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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Charleston County

Honorable Kristi F. Curtis, Circuit Court Judge

JALANN WILLIAMS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2024-000967

APPENDIX

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1 MR. FALK: We'll call Mr. Murphy to the stand.

2 [Whereupon, Mr. Murphy comes forward]

3 [Whereupon, the witness is duly sworn by the Clerk
4 of Court]

5 THE CLERK OF COURT: Please state your name for the
6 record and spell your last name.

7 THE WITNESS: Christopher Lewis Murphy, M-U-R-P-H-Y.

8 - - - - -

9 CHRISTOPHER MURPHY,

10 Having been first duly sworn,

11 Was examined and testified as follows:

12 DIRECT EXAMINATION

13 BY MR. FALK:

14 Q. Mr. Murphy, can you sort of lay out the factual
15 setting for this case, what this case was about?

16 A. Yes. This was a drug deal gone bad. And what the
17 State, what happened was Mr. Williams was in the backseat
18 of a pickup truck I believe and the drug dealer was in
19 the front seat of the pickup truck.

20 They had intended to rob the drug dealer because
21 they didn't have enough money to buy the drugs. There
22 was a fight, a gunshot went off and a person got killed.

23 The State's position was that Mr. Williams reached
24 over the front seat and shot the victim and killed him;
25 shot him in the head and it went down. Our position was

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1 the fellow turned around. He realized what was happening
2 that he was about to get robbed. He turned around and
3 lunged at Jalann Williams. Williams grabbed a gun and
4 fired. And that was, that was the facts.

5 Q. So there was some element of mutual combat?

6 A. No question, yes.

7 Q. And ---

8 A. --- that was our whole strategy was this was a drug
9 deal gone bad. There was no intent to kill. He did fire
10 a gun but it was a self-defense type situation.

11 Q. Okay. You said it was a self-defense type
12 situation. Did you request a charge on self-defense?

13 A. I did request a charge and this was the judge denied
14 that charge. And when the Supreme Court looked at it
15 they ruled 5 to 4 that he should not have gotten that;
16 that the judge was right. So four of the justices I
17 sided with; five disagreed.

18 Q. So four of them were correct?

19 A. That's correct.

20 Q. So there would be no way to, this is obviously like
21 a Belcher type case that they could never infer malice by
22 the use of a gun right?

23 A. I didn't believe so.

24 Q. Right, I mean because it was just clearly a mutual
25 combat case and the gun goes off.

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1 A. I would say right that was our argument that he
2 pulled a gun. He had no intent to kill him, no intent to
3 -- he just wanted to protect himself so.

4 Q. Well then kind of walk me through what your strategy
5 was when it came to jury charges.

6 A. All right. So this is kind of the crux, Judge.
7 When we went to trial this was, I intended at the very
8 beginning to argue manslaughter the entire time. There
9 wasn't any question about that. That was in my opening
10 argument.

11 And in every trial I look at a timeline. And in
12 this case the timeline was about 5 to 10 seconds during
13 that drug deal between when they thought they were going
14 to get robbed, the fight, and the gunshot went off.

15 So, we ended up doing I thought really well at
16 trial. And there was an alternate juror that got
17 dismissed. And when I spoke, I always speak to the
18 alternates.

19 And that alternate told me that he wasn't guilty at
20 all. I would find him not guilty and that changed our
21 strategy mid-way. And that's one of the errors that I
22 think looking back I probably committed.

23 In terms of the jury charge we really wanted that
24 self-defense charge and I thought if we got the self-
25 defense charge we would get a not-guilty verdict based on

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1 that conversation with the alternate. When it was denied
2 I felt really good that we had a real strong appealable
3 issue. So I thought Jalann won either way.

4 Q. Uh Huh.

5 A. And so if you're talking about specifically the
6 intent charge that murder charge you had I thought dealt
7 with that said he had to have that malice aforethought
8 and the intent, the depraved heart language. And I
9 didn't think there was any way a jury could find that.

10 Q. Right. And then that's what I was getting to the
11 State could not have charged that you can infer malice by
12 the use of a gun because of the facts of this case.

13 A. And if I did not ask that ---

14 Q. --- no, no, I'm saying it wasn't. I'm just pointing
15 out that this is, they would have to show actual malice
16 not ---

17 A. --- right, I agree ---

18 Q. --- not inferred.

19 A. That's correct, yes.

20 Q. So it seems a little inconsistent to be on the one
21 hand looking for a self-defense charge and then not
22 requesting a voluntary charge, voluntary manslaughter
23 charge.

24 A. Right ---

25 Q. --- because a lot of times you know if someone

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1 doesn't, voluntary manslaughter is sort of an imperfect
2 self-defense.

3 A. Right. And this is, Judge, one of these cases that
4 haunts me because of that. I agree that it was an
5 inconsistent defense. I really don't know, I mean I
6 think about this case a lot because we had a strategy at
7 the beginning and we changed it midway.

8 And I don't know if it was my pride of wanting to
9 win or my laziness of not wanting to try the case again.
10 But I know that when I was talking to Jalann he wanted to
11 hear that he was going to get found not guilty.

12 I thought that the State did not prove those
13 elements of murder. And I really thought that I knew
14 that if we did the manslaughter he would get convicted in
15 a second of that.

16 But I knew that I also felt really good they were
17 not going to get him with the murder. And so we talked
18 about whether we should go all or none on this. And
19 that's where I believe that my error came in.

20 Q. Okay. I'm going to come back around to that in a
21 minute but let me just focus on these other issues that I
22 highlighted in this PCR application. If you can, look at
23 page 112?

24 [Whereupon, the witness reviews document]

25 Q. What are you looking at, the record?

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1 A. I'm looking at the record on appeal.

2 Q. Oh, it's 66.

3 A. Okay.

4 [Whereupon, the witness reviews document]

5 A. All right I'm here.

6 Q. So where did Taylor McLean fit in this case?

7 A. I don't recall and I don't know who Taylor McLean
8 is.

9 MR. FALK: May I approach, Your Honor?

10 THE COURT: Uh Huh.

11 [Whereupon, the witness is shown document]

12 Q. [Mr. Falk] I'm not sure what page you're on but this
13 is what I'm looking for.

14 A. So if I understand this let's see Taylor -- I'm
15 going to ask you, I'm trying to refresh my memory about
16 what you're looking for and I'm happy to answer.

17 Q. Okay. First of all were there any identifications
18 in this case, any in court identifications?

19 A. I believe there was. That's one of those things
20 that I always look for one of the basic elements. I
21 believe there was but if there wasn't then I should have
22 moved for a directed verdict ---

23 Q. --- here's the thing. I found no evidence that
24 there was a Jackson v Denno hearing.

25 A. Right. And I wouldn't have done that. I wouldn't

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1 have done that because we admitted to shooting him.

2 Q. Okay.

3 A. Our whole point was yeah, we shot him. There wasn't
4 any question about who pulled the trigger, who had the
5 gun. And so I wouldn't have done a Jackson v Denno
6 hearing.

7 Q. Okay. Fair enough. So Taylor McLean seems to be
8 one of his, somebody who knew Mr. Williams since they
9 were 12 years old. And when you get to page 112 on the I
10 guess the transcript page ---

11 A. --- okay

12 Q. --- there are questions about a conversation
13 apparently that she was having with Lauren Thrower.

14 A. Okay.

15 [Whereupon, the witness reviews document]

16 A. And there is some hearsay in there I believe.

17 Q. And there's some hearsay in there.

18 A. Right, and all of that ---

19 MS. WEIDAUER: --- objection, Your Honor. There is
20 not a question in there.

21 Q. [Mr. Falk] Did you consider objecting to the hearsay
22 testimony?

23 A. I would not have.

24 Q. Okay.

25 A. And the reason why is because I'm looking at this

1 case from the timeline again. I didn't care what
2 happened after those 10 to 15 seconds because after
3 shooting someone it's reasonable to want to try and hide
4 evidence or get scared or do things that are foolish. I
5 wanted to focus solely on those 10 to 15 seconds when he
6 was in the car.

7 Q. And so when we go to Charles Benton's testimony
8 which starts on page 121.

9 [Whereupon, the witness reviews document]

10 Q. And that's the detective from North Charleston.

11 A. Yes.

12 Q. And then if you look at lines 20 through 24 still on
13 page 122 there is more hearsay testimony.

14 A. That's -- I believe you and it's the same
15 explanation is that this would have been information that
16 happened afterwards. I don't like objecting to stuff
17 just because I can object. I like the State to put in
18 evidence that is outside that timeline.

19 I think that the jurors get annoyed with it and I
20 also think that my objection shows that I'm trying to
21 hide something which I didn't care what happened
22 afterwards; it was just during that timeframe.

23 Q. Fair enough. Let me skip on down to some of the
24 concerns in the closing argument. Would you agree that
25 Mr. Voigt was trying to paint him as being a bad father

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1 during that closing argument?

2 A. I don't recall. But I'll take your word for it.

3 Q. Look at pages like starting on 393 lines 18.

4 A. I just have the record on appeal so I'm not sure.

5 Q. I'm sorry. It will be 382 with the numbers on the
6 bottom of the page its 382.

7 A. Okay.

8 [Whereupon, the witness is shown document]

9 Q. I'm sorry. That's where the closing argument
10 starts.

11 A. I have it, yes.

12 Q. So that paragraph if you can just kind of read to
13 yourself that paragraph starting with line 18.

14 A. On page 382?

15 Q. 393.

16 A. Oh, 393.

17 [Whereupon, the witness reviews document]

18 A. Yes, I see that.

19 Q. Then just skip ahead to the for example 395.

20 A. Okay.

21 Q. That first sentence in that line 1 starting with
22 well, and going down through line 7.

23 [Whereupon, the witness reviews document]

24 A. Okay.

25 Q. Would you agree that Mr. Voigt is sort of attacking

1 his character as being a bad father?

2 A. I mean I think that's a stretch. But again, if he's
3 a bad father he's not guilty of the murder. He was going
4 to rob someone, a drug dealer, so I don't think that that
5 has -- again, that would be the superfluous stuff that
6 doesn't really make sense with the case.

7 Q. But could that be something that could enflame the
8 jury to...

9 A. I wouldn't think so. I wouldn't even object to it
10 again if I heard it right now so I don't think it is
11 inflammatory at all.

12 Q. Okay. Fair enough. Let me get now to sort of
13 coming back around to the whole involuntary manslaughter
14 murder charge etcetera; voluntary manslaughter. So, how
15 long did the jury deliberate?

