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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Berkeley County

Honorable Clifton Newman, Circuit Court Judge

JOHNNY LEE IRBY,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2024-001262

APPENDIX

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JOHNNY LEE IRBY - DIRECT BY MR. SHELTON

1 choice. I mean, they got the same situation with my baby
2 boy. That's what they chose, you know. That's what they
3 love.

4 Like I say, love -- you can love anybody, and
5 evidently this is what happened, all right? And this is
6 what happened. Telly, all through high school, this
7 is -- the companionship they had.

8 Q. So how do you feel about Telly dying?

9 A. Oh, I miss him. When I get a chance to think
10 about him sometime, I miss him so much. I had so much
11 things we were going to -- and the simple fact that he
12 didn't get to do all the things that he wanted to do with
13 his boy that I got to do with him, and he just didn't get
14 to do it.

15 And I wake up at night sometimes, and me and
16 myself -- that's all you got to do, is for your mind to
17 wander, and you got plenty of time to wonder when you got
18 nothing to do but think and I thought.

19 And I thought, Oh, my God. Why did that have to
20 happen? Why didn't I just say no to that? Say, Hang on.
21 Let him stay down here.

22 Like I say, he hadn't done anything about it, so I
23 should have left him down there. Like, why did I bother?

24 Q. Did Telly ever do something special between you
25 guys when -- on your birthdays?

JOHNNY LEE IRBY - DIRECT BY MR. SHELTON

1 A. If anybody contacted me on my birthday, Telly was
2 the one that stayed in communication with me. All of my
3 three kids, Telly called me every other month or so:
4 Hey, old dude, wanted to see how you're doing.

5 He might be coming through the area, making a
6 delivery someplace, he call and tell me.

7 I might say, No, I'm at work.

8 Okay. Well, we're going to Greenville. He come
9 up here a couple times, and he drive a truck, take
10 furniture someplace. He call me when he get in the area.
11 He's done that a few times. He never forgot my birthday,
12 and when there was a holiday, I always got a call from
13 Telly wishing me, you know, Merry Christmas, or, Hey,
14 what are you doing for the 4th? Are you shaking them
15 ribs? And stuff like this.

16 We used to be in competition with cooking ribs,
17 who be doing it the best, but he call me at home. All
18 kind of occasions, he would call me, and of all them --
19 like I said, of all the kids, he would be the one that
20 call me, and we talk often, and that's how I try to get a
21 chance as to school him about his lifestyle.

22 And I could only remember one time that I went to
23 Jacksonville to visit him that he was in his place, and
24 that was the conversation, that I really had a lot of
25 talk with him about, and I was kind of hoping maybe they

JOHNNY LEE IRBY - DIRECT BY MR. SHELTON

1 would come up here, you know, him and his kids and be
2 here near -- like I say, I was doing things on the side
3 that made money.

4 He could have another job making money, and we
5 would have been a good team, and I even got to the point
6 where I want to help him and his brother get two men and
7 a truck. I wanted to do them for that for them two so
8 they would have a little business on their own.

9 We didn't get around to it, so -- when it's
10 spilled milk is spilled milk. I try not to think about
11 it, but you can't help but think about it because it
12 happened, and it shouldn't have happened.

13 Q. Now, you gave some statements. You heard some
14 statements, some statements that's been played about this
15 all taking place in the back room.

16 A. Yeah. That's part -- that's kind of where it got
17 misconstrued in some kind of way. But Michelle and Telly
18 and myself, we did have part of that conversation. It
19 did happen in the room because I called a conference
20 between the two of them because the fact that she had
21 told him she checked Facebook. He got mad about it, and
22 I think that's just before I left out of the way, and I
23 told them going down the hallway then that they would
24 have to leave the night, you know, and I left the house.

