done argue before, yes.

Thomas: Did you argue last night when you saw him</b>

136

00:11:51,911 --> 00:11:57,50

<b>at 12 o'clock?

Fludd: I can't deny. Yes, we did. We got into a</b>

137

00:11:57,50 --> 00:11:58,918

<b>argument.

Thomas: What did you guys get into an argument</b>

138

00:11:58,918 --&gt; 00:12:00,987

&lt;b&gt;about?

Fludd: Cause he stole my gold chain.&lt;/b&gt;

139

00:12:00,987 --&gt; 00:12:05,759

&lt;b&gt;Thomas: How did he... How did he get your chain?

Fludd: Uhh, I left it at Bummy's house on the front&lt;/b&gt;

140

00:12:05,759 --&gt; 00:12:10,63

&lt;b&gt;porch. And he took it from his front porch and put it on his neck and never returned it.&lt;/b&gt;

141

00:12:10,63 --&gt; 00:12:13,33

&lt;b&gt;Thomas: How long ago was that?

Fludd: That was last night.&lt;/b&gt;

142

00:12:13,33 --&gt; 00:12:15,168

&lt;b&gt;Thomas: So he took your chain last night?

Fludd: Last night.&lt;/b&gt;

143

00:12:15,168 --&gt; 00:12:19,572

&lt;b&gt;Thomas: And then when you ran back into him...

Fludd: Nah I ain't run back into him after, after&lt;/b&gt;

144

00:12:19,572 --&gt; 00:12:25,979

&lt;b&gt;I seen him. I was like bro what's, what's the word you got my chain bro like... You know what I'm saying?&lt;/b&gt;

145

00:12:26,479 --&gt; 00:12:32,118

&lt;b&gt;And he came with a shovel and tried to hit me.

Williams: Where was this at?&lt;/b&gt;

146

00:12:32,952 --&gt; 00:12:39,592

&lt;b&gt;Fludd: Right there on mother fuckin' uhh... Uhh what's the name of that damn road... He, he...&lt;/b&gt;

147

00:12:39,592 --&gt; 00:12:42,128

&lt;b&gt;They... They just had me laying down there.&lt;/b&gt;

148

00:12:42,128 --&gt; 00:12:44,230

&lt;b&gt;Umm...&lt;/b&gt;

149

00:12:44,230 --> 00:12:49,669

<b>Uhh fuck... Umm</b>

150

00:12:50,670 --> 00:12:53,940

<b>It's Mr. Black's road. I'm trying to think of it.

Williams: Mr. Black?</b>

151

00:12:54,207 --> 00:12:58,645

<b>Fludd: Mr. Black.

Thomas: Mr. Black, umm...</b>

152

00:12:58,645 --> 00:13:02,48

<b>You talking about the little cut by the trailers?

Fludd: Yeah. Yeah.</b>

153

00:13:02,48 --> 00:13:05,185

<b>Thomas: So you ran into them over there?

Fludd: Mmm hmm and I asked him. I'm like bro</b>

154

00:13:05,185 --> 00:13:07,721

<b>You know what I'm saying? All I want is my chain, bro like.</b>

155

00:13:07,721 --> 00:13:10,256

<b>Thomas: Makes sense. That's yours.

Fludd: You know what I'm saying? I, I bought my</b>

156

00:13:10,256 --> 00:13:15,228

<b>chain. You know what I'm saying? You already know.

If you want it you could just ask for it. I'm not tripping</b>

157

00:13:15,228 --> 00:13:21,267

<b>over jewelry. You know what I'm saying? I know I got two jobs bro. I work at Burger King and Nicklepumpers.</b>

158

00:13:21,267 --> 00:13:25,939

<b>So I know I could get another chain. It's just like come on bro. You ain't got to steal from me, bro.</b>

159

00:13:25,939 --> 00:13:29,109

<b>Thomas: So when you asked him for your chain back, man which is normal.</b>

160

00:13:29,109 --> 00:13:32,779

<b>Fludd: Yeah he tried to swing on me with the damn shovel. He had a shovel in his hand.</b>

161

00:13:32,779 --> 00:13:35,548

<b>Thomas: Was he with anyone?

Fludd: He was with Zaneh.</b>

162

00:13:35,548 --> 00:13:38,885

<b>Thomas: He was with Zaneh?

Williams: You said he tried to hit you with a shovel...</b>

163

00:13:38,885 --> 00:13:44,491

<b>Where was he at? Like, you said on that dirt road...

Fludd: Yeah right there, look... Okay, alright...</b>

164

00:13:44,491 --> 00:13:46,493

<b>Williams: Where did he get the shovel from? Out the ditch somewhere?</b>

165

00:13:46,493 --> 00:13:50,630

<b>Fludd: I don't know where he got the shit from.

'Cause when I seen him he didn't have shit in his</b>

166

00:13:50,630 --> 00:13:54,868

<b>hand. When he turned back around, he went like this. He was like whoa... Why you, why you want</b>

167

00:13:54,868 --> 00:14:00,507

<b>this chain? This is my chain. I'm like bro you know that's my damn chain. I told you to fix my chain</b>

168

00:14:00,507 --> 00:14:04,44

<b>and return it back to me. I wanted to pawn my chain because it broke.</b>

169

00:14:04,44 --> 00:14:06,546

<b>Thomas: Okay.

Fludd: You know what I'm saying? So I'm like well...</b>

170

00:14:06,546 --&gt; 00:14:12,52

<b>Shit if you could fix it. You know what I'm saying?  
I'll just keep my chain. He like aight. He fixed the</b>

171

00:14:12,52 --&gt; 00:14:18,658

<b>chain, I put it on my neck just to see if it. You know  
what I'm saying? Was fully fixed. I put the shit down</b>

172

00:14:18,658 --&gt; 00:14:22,662

<b>on Bummy's porch. Lit my damn cigarette and forgot  
I left it there.</b>

173

00:14:22,662 --&gt; 00:14:25,565

<b>Thomas: Okay.

Fludd: When I came back, I'm like damn, where the</b>

174

00:14:25,565 --&gt; 00:14:36,242

<b>fuck my chain at? I seen him... I think he was in uhh...  
Uhh.. Uhh a gold shirt. I seen my chain on his damn</b>

175

00:14:36,242 --&gt; 00:14:43,316

<b>neck. I'm like bruh, what's up bruh? You got my damn  
chain. What's up man? You, the fuck man, like bruh.</b>

176

00:14:43,316 --&gt; 00:14:45,819

<b>Thomas: That had to piss you off. I know that had to  
piss you off.</b>

177

00:14:45,819 --&gt; 00:14:50,724

<b>Fludd: Yes, but it didn't... It didn't frustrate me to the  
point where I wanted to put my hands on him.</b>

178

00:14:50,724 --&gt; 00:14:55,829

<b>Like I said he swung. He tried to swing on me. I done  
dodged the shit. I'm like bruh, come on now don't</b>

179

00:14:55,829 --&gt; 00:15:01,234

<b>try to swing on me bruh about something that ain't  
yours. It's mine bruh. You wore that shit bruh.</b>

180

00:15:01,234 --> 00:15:04,104

<b>I came by here with two chains. You know that.</b>

181

00:15:04,637 --> 00:15:08,241

<b>Thomas: Okay.

Fludd: (Expletive) swung. I went like this... Now</b>

182

00:15:08,241 --> 00:15:11,644

<b>I ain't gonna flex. I punched the shit out of his chin.

Thomas: Okay.</b>

183

00:15:11,644 --> 00:15:15,849

<b>Fludd: I punched the shit out of his ass now. I ain't even gonna flex. I ain't had no damn weapon.</b>

184

00:15:15,849 --> 00:15:21,21

<b>You swinging a big ass shovel, bro. And that's where the fuck this shit come from.</b>

185

00:15:21,21 --> 00:15:25,125

<b>Thomas: That's coming from the shovel?

Fludd: Yeah. That's why my damn, you look at my</b>

186

00:15:25,125 --> 00:15:28,495

<b>damn arm. It looks weird as fuck don't it?