16 A. They were out as I recall for a couple of days and
17 it was a long time. And that leads me to my second error
18 that I believe I committed was the judge asked did we
19 want a mistrial and I said no.

20 I want the jury to try to deliberate. And again
21 that's where I come in to did I let my personal feelings
22 interfere with representation of what was best for Mr.
23 Williams.

24 Q. So, the jury went home one day and came back and
25 kept deliberating?

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1 A. As I recall, yes.

2 Q. Anytime that has happened to me the jury comes back
3 the next day and they have a verdict in like 10 minutes.

4 A. It was a long time. It was a long time in
5 deliberations. And that's what fed into this case. We
6 really thought that the jury was going to find him guilty
7 of the armed robbery and not guilty of murder because
8 that's what the whole argument was; that's what all the
9 facts were.

10 And so that's really what we thought was going to
11 happen. And then when the jury came back with the murder
12 verdict and no argument on the armed robbery that really
13 surprised everybody; including the judge.

14 And I was trying to figure out a way to get a
15 consistent verdict out of those two but I just could
16 never figure out anything.

17 Q. Let me kind of, would you look at page 446 in the
18 transcript, the little numbers on the bottom.

19 [Whereupon, the witness reviews document]

20 A. I am, yes. Okay.

21 Q. If you could just sort of read over that, it's a
22 couple of pages to sort of refresh your memory of what's
23 going on.

24 [Whereupon, the witness reviews document]

25 A. Okay. This was a jury question.

1 Q. And what was the jury's question?

2 A. It says the first is we want to hear the legal
3 definition of grievous harm.

4 Q. Okay. Let me just get -- look at that first
5 paragraph line 8. Would you agree that the jury asked
6 whether or not there were any lesser included offenses?

7 A. I would agree to that.

8 Q. So somebody on that jury had some familiarity with
9 criminal law it would seem like.

10 A. Well, they also listened to my opening statement.

11 Q. Okay ---

12 A. --- and so that's where the rub comes in for me is I
13 changed the strategy. Our whole intent at the beginning
14 was to argue the manslaughter and get the manslaughter
15 charge.

16 But we changed it based on that conversation. I
17 also wasn't familiar with the judge. I knew that if he
18 went to trial I thought he could get 30 years anyways.
19 And we thought he was going to get convicted of the armed
20 robbery.

21 So there were a lot of moving parts we were looking
22 at here. And when it comes down to it I shouldn't have
23 changed our strategy and I should have asked for a
24 mistrial. And those are the two things that I can't
25 stress enough that I've been thinking about ever since

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1 this time.

2 Q. Well, here is a concern that I have. So your
3 strategy was this all or nothing strategy.

4 A. At the end.

5 Q. No, I know; at the end.

6 A. Right, yes.

7 Q. So at some point the jury is kind of asking about
8 lesser included offenses.

9 A. Yep.

10 Q. So how did y'all agree to respond to the jury's
11 questions?

12 A. Whatever is in the record is what we agreed to do.
13 I don't remember the specifics. When they -- and if I
14 did something wrong asking for the State having to meet
15 the elements -- whatever is in the record is there and if
16 whatever I did was wrong then I...

17 Q. So the question from the jury was are there any
18 lesser included offense charges and the answer was no.
19 That was the ---

20 A. --- right, that is correct.

21 Q. And that is what y'all agreed to, that's what the
22 judge said that everybody agreed to. Did you consider
23 asking for a different charge that is more in line with
24 the decision in State v Smith, which is 304 S.C. 129?

25 A. No, I did not. And there was -- I didn't know about

1 it at the time.

2 Q. Okay. Because in that case, which is sort of a
3 similar fact pattern where it was a murder case and there
4 was a question about provocation -- I'm just telling you
5 from Smith ---

6 A. --- I understand ---

7 Q. --- there is a question about provocation and
8 whether or not sufficient provocation for a charge could
9 result from an attacking on another person.

10 In that case the Court just recharged everything and
11 didn't explain that yes, you could have provocation for
12 an attack on another person is actually consistent with
13 the law.

14 So my suggestion is do you think this trial might
15 have been different if the charge in response to that
16 question would be, in response to the question are there
17 any lesser included offenses if you charged or if the
18 response was if after considering the evidence in the
19 case you find the defendant's conduct matches something
20 less than murder then you must find the defendant not
21 guilty on the murder charge. Do you think that would
22 have helped?

23 A. I think that would have helped, yes sir.

24 MR. FALK: I have no further questions.

25 THE COURT: Ms. Weidauer?

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CROSS-EXAMINATION

BY MS. WEIDAUER:

Q. Good morning, Mr. Murphy.

A. Good morning.

Q. So I want to back up a little bit and talk about the beginning of your representation and how it got to trial.

How long have you been practicing law in South Carolina?

A. Twenty-five years.

Q. Okay. And how much of that has been criminal law?

A. I've been doing criminal the entire 25 years.

Q. Okay. And is it a good portion of your practice?

A. I've slowed down. It was a big portion for the first 10 to 15 years. I've stopped doing State work; I still do Federal criminal.

Q. So, it's safe to say you've been involved in dozen of trials.

A. Oh, lots. More than I care to be as I recall.

Q. And I don't think I caught it. Were you appointed or retained in this case?

A. I was appointed as a 608 attorney in this case.

Q. And roughly how long before trial were you appointed?

A. It was I believe the P.D.'s office conflicted this out immediately. So, it was plenty of time.

Q. Plenty of time to discuss everything with Applicant?

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1 A. Right, no question; yes.

2 Q. Okay. And you would have had how many discussions
3 with Applicant about this case?

4 A. He says we had about five face to face discussions.
5 That's probably true. I always write my clients lots of
6 letters. I respond in writing to any one of their
7 letters; every letter I do. If they call me I pick up
8 the phone whenever I can.

9 So, he's probably right about the five in person
10 visits but I know that there were a lot of letters and
11 telephone calls. But that's typical of any case.

12 Q. Okay. So though there were five in person meetings
13 there were numerous other communications throughout the
14 case.

15 A. Right.

16 Q. Okay. And during that time you received discovery
17 pursuant to Rule 5 and Brady from the State, correct?

18 A. Yes.

19 Q. And you would have had time to review that in full
20 with Applicant?

21 A. Right. But this wasn't a case; I mean it was a
22 simple case factually. We didn't we knew that there was
23 a shooting. We knew that there was a guy dead and we
24 knew what our position, our story was. And so it wasn't
25 like we had to go in depth or do a whole bunch of

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1 investigation and that sort of thing.

2 Q. And that leads into my next question. So after the
3 review of the discovery and talking it over with
4 Applicant how long before trial did you kind of start
5 garnering this strategy and be able to kind of piecemeal
6 it ---

7 A. --- it would have been months before trial. And the
8 Prosecutor on this made no offers. He was very tough,
9 you know pro State guy and there were no offers. It was
10 you can plead straight up and that's it.

11 Q. Okay. So after you and I'm going to give you a
12 chance to kind of go into this self-defense charge. You
13 requested a self-defense charge, right?

14 A. That's correct.

15 Q. And you stated before that that went all the way up
16 to the Supreme Court.

17 A. Yes.

18 Q. Okay. And I think you testified that the Supreme
19 Court justices were wrong in their decision; you believe
20 them to be wrong in their decision, right?

21 A. I disagreed. I agreed with four of them.

22 Q. Okay. And that was based on your argument and the
23 defense theory and what you ---

24 A. --- and just the facts of the case, right. The
25 facts of the case that came out I believed it was

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1 appropriate.

2 Q. Okay. I'm going to try to go through these
3 allegations one by one and just kind of talk about them
4 in order. You have been able to familiarize with the
5 amended post-conviction relief application filed by
6 Applicant's counsel, correct?

7 A. Yes, yes.

8 Q. Okay. So there is an allegation referencing some
9 testimony by Taylor McLean. Is it your understanding that
10 Taylor McLean was the Applicant's girlfriend?

11 A. Yes, that's correct.

12 Q. Okay. And that is on page 112, which is the smaller
13 numbers at the bottom of your copy.

14 A. Okay.

15 [Whereupon, the witness reviews document]

16 Q. I just want to clarify. There was some strategic
17 reasoning behind not objecting wasn't there?

18 A. Right. That's correct. This, her testimony came
19 about his acts after the shooting, which we admitted to.
20 So it was irrelevant as to -- I didn't want to keep out
21 something that didn't have any impact on the case.

22 Q. Right. And was it helpful to your case in any way?

23 A. It didn't help or hurt.

24 Q. Okay. Showing that maybe he panicked afterwards
25 though wouldn't hurt your case in any way ---

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1 A. --- absolutely not, no ---

2 Q. --- it might tend to help your case.

3 A. I think it's natural that anybody is going to panic
4 after shooting somebody; there is no question about it.
5 So to me it was just I called it a red herring and it was
6 just extra information that had nothing to do with the
7 facts.

8 Q. Okay. And we don't have the benefit of having been
9 at the trial but you were at the trial and did you
10 believe that was kind of the sense you got from the jury
11 too that they were able to piece through these red
12 herrings as you've said?

13 A. I agree with that. I mean I think the jury just by
14 how long they were out deliberating I thought we did a
15 really good job with our arguments.

16 Q. Okay. I would like to move on to allegation 1(b)
17 and that's in regards to Charles Benton on page 122.

18 [Whereupon, the witness reviews document]

19 Q. His testimony says, and this is in reference to
20 Taylor McLean and some statements she made to Mr. Benton.
21 She advised us initially that she had not seen Mr.
22 Williams since 2 p.m. the previous day, which would have
23 been the day of the homicide.

24 She said that she had dropped him off at 2 p.m. at
25 the Piggly Wiggly on Remount Road. As we were preparing

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1 to leave that residence a neighbor informed us that they
2 had seen Mr. Williams there at, and it's redacted on my
3 copy, blank on the day of the homicide at approximately 5
4 p.m. which is different from what Ms. McLean told us.

5 Is there any reason that, strategic reason you
6 wouldn't have testified to that?

7 A. Again ---

8 Q. --- excuse me, objected to that?

9 A. Again, it's the same reason that he was going there
10 to rob a drug dealer so the fact that somebody was
11 incorrect about where he was or what he was doing isn't
12 surprising.

13 Again, it's information that really doesn't help or
14 hurt us because we've already admitted what we were doing
15 there at the scene so.