25 And I come back to the house, and I was coming

1 back in from the other way, but some kind of way I got
2 things misconstrued. It got crossed up in my mind or
3 crossed up in my memory, I don't know, but sometimes it
4 seemed like it didn't happen because what ended up
5 happening, some things that ended up happening -- it's
6 foggy as to where it come from, a dream, a memory or
7 whatever, but it did happen.

8 Q. And -- beg the Court's --

9 MR. SHELTON: No further questions.

10 THE COURT: Cross.

11 MR. OZMENT: Thank you, Your Honor.

12 CROSS-EXAMINATION

13 BY MR. OZMENT:

14 Q. Hi, Mr. Irby. I'm going to start with the easy
15 questions. Everything you've said today is true,
16 correct?

17 A. To the best of my knowledge.

18 Q. And you took an oath before you took the stand
19 that you were going to tell the truth from that stand,
20 right?

21 A. Nothing but.

22 Q. All right. I want to start with a little of back
23 story and the buildup to what happened that day.

24 When Telly first told you that he was going to
25 come back and ask for some money, you said you had the

1 money to give them then but you didn't want to yet?

2 A. True that.

3 Q. And you said you hoped he would change his mind
4 and actually not come back?

5 A. I told him to wait till Friday.

6 Q. And you testified that was so he would maybe
7 change his mind and not come, right?

8 A. Right.

9 Q. So you didn't really want Telly to come back the
10 second time?

11 A. I wanted him to go ahead and do what he needed to
12 do. His kids was down there. He needed to take care of
13 his kids. I often think -- I didn't leave them, and I
14 don't think he's supposed to leave his kids, you know.

15 Q. Okay. And so when you find out he's coming back
16 that Tuesday, when Gene tells you he's bringing Michelle
17 and the girls, you weren't happy about that either, were
18 you?

19 A. No. I wasn't happy, especially the fact that I
20 didn't know they was on the way until the fact that I get
21 home and they going to be there. I don't know whether
22 they're going to be there when I get home, you know. I
23 got off work after picking my brother up from his job,
24 and when we get to the house, almost to the house, he
25 tell me by the time we get there Michelle and Telly and

1 the kids, and the girls, he said, would be there.

2 And if you remember that letter I wrote to my
3 daughter, I said what the F, you know -- you know, when
4 were you going to tell me? You know.

5 Q. So you weren't happy about that.

6 A. At the initial stage in the car, no.

7 Q. You kind of have mixed feeling with Michelle, a
8 little bit?

9 A. Not really.

10 Q. You don't at all?

11 A. Not really. Like I say, that's his choice.
12 That's his choice, but a choice that you make, you have
13 to go live with it, you know, but you can't bring it to
14 me and live with it.

15 Q. Okay. And just a couple months earlier you told
16 Telly that it's time to move on and he agreed?

17 A. I had to talk him out of it.

18 Q. And now he was back with her?

19 A. He brought her back, and he didn't tell me he was
20 going to get her. Like I say, I don't know what, he got
21 a call from his mother or he found out where Michelle was
22 through the texts he put out there.

23 But, anyway, that's when he end up coming back
24 here with her, and when I come in the house that Tuesday
25 and it just been Telly and Michelle, no, they wouldn't

1 have been there. You know, if it wasn't for those girls
2 being with them, they wouldn't have been there.

3 Q. Okay. And also Michelle is who got him beat up in
4 Florida?

5 A. That's what I figure because she wasn't with him
6 when he got beat, and he tells me that that he don't know
7 where she was. He doesn't know where his dog was, so
8 evidently they had him someplace so he couldn't get there
9 to help him or to stop them, and for him to tell me that
10 he didn't fight back because he felt that he had wronged
11 Michelle so often and stuff like this, you know, that
12 this is supposed to happen to him, so evidently he was
13 taking his medicine.

14 Q. So would you say Michelle wasn't actually good for
15 Telly?

16 A. I would say if you are going to leave your kids to
17 try to take care of some kids that you don't belong to
18 and you can't even take care of your own, what are you
19 doing out there with somebody else taking care of her
20 kids when you ain't taking care of your own?