Thomas: Yeah it looks a little swollen now.</b>

187

00:15:28,495 --> 00:15:32,65

<b>Fludd: The (expletive) hit me with the god damn shovel. I went like this, side stepped, and hit</b>

188

00:15:32,65 --> 00:15:33,900

<b>the shit out of his ass.

Thomas: And then what happened?</b>

189

00:15:33,900 --> 00:15:39,539

<b>Fludd: And then afterwards he said he was going to get a gun. So I fucking ran. I ain't even going to flex.</b>

190

00:15:39,539 --> 00:15:45,612

<b>He said he was going to get a gun. I ain't have shit on me bruh, but a damn bookbag filled with chargers.</b>

191

00:15:46,179 --> 00:15:52,252

<b>And my damn work clothes, these, what I got on right now. That's it.</b>

192

00:15:54,621 --> 00:16:00,93

<b>Like I said, when he say he was going to get a damn gun, I ain't even going to lie. I was scared for my</b>

193

00:16:00,93 --> 00:16:07,200

<b>fucking life. I took the fuck off. I took off. And Zaneh was telling me don't run. "Don't run Daniel, don't</b>

194

00:16:07,200 --> 00:16:12,839

<b>run now. You was just so gangster. You wanted to hit him in the face." Yeah I hit him in the face cause the</b>

195

00:16:12,839 --> 00:16:15,575

<b>(expletive) tried to hit me with a god damn shovel.</b>

196

00:16:16,142 --> 00:16:18,311

<b>Thomas: Man, I understand that man.</b>

197

00:16:18,311 --> 00:16:21,848

<b>I'm not going to stand up, I ain't going to stand by nobody hitting me with a shovel, so I would expect</b>

198

00:16:21,848 --> 00:16:25,18

<b>you would do the same either.

Williams: So, so let me ask you something right...</b>

199

00:16:25,18 --> 00:16:27,487

<b>Fludd: Yes sir.

Williams: I get confused you know? I'm slow.</b>

200

00:16:27,487 --> 00:16:32,392

<b>My momma smoked when she was pregnant with me so. I want to make sure, make sure I'm clear on</b>

201

00:16:32,392 --> 00:16:39,232

<b>something now. Okay. You went, you was at Bummy's

house from around 9 'til you say about 12?</b>

202

00:16:39,232 --> 00:16:43,503

<b>Fludd: Mmm hmm.

Williams: You left Bummy's house to go try to find</b>

203

00:16:43,503 --> 00:16:47,273

<b>to see if a store was open. So you went to 3-Way first?

Fludd: Mmm hmm.</b>

204

00:16:47,273 --> 00:16:51,911

<b>Williams: So that would be Bummy's house and 3-Way  
you on the north...</b>

205

00:16:51,911 --> 00:16:55,815

<b>Fludd: Yeah the back, that same back road.

Williams: You on the northeastern side of town. Okay.</b>

206

00:16:55,815 --> 00:17:00,653

<b>So, you go to 3-Way. They're not open so that would  
mean you walked towards Nicklepumpers.</b>

207

00:17:00,653 --> 00:17:03,156

<b>Fludd: Mmm hmm.

Williams: You're still on the north side, but you</b>

208

00:17:03,156 --> 00:17:08,328

<b>could've... You still on the northeastern side, but you're  
coming a little more south. Okay, so then you get to</b>

209

00:17:08,328 --> 00:17:12,132

<b>Nicklepumpers. They're not open. So, then you go  
to the bootlegger. Who is the bootlegger? Where's</b>

210

00:17:12,132 --> 00:17:17,637

<b>the bootlegger live?

Fludd: The bootleg is down the street uhh, it's this</b>

211

00:17:17,637 --> 00:17:21,875

<b>dude. It's this old dude. He sits on his porch and shit  
and smoke Newports.</b>

212

00:17:21,875 --&gt; 00:17:25,211

&lt;b&gt;Williams: Where, where?

Fludd: Umm, right there on 5th St. On the back road.&lt;/b&gt;

213

00:17:25,211 --&gt; 00:17:36,89

&lt;b&gt;Right up, at that damn, at that damn dirt road. At that damn dirt road. It's the uhh, trailer that's all the way&lt;/b&gt;

214

00:17:36,89 --&gt; 00:17:38,692

&lt;b&gt;in the corner.

Williams: A fat dude?&lt;/b&gt;

215

00:17:38,692 --&gt; 00:17:41,27

&lt;b&gt;Fludd: Yeah, he is sort a kind of fat. No.

Williams: Dark skinned?&lt;/b&gt;

216

00:17:41,27 --&gt; 00:17:47,33

&lt;b&gt;Fludd: He ain't, he ain't fat. He ain't fat. I would say he just sorta kinda. Sorta kinda.&lt;/b&gt;

217

00:17:47,33 --&gt; 00:17:51,871

&lt;b&gt;Williams: So you go to the bootlegger. We, we back on 5th Street, so you're all the way back on the&lt;/b&gt;

218

00:17:51,871 --&gt; 00:17:53,640

&lt;b&gt;northeastern side of town.

Fludd: Mmm hmm.&lt;/b&gt;

219

00:17:53,640 --&gt; 00:17:57,277

&lt;b&gt;Williams: Alright, so what time was that cause I mean...

Fludd: Well when I got back.&lt;/b&gt;

220

00:17:57,277 --&gt; 00:17:59,479

&lt;b&gt;Williams: Yeah to the, when you got back to the bootlegger so...&lt;/b&gt;

221

00:17:59,479 --&gt; 00:18:01,114

&lt;b&gt;Fludd: It was around like 1 o'clock.

Williams: Okay so...&lt;/b&gt;

222

00:18:01,114 --&gt; 00:18:06,553

<b>Fludd: I got to the bootlegger at like 1:30, 1:30, 2:00.  
Williams: Okay. I got you. I'm tracking. So you got to</b>

223

00:18:06,553 --> 00:18:09,489  
<b>the bootlegger 1:30, 2:00?  
Fludd: Nah. Not 2:00.</b>

224

00:18:09,489 --> 00:18:19,65  
<b>Williams: 1:30 okay so when, when did we make it back  
over here to the southeastern side of town where</b>

225

00:18:19,666 --> 00:18:24,671  
<b>Champ and Zaneh were at over here on Godbold about  
what time was that?</b>

226

00:18:24,671 --> 00:18:28,675  
<b>Fludd: That shit was like... I ain't even going to flex. It  
was like 2 or 3.</b>

227

00:18:28,675 --> 00:18:31,378  
<b>Williams: Okay it was 2 or 3 in the morning?  
Fludd: Something like that 2 or 3...</b>

228

00:18:31,378 --> 00:18:34,214  
<b>Williams: Okay.  
Fludd: Because I know my phone damn it, it already</b>

229

00:18:34,214 --> 00:18:37,183  
<b>had damn died in the process.  
Williams: Where is your phone now? I mean.</b>

230

00:18:37,183 --> 00:18:39,786  
<b>Fludd: That's what the fuck I was looking for.  
Thomas: What kind of phone you got?</b>

231

00:18:39,786 --> 00:18:43,590  
<b>Fludd: It's a uhh, J1, Galaxy J1.  
Thomas: Okay.</b>

232

00:18:43,590 --> 00:18:48,161  
<b>Fludd: Ever since, when me and damn Champ got  
into that damn altercation, I couldn't find my damn</b>

233

00:18:48,161 --&gt; 00:18:50,463

&lt;b&gt;phone.

Williams: So, you said what about 2 o'clock?&lt;/b&gt;

234

00:18:50,463 --&gt; 00:18:54,434

&lt;b&gt;Fludd: 2 or 3.

Williams: So it was about 2 or 3 o'clock? Okay.&lt;/b&gt;

235

00:18:54,434 --&gt; 00:19:00,907

&lt;b&gt;So what is, so let me ask you this. So, where were you around 11?&lt;/b&gt;

236

00:19:00,907 --&gt; 00:19:03,977

&lt;b&gt;Fludd: 11 o'clock?