16 Q. So that was part of your strategy going into that
17 case is not to focus your efforts on these things that
18 you thought fell outside that 10 to 15 second timeframe,
19 is that correct?

20 A. Right. When I try cases I try to get laser-focused
21 on the real issues. I'm not going to object to stuff
22 that's outside what we think is important in this case.

23 Q. Just one question just for clarification on the
24 allegation number two. You testified that there was, I
25 mean it was part of your overall defense strategy not to

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1 ask for a Jackson v Denno hearing because you were never
2 going to -- why didn't you? Just answer one more time.

3 A. I'm not going to on one hand make a representation
4 to the Court there was no identification then in opening
5 arguments or trial take the complete opposite stance.

6 Like I said we admitted to the shooting. There was
7 no question about it and there is no reason to have a
8 Jackson v Denno hearing which would have been completely
9 opposite of what we were going to say at trial.

10 Q. And you would have discussed that with Applicant
11 prior to trial your reasoning for not necessarily not
12 having a Jackson v Denno hearing but you would have
13 discussed we're going to say this in opening ---

14 A. --- no question ---

15 Q. --- we're going to put it out there for the jury.

16 A. No question. I would have said this is our
17 argument; this is what we're focusing on. This is what I
18 think we can get away with or what will happen. Yes, no
19 question about that.

20 Q. Okay. There is another allegation in here regarding
21 counsel's, your failure to object to portions of the
22 State's closing argument containing personal attacks on
23 defendant.

24 I think you testified that you didn't have any sense
25 that that inflamed the jury. And sitting in that

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1 courtroom at trial did you get the feeling from them in
2 any sense that have them look over at you when he was
3 saying the things about the dreads or being a bad father?

4 A. Again, I don't think that had anything to do with
5 the case. I don't think there was any type of inflaming
6 or angering the jury. Frankly, I thought that's the
7 least of his problems if he was a bad father or had
8 dreadlocks. Big deal.

9 And I like that the State was saying stuff like that
10 because it shows that they are reaching. They're not
11 focusing on the facts. They're focusing on stuff that
12 has nothing to do with the case.

13 Q. Right. And that I mean has nothing to do with the
14 defense who admitted that he was there for a drug deal.

15 A. Right, no question.

16 Q. Right. So him having dreadlocks would have nothing
17 to do with, I mean when you first started with a self-
18 defense case or moving forward that you tried to say that
19 this was a fight, a physical altercation gone wrong.

20 A. Correct.

21 Q. Okay. The next allegation I'd like to discuss is
22 the jury charge. So you testified that you intended to
23 argue manslaughter the whole time. Can you kind of
24 expound on that?

25 A. Right. So again, it was a self-defense type case in

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1 our mind. There was no intent to commit any harm at the
2 beginning. And based on the elements of murder I didn't
3 think they could charge him.

4 There was no question he was guilty of manslaughter.
5 And that was at the beginning of trial that's what we
6 thought we were going to do. That's what we did. I
7 argued that throughout the case.

8 The cross-examination of the witnesses was the same
9 effect that a gun was pulled but it wasn't, it didn't
10 show an intentional cold-blooded type killing. It showed
11 more of a self-defense type killing.

12 It was talking to that alternate that we changed and
13 then we requested the judge to withdraw the charge for
14 the lesser-included offense.

15 Q. Okay. And you testified that now in hindsight this
16 is kind of something that you think you did wrong.

17 A. That's correct.

18 Q. Okay. But at the time you felt there were valid
19 strategic reasons in the midst of trial for trying to go
20 all or nothing.

21 A. I did. But again that's where I'm talking about
22 whether I let other issues, personal issues, interfere
23 with that.

24 And so with that looking back now we should have
25 done it. I mean there is no question about it. But if

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1 he did get that self-defense charge if the jury, if the
2 Supreme Court ruled that there was one judge that changed
3 his mind he would have been in the same situation.

4 Again, this was such a close case and it was such a
5 tough case and that's why it bothers me so much.

6 Q. That's fair. Ultimately, he did get that self-
7 defense charge. And if you would have requested the
8 lesser included did you have any doubt that he would have
9 been convicted of a lesser offense?

10 A. There is no doubt. The jury would have been out 10
11 to 15 minutes.

12 Q. So you were between a rock and a hard place. You go
13 for the all or nothing or the jury is going to convict
14 you today of this lesser included.

15 A. That's correct. And we also thought he was going to
16 get convicted of that armed robbery. So we were looking
17 at -- he's going to get that armed robbery but he's not
18 going to get the murder.

19 We thought that the jury if they were going to split
20 the difference would give them an option that they were
21 going to tag him with the armed robbery.

22 We knew that if we had the manslaughter it would be,
23 the manslaughter at least, and we thought it would be the
24 armed robbery as well but.

25 Q. Okay. And do you feel like you had adequate time to

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1 discuss with Applicant this change in strategy?

2 A. When you're in trial these things happen real fast.

3 And I'm talking to him in the booth, and I believe it

4 might have been in this courtroom we did the trial, and I

5 was talking to him in the booth about it.

6 And he liked what I was saying; he liked what he was

7 hearing. And we had as much time as I could get so.

8 Q. But that's typical of defendants who are facing a

9 murder charge. They want you to tell them that they are

10 going to get a not-guilty charge. And this is the avenue

11 your legal and professional opinion that this is the

12 avenue you should take to get to this ---

13 A. --- that is correct, yes ---

14 Q. --- verdict.

15 A. And when we say all or nothing we really weren't

16 going, we were going all or nothing in on the murder

17 charge. They still had the backup of the armed robbery.

18 So that was in my mind that was the choice, the lessor of

19 the two charges that we thought the jury would pick.

20 MS. WEIDAUER: Beg the Court's indulgence for one

21 moment.

22 [Whereupon, Ms. Weidauer reviews documents]

23 Q. [Ms. Weidauer] There has been some mention of a

24 criminal intent charge. Is that anything you ever

25 discussed with Applicant or had concern about during the

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1 trial?

2 A. I didn't and when the jury came back with that
3 question it's something that we anticipated -- well, I
4 shouldn't say we anticipated it didn't surprise us.

5 Q. Can you just clarify for the record what question
6 you're referring to?

7 A. Whether there was a lesser included offense.

8 Q. Okay.

9 A. And it didn't surprise us because that was what we
10 tried to set up that if the elements weren't proved then
11 they'd have to find him not guilty.

12 Q. And would you tend to agree or you can disagree as
13 well but that them asking for the lesser included meant
14 they were looking to tag him with something and they
15 didn't think at that point in time they could meet the
16 burden of the higher charge.

17 A. I agree with that 100 percent.

18 Q. And that would lend itself to believe that that's
19 why you went for the quote unquote all or nothing.

20 A. Right, with that charge, yes.

21 Q. With that charge specifically.

22 A. They really messed us up like I said. I still can't
23 figure out how they had no decision on the armed robbery
24 and we said we had a gun and we were going to rob him and
25 then they hit him with a murder charge. It still doesn't

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1 make sense to me but.

2 [Whereupon, Ms. Weidauer and Ms. Mims confer]

3 MS. WEIDAUER: No further questions, Your Honor.

4 THE COURT: Thank you. Anything further, Mr.

5 Falk?

6 MR. FALK: No redirect.

7 THE COURT: Thank you, sir. You can step down.

8 THE WITNESS: Thank you.

9 [Whereupon, the witness is excused and exits the
10 witness stand]

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Jalann Williams v State of S.C.
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1 MR. FALK: We have no further witnesses.

2 THE COURT: Ms. Weidauer?

3 MS. WEIDAUER: And at this time the State would
4 just like to infer directed verdict on allegations
5 1(c), (d) and 3 because there was no testimony presented
6 on those allegations today. That's 1(c), (d), and
7 allegation number 3.

8 THE COURT REPORTER: Repeat the numbers again
9 please?

10 MS. WEIDAUER: 1(c), 1(d), and number 3.

11 THE COURT: Do you want to be heard on that Mr.
12 Falk?

13 MR. FALK: No, Your Honor --

14 THE COURT: I'm sorry?

15 MR. FALK: I was satisfied with what I thought his
16 answers were going to be to that.

17 THE COURT: Okay.

18 [Whereupon, the Court reviews documents]

19 THE COURT: Okay. So the petition is denied as to
20 those three issues. Do y'all want to be heard on --
21 well, first of all any other witnesses on the part of the
22 Applicant?

23 MR. FALK: No.

24 THE COURT: And from the State?

25 MS. WEIDAUER: No witnesses from the State, Your

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1 Honor.

2 THE COURT: Anything else that y'all want to tell
3 me.

4 MR. FALK: Your Honor, I have a copy of this case
5 that I'd like to hand it up to you.

6 [Whereupon, Mr. Falk proffers documents to the
7 Court]

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CLOSING ARGUMENTS

BY MR. FALK:

This is what I know about this issue is that I recently filed a Johnson petition in a PCR case. And I was not relieved from the case, and the Court asked me to brief this issue.

And I do think this is an important issue in this case because it's so inconsistent with his trial strategy in that you want to have this all or nothing type of risk as far as the murder charge would go. And then it looks clear is that the jury is troubled with that based on the length of the deliberation.

And then the request about the lesser included offense and the fact that trial counsel agreed to let the Court just say no to that answer is inconsistent with the case law in the Smith v State case. It says that when the jury comes out with a well crafted question the Court needs to make some effort to provide a meaningful answer to the jury's question.

In Smith, the facts in the Smith case was there was a question regarding sufficient provocation and the Court just recharged his original charge without trying to come up with or craft some kind of an answer that would actually be responsive to the jury's question to where it's reasonable to assume the jury was. And I think that

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1 the language something similar to the language that I
2 suggested at the bottom of his PCR application in which I
3 asked then and I think it would be totally appropriate as
4 a response that he should have said something to the
5 effect that if after considering the evidence in this
6 case you find the defendant's conduct amounted to
7 something less than murder then you must find the
8 defendant not-guilty on the murder charge.

9 Mr. Murphy certainly agreed that he thought that
10 that would be helpful. I'm happy to brief this issue
11 further but I'm sort of putting a lot of my eggs in that
12 basket.

13 THE COURT: I'm looking for the place in the
14 transcript where the judge responds to the question.

15 MR. FALK: Oh, I'm sorry. It's ---

16 MS. WEIDAUER: --- it's the bottom of page 447 of
17 the transcript. It starts at line 23 I believe is what
18 you're looking for, Your Honor.