21 Q. Okay. So they -- and I think also Mr. Shelton
22 asked you when they got there and the girls were hugging
23 on you that you said that that brought your anger down a
24 little bit, but it didn't get rid of it?

25 A. It brought it down a lot because it brought on a

1 happy feeling. You got the -- I don't know. You got
2 kids, you think about Christmastime and happy times when
3 kids are happy. I love happy kids, and, like I said, I
4 had a hug around the neck, a hug around the waist, and a
5 hug around the leg, so I got these three happy kids,
6 granddaddy, and it sort of made me feel good to even call
7 me that, the fact that they had two other grandparents,
8 you know, that they very seldom got to go see.

9 Q. Okay. Let's talk about the Facebook. How much
10 was this arguing going on in your house between the two
11 of them about Facebook and all this drama?

12 A. When they come up, they told me they had both shut
13 it down.

14 Q. It was an ongoing issue with them a little bit?

15 A. They shut it down when they got there. They
16 informed me of this when they got there. They informed
17 me that this had happened, so I didn't expect to hear
18 nothing about it. I didn't expect to hear it going on no
19 more than what I already knew about what Michelle thought
20 about him on Facebook and Jacksonville and they always
21 outside on Facebook talking to somebody.

22 Q. Right. Up to that point in Telly's life, would
23 you say you were kind of disappointed in how his life had
24 gone?

25 A. Of course.

1 Q. You felt like he maybe had thrown his life away to
2 a point?

3 A. He did.

4 Q. Let's now kind of start to focus in on a little
5 closer to when this actually happened. You said that you
6 have some memory problems of that day?

7 A. Some.

8 Q. Some? Okay. The first thing, you went over to
9 Miss Mamie's, house but she wasn't there; is that
10 correct?

11 A. I was at the house, Telly, Gene and myself. We
12 changed breakers in the breaker box, right? I put dinner
13 on that day, and when I got ready to leave the house, I
14 asked Michelle if she could keep a watch on it.

15 Q. Do you recall what you were having for dinner that
16 night?

17 A. Yeah, I was having me some green lima beans and
18 pigtails. I bought a whole five-pound pack and a big old
19 pack of green lima beans, and were just going to have at
20 it.

21 Q. Now, you went over to Ms. Mamie's house to move
22 the doghouse for her?

23 A. True that.

24 Q. And she wasn't there but you stayed and you
25 watched Steve Harvey?

1 A. I went to do what I went to do. I knew what she
2 wanted so I did that, but I would have stayed longer had
3 she been there.

4 Q. Okay. But you watched a TV show over at her
5 house?

6 A. Yes, 7:00 to 8:00.

7 Q. And you drank a half pint over that period of
8 time?

9 A. True that.

10 Q. Do you remember what you were drinking?

11 A. Yeah. I drank Seagram's Seven.

12 Q. Okay. And did she just keep liquor at her house?
13 Did you get it from her house? Is that how that works?

14 A. From time to time, yeah.

15 Q. Okay. Now, you came back home, you said, and they
16 were drinking in the yard, and you didn't like that?

17 A. I didn't like that. I had told them not to do it
18 out there.

19 Q. And your problem is that people would see them
20 drinking in the yard, and, obviously, you don't have a
21 problem with drinking because you were drinking.

22 A. Go in the house and do it. I always did it in the
23 house.

24 Q. Didn't like other people seeing them drinking?

25 A. True that, true that. It's a facade, I guess.

1 What you do in the dark is going to come into the light.

2 Q. And in the front yard, it's already in the light?

3 A. Yeah, it's in the light. Everybody know it once
4 it happen a few times, and they never saw it before that.
5 Before Telly and them, there was no party in my yard.
6 There was no lounging in my yard unless there was a
7 barbecue day or something like that, you know. I ain't
8 no barbecue in the back yard or side of the house, so
9 nothing like that.