Williams: Yeah what were you doing around 11 o'clock?&lt;/b&gt;

237

00:19:03,977 --&gt; 00:19:07,313

&lt;b&gt;Fludd: Shit. I was at Bummy's house.

Williams: So you was at Bummy's around 11?&lt;/b&gt;

238

00:19:07,313 --&gt; 00:19:13,153

&lt;b&gt;Fludd: 9 to, 9 to 12...

Williams: Okay. So you, who, who would of saw you&lt;/b&gt;

239

00:19:13,153 --&gt; 00:19:15,789

&lt;b&gt;there? Who else was there?

Fludd: Bummy was there.&lt;/b&gt;

240

00:19:15,789 --&gt; 00:19:18,224

&lt;b&gt;Williams: That was it?

Fludd: Bummy and...&lt;/b&gt;

241

00:19:18,224 --&gt; 00:19:20,527

&lt;b&gt;Williams: So he didn't clean up at Felicia's last night or nothing?&lt;/b&gt;

242

00:19:20,527 --&gt; 00:19:24,264

&lt;b&gt;Fludd: I don't know. I don't know. That...

Williams: But you said, but I mean he was there?&lt;/b&gt;

243

00:19:24,264 --> 00:19:27,167

<b>Fludd: He was there. He was there with us.

Williams: He normally goes and cleans up at Felicia's</b>

244

00:19:27,167 --> 00:19:29,402

<b>right down here?

Fludd: I really don't know who Felicia is.</b>

245

00:19:29,402 --> 00:19:31,905

<b>Williams: The shop down here on 2nd Street.

Fludd: Oh yeah, yeah.</b>

246

00:19:31,905 --> 00:19:34,574

<b>Williams: So he normally goes and cleans up over there.

So did he go over there?</b>

247

00:19:34,574 --> 00:19:37,977

<b>Fludd: The lady that be in that gold car? Little small little Toyota.</b>

248

00:19:37,977 --> 00:19:41,381

<b>Williams: Oh I don't know. It's a little store down here at the end of 2nd Street.</b>

249

00:19:41,381 --> 00:19:44,417

<b>Fludd: Okay. Okay.

Williams: Okay so you said it's around 2, 3 o'clock</b>

250

00:19:44,417 --> 00:19:46,386

<b>Fludd: Mmm hmm.

Williams: When you see Bobby?</b>

251

00:19:46,386 --> 00:19:47,921

<b>Williams: Okay.

Fludd: Bo...</b>

252

00:19:47,921 --> 00:19:50,123

<b>Williams: I mean no, I mean Champ. I'm sorry.

Fludd: Oh.</b>

253

00:19:50,123 --> 00:19:52,392

<b>Williams: So y'all get into the altercation around...

Fludd: Mmm hmm.</b>

254

00:19:52,392 --> 00:19:56,663

<b>Williams: You saw him around 12?

Fludd: Mmm hmm. I seen him the first time around 12.</b>

255

00:19:56,663 --> 00:20:01,34

<b>Williams: Around 12 o'clock, but you get, you get in an argument with him about the chain around what</b>

256

00:20:01,34 --> 00:20:02,168

<b>time again?

Fludd: 2.</b>

257

00:20:02,168 --> 00:20:03,937

<b>Williams: About 2 AM?

Fludd: Mmm hmm.</b>

258

00:20:03,937 --> 00:20:06,106

<b>Williams: Okay.

Fludd: Damn near 3. I ain't even gonna...</b>

259

00:20:06,106 --> 00:20:07,407

<b>Williams: 2 AM to 3 AM.

Fludd: 2 to 3 AM...</b>

260

00:20:07,407 --> 00:20:15,615

<b>Williams: Okay. Alright. So, you're there 2 AM to 3 AM and you argue. You say he swings a shovel at you?</b>

261

00:20:15,615 --> 00:20:16,549

<b>Fludd: Mmm hmm.

Williams: Okay.</b>

262

00:20:16,549 --> 00:20:19,185

<b>Fludd: The shovel broke. He hit me with it twice.

Williams: Okay.</b>

263

00:20:19,185 --> 00:20:21,955

<b>Williams: Okay, so...

Fludd: He hit me the first time and I dodged it.</b>

264

00:20:21,955 --&gt; 00:20:29,729

&lt;b&gt;I went like this. I put my arm up like this... and side.

Williams: So... Okay. So you get with the shovel.&lt;/b&gt;

265

00:20:29,729 --&gt; 00:20:31,865

&lt;b&gt;Fludd: Mmm hnn.

Williams: Okay. Where exactly were y'all at?&lt;/b&gt;

266

00:20:31,865 --&gt; 00:20:34,634

&lt;b&gt;Were y'all at...

Fludd: We was at the end of the dirt road directly&lt;/b&gt;

267

00:20:34,634 --&gt; 00:20:38,772

&lt;b&gt;in, next to, next to them abandoned trailers.

Williams: So y'all was all the way back here by the&lt;/b&gt;

268

00:20:38,772 --&gt; 00:20:42,776

&lt;b&gt;blue house where uhh...

Fludd: Where, where, okay... You know where Tyrell&lt;/b&gt;

269

00:20:42,776 --&gt; 00:20:44,77

&lt;b&gt;grandmomma and them?

Williams: Yeah the blue house.&lt;/b&gt;

270

00:20:44,77 --&gt; 00:20:47,80

&lt;b&gt;Fludd: Right there. Right there. Right there on that dirt road.&lt;/b&gt;

271

00:20:47,80 --&gt; 00:20:50,250

&lt;b&gt;Williams: Y'all were right there on that dirt road...

Fludd: Yeah.&lt;/b&gt;

272

00:20:50,617 --&gt; 00:20:53,453

&lt;b&gt;Williams: He comes with a shovel out of nowhere.

Fludd: Out of nowhere.&lt;/b&gt;

273

00:20:53,453 --&gt; 00:20:56,56

&lt;b&gt;I don't know where the fuck he got the shovel.

Williams: And y'all were in the middle of the road?&lt;/b&gt;

274

00:20:56,56 --&gt; 00:20:57,657

<b>Fludd: Yeah.

Williams: And, and just...</b>

275

00:20:57,657 --> 00:21:02,262

<b>Fludd: And I hollered at him. I'm like bruh, bruh I need my chain, bruh. Bruh.</b>

276

00:21:02,262 --> 00:21:08,34

<b>Williams: So then you, so you hollered at him then you approached him and then you, as you got toward him</b>

277

00:21:08,34 --> 00:21:11,404

<b>Fludd: I seen the shovel.

Williams: So he had the shovel in his hands, you think?</b>

278

00:21:11,404 --> 00:21:15,442

<b>Fludd: I think he had the, the shovel in his hands. From the first beginning. I don't...</b>

279

00:21:15,442 --> 00:21:17,777

<b>Fludd: (Inaudible)

Williams: Okay so what made you go to that side of</b>

280

00:21:17,777 --> 00:21:20,814

<b>town?

Fludd: Because I knew that's where I seen him last.</b>

281

00:21:20,814 --> 00:21:27,153

<b>They was going towards the projects way. So I'm like well shit, the only person that I knew that had my chain</b>

282

00:21:27,153 --> 00:21:34,894

<b>last was Champ.

Williams: Okay. So, so you were the last person around</b>

283

00:21:34,894 --> 00:21:41,634

<b>your chain so you made your way from Nicklepumper, then you went to the bootlegger, then you walked</b>

284

00:21:41,634 --> 00:21:49,109

<b>back over here to try to locate him. So, I mean I understand it's your chain. I, I, I if I lost my watch,</b>

285

00:21:49,109 --&gt; 00:21:54,214

<b>if somebody, I, You know I'm just particular about my stuff that I paid my money for. And I work hard.</b>

286

00:21:54,214 --&gt; 00:21:56,16

<b>Fludd: Yes sir.