19 [Whereupon, the Court reviews documents]

20 THE COURT: So, I mean the judge did say those are
21 the only charges that you may consider; the murder, the
22 armed robbery, and the possession of the weapon none of
23 which are lesser included of each other. And those are
24 the only charges that you may consider.

25 So, he did respond to the question; he didn't just

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1 recharge but I understand your argument that that is not
2 sufficient.

3 MR. FALK: Thank you.

4 THE COURT: Ms. Weidauer?

5 MS. WEIDAUER: Just briefly and as I mentioned
6 before if the Court requires I would like room to further
7 brief the issue that was brought up today regarding
8 criminal intent; and any other issues the Court deems
9 necessary.

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1 CLOSING ARGUMENTS

2 BY MS. WEIDAUER:

3 In total I think that Mr. Murphy testified to very
4 strategic reasons why he did things. He testified that
5 it was very honed in on that 5 to 10, 15 second timeframe
6 and that he had the jury that that was all that was
7 relevant in this case.

8 None of the things that the State were bringing in
9 were relevant. He testified that he thought a lot of the
10 things the State brought in the jury understood they were
11 reaching and that he had strategic reasons specifically
12 regarding this application for not objecting to, this is
13 allegation number one, some of that testimony by Taylor
14 McLean and some of that testimony by Charles Benton.

15 In regards to Taylor McLean he thinks thought that
16 the panic of throwing the cell phones actually could have
17 helped their case yet he said it didn't help or hurt when
18 they inquired a little further. And I would tend to
19 agree that that could help his case that this was an
20 accident. This was what they were trying to present.

21 This wasn't a cold blooded murder; it was a guy that
22 got in a fight, there was a shooting and he panicked. I
23 think that that supports their position at trial. To
24 allegation number two counsel's failure to request a
25 Jackson v Denno hearing, counsel very clearly said that

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June 23, 2022

1 he had a strategic reason for not doing that, by
2 presenting that to the judge and then flipping it on its
3 head during opening was wholly consistent with his
4 strategy and the discussions that he had with Applicant
5 and what they had agreed on on how they wished to proceed
6 in this trial.

7 As to allegation number four on the closing argument
8 we would agree with Mr. Murphy's testimony that that was
9 not enough to inflame the jurors and that failure to
10 object did not, you know wasn't enough to allow the
11 jurors to convict him of murder because there was a
12 mention of dreads and there was a mention that he wasn't
13 with his kids that day, that he was out doing this drug
14 deal.

15 And as to allegation number five regarding the
16 lesser included sentence I think Mr. Murphy testified
17 that there was a clear strategic reason at the time of
18 trial why he didn't want to do that because he knew that
19 if he allowed that lesser included to come in there was
20 almost a 100 percent chance in his mind that he was going
21 to be convicted of that lesser included.

22 There was a lot of talk about the armed robbery.
23 There was a mistrial on the armed robbery. So I think
24 any testimony regarding armed robbery is kind of
25 irrelevant here because we're just talking about the

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1 murder and the decision on whether to ask for a lesser
2 included on the murder charge. So, the State would just
3 ask that if this Court deems necessary we be allowed to
4 further brief these issues otherwise that this Court
5 dismiss and deny this application in full.

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Jalann Williams v State of S.C.
Post-Conviction Relief Hearing-Closing Arguments-Reply by Mr. Falk
June 23, 2022

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CLOSING ARGUMENT REPLY

BY MR. FALK:

Your Honor, just by way of response because I did hit this issue and I do think it's -- admittedly I'm not as concerned with some of the other issues that are raised. But I do think that if you look at Mr. Voigt's closing argument he's attacking this man's character, I mean his character and information that you know, whether Mr. Murphy thought it was relevant or not I don't know if he knows what other jurors were thinking but it clearly was attacking him if you read through his closing argument.

The fact that here's this father doing a drug deal and not hanging out with his kids that day and I think it's totally inappropriate and an attack on his character.

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1 THE COURT: Thank you. Yes, I think whether or not
2 to request a charge on lesser included is probably one of
3 the most difficult choices that you make during a trial.
4 And no matter which way you do it you're always going to
5 look back in hindsight and wonder if you made the right
6 choice.

7 If this jury had convicted him of voluntary
8 manslaughter and he got 30 years we'd still be having
9 this discussion today just the opposite that he shouldn't
10 have requested the lesser included and maybe he could
11 have gotten a not-guilty on the murder. And of course I
12 think that's also complicated by the fact that he could
13 have gotten up to 30 years on the armed robbery.

14 But I'm going to take a careful look at State v
15 Smith. I'm going to -- I've read through a lot of the
16 transcript but I'm going to take a hard look at it before
17 I give you my final answer.

18 MR. FALK: And Your Honor, my argument is not that
19 he erred in not asking for the lesser included. My point
20 was the strategy he adopted in response to the jury
21 question was inconsistent with that.

22 THE COURT: I understand. All right. Thank you.

23 MS. WEIDAUER: Thank you, Your Honor.

24 *****END OF TRANSCRIPT OF RECORD*****

25

Jalann Williams v State of S.C.
Certificate of the Court Reporter
June 23, 2022

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C E R T I F I C A T E

I, the undersigned, Joyce C. Rueger, Official Circuit Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Charleston County, South Carolina on the 23rd day of June, 2022.

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

January 19, 2023

Joyce C. Rueger, CVR-M
Court Reporter

STATE OF SOUTH CAROLINA)
 COUNTY OF CHARLESTON)
)
 JALANN WILLIAMS,)
)
 Applicant,)
 v.)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FOR THE NINTH JUDICIAL CIRCUIT

Case No.: 2020-CP-10-2706

ORDER OF DISMISSAL

FILED
 2024 JUN -7 AM 10:00
 JULIE J. ARMSTRONG
 CLERK OF COURT

This matter is before this Court by way of an application for post-conviction relief (PCR) filed by Jalann Williams (Applicant) on June 23, 2020. On June 23, 2022, an evidentiary hearing convened before the Honorable Kristi Curtis. James K. Falk, Esquire, represented Applicant, and Assistant Attorney General Samantha J. Weidauer represented Respondent. At the hearing Applicant testified on his behalf and called as a witness trial counsel Christopher Murphy, Esquire. Respondent did not call any witnesses. After reviewing the records and evidence, this Court finds Applicant failed to meet his burden and denies and dismisses this application with prejudice.

FACTUAL AND PROCEDURAL HISTORY

Applicant is currently confined in the South Carolina Department of Corrections serving an aggregate thirty-year sentence. In June 2013, the Charleston County Grand Jury indicted Applicant for murder (2013-GS-10-2839), armed robbery, and possession of a weapon during a violent crime (2013-GS-10-2840). On January 5-8, 2015, Applicant proceeded to a jury trial before the Honorable R. Lawton McIntosh. Christopher Murphy, Esquire, represented Applicant. Assistant Solicitors Greg Voigt and David Osborne prosecuted the case. The jury convicted Applicant of murder and the weapon charge but did not reach a verdict on the armed robbery

charge.¹ Judge McIntosh sentenced Applicant to concurrent terms of thirty years for murder and five years for the weapon charge.

Applicant filed a timely notice of appeal. Chief Appellate Defender Robert Dudek filed a brief arguing the trial court erred in refusing to charge self-defense. The Court of Appeals affirmed on the merits. State v. Williams, Op. No. 2017-UP-015 (S.C. Ct. App. filed 1/11/17). Applicant filed a petition for rehearing, which was denied.

Applicant filed a petition for writ of certiorari in the South Carolina Supreme Court, which was granted. Following briefing, the Supreme Court issued a published opinion affirming and finding Applicant was not entitled to the self-defense charge because he was not without fault in bringing on the difficulty. State v. Williams, 427 S.C. 246, 830 S.E.2d 904 (2019). Applicant filed a petition for rehearing, which was denied. The remitter was sent August 15, 2019.

SUMMARY OF TRIAL

On January 30, 2013, officers from the North Charleston Police Department responded to a shooting. Upon arrival, officers located Akeem Ladson (“Victim”) slumped over in a Ford Explorer; he was pronounced dead. Applicant’s fingerprint was recovered from the Ford Explorer. Detectives learned a female had provided Applicant and a co-defendant transportation from the crime scene and contacted her. This witness advised officers as to where the men could be found. Applicant, the co-defendant, and a witness were interviewed by law enforcement. Applicant was advised of his rights in writing and signed a waiver of his rights. During the interview, Applicant confessed to shooting Victim twice during a drug deal; the confession was recorded on audio and video.

¹ Judge McIntosh declared a mistrial on the armed robbery charge.

Applicant initially proceeded on a theory of manslaughter. (R. 19-21). Applicant testified in his defense and acknowledged being the shooter. However, he claimed Victim had sold him bad drugs, they got into an altercation, Victim began choking him, and he shot Victim twice in response. (R. 228-48). Applicant testified that he panicked and hid the gun. (R. 248-49). At the conclusion of trial Applicant request a charge on self-defense, which the Court declined. (R. 290-92, 295-96). Although the Court was willing to charge voluntary manslaughter, Applicant relayed that he did not want the Court to charge the lesser included offense of voluntary manslaughter. (R. 298). The Court stated, “Your attorney advises me that you do not wish for me to charge the jury on voluntary manslaughter.” Applicant replied, “Yes, sir.” The Court then advised him of the sentencing range for both murder and voluntary manslaughter and asked whether trial counsel had explained the difference; Applicant replied, “Yes, sir.” The Court then asked if Applicant was freely and voluntarily asking it not to charge voluntary manslaughter; Applicant replied, “Yes, sir.” (R. 300-01). The Court did not charge voluntary manslaughter, and the jury convicted Applicant of murder.

CURRENT APPLICATION

On June 23, 2020, Applicant filed a PCR application raising various grounds of ineffective assistance of counsel. On March 22, 2022, Applicant filed an amended PCR application alleging the following:

Ineffective assistance of counsel:

1. Counsel failed to object to hearsay by Taylor McLean (112 ln. 4-8), Charles Benton (122 ln. 20-25), Lauren Thrower (145 ln 8-18), and Matt Hughes (194 ln. 25 through 195 ln. 1);
2. Counsel failed to request a Jackson v. Denno hearing;

3. Counsel failed to object to the solicitor's leading questions (pg. 205 ln. 14-19; pg. 276 ln. 2 through 278 ln. 17);
4. Counsel failed to object to portions of the State's closing argument that contained personal attacks against Applicant. On page 392, the solicitor implied that Applicant was being disingenuous with the jury because he cut off his dreads. On page 395, the solicitor accused Applicant of being a bad father;
5. Counsel failed to object to the Court's response to the jury's question regarding the lesser-included offense.

At the hearing, Applicant proceeded on the grounds presented in his amended application. He also proceeded on one ground from his original application—that counsel was ineffective for not requesting a charge on criminal intent. This Court will address these six grounds below. This Court further finds Applicant did not present evidence or testimony to support any other ground.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the records before it, including the Charleston County Clerk of Court records of the underlying convictions, Applicant's records from the South Carolina Department of Corrections, the trial transcript, Applicant's appellate records, and the records from 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

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 v. Washington, 466 U.S. 668 (1984).

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.

Failed to object to hearsay – Taylor McLean

Applicant first contends counsel was ineffective for failing to object to hearsay during Taylor McLean’s testimony. This Court finds Applicant did not prove counsel was ineffective in this regard.

At trial, Taylor McLean testified that Applicant was her ex-boyfriend and the father of her two children. (R. 61-62). She stated Robert Mitchell and “Lauren” picked Applicant up from her

home sometime on January 30, 2013, and later returned when the sun was setting. (R. 62-64). She stated Applicant asked her to drive them to Mitchell's house. (R. 65). Thereafter, the following exchanged occurred:

Q: Did Mitch and Lauren talk in the backseat?

A: Yes, sir.

Q: What did they say?

A: Lauren was talking about throwing away phones and Mitch was—I can't remember what he said but he was just talking.

Q: Talking about getting rid of cell phones?

A: Well, Lauren was. Mitch was kind of looking around everywhere because there were sirens.

(Tr. 112). At the PCR hearing, counsel testified he did not object to this testimony due to trial strategy. Specifically, he stated his initial strategy was to argue manslaughter, but they changed their strategy to self-defense midtrial—which he regretted. He stated that because Applicant did not deny being the shooter, he did not consider McLean's testimony harmful. He explained, “[A]fter shooting someone it's reasonable to want to try and hide evidence or get scared or do things that are foolish. I wanted to focus solely on those 10 to 15 seconds when [Applicant] was in the car [with the victim].” (PCR 18). Counsel further explained he did not typically object to things *only* because they were objectionable because jurors get annoyed with it. Here, he was not concerned with the testimony because it was outside the critical timeframe, and he did not want the jury to believe he was trying to hide something.

This Court finds counsel's testimony on this issue credible. This Court further finds counsel articulated a valid strategy in not objecting to the foregoing in that he did not believe it

was harmful to his initial strategy of manslaughter, and he did not want the jury to believe he was hiding something. See Smith v. State, 386 S.C. 562, 689 S.E.2d 629 (2010) (providing that when counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel). Counsel has been engaged in the practice of criminal law in this State for twenty-five years and has significant experience trying cases before juries and evaluating trial tactics and strategy. This Court agrees with counsel's assessment that the foregoing was not harmful to his initial manslaughter defense and finds Applicant failed to establish deficiency.

Moreover, Applicant did not prove prejudice. Notably, the foregoing hearsay—"Lauren was talking about throwing away phones and Mitch was—I can't remember what he said but he was just talking"—in and of itself did not implicate Applicant as the shooter. More critically, Applicant himself admitted to being the shooter as part of his initial strategy of voluntary manslaughter. (R. 19-21). In fact, Applicant admitted on the stand to panicking and hiding the gun. (R. 248-49). In light of the foregoing, it is not reasonably likely the outcome would have been different had counsel objected and had the foregoing hearsay testimony excluded. Thus, Applicant failed to prove deficiency and prejudice, and this claim is denied.

Failed to object to hearsay – Charles Benton

Applicant next asserts counsel was ineffective for failing to object to hearsay testimony of Detective Charles Benton. Applicant did not prove counsel was ineffective in this regard.

During trial, Detective Benson testified that as part of his investigation, he went to an address associated with Applicant and spoke to McLean. He testified, "She advised us initially that she had not seen [Applicant] since 2 p.m. the previous day, which would have been the day of the homicide.

She said that she had dropped him off at 2 p.m. at the Piggly Wiggly As we were preparing to leave that residence, a neighbor informed us that they had seen Mr. Williams” (Tr. 122).

Counsel testified he did not object to this testimony due to trial strategy. He indicated that with Applicant headed off to rob a drug dealer, “the fact that somebody was incorrect about where he was or what he was doing isn’t surprising.” Counsel further testified there was not a need to object as “[a]gain, it is information that really doesn’t help or hurt us.”

This Court finds Counsel’s testimony on this issue credible. This Court further finds counsel articulated a valid strategy in that the foregoing testimony did not really help or hurt their case—especially where Applicant acknowledged being the shooter. Thus, Applicant did not prove deficiency. Likewise, it is not reasonably likely the outcome would be different had counsel objected to and had the foregoing hearsay excluded because it was not material to Applicant’s guilt or innocence. Thus, Applicant did not establish any resulting prejudice, and this claim is denied.

Failed to object to hearsay – Lauren Thrower

Applicant next asserts counsel was ineffective for failing to object to hearsay testimony of Lauren Thrower. Applicant did not prove counsel was ineffective in this regard.

At trial, Thrower testified she was with Applicant and Robert Mitchell the day of the shooting. She stated Mitchell spoke to Victim that morning and arranged to purchase marijuana from him. She and Mitchell walked to Applicant’s home, and the three of them walked to a park to wait for Victim. (R. 85-89). According to Thrower, Applicant and Mitchell discussed “jacking” Victim. (R. 89). She recalled Applicant and Mitchell got into the car with Victim; thereafter she looked up and saw them running. Thrower stated she did not hear any gunshots and although she could see Victim’s car, she could not see Applicant or Mitchell inside the car. (R. 90-91). She stated they went back to her

apartment to divide the marijuana. The following exchange then occurred:

Q. Do you know where the marijuana came from?

A. I'm assuming—I know it came from [Victim] because that's who they were getting it from.

Q. Did Mitch or the defendant have marijuana prior to meeting with [Victim]?

A. No, sir.

Q. I kind of breezed over it pretty quickly. You got to your apartment by [McLean]. [McLean] drove all three of you there?

A. Yes, sir.

Q. After they split the marijuana and had the conversation, what happened then?

A. [Applicant] ended up leaving maybe 45 minutes to an hour later. And [McLean] came back and got him and took him to wherever he was at.

(R. 94; Tr. 145).²

No testimony was presented on this allegation at the hearing; thus, this Court granted Respondent's motion for a directed verdict. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985) (holding a PCR applicant bears the burden of proving his allegations).³ Thus, this claim is dismissed with prejudice.

Failed to object to hearsay - Matt Hughes

Applicant next asserts counsel was ineffective for failing to object to hearsay testimony of

² This is the portion of the transcript referenced in Applicant's amended application.

³ Alternately, this Court finds the foregoing does not contain objectionable hearsay, and Applicant did not prove counsel was deficient for not objecting. Likewise, the foregoing was not material to Applicant's guilt or innocence—especially when Applicant admitted as part of his trial strategy that he was purchasing marijuana from Victim when the shooting occurred. Because it is not reasonably likely the outcome would have been different had counsel objected, Applicant failed to prove deficiency or prejudice, and this claim is denied.

Sergeant Matt Hughes. At trial, Sergeant Hughes testified about his investigation. During his testimony, the State asked, “Now you said you had the occasion to speak to the Defendant?” Sergeant Hughes replied, “I did.” (R. 1432-43; Tr. 194-95).⁴

No testimony was presented on this allegation at the hearing; thus, this Court granted Respondent’s motion for a directed verdict. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985) (holding a PCR applicant bears the burden of proving his allegations).⁵ Thus, this claim is dismissed with prejudice.

Failed to request a Jackson v. Denno hearing

Applicant contends counsel was ineffective for failing to request a Jackson v. Denno hearing. At the PCR hearing, counsel testified he did not request a Denno hearing because “we admitted to shooting him.” He further stated “Our whole point was yeah, we shot him. There wasn’t any question about who pulled the trigger, who had the gun. And so I wouldn’t have done a Jackson v. Denno hearing.”

This Court finds counsel’s foregoing testimony credible, and counsel articulated a valid reason for not requesting a Denno hearing. Specifically, Applicant never denied shooting Victim but rather initially proceeded on a theory of voluntary manslaughter.⁶ Counsel credibly testified he discussed the strategy with Applicant, and counsel articulated valid reasons for the strategy. Thus, Applicant did not prove deficiency.

Likewise, it is not reasonably likely Applicant would have been successful in having the

⁴ This is the portion of the transcript Applicant cites to in his amended application.

⁵ Alternately, this Court finds the foregoing does not contain objectionable hearsay, and Applicant did not prove counsel was deficient for not objecting on that basis. Likewise, it is not reasonably likely the outcome would have been different had counsel objected based on hearsay, and Applicant failed to prove resulting prejudice.

⁶ Notably, it was ultimately Applicant’s decision for the Court to not charge voluntary manslaughter.

statement suppressed. Specifically, Sergeant Hughes and Detective Jerome Desheers both testified Applicant was advised of his Miranda rights, and the State entered a Miranda advice of rights form signed by Applicant. (R. 143, 167). Applicant did not put forth any evidence suggesting his statement was not knowing or voluntary and thus did not show any likelihood of success at a Denno hearing. Applicant thus failed to show any resulting prejudice, and this claim is denied.

Failed to object to leading

Applicant next asserts that Counsel was ineffective for failing to object to leading. Specifically, he contends counsel should have objected to the following during Sergeant Hughes' direct examination:

Q. So is it accurate to say through your investigation, through the witness testimony, through the evidence that you believe the defendant, Mitchell and Lauren went through this hole in the fence and came back after the shooting through this hole in the fence—

A: —yes, sir.

(R. 153; Tr. 205). He further contends counsel should have objected to leading during the following redirect examination of Robert Mitchell:

Q. You knew it was a very good possibility didn't you?

A. Yeah.

Q. And you knew he brought a gun that would let him do it right?

A. Right.

Q. And you knew that after he did it you'd still had the money and the weed right?

A. Right.

Q. So you come out ahead right?

A. Right.

Q. Jalann gets some weed and he comes out ahead right?

A. Right.

Q. The only person who doesn't come out ahead is [Victim] right?

A. Right.

Q. And you knew that going to meet [Victim] because y'all talked about it right?

A. Right.

Q. I mean very clearly you knew exactly what he meant to do right?

A. Right.

Q. And you were okay with it.

A. Right.

Q. Okay. And this wasn't a fight. This was [Victim] trying to protect himself from that gun [indicates] isn't it?

A. I mean like I told you they was struggling over the gun. I seen the dude come across the seat. I don't know when the gun was pulled or nothing.