Williams: We work a lot of hours. We do a lot of stuff.</b>

287

00:21:56,16 --&gt; 00:22:00,120

<b>So, we just ain't going to let nobody just take our stuff. Especially if we paid our money for it. It's</b>

288

00:22:00,120 --&gt; 00:22:07,260

<b>understandable. I'm not, I'm not, I'm not a... Have an issue with that. Um, so... I mean I was just trying to</b>

289

00:22:07,260 --&gt; 00:22:11,831

<b>figure out why you didn't go straight away when you realized your chain was missing. He was...</b>

290

00:22:11,831 --&gt; 00:22:15,201

<b>Fludd: I didn't know directly.

Williams: No, no, no I mean no I said when you realized</b>

291

00:22:15,201 --&gt; 00:22:20,6

<b>that why didn't you go directly when you realized it. Like wait a minute now my chain is missing off the</b>

292

00:22:20,6 --&gt; 00:22:23,843

<b>porch. You know instead of the cigarette. I guess the cigarette was more important...</b>

293

00:22:23,843 --&gt; 00:22:28,982

<b>Fludd: Oh nah, see what I did like I said I took the chain off my neck and put it right there and picked</b>

294

00:22:28,982 --&gt; 00:22:31,851

<b>up my cigarette.

Williams: So let me... Yeah, so you picked up your</b>

295

00:22:31,851 --> 00:22:38,24

<b>cigarette then you left, then you went... You, you was like man I got to go see the store, so, then you,</b>

296

00:22:38,24 --> 00:22:43,63

<b>when you realize your chain wasn't where you left it or where you remember leaving it, why didn't you go</b>

297

00:22:43,63 --> 00:22:45,965

<b>find him right then?

Fludd: That's what I was trying to do sir.</b>

298

00:22:45,965 --> 00:22:48,201

<b>Williams: Okay.

Fludd: They told me he was going towards the projects</b>

299

00:22:48,201 --> 00:22:50,203

<b>way. That's where he stay.

Williams: Who is they? That's what...</b>

300

00:22:50,203 --> 00:22:51,705

<b>Fludd: (Inaudible) Yeah.

Williams: Bummy or who?</b>

301

00:22:51,705 --> 00:22:52,872

<b>Fludd: Bummy.

Williams: So...</b>

302

00:22:52,872 --> 00:22:56,943

<b>Fludd: He said that the last time he talked to Zaneh they said they was going home towards the projects</b>

303

00:22:56,943 --> 00:22:58,712

<b>way.

Williams: So that, that's what I was asking...</b>

304

00:22:58,712 --> 00:23:02,415

<b>So when you talked to Bummy, was Bummy still at the house or was he by...</b>

305

00:23:02,415 --> 00:23:04,884

<b>Fludd: Yeah he was staying at the house.

Williams: Okay, so that's what I'm asking. Did he go</b>

306

00:23:04,884 --> 00:23:07,287

<b>clean up, did Bummy go clean up last night or you don't know?</b>

307

00:23:07,287 --> 00:23:09,522

<b>Fludd: I don't know.

Williams: Okay, so Felicia's you know closes around</b>

308

00:23:09,522 --> 00:23:12,659

<b>what 2, 1, 2, in the morning?

Fludd: I'm not from here. I don't know.</b>

309

00:23:12,659 --> 00:23:18,698

<b>Williams: Yeah, so, just I am so that's what I'm telling you. Okay. So you say 2 or 3 o'clock in the morning</b>

310

00:23:18,698 --> 00:23:25,138

<b>you walk over there. Y'all are in the middle of the dirt road near his, uhh, Tyrell's 'ma grandmother's house</b>

311

00:23:25,138 --> 00:23:27,307

<b>the blue, but y'all are in the middle of the dirt road.

Fludd: Mmm hmm.</b>

312

00:23:27,307 --> 00:23:30,610

<b>Williams: Which way did you call out from him. Which way, like...</b>

313

00:23:30,610 --> 00:23:32,379

<b>Fludd: Next to that church...

Williams: So we got a T...</b>

314

00:23:32,379 --> 00:23:35,215

<b>Fludd: Next to that church.

Williams: So wait a minute now. What church?</b>

315

00:23:35,615 --> 00:23:39,119

<b>Fludd: That church. That white church.

Williams: Okay so you talking about the one that's</b>

316

00:23:39,119 --&gt; 00:23:43,456

&lt;b&gt;in front of the yellow house?

Fludd: Yeah, yeah not in front of the yellow house.&lt;/b&gt;

317

00:23:43,456 --&gt; 00:23:48,728

<b>The one that's right here. It's okay, you walk through,  
okay it's a brick house right here. And you walk</b>

318

00:23:48,728 --&gt; 00:23:51,97

&lt;b&gt;straight through (inaudible)...

Williams: So you saw them going through the path?&lt;/b&gt;

319

00:23:51,97 --&gt; 00:23:54,267

&lt;b&gt;Fludd: Yeah.

Williams: Okay. So you called out to him from the&lt;/b&gt;

320

00:23:54,267 --&gt; 00:23:56,236

&lt;b&gt;church...

Fludd: Mmm hmm and I said Champ.&lt;/b&gt;

321

00:23:56,236 --&gt; 00:23:57,804

&lt;b&gt;Williams: As they going through the path?

Fludd: Mmm hmm.&lt;/b&gt;

322

00:23:57,804 --&gt; 00:24:02,575

&lt;b&gt;Williams: So you, did you, did you run towards them?

Fludd: No I didn't run towards him he seen me,&lt;/b&gt;

323

00:24:02,575 --&gt; 00:24:04,744

&lt;b&gt;He seen me, I said Champ...

Williams: Okay, He saw you...&lt;/b&gt;

324

00:24:04,744 --&gt; 00:24:08,14

&lt;b&gt;Fludd: Hey Champ let me holla at you about my chain.

Williams: And you say, what you say he had on again?&lt;/b&gt;

325

00:24:08,14 --&gt; 00:24:13,286

&lt;b&gt;Fludd: He had on a gold shirt, a gold button up.

Williams: Okay. Gold button up, so, you, you saw&lt;/b&gt;

326

00:24:13,286 --&gt; 00:24:16,22

<b>you saw what he had on that's pretty, that's, I mean that's pretty good...</b>

327

00:24:16,22 --> 00:24:22,429

<b>Fludd: He had on go... Well what he had on today, well that day was a gold button up. I think they were</b>

328

00:24:22,429 --> 00:24:24,931

<b>black pants. If not black, they were blue. Williams: Okay.</b>

329

00:24:24,931 --> 00:24:28,301

<b>Fludd: Umm and some Timberlands. Not Timberlands, but Polo boots.</b>

330

00:24:28,301 --> 00:24:33,573

<b>Williams: Man you, you awesome. You can see that for in the dark. So you called out to him through the</b>

331

00:24:33,573 --> 00:24:36,443

<b>path. You at the church and he at the path. Fludd: Mmm hmm.</b>

332

00:24:36,443 --> 00:24:39,446

<b>Williams: So does he stop? Does he keep going? Fludd: They kept going.</b>

333

00:24:39,446 --> 00:24:43,550

<b>Fludd: That's why I approached him. I'm like bruh. Williams: So you walked briskly or you ran?</b>

334

00:24:43,550 --> 00:24:46,119

<b>Fludd: No. I didn't run. I was walking. Williams: So you walked him down?</b>

335

00:24:46,119 --> 00:24:48,621

<b>Fludd: Yeah I walked him down. Williams: So you walked him down and y'all meet</b>

336

00:24:48,621 --> 00:24:50,857

<b>in the middle of the dirt road right here at the T. Fludd: Mmm hmm and they stop.</b>

337

00:24:50,857 --&gt; 00:24:54,527

<b>Williams: Y'all stop at the T, okay. What was said right there at the T?</b>

338

00:24:54,527 --&gt; 00:25:01,0

<b>Fludd: I said bro, you got my chain? He said no. And I'm like bruh, I can see my chain on your shirt.</b>