Q. Where was [Victim] going to run? He wasn't going anywhere was he?

A. No.

Q. You keep the money?

A. I gave him his money back.

Q. Right. You kept what you came with?

A. Right.

Q. And you got the weed?

A. Right.

Q. And that was your plan the whole time, yes?

A. Right.

Q. And that was his plan the whole time, yes?

The Court Reporter: Is that yes?

A. Yes, sir, yes ma'am.

(R. 224-25; Tr. 276-77).⁷

Applicant did not present any testimony or further argument on this issue at the PCR hearing, and this Court granted Respondent's motion for a directed verdict.⁸ Thus, this claim is dismissed with prejudice.

Failed to object to the State's closing argument

⁷ Although the amended application references testimony through page 278 of the transcript, this is the end of Mitchells' testimony.

⁸ Alternately, this Court finds counsel articulated a valid reason in that he explained he does not object to everything during trial because jurors get annoyed with excessive objections. This Court finds counsel was not deficient for failing to object. This Court further finds it is not reasonably likely the outcome would have been different had counsel objected based on leading. Sergeant Hughes' testimony above—pointing to a hole in a fence that he believed Applicant, Mitchell, and Lauren went through—was cumulative to other testimony and not material to Applicant's guilt or innocence, especially here where Applicant acknowledged being in the car with Victim and being the shooter. Although some of Mithcell's foregoing testimony *was* material to Applicant's guilt, it was cumulative to his direct testimony that Applicant had a gun and planned to rob Victim. (R. 198-203). Thus, it is not reasonably likely the outcome would have been different had counsel based on leading, Applicant failed to prove deficiency or prejudice, and this claim is denied.

Applicant contends counsel was ineffective for not objecting to the following statements in the State's closing argument:

And then what does Jalann, what does the kid with the dreads, the kid with dreads for some reason decided to change his haircut for you, the kid with dreads in the backseat says give it up.

(R. 390).⁹

Well on this day the only time those kids got to really see their parents that we have evidence of, evidence, testimony is when they drive dad away when he murdered somebody. When he puts them in the car seat and has Taylor McLean drive him and get him out of there and she starts to freak out because she knows something has gone wrong and she hears the sirens.

(R. 395). Applicant specifically contends counsel should have objected because the foregoing implied he was being disingenuous with the jury because he cut off his dreads and accused him of being a bad father. This Court finds Applicant did not prove counsel was ineffective in this regard.

“To find whether the assistant solicitor's comments in closing argument violated the defendant's due process rights, we must determine whether the comments were improper, and if so, whether the improper argument so unfairly prejudiced the defendant as to deny him a fair trial.” Fortune v. State, 428 S.C. 545, 549, 837 S.E.2d 37, 39 (2019). In determining whether an improper comment prejudiced a defendant, “[t]he relevant question is whether the prosecutors' comments so infected the trial with unfairness as to make the resulting conviction a denial of due process.” Darden v. Wainwright, 477 U.S. 168, 181 (1986).

At the PCR hearing, counsel testified he did not have any sense that the statements inflamed the jury. Counsel testified “Again, I don't think that had anything to do with the case. I don't think

⁹ Although Applicant cites to 392 in his amended application, that page does not discuss Applicant's haircut or children. This Court finds the reference to 392 is a scrivener's error.

there was any type of inflaming or angering the jury. ... And I like the State saying stuff like that because it shows they are reaching. They're not focusing on the facts. They're focusing on stuff that has nothing to do with the case.”

This Court finds counsel’s testimony credible, and counsel articulated a valid reason for not objecting in that he did not believe the statements were inflammatory. This Court further finds the foregoing statements were reasonable inferences from the evidence and not objectionable, and Applicant thus failed to prove deficiency. Applicant did not prove resulting prejudice by showing it was reasonably likely the outcome would have been different had counsel objected. See Darden, 477 U.S. 168 (finding prosecutor’s improper comments—which included statements such as “He shouldn’t be out of his cell unless he has a leash on him” and “I wish that I could see him sitting here with no face, blown away by a shotgun”—did not “so infect the trial with unfairness as to make the resulting conviction a denial of due process”). Thus, this claim is denied.

Failed to object to the Court’s response to the jury question

Applicant alleges that Counsel was ineffective for failing to object to the Court’s response following a jury question. During deliberations, the jury sent the following question (among others) to the presiding judge: “Are there any lesser included offenses charged?”. In response, the judge stated, “I’m going to tell them that none of the charges that I have given them are lesser included of one another.” Counsel replied, “That’s correct.” The Court then made the charge without objection.

At the PCR hearing, counsel indicated he had valid strategic reasons for going “all or nothing,” and he felt good about the “all or nothing” strategy at the close of the State’s case. He stated he had adequate time to discuss the strategy with Applicant and “he liked what I was saying.” Applicant agreed the “all or nothing” strategy was discussed with him. For these reasons, Applicant did not

request a lesser-included offense.¹⁰ Thus, counsel found the judge's statement that "none of the charges that I have given them are lesser included of one another" was accurate and did not object.

This Court finds Counsel articulated strategic reason for not objecting. Further, this Court finds that due to Applicant's decision to waive the lesser-included offense, there was nothing objectionable in the court's response to the jury. Applicant has not shown deficiency or resulting prejudice, and this claim is denied.

Failed to object to recharge

Applicant contends counsel was ineffective for not charging criminal intent during the jury recharge. This Court finds Applicant did not prove counsel was ineffective in this regard.

At the PCR hearing, Applicant stated, "I believe that you have to charge criminal intent in a criminal case because in any crime not charging the jury criminal intent is like giving them the whole thing that you don't understand what you're doing." Trial counsel testified he didn't object because he felt the intent charge "dealt with that [it] said he had to have malice aforethought and the intent, the depraved heart language."

Initially, this Court notes the trial court *did* charge the jury on criminal intent. (R. 447-48). Although the Court did not specifically recharge criminal intent, the recharge was responsive to the question asked by the jury, and it charged the jury on malice as a necessary element of murder. (R. 366). This Court finds Applicant did not prove deficiency or prejudice, and this claim is denied.

¹⁰ Applicant waived a charge on the lesser-included offense of voluntary manslaughter on the record. (R. 300-01).

CONCLUSION

Based on the foregoing, this Court finds 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 in seeking review of the denial of PCR. Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). If Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on applicant's behalf. Rule 71.1(g), SCRCP. Attention is directed to Rule 243, SCACR, for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED THIS 29 day of May, 2024.



KRISTI F. CURTIS
Presiding Judge
Ninth Judicial Circuit



, South Carolina

WITNESSES

North Charleston Police Department

AGENCY CASE NUMBER

2013003512

ARREST WARRANT NUMBER

2013A1010200536

DATE OF ARREST

February 1, 2013

ACTION OF GRAND JURV

TRIE RII

Jack Butler
Foreperson of Grand Jury
Date: JUN 4 2013

VERDICT

GUILTY

[Signature]
Foreperson of Petit Jury
Date: 1/8/15

INDICT

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

June Term 2013

THE STATE

vs.

JALANN LEE WILLIAMS

DOB: 1992

B/M

Indictment for

Possession of a Firearm During the
Commission of a Violent Crime

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)


INDICTMENT

At a Court of General Sessions, convened on June 3, 2013 the Grand Jurors of Charleston County present upon their oath:

Possession of a Firearm During the Commission of a Violent Crime

That in Charleston County, South Carolina, on or about January 30, 2013, the Defendant, JALANN LEE WILLIAMS, did possess a .22 caliber Rohm revolver, serial number 79645 or visibly display what appeared to be a knife during the commission, or attempted commission, of Murder, a violent crime. This is in violation of 16-23-490 of the South Carolina Code of Laws, (1976) as amended.

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



GREGORY VOIGT
ASSISTANT SOLICITOR

WITNESSES

North Charleston Police Department

AGENCY CASE NUMBER

2013003512

ARREST WARRANT NUMBER

2013A1010200535

DATE OF ARREST

February 1, 2013

ACTION OF GRAND JURY

TRUE BILL

South Butler
Foreperson of Grand Jury
Date: JUN 4 2013

VERDICT

GUILTY

D. J. [Signature]
Foreperson of Petit Jury
Date: 1/8/15

INDICT

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

June Term 2013

THE STATE

vs.

JALANN LEE WILLIAMS
DOB: 1992 [REDACTED]
B/M

Indictment for

Murder

THE STATE OF SOUTH CAROLINA
In The Supreme Court

The State, Respondent,

v.

Jalann Lee Williams, Petitioner.

Appellate Case No. 2017-000727

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

Appeal from Charleston County
R. Lawton McIntosh, Circuit Court Judge

Opinion No. 27895
Heard October 18, 2018 – Filed June 19, 2019

AFFIRMED

Chief Appellate Defender Robert Michael Dudek, of
Columbia, for Petitioner.

Attorney General Alan McCrory Wilson, Deputy Attorney
General Donald J. Zelenka, Senior Assistant Deputy
Attorney General Melody J. Brown, Assistant Attorney
General Sherrie Butterbaugh, all of Columbia; and
Solicitor Scarlett Anne Wilson, of Charleston, for
Respondent.

JUSTICE FEW: In this appeal from a conviction for murder, we hold the trial court properly refused to charge the law of self-defense. The defendant shot and killed

And

the victim with an unlawfully-possessed pistol the defendant intentionally brought to an illegal drug transaction. We find the defendant was at fault in bringing on the violence. We affirm.

Robert Mitchell made arrangements with Akim Ladson to meet for the purpose of purchasing from Ladson a particularly high-quality variety of marijuana known as "loud."¹ Mitchell then went to the mobile home where he knew Jalann Williams to be living to recruit Williams as a participant in the drug deal. The reasons Mitchell recruited Williams—and Williams agreed to go—are disputed. Mitchell testified Williams told him he was going to the drug deal to rob Ladson because Williams needed money to pay his bail bondsman on other charges. Williams denied any intent to rob Ladson. He testified he loaned Mitchell the money to buy "loud," but the price seemed low, so he went to the drug deal to be sure Mitchell was buying the proper marijuana. His apparent purpose was to ensure his loan would be repaid. Referring to the price, he testified, "I didn't really trust that but I was like, 'That's him buying and as long as I get my money back by the end of the week I was all right.'" Williams further explained his purpose, "I said, 'well, I'm going to go along with you because I don't believe nobody got no price [sic] for that weed.'" He later testified, "Out of the whole my main concern was just to get my money back at the end of the week because I needed the money back."