339

00:25:01,0 --&gt; 00:25:04,204

<b>Williams: So what you, at which point did the shovel come out? Because...</b>

340

00:25:04,204 --&gt; 00:25:10,43

<b>Fludd: He went like this, when he went like this and I said bruh, I just want my damn chain. That's it.</b>

341

00:25:10,43 --&gt; 00:25:16,483

<b>The (expletive) went like this... He told Zaneh to move, and he swung. Boom. I put my hand up like this to</b>

342

00:25:16,483 --&gt; 00:25:24,491

<b>block. The second time after he fucking broke the shovel on my arm, he fucking swung it again. Boom.</b>

343

00:25:24,491 --&gt; 00:25:27,260

<b>Williams: Okay so, when he said he going to get his gun you run. Poof...</b>

344

00:25:27,260 --&gt; 00:25:29,996

<b>Fludd: Yeah. I took the fuck off.  
Williams: Where did you go to?</b>

345

00:25:29,996 --&gt; 00:25:32,599

<b>Fludd: Right into the damn projects.  
Williams: Okay. Whose house did you...</b>

346

00:25:32,599 --&gt; 00:25:34,901

<b>Did you go to anybody house in the projects?  
Fludd: No. I just stood right there.</b>

347

00:25:34,901 --> 00:25:37,37

<b>Williams: At the corner of the projects?

Fludd: Mmm hmm. Right there at the mother fucking</b>

348

00:25:37,37 --> 00:25:40,240

<b>sign.

Williams: Okay. About what time was that?</b>

349

00:25:40,240 --> 00:25:41,875

<b>Fludd: Around like 3:30.

Williams: That's right.</b>

350

00:25:41,875 --> 00:25:47,113

<b>Williams: Probably like 4.

Williams: Alright, so you went to the projects at...</b>

351

00:25:47,113 --> 00:25:51,584

<b>So why didn't you call the police?

Fludd: Because I didn't see it as really being that</b>

352

00:25:51,584 --> 00:25:56,656

<b>major. I knew I could... (inaudible)

Williams: Did you hear any lights? Did you hear any</b>

353

00:25:56,656 --> 00:26:00,527

<b>sirens? Did you see any lights?

Fludd: I heard a, I heard a umm... Ambulance truck</b>

354

00:26:00,527 --> 00:26:01,161

<b>coming.

Williams: Okay.</b>

355

00:26:01,161 --> 00:26:05,298

<b>Fludd: I thought they was coming for me.

Williams: Okay. You went to Estill Apartments</b>

356

00:26:05,298 --> 00:26:10,403

<b>or projects, okay? And you just stood kinda right at the

Fludd: Right at the door. Like... (inaudible)</b>

357

00:26:10,403 --> 00:26:13,73

<b>Williams: At the gate...

Fludd: Yeah. Where they be having that little, those</b>

358

00:26:13,73 --> 00:26:14,407

<b>bricks, those...

Williams: Okay.</b>

359

00:26:14,407 --> 00:26:18,178

<b>Fludd: Yeah. I sat right on them.

Williams: Okay. Went to Estill Apartments and sat on</b>

360

00:26:18,178 --> 00:26:21,181

<b>the bricks. Okay, umm...</b>

361

00:26:22,182 --> 00:26:23,750

<b>So...</b>

362

00:26:24,484 --> 00:26:25,452

<b>Now...</b>

363

00:26:25,452 --> 00:26:31,825

<b>So after all that 3:30 in the morning, you know you say at 3:30. Okay. We right about 3:30 AM. Correct?</b>

364

00:26:31,825 --> 00:26:35,261

<b>Fludd: Yes sir.

Williams: Okay. From 3:30 AM, you're there</b>

365

00:26:35,261 --> 00:26:41,301

<b>You hear the lights... You see the lights. You hear the sirens. And you don't decide to call the police and</b>

366

00:26:41,301 --> 00:26:46,706

<b>somebody just tried to hit you with a shovel? Or what...

Let's just, let's back up. First he stole your chain, let's</b>

367

00:26:46,706 --> 00:26:49,309

<b>get that out the way. So that's the first (inaudible)

Fludd: Mmm hmm.</b>

368

00:26:49,309 --> 00:26:51,711

<b>Williams: He stole your chain. So that's the first crime.

Fludd: Mmm hnn.</b>

369

00:26:51,711 --> 00:26:56,116

<b>Williams: Then you go confront him about your chain, in which he stole...</b>

370

00:26:56,583 --> 00:27:02,22

<b>He in turn assaults you pretty much and...

Fludd: 'Cause he was (inaudible) and smoking crack.</b>

371

00:27:02,22 --> 00:27:06,126

<b>Fludd: He did that shit for sure. I done seen him do it in front of my face.</b>

372

00:27:06,126 --> 00:27:10,30

<b>Williams: So, him and Zane smoke crack...

Fludd: Yes. And they be popping E.</b>

373

00:27:10,30 --> 00:27:14,501

<b>Williams: Okay. So they... Him and Zane smoke crack pop E... Ernie calling you...</b>

374

00:27:14,501 --> 00:27:18,238

<b>Thomas: Huh?

Williams: Washington calling you... Ernie.</b>

375

00:27:18,238 --> 00:27:19,506

<b>Thomas: Hey.</b>

376

00:27:19,973 --> 00:27:22,8

<b>Somebody's turned in a cell phone...

Fludd: Mmm hnn.</b>

377

00:27:22,8 --> 00:27:26,12

<b>Thomas: Umm, what's your cell phone number? What's the last four? Do you remember?</b>

378

00:27:26,12 --> 00:27:27,480

<b>Fludd: It's not on.

Thomas: It's not on?</b>

379

00:27:27,480 --> 00:27:29,949

<b>Fludd: It's not on.

Williams: What you use the wifi or something?</b>

380

00:27:29,949 --> 00:27:33,219

<b>Fludd: Yeah. I go to the library to use my phone.

Williams: When it was on... I know it was on at</b>

381

00:27:33,219 --> 00:27:35,555

<b>one point. Got to be. So what was the number, what was the phone number?</b>

382

00:27:35,555 --> 00:27:42,529

<b>Fludd: The last numbers I think was like 4052 or either 4553 or something...</b>

383

00:27:42,529 --> 00:27:46,666

<b>Williams: I met you over there in the park one day. Y'all was over there smoking...</b>

384

00:27:46,666 --> 00:27:48,868

<b>Fludd: Where?

Williams: Over there in the park.</b>

385

00:27:48,868 --> 00:27:53,373

<b>So you had a... You had... 'Cause you say y'all just moved down here from...</b>

386

00:27:53,373 --> 00:27:55,608

<b>Fludd: Mmm hmm. Boston.

Williams: So did you have a Boston number or you</b>

387

00:27:55,608 --> 00:27:58,878

<b>got a...?

Fludd: No I had a Georgia number. I had a Georgia</b>

388

00:27:58,878 --> 00:27:59,779

<b>number.

Williams: Okay.</b>

389

00:27:59,779 --> 00:28:04,818

<b>Fludd: 'Cause before, before we moved down here,

me and my si', well, if y'all got my, well if you look</b>

390

00:28:04,818 --> 00:28:08,722

<b>in my wallet you'll see a Georgia permit ID.

Williams: What's your, what, what you got a Georgia</b>

391

00:28:08,722 --> 00:28:10,557

<b>number 706?

Fludd: 706.</b>

392

00:28:10,557 --> 00:28:15,61

<b>Williams: Uhh 9 1, 9 2, 912...

Fludd: No it's not a 912.</b>

393

00:28:15,61 --> 00:28:20,467

<b>Williams: Okay. (Inaudible) Georgia numbers...

Fludd: 706. 7 0. I think it's 7 0, 706...</b>

394

00:28:20,467 --> 00:28:25,772

<b>Thomas: And 404 like Atlanta.

Williams: Yeah. Okay, so 3:30 in the morning you ran</b>

395

00:28:25,772 --> 00:28:27,841

<b>to the Estill Apartments. You sat on the bricks.

Fludd: Mmm hmm.</b>

396

00:28:27,841 --> 00:28:33,46

<b>Williams: This man done stole your chain. Hit your ass with a shovel tried to kill you, you say... And</b>

397

00:28:33,46 --> 00:28:37,684

<b>you hear the siren. You see the lights and you don't call the police?</b>

398

00:28:38,318 --> 00:28:43,490

<b>Fludd: Bruh like I said my phone's off. Who am I gonna call and how am I gonna call?</b>

399

00:28:43,490 --> 00:28:47,694

<b>Williams: I mean you was right like... You could have spit and hit the police department.</b>

400

00:28:48,294 --> 00:28:51,464

<b>Williams: I'm just asking. I'm just trying to understand.

Fludd: You, you, you got a point. You know what I'm</b>

401

00:28:51,464 --> 00:28:56,803

<b>saying? I shoulda did that, but like I said I didn't see it

as too major 'cause I know, I know Champ. You know</b>

402

00:28:56,803 --> 00:29:01,7

<b>what I'm saying? From what I knew him as...

Williams: So, so take... Listen. You say that was caused</b>

403

00:29:01,7 --> 00:29:02,442

<b>by the shovel right? That on your arm.

Fludd: Yeah.</b>

404

00:29:02,442 --> 00:29:05,612

<b>Williams: Alright, so let's just take that scar and move it up a little bit to your neck...</b>

405

00:29:05,612 --> 00:29:09,783

<b>Fludd: If I didn't block, it would have been at my neck.

Williams: Okay. So you don't think, you think he was</b>

406

00:29:09,783 --> 00:29:11,451

<b>aiming for your neck?

Fludd: Yes.</b>

407

00:29:11,451 --> 00:29:13,853

<b>Williams: Okay.

Fludd: Damn, damn sure... If I didn't do this...</b>

408

00:29:13,853 --> 00:29:17,857

<b>Williams: But you didn't think it was serious enough.

This man trying to take your head off essentially.</b>

409

00:29:17,857 --> 00:29:21,628

<b>And you didn't think it was serious enough...

Fludd: Because I know they... He, he at the end of</b>

410

00:29:21,628 --> 00:29:26,733

<b>the day I ain't going to flex. That man has been a good person. You know what I'm saying? Aside</b>

411

00:29:26,733 --> 00:29:31,905

<b>from the mother fucking chain incident, he's been a good person. So that's why I didn't hold the shit</b>

412

00:29:31,905 --> 00:29:37,310

<b>against him. I'm like well shit you know what I'm saying? He, he must like the chain so, well he get</b>

413

00:29:37,310 --> 00:29:43,650

<b>paid Friday. I'm a just pay me then. I only want \$150 for the chain. You could have the chain bruh...</b>

414

00:29:43,650 --> 00:29:46,586

<b>Williams: Okay so you say he... That you done seen him and Zane smoke crack?</b>

415

00:29:46,586 --> 00:29:47,854

<b>Fludd: Yeah.

Williams: Okay.</b>

416

00:29:47,854 --> 00:29:55,695

<b>So, now all these things happen and it's 3:30 in the morning. So, now I'm going to let Lt. Thomas go</b>

417

00:29:55,695 --> 00:30:03,236

<b>with his questions, but, before I, before, my last question is if you didn't see him until 3:30...</b>

418

00:30:04,404 --> 00:30:14,414

<b>Why was my phone called at around 11, after 11 o'clock saying there is a problem with Champ?</b>

419

00:30:15,515 --> 00:30:17,484

<b>Fludd: I don't know.

Thomas: So what that means is...</b>

420

00:30:17,484 --> 00:30:22,856

<b>Fludd: I seen my boy at, at exactly... I know it was like, it had to be at least 2 or 3. That was the last</b>

421

00:30:22,856 --&gt; 00:30:26,659

<b>time I, the last time I checked my phone it was just turning 1.</b>

422

00:30:26,659 --&gt; 00:30:29,295

<b>Thomas: The only problem with that is...

Fludd: Mmm hmm.</b>

423

00:30:29,295 --&gt; 00:30:34,334

<b>Williams: 11:41 PM.

Thomas: I saw, I saw Champ dead at 11:40 PM.</b>

424

00:30:34,334 --&gt; 00:30:42,275

<b>Well I saw him at 12 o'clock dead. I saw him dead.

I got the pictures. The coroner saw him dead.</b>

425

00:30:42,275 --&gt; 00:30:47,881

<b>The EMS saw him dead. Other officers saw him dead.

Williams: And I called him. 'Cause the officers that saw</b>

426

00:30:47,881 --&gt; 00:30:55,21

<b>him dead first, called me at 11:41 PM.

Thomas: So, so the problem is your story doesn't</b>

427

00:30:55,21 --&gt; 00:31:03,897

<b>match up. But here's what I'm gonna do. I know shit

happens. I know shit happens. You know? Shit done</b>

428

00:31:03,897 --&gt; 00:31:10,804

<b>happened to me. I know tempers flare. Uhh, I know if

somebody takes my shit, I want to get my shit back.</b>

429

00:31:10,804 --&gt; 00:31:16,443

<b>It can get to a problem and it can get out of control.

Right? I think what happened. The situation got out</b>

430

00:31:16,443 --&gt; 00:31:24,50

<b>of control. Right? Now you a man. Every time I saw you

walking down the street you never gave me troubles.</b>

431

00:31:24,50 --> 00:31:28,621  
<b>So I don't take you as a bad guy. But I know shit happens. And I don't think truly that you are a bad</b>

432  
00:31:28,621 --> 00:31:30,90  
<b>guy.  
Fludd: I'm not man.</b>

433  
00:31:30,90 --> 00:31:35,95  
<b>Thomas: I think that you want to tell me the whole story.</b>

434  
00:31:35,95 --> 00:31:37,530  
<b>Fludd: I do man.  
Thomas: I know you want to tell me. You know why?</b>

435  
00:31:37,530 --> 00:31:42,502  
<b>You know why? I see it in you. Every time I saw you, you was walking with a guy named Terrell Black.</b>

436  
00:31:42,502 --> 00:31:44,671  
<b>Not a bad dude.  
Fludd: Yep. That's my homeboy right there.</b>

437  
00:31:44,671 --> 00:31:48,274  
<b>We went to school together.  
Thomas: Not a bad dude. So I know if he's not a bad</b>

438  
00:31:48,274 --> 00:31:54,214  
<b>dude, you can't be a bad dude. Alright? Now I know shit happens. Don't get me wrong. I know shit</b>

439  
00:31:54,214 --> 00:31:58,685  
<b>happens, but I know deep down this shit fucking with you.</b>

440  
00:31:58,685 --> 00:32:00,653  
<b>Fludd: Yeah it is.  
Thomas: It seems like it's fucking with you.</b>

441  
00:32:00,653 --> 00:32:03,590  
<b>Fludd: It is man.

Thomas: Now is the time for you to give me a</b>

442

00:32:03,590 --> 00:32:07,293

<b>opportunity to help you help yourself.