These disputed facts, however, are not important to our analysis. What is important to our analysis is the undisputed fact that when Williams agreed to participate in the drug deal, he made a conscious choice to take his loaded pistol with him.

Williams and Mitchell waited for Ladson in the same mobile home park where Williams was living. Ladson arrived in a car driven by his girlfriend, Alayah Hamlin. Ladson was in the front passenger seat. Williams and Mitchell entered the backseats of Hamlin's car and began the drug deal. Ladson handed Mitchell the marijuana, and Mitchell began to inspect and weigh it on a portable scale Williams brought with him. Viewing the evidence in the light most favorable to Williams, Ladson attacked Williams, Williams feared for his safety, and Williams had no opportunity to get away. Williams then shot and killed Ladson.

¹ "Loud" is defined in the Urban Dictionary as, "A slang term for marijuana of high quality," and, "Bomb-ass weed." See *Loud*, Urban Dictionary, <https://www.urbandictionary.com/define.php?term=loud> (last visited June 14, 2019).

The State charged Williams with murder, armed robbery, and possession of a firearm during the commission of a violent crime. At trial, Williams requested the trial court charge the jury the law of self-defense as to the murder charge. The trial court refused. The jury convicted Williams of murder and possession of a firearm during the commission of a violent crime. The jury was unable to reach a verdict on the charge that Williams robbed Ladson. The trial court sentenced Williams to thirty years in prison.

Williams appealed, arguing the trial court erred in refusing to charge the law of self-defense. The court of appeals affirmed. *State v. Williams*, Op. No. 2017-UP-015 (S.C. Ct. App. filed Jan. 11, 2017). We granted Williams' petition for a writ of certiorari to review the court of appeals' decision.

The trial court must charge the jury on the law applicable to the jury's deliberations. *See State v. Marin*, 415 S.C. 475, 482, 783 S.E.2d 808, 812 (2016) ("The trial court is required to charge only the current and correct law of South Carolina. The law to be charged must be determined from the evidence presented at trial.") (quotations and citations omitted); *Winkler v. State*, 418 S.C. 643, 655, 795 S.E.2d 686, 693 (2016) (holding a trial court should not answer a jury's question if the answer is "not applicable to the jury's deliberations") (citation omitted). In some cases, the jury must be charged that criminal liability for homicide may be excused under the doctrine of self-defense. The law requires this self-defense charge, however, only when there is evidence in the record that supports the right of the defendant to use deadly force. To enable trial courts to determine when the evidence does support that right, and thus when the law of self-defense must be charged to the jury, this Court has listed four elements that must be present. *State v. Dickey*, 394 S.C. 491, 499, 716 S.E.2d 97, 101 (2011). If there is no evidence to support the existence of any one element, the trial court must not charge self-defense to the jury. Whether there is any evidence to support each element is a question of law.

This structure places the burden on the defendant to produce some evidence to support the existence of each element. *See Stone v. State*, 294 S.C. 286, 287, 363 S.E.2d 903, 904 (1988) (stating "a defendant is entitled to a jury instruction on self-defense if he has produced evidence tending to show the four elements of that defense"); *State v. Bellamy*, 293 S.C. 103, 105, 359 S.E.2d 63, 64-65 (1987) (stating the defendant "must . . . produce evidence" to support the charge of self-defense), *overruled on other grounds by State v. Torrence*, 305 S.C. 45, 406 S.E.2d 315 (1991). While the State must present evidence to support the existence of each element of the crime charged, the State is under no burden to produce evidence to refute the existence of self-defense. However, if there is some evidence to support

each element of self-defense—whether found in the State's presentation of evidence or produced by the defendant—it becomes the State's burden to persuade the jury beyond a reasonable doubt that at least one element of the defense does not exist. *See State v. Wiggins*, 330 S.C. 538, 544, 500 S.E.2d 489, 492-93 (1998) (stating "current law requires the State to disprove self-defense, once raised by the defendant, beyond a reasonable doubt"); *Bellamy*, 293 S.C. at 105, 359 S.E.2d at 64 (finding the trial court erred in holding the defendant to the burden of persuasion (relying on *State v. Glover*, 284 S.C. 152, 326 S.E.2d 150 (1985), and *State v. Davis*, 282 S.C. 45, 317 S.E.2d 452 (1984))).

This case involves the element we have traditionally described as, "The defendant [must be] without fault in bringing on the difficulty." *Dickey*, 394 S.C. at 499, 716 S.E.2d at 101. The issue in this case is whether there was any evidence presented at trial that would support a finding Williams was "without fault."² We addressed the element in *State v. Bryant*, 336 S.C. 340, 520 S.E.2d 319 (1999). We held the defendant's actions precluded a charge on self-defense as a matter of law because he was "responsible for bringing on the difficulty." 336 S.C. at 346, 520 S.E.2d at 322. We explained, "Any act of the accused in violation of law and reasonably calculated to produce the occasion amounts to bringing on the difficulty and bars his right to assert self-defense as a[n] . . . excuse for a homicide." 336 S.C. at 345, 520 S.E.2d at 322 (citing 40 Am. Jur. 2d *Homicide* § 149 (1999)). We established in *Bryant* the principle that a defendant is not entitled to a charge of self-defense if the evidence supports only the conclusion that he acted "in violation of law" in a manner "reasonably calculated to produce [a violent] occasion." *Id.*

Under this principle from *Bryant*, the trial court properly refused to charge self-defense. Williams' act of intentionally bringing a loaded, unlawfully-possessed pistol to an illegal drug transaction was a "violation of law" that was "reasonably calculated to produce" violence. *Id.* Williams' act "bars his right to assert self-defense as a[n] . . . excuse for a homicide." *Id.*

Intentionally bringing a loaded, unlawfully-possessed pistol to an illegal marijuana transaction is "in violation of law" in three important respects. First, Williams'

² We readily acknowledge Ladson was at fault, and perhaps Mitchell and Hamlin. The question, however, is not who else might have been at fault, but whether Williams was *without* fault. In answering that question, it does not matter who else was at fault. Thus, the fact "there is evidence . . . that Ladson . . . produced the violent occasion" is not relevant. The dissent mistakenly relies on the premise that only one person can be at fault.

possession of the pistol was a violation of law. *See* S.C. Code Ann. § 16-23-20 (2015) (providing, "It is unlawful for anyone to carry about the person any handgun . . . except . . ." under circumstances not applicable in this case). Second, the possession, purchase, or sale of marijuana is a violation of state and federal law. S.C. Code Ann. § 44-53-370(a) and (c) (2018); 21 U.S.C.A. §§ 841, 844 (West 2013). Third, and most important, it is a separate violation of federal law to bring any gun to an illegal drug transaction. Subsection 18 U.S.C.A. § 924(c)(1)(A) (West 2015) provides, "any person who, during and in relation to any . . . drug trafficking crime . . . , uses or carries a firearm, or who, in furtherance of any such crime, possesses a firearm, shall, (i) be sentenced to a term of imprisonment of not less than 5 years"

In addition, intentionally bringing a loaded, unlawfully-possessed pistol to an illegal drug transaction is "calculated to produce a violent occasion." Williams' pistol was not simply a convenience for him so he could protect himself just in case violence arose. Rather, it is well-documented that the mere presence of guns at illegal drug transactions *produces* the violence. *See Harmelin v. Michigan*, 501 U.S. 957, 1003, 111 S. Ct. 2680, 2706, 115 L. Ed. 2d 836, 870 (1991) ("Studies . . . demonstrate a direct nexus between illegal drugs and crimes of violence."); *State v. Banda*, 371 S.C. 245, 253, 639 S.E.2d 36, 40 (2006) (citing, in a different context, the "indisputable nexus between drugs and guns"). Congress enacted subsection 924(c)(1)(A) for the purpose of separately criminalizing the combination of drug dealing and unlawful possession of a gun, not just the individual crimes. *See Smith v. United States*, 508 U.S. 223, 240, 113 S. Ct. 2050, 2060, 124 L. Ed. 2d 138, 155 (1993) ("When Congress enacted the current version of § 924(c)(1), it was no doubt aware that drugs and guns are a dangerous combination."). Congress recognized the causal connection between the presence of an unlawfully-possessed gun and violence in illegal drug transactions. *See Muscarello v. United States*, 524 U.S. 125, 132, 118 S. Ct. 1911, 1916, 141 L. Ed. 2d 111, 118 (1998) ("This Court has described [subsection 924(c)(1)'s] basic purpose broadly, as an effort to combat the 'dangerous combination' of 'drugs and guns.'" (citing *Smith*, 508 U.S. at 240, 113 S. Ct. at 2060, 124 L. Ed. 2d at 155)).

We have held—in other circumstances—a defendant may lawfully arm himself in self-defense even when in unlawful possession of a firearm. *See, e.g., State v. Burriss*, 334 S.C. 256, 513 S.E.2d 104 (1999). In *Burriss*, several men attacked and attempted to rob the defendant. 334 S.C. at 258, 513 S.E.2d at 106. The defendant pulled a gun and intentionally fired it into the ground. The shot caused a short pause in the fight. When the fight resumed, the gun fired again—the defendant claimed accidentally—killing one of the men who attacked him. 334 S.C. at 258-59, 513

S.E.2d at 106. We reversed the trial court's refusal to charge the law of accident, 334 S.C. at 264, 513 S.E.2d at 109, stating "a person can be acting lawfully, even if he is in unlawful possession of a weapon, if he was entitled to arm himself in self-defense at the time of the shooting," 334 S.C. at 262, 513 S.E.2d at 108; *see also State v. Slater*, 373 S.C. 66, 71, 644 S.E.2d 50, 53 (2007) (stating "the [*Burriss* accident] analysis is equally applicable in determining if a defendant in unlawful possession of a weapon is entitled to a charge on self-defense").

The defendant in *Burriss* was not doing anything "in violation of law" except unlawfully possessing a pistol. As the *Burriss* majority explained, the defendant simply "went to visit a friend at [the friend's] apartment" and "was waiting for his friend to come out of the apartment" when the men attacked him. 334 S.C. at 258, 513 S.E.2d at 106. In this case, Williams was doing something "in violation of law" in addition to merely unlawfully possessing a pistol. He was participating in an illegal drug deal for which he illegally armed himself in violation of 18 U.S.C.A. § 924(c)(1)(A).

For this reason, Williams' case is more like *Slater*. In that case, Lord Byron Slater "noticed that [a] disturbance was taking place in an adjacent parking lot. Carrying his gun with him, [Lord Byron] went to the adjacent parking lot to investigate." 373 S.C. at 68, 644 S.E.2d at 51. The "disturbance" turned out to be a robbery, and when Lord Byron "surprised one of the attackers . . . , the man turned around and pointed a gun." *Id.* Lord Byron shot and killed him. *Id.* At Lord Byron's trial for "murder and possession of a firearm during the commission of a violent crime," 373 S.C. at 67-68, 644 S.E.2d at 51, the trial court refused to charge self-defense, 373 S.C. at 69, 644 S.E.2d at 52. The jury convicted Lord Byron of both charges. *Id.*

On appeal, relying on *Burriss*, Lord Byron argued the trial court erred in refusing the self-defense charge. 373 S.C. at 69-70, 644 S.E.2d at 52. We affirmed the trial court,³ stating, Lord Byron "fails to meet the first requirement for the self-defense charge: specifically, [Lord Byron] was not without fault in bringing on the difficulty." 373 S.C. at 70, 644 S.E.2d at 52. We cited the passage above from *Bryant*, and observed that Lord Byron "approached an altercation that was already

³ The court of appeals reversed the trial court in a split decision. *State v. Slater*, 360 S.C. 487, 493, 602 S.E.2d 90, 94 (Ct. App. 2004) (Hearn, C.J., dissenting), *rev'd*, 373 S.C. 66, 644 S.E.2d 50 (2007). On the State's petition for a writ of certiorari, we reversed the court of appeals and reinstated the jury verdict. 373 S.C. at 71, 644 S.E.2d at 53.

underway with a loaded weapon by his side," which we found was "reasonably calculated to bring the difficulty." 373 S.C. at 70, 644 S.E.2d at 52.

Slater is not identical to Williams' case. In fact, we stated Lord Byron "carried the cocked weapon, in open view, into an already violent attack." 373 S.C. at 71, 644 S.E.2d at 53. Here—although Williams made his gun possession known to Mitchell—the evidence indicates Williams concealed his pistol from Ladson until he was attacked. However, *Slater* is important to our analysis in this case because Lord Byron armed himself for the purpose of entering into a situation he knew to be rife with violence—just like Williams did here.

Slater is also important because we explained *Burriss*. Referring to *Burriss*, we "reject[ed] the position that the unlawful possession of a weapon could never constitute an unlawful activity which would preclude the assertion of self-defense." 373 S.C. at 70, 644 S.E.2d at 52-53. Further explaining *Burriss*, we stated, "Clarifying an ambiguity in this Court's prior case law, we noted [in *Burriss*] that where the defendant's unlawful possession of a weapon is *merely incidental* to the defendant's lawful act of arming himself in self-defense, the unlawful possession of the weapon will not prevent the use of an accident defense." 373 S.C. at 71, 644 S.E.2d at 53 (emphasis added) (citing *Burriss*, 334 S.C. at 262 n.5, 513 S.E.2d at 108 n.5).

Where the unlawful possession of a weapon is not "merely incidental," as we found it was not in *Slater*, the unlawful possession of a weapon does foreclose a self-defense charge. Like Lord Byron, Williams illegally armed himself before he chose to enter a situation he knew to be unlawful, and which he knew was likely to be violent. Williams' actions proximately caused the difficulty⁴ as a matter of established law because his act of taking a loaded, unlawfully-possessed pistol into an illegal drug transaction was not "merely incidental" to the act of arming himself in self-defense. *Bryant*, 336 S.C. at 345, 520 S.E.2d at 322; *Slater*, 373 S.C. at 71, 644 S.E.2d at 53; *see also State v. Smith*, 391 S.C. 408, 415, 706 S.E.2d 12, 16 (2011) (holding, "Because Smith was acting unlawfully" in taking a loaded, unlawfully-carried pistol into an illegal drug transaction, "he was not entitled to an accident charge").

⁴ In *Slater*, we said the question was whether "the weapon is the proximate cause of the killing." 373 S.C. at 71, 644 S.E.2d at 53. We should have said the question is whether it is the proximate cause of the "difficulty" or "occasion" that led to the killing.

We conclude with a quote from now Chief Judge Lockemy of the court of appeals in *State v. Smith*, 406 S.C. 547, 752 S.E.2d 795 (Ct. App. 2013). Concurring in the majority's decision to affirm the trial court's refusal to grant the defendant a directed verdict on the basis of self-defense, Judge Lockemy argued that bringing a loaded, unlawfully-possessed pistol to an illegal drug deal forecloses self-defense,

At the time of the shooting, Smith was engaged in the crime of selling illegal drugs. This activity, in addition to damaging the lives of untold numbers of people, also results in shootings and deaths on a very frequent basis. Smith's decision to bring a loaded weapon to the drug deal clearly shows his knowledge of the danger of the situation. His criminal conduct brought on the necessity to take the life of another. Smith created a situation fraught with peril. He cannot be excused for the violence that logically and tragically often occurs when engaging in such conduct, nor can he claim he did not anticipate the high probability of such violence.

406 S.C. at 557, 752 S.E.2d at 800, (Lockemy, J., concurring).

In some future case involving facts different from these, perhaps the defendant will convince the trial court he has produced evidence he was not at fault in bringing on the violent occasion. In this case, however, there is no evidence on which a jury may find Williams' unlawful possession of a loaded pistol during an illegal drug transaction was "merely incidental" to arming himself in self-defense. Rather—as a matter of law—Williams' act of taking the pistol to the drug deal was a violation of law that produced the violent occasion. *Bryant*, 336 S.C. at 345, 520 S.E.2d at 322. The trial court correctly refused the charge.

AFFIRMED.

KITTREDGE and HEARN, JJ., concur. JAMES, J., dissenting in a separate opinion in which BEATTY, C.J., concurs.

JUSTICE JAMES: I dissent. Presumably, the majority would not balk at the giving of a self-defense instruction if Ladson and Williams (with a gun illegally concealed in his back pocket) had not been engaged in a drug deal but had instead been arguing about which radio station to listen to. I fully agree illegal drug transactions are rife with violence. They are an absolute blight on civilized society. However, I believe our self-defense law already adequately sets forth the parameters of how judges and juries are to consider the question of whether a drug-dealing or drug-purchasing defendant was or was not "without fault in bringing on the difficulty."

The majority cites this Court's holding in *State v. Bryant* that a defendant's act "in violation of law and reasonably calculated to produce the occasion amounts to bringing on the difficulty and bars his right to assert self-defense." 336 S.C. 340, 345, 520 S.E.2d 319, 322 (1999). As does the majority, I emphasize the portion of our holding in *Bryant* that self-defense is barred if the defendant's act was reasonably calculated to produce the violent occasion. Here, even the majority acknowledges the evidence indicates the gun was in Williams' back pocket the entire time before Ladson climbed over the front seat and then got on top of and began to choke Williams, who was in the back seat. I respectfully reject the majority's supposition that I rely upon the premise that only one person can be at fault in "bringing on the difficulty" as contemplated in our self-defense law. I do not. I simply conclude there is evidence in this case that Ladson, and Ladson only, produced the violent occasion by attacking Williams, which in turn led to Williams retrieving his gun from his back pocket and firing in self-defense.

In its footnote 4, the majority clarifies our holding in *State v. Slater*,⁵ by stating, "In *Slater*, we said the question was whether 'the weapon is the proximate cause of the killing.' 373 S.C. at 71, 644 S.E.2d at 53. We should have said the question is whether it is the proximate cause of the 'difficulty' or 'occasion' that led to the killing." I agree with that clarification, and I believe it requires the giving of a self-defense instruction in this case; as applied to the evidence in this record, there is evidence to support a finding by a jury that, in this case, the sole proximate cause of the "difficulty" or the "occasion" that led to the killing was Ladson choking Williams, not Williams having a gun in his back pocket.

The majority cites *Slater* for the proposition that "where the defendant's unlawful possession of a weapon is *merely incidental* to the defendant's lawful act of arming himself in self-defense, the unlawful possession of the weapon will not prevent the

⁵ 373 S.C. 66, 644 S.E.2d 50 (2007).

use of an accident defense." 373 S.C. at 71, 644 S.E.2d at 53 (emphasis added) (citing *State v. Burriss*, 334 S.C. 256, 262 n.5, 513 S.E.2d 104, 108 n.5 (1999)).⁶ Again, the majority acknowledges the evidence indicates Williams' gun was in his back pocket until he was attacked by Ladson. Consequently, there is evidence that the taking of the gun to the transaction was "merely incidental" to Williams lawfully arming himself in self-defense after being attacked. In other words, Williams' possession of the gun was a moot point, legally and factually, until Ladson brought about the difficulty by choking Williams.

The defendant who, without first being attacked, brandishes a firearm during the course of any transaction, whether it is an illegal drug deal or otherwise, will likely be considered, as a matter of law, to have "brought about the difficulty." In virtually every such scenario, any violence that breaks out would likely be "calculated to produce" the violence that ensued. However, the majority makes an illogical and unnecessary leap when it broadly concludes that "intentionally bringing a loaded, unlawfully-possessed pistol to an illegal drug transaction is 'calculated to produce a violent occasion.'"

Finally, and most respectfully, I take issue with the majority's emphasis of now Chief Judge Lockemy's concurrence in *State v. Smith*, in which he expresses his view that because the defendant was engaged in the crime of selling illegal drugs, his decision to bring a loaded weapon to the transaction foreclosed self-defense. 406 S.C. 547, 557, 752 S.E.2d 795, 800 (Ct. App. 2013). In the very next paragraph, however, the majority states it does not foreclose the possibility that a future drug-dealing or drug-purchasing defendant will rightly convince a trial court that a self-defense instruction is warranted. At the least, the majority is giving the trial bench mixed signals on this issue.

I would reverse Williams' convictions and remand for a new trial.

BEATTY, C.J., concurs.

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⁶ Of course, we have extended our reasoning to the issue of self-defense. See *Slater*, 373 S.C. at 71, 644 S.E.2d at 53.