Fludd: Alright man, I'm about to help y'all all the</b>

443

00:32:07,293 --> 00:32:13,99

<b>fucking way man. We fucking got into our damn altercation man and it fucking went south.</b>

444

00:32:13,99 --> 00:32:18,71

<b>You know what I'm saying? I grabbed what the fuck... I grabbed the damn piece of shovel and I</b>

445

00:32:18,71 --> 00:32:23,209

<b>went. You know what I'm saying? Because you try to, you try to harm me bruh. You try to harm me bruh.</b>

446

00:32:23,510 --> 00:32:28,648

<b>And I knew you as a good dude, bruh. Why would you do that to me, bruh? Why would you even have to steal</b>

447

00:32:28,648 --> 00:32:33,119

<b>from me. You know I would have gave you anything bruh and I don't even got a house right now.</b>

448

00:32:33,319 --> 00:32:38,958

<b>But I done gave this man the last bit of money out my pocket. The last bit of money that was on my card.</b>

449

00:32:38,958 --> 00:32:45,65

<b>I gave it to him so him and his girl got a place to stay knowing that I didn't have a place to stay that night.</b>

450

00:32:45,331 --> 00:32:51,705

<b>And you gonna do that bruh. Come on man. That't not cool bruh. I keep it 100 with everybody that I'm around</b>

451

00:32:51,705 --> 00:32:57,410

<b>because I don't want nobody to keep me in the dark about nothing. I have to keep it that way because I</b>

452

00:32:57,410 --&gt; 00:33:04,317

<b>don't like... I don't like the feeling of okay just like this morning. You have a warrant for your arrest. What the</b>

453

00:33:04,317 --&gt; 00:33:12,325

<b>fuck is going on? How, what, what? And this is what the fuck I'm sitting looking at like god damn (expletive)</b>

454

00:33:12,325 --&gt; 00:33:19,265

<b>The more you try to stay the fuck out of trouble, it seems like the faster that mother fucker finds you.</b>

455

00:33:19,432 --&gt; 00:33:20,533

<b>Thomas: Daniel.</b>

456

00:33:21,201 --&gt; 00:33:26,306

<b>You say you stuck him with the shovel.

Fludd: Yeah. That damn... The broken piece of shovel.</b>

457

00:33:26,306 --&gt; 00:33:27,741

<b>Yes I did.

Thomas: What it was...</b>

458

00:33:27,741 --&gt; 00:33:33,913

<b>Fludd: Yes. I poked his ass up. I will not lie about that shit. Because you try to harm me bruh. You tried to</b>

459

00:33:33,913 --&gt; 00:33:39,486

<b>damn take me out over something that ain't your's bruh. And you know you could of god damn just</b>

460

00:33:39,486 --&gt; 00:33:44,391

<b>You know what I'm saying? You could have easily bruh you know what I'm saying? Im wrong bruh. I'm sorry.</b>

461

00:33:44,391 --&gt; 00:33:49,896

<b>And even then... Even if after that apology I would have been like bruh. You know what man? You such a god</b>

462

00:33:49,896 --&gt; 00:33:54,801

<b>damn good dude bruh. You could have the chain bruh.

And he know that shit bruh. I would have gave him the</b>

463

00:33:54,801 --> 00:33:59,406

<b>chain as many times as he done asked me for that damn chain. I said bruh, when I'm done with it. You know what</b>

464

00:33:59,406 --> 00:34:04,310

<b>I'm saying? That's if it gets fixed. Once he fixed the shit, I was like well, you know what I'm saying? I could still</b>

465

00:34:04,310 --> 00:34:06,146

<b>wear my damn chain.</b>

466

00:34:06,846 --> 00:34:13,553

<b>And after that, like I said everything is true leading up to mother fucking the time that I seen this (expletive)</b>

467

00:34:13,553 --> 00:34:20,93

<b>aside from all that fucking 2:30 bullshit bruh, like, bruh. I keep it 100 man. This shit's fucking with me</b>

468

00:34:20,93 --> 00:34:21,995

<b>man.

Thomas: And I appreciate your honesty.</b>

469

00:34:21,995 --> 00:34:27,567

<b>Fludd: This shit is fucking with me man 'cause it's like yo bruh... As a good dude bruh. As a young man</b>

470

00:34:27,567 --> 00:34:29,836

<b>

Fludd: You know what I'm saying? So that's why I'm</b>

471

00:34:29,836 --> 00:34:36,309

<b>like yo. For him to even steal from me bruh. Even go to that extent and then try to god damn kill me at the end</b>

472

00:34:36,309 --> 00:34:39,946

<b>of the day. You talking about you going to get a gun bruh.</b>

473

00:34:39,946 --> 00:34:43,183

<b>Thomas: Yeah that's not cool.

Fludd: What, what, what you expect me to do?</b>

474

00:34:43,583 --> 00:34:48,521

<b>You talking about you going to get a gun. You going  
(inaudible) so that mean... So that mean you about</b>

475

00:34:48,521 --> 00:34:52,359

<b>to god damn smoke me man. Over something that  
ain't yours.</b>

476

00:34:52,359 --> 00:34:55,929

<b>Williams: So you say you stuck him with the shovel..

Fludd: Yes. I did.</b>

477

00:34:55,929 --> 00:34:58,365

<b>Williams: So what did you do with this piece that you  
stuck him with?</b>

478

00:34:58,365 --> 00:35:02,335

<b>Fludd: I left it there. Where he was at.

Williams: Okay.</b>

479

00:35:02,502 --> 00:35:07,807

<b>Fludd: I left it there. Cause it was a broken piece of  
shovel. He hit me with the shovel once. After he hit</b>

480

00:35:07,807 --> 00:35:13,346

<b>me and I blocked the shit, he hit me again and I caught  
the damn shovel and took it out his damn hand. And</b>

481

00:35:13,346 --> 00:35:17,617

<b>he said I'm about to get a god damn gun. I said  
no you not.</b>

482

00:35:19,219 --> 00:35:23,89

<b>I ain't even going to deny bruh. It's, it's real bruh.

Williams: I understand.</b>

483

00:35:23,89 --> 00:35:29,996

<b>Fludd: But I done try to god damn say so... I, I done

try to be such a good damn person down here bruh.</b>

484

00:35:29,996 --> 00:35:36,403

<b>Like I don't give a damn man. I try to stay out of trouble. I try to god damn keep those around me</b>

485

00:35:36,403 --> 00:35:41,141

<b>out of trouble because I don't even like being in damn trouble. I don't even like the feeling of these</b>

486

00:35:41,141 --> 00:35:46,813

<b>damn cuffs, but like I said I'm a man bruh. I'm gonna god damn take what's coming. It's just bruh.</b>

487

00:35:46,813 --> 00:35:53,219

<b>It's a lot of shit bruh. Like man, I work two jobs. Aside from me working two jobs, them jobs ain't doing</b>

488

00:35:53,219 --> 00:35:57,323

<b>shit to pay my bills man.

Williams: I got you. So you um, you were wearing that</b>

489

00:35:57,323 --> 00:35:58,558

<b>last night?

Fludd: No.</b>

490

00:35:58,558 --> 00:36:03,530

<b>Williams: What were you wearing last night?

Fludd: I was wearing my... No actually I was. No, no.</b>

491

00:36:03,530 --> 00:36:11,905

<b>I was wearing my black shirt. I had a black shirt on and I had on my umm, my Boston Red Sox hat. My skully.</b>

492

00:36:11,905 --> 00:36:16,676

<b>Williams: So where are those clothes at now?

Fludd: At my... At Country Craft.</b>

493

00:36:16,676 --> 00:36:18,712

<b>Williams: 150?

Fludd: Yes.</b>

494

00:36:18,712 --&gt; 00:36:22,916

&lt;b&gt;Williams: You said there was no lights out there?

Fludd: No lights.&lt;/b&gt;

495

00:36:23,983 --&gt; 00:36:27,754

&lt;b&gt;Like I said, I went there and I was like well... You know what I'm saying? She said we ain't got no&lt;/b&gt;

496

00:36:27,754 --&gt; 00:36:33,226

&lt;b&gt;lights out here. I'm just... You know what I'm saying? Get my clothes... You know what I'm saying? So I&lt;/b&gt;

497

00:36:33,226 --&gt; 00:36:36,663

&lt;b&gt;could go because I don't want no issues between me and her. Even though like I said.&lt;/b&gt;

498

00:36:36,663 --&gt; 00:36:38,665

&lt;b&gt;Williams: What is she to you?

Fludd: My cousin.&lt;/b&gt;

499

00:36:38,665 --&gt; 00:36:40,967

&lt;b&gt;Williams: The Tina woman?

Fludd: Tina?&lt;/b&gt;

500

00:36:40,967 --&gt; 00:36:42,836

&lt;b&gt;Williams: The woman you say that...

Fludd: Tijuana.&lt;/b&gt;

501

00:36:42,836 --&gt; 00:36:45,472

&lt;b&gt;Williams: Tijuana. Okay.

Fludd: Yeah that's my cousin. You know what I'm saying?&lt;/b&gt;

502

00:36:45,472 --&gt; 00:36:50,176

&lt;b&gt;We, we you know what I'm saying? We wasn't... We didn't have no issues. It was just like I said,&lt;/b&gt;

503

00:36:50,176 --&gt; 00:36:55,648

&lt;b&gt;We, we, we as grown folks... You know what I'm saying? Like I said I tend to slip. You know what&lt;/b&gt;

504

00:36:55,648 --&gt; 00:37:00,754

<b>I'm saying? As far as paying rent, that was nothing.  
I was paying my rent. It's just... You know what</b>

505

00:37:00,754 --> 00:37:04,591

<b>I'm saying? Everybody have their attitudes and I  
was like yo... You know what I'm saying?</b>

506

00:37:04,591 --> 00:37:11,965

<b>Aside from us staying here bruh. I'm gonna try to get  
us something else. And that's what I been doing so far.</b>

507

00:37:11,965 --> 00:37:17,804

<b>My sister been staying with her boyfriend and I been  
checking up on her day by day. You know what I'm</b>

508

00:37:17,804 --> 00:37:18,705

<b>saying? (Inaudible)

Williams: Who her boyfriend?</b>

509

00:37:18,705 --> 00:37:21,241

<b>Fludd: Huh?

Williams: What is... You said... Who is her boyfriend?</b>

510

00:37:21,508 --> 00:37:23,810

<b>Fludd: Kurt Gadson.</b>

511

00:37:24,844 --> 00:37:27,313

<b>Williams: Oh, okay.

Fludd: You know what I'm saying? They, they...</b>

512

00:37:27,313 --> 00:37:30,917

<b>That, that's her boyfriend. You know what I'm saying?  
And they stay with eachother. You know what I'm</b>

513

00:37:30,917 --> 00:37:36,423

<b>saying? So I'm like, that's cool. You know what I'm  
saying? Long as she's straight. I don't really...</b>

514

00:37:36,423 --> 00:37:41,961

<b>I ain't gonna say I don't care too much about me, but  
that's a female man. You know what I'm saying?</b>

515

00:37:41,961 --&gt; 00:37:43,163

&lt;b&gt;It's different.

Williams: I understand.&lt;/b&gt;

516

00:37:43,163 --&gt; 00:37:48,601

&lt;b&gt;Fludd: So, like I said. I just wanted to make sure she's good. After I found out she was good, I been trying&lt;/b&gt;

517

00:37:48,601 --&gt; 00:37:54,107

&lt;b&gt;to, you know what I'm saying? Since I got down here.

Since I first put my mind to trying to move into them&lt;/b&gt;

518

00:37:54,107 --&gt; 00:37:58,578

&lt;b&gt;projects. I've been moving forward ever since.

Williams: I got you.&lt;/b&gt;

519

00:37:58,945 --&gt; 00:38:04,484

&lt;b&gt;Fludd: So I'm like man that shit is crazy man. Sorry for cursing so much.&lt;/b&gt;

520

00:38:04,484 --&gt; 00:38:11,458

&lt;b&gt;Williams: Man you good, man. That's reality, that's you know those real emotions. You can't change that.&lt;/b&gt;

521

00:38:12,325 --&gt; 00:38:18,398

&lt;b&gt;Fludd: Like I said man. I, I want to keep it 100 bruh. I don't want to hide shit from y'all because like I&lt;/b&gt;

522

00:38:18,398 --&gt; 00:38:21,601

&lt;b&gt;said if it's going to help me then let it help me.

Williams: Yeah.&lt;/b&gt;

523

00:38:21,601 --&gt; 00:38:26,206

&lt;b&gt;Fludd: I'm not trying to be fucked up in this shit because like I said if I had a phone the way they&lt;/b&gt;

524

00:38:26,206 --&gt; 00:38:29,609

&lt;b&gt;had a damn phone, you damn right I probably would have called the damn cops.&lt;/b&gt;

525

00:38:29,609 --&gt; 00:38:32,746

<b>Stand up right in front of him.

Fludd: What, you dropped your phone or something?</b>

526

00:38:32,746 --> 00:38:35,215

<b>Fludd: Yeah. I dropped my phone.</b>

527

00:38:35,982 --> 00:38:40,453

<b>And I can't find that shit. I been looking for it.</b>

528

00:38:42,689 --> 00:38:49,95

<b>Like I said man, if I knew, like I said... If I had a phone, that was on, or at least I could make emergency calls</b>

529

00:38:49,95 --> 00:38:54,67

<b>off of. I promise you y'all wouldn't have got the call from them. Y'all damn sure would have gotten that</b>

530

00:38:54,67 --> 00:38:56,136

<b>bitch from me.

Williams: I got you.</b>

531

00:38:56,403 --> 00:38:58,938

<b>Fludd: Straight like that.</b>

532

00:39:01,641 --> 00:39:08,114

<b>Like I said man last night I slept on the damn floor. You know what I'm saying, like? I don't even have</b>

533

00:39:08,114 --> 00:39:11,651

<b>nowhere to go bruh. I'm, I'm sleeping on the floor right now man.</b>

534

00:39:11,651 --> 00:39:18,258

<b>Williams: I mean and I understand that man. I, I really do. And I'm not... Look I'm not here to judge you.</b>

535

00:39:18,258 --> 00:39:24,30

<b>That's not my job. My job is to find the truth and that's all I'm here to do. Wherever that truth leads</b>

536

00:39:24,30 --> 00:39:30,103

<b>is where it leads. You know? I wasn't there. Only two people, you know truly knows what happened.</b>

537

00:39:30,103 --> 00:39:39,112

<b>That's you and you know, Mr. Atkins who is no longer here. And I, you know, umm...</b>

538

00:39:40,347 --> 00:39:45,985

<b>But all we here to do is find the truth. And wherever that goes, it goes. I don't have no dog in that fight.</b>

539

00:39:45,985 --> 00:39:54,794

<b>I'm just, I'm just here for the truth. I just present the facts and that's all I present. Um, I present what's</b>

540

00:39:54,794 --> 00:40:00,567

<b>given to me, the evidence and what evidence we collect. And we go from there. You know it's an</b>

541

00:40:00,567 --> 00:40:07,7

<b>unfortunate thing for anybody to lose their life, however, it is a fact of life. It does happen.</b>

542

00:40:07,340 --> 00:40:14,781

<b>So, I'm not here to judge you. You felt like you were defending yourself and that's totally your</b>

543

00:40:14,781 --> 00:40:18,551

<b>right. But that's not for me to decide.  
Fludd: Understood.</b>

544

00:40:18,551 --> 00:40:20,120

<b>Williams: Alright?  
Fludd: Understood.</b>

545

00:40:20,120 --> 00:40:23,556

<b>Williams: I don't, I don't adjudicate that part of the argument.</b>

546

00:40:23,857 --> 00:40:29,796

<b>Umm... But what we have at the time like he explained to you. At this time we are going to charge you with</b>

547

00:40:29,796 --&gt; 00:40:37,637

<b>murder at this time. That's just... That's just the start of the process. Umm...</b>

548

00:40:38,705 --&gt; 00:40:43,743

<b>And wherever it goes from there, that's not in my hands nor it's not in the Estill Police Department's hands.</b>

549

00:40:43,743 --&gt; 00:40:50,150

<b>Based on the facts we have right now, we do have probable cause to... We did have probable cause and</b>

550

00:40:50,150 --&gt; 00:40:56,890

<b>we do have probable cause to seek an arrest, a warrant for your arrest which we have done. Umm...</b>

551

00:40:57,323 --&gt; 00:41:03,63

<b>When Lt. Thomas returns, we will get those warrants and probably will have to collect some things from you.</b>