10 Q. Now, after you have that conversation with Telly
11 and you said he stands up and then you go in the house --
12 correct?

13 A. I go in the house. I mean, I go in the house. As
14 soon as I step up on the porch, I look and see the girls
15 sitting on the couch in there watching TV. I tell them
16 to go outside.

17 Q. Okay. And then did you immediately go back to
18 your bedroom after you toll them to go outside?

19 A. No, not immediately. They went out, and as they
20 were going out, I guess Telly come behind me, and he told
21 them to go back inside, all right, and stay right there.

22 I say, There is something wrong with this here
23 today, and I went in my room and I got my weapon and I
24 come to the front room there.

25 Q. So the reason you got the weapon is because he

1 told the girls to get back in the house?

2 A. He kept telling them, contrary to what I just told
3 them, right, and last I remember, they actually left the
4 porch, you know, because I hear them saying they were on
5 the porch. I said no, there is not enough room on there
6 for the four of us to be standing there, really. It's
7 just a pathway up there with all that stuff that's on the
8 porch.

9 Q. I just want to be clear. You got the gun because
10 Telly was telling them to come back in the house, and so
11 what -- were you planning on intimidating Telly to keep
12 him out of house? Why did you need a gun to kick three
13 little girls out of your house?

14 A. It wasn't for the girls, it was for Telly, because
15 he intimidates me by the fact that he has got enough to
16 stick his chest out and raise up at me, and I just know
17 he was going to grab at me or grab me or something.

18 Q. He never grabbed you before, though, had he?

19 A. He had never done anything like that before, no.

20 Q. And how old was Telly when he died?

21 A. Telly was 35 years old.

22 Q. And he had never saw -- he never hit you?

23 A. In his life that I remember, but when we talk
24 about ever, ever, ever, Telly hadn't been at my house for
25 no period of time since 1999 when he left, right? When

1 all of them -- all of them went to Jacksonville shortly
2 after their mother went to Jacksonville.

3 Q. But in '99, he would have already been about 20
4 years old, so growing up in high school, he was a big
5 football player in college, he never raised up at you?

6 A. No. He was still at the house. He was still
7 living at that house until Clemson come and sent him off.

8 Q. Did Telly have a weapon on him? Is there a reason
9 you were scared or just him?

10 A. Just his size and strength and I knew, I knew what
11 he could do.

12 Q. Okay. And so you got the gun to kind of
13 intimidate him back?

14 A. If he just stay where he was, gun straight down at
15 my side, I turn around and I go back in the house, and
16 some kind of way he got me turned around, pull me around
17 or whatever, but he went to take a gun from me, so --

18 Q. And I guess -- I'm still not clear if Telly was
19 just intimidating. I'm not clear as to why do you feel
20 that you needed a gun? Was it to kind of intimidate him
21 back? As I mentioned, I'm just confused as to why you
22 said that day, I need to go get a gun.

23 A. Like I said, a gun became my equalizer as far as
24 intimidate him, and I wouldn't -- that's my feeling about
25 a person that's got a weapon on me, and they hadn't done

1 anything to me with it yet, but if they got it, I'm not
2 going to approach it, you know what I mean, especially in
3 front of me. I just did what he told me to do. I just
4 back off.

5 Q. And so it was to scare him off. It was to get him
6 back off of you.

7 A. Technically, back off, let me go in the house and
8 do what I want to do, and that's why I put everybody out.
9 I'm going to close the doors, and, like I said, I been in
10 there for a while by myself.

11 Q. If you had just closed and locked the door, Telly
12 couldn't have got to you?

13 A. Telly got a key.

14 Q. Did you think about calling the police?

15 A. No, I didn't expect I have to go that far. I
16 didn't expect to go as far as it did go.

17 Q. You thought you needed to get a gun, but you don't
18 think you needed to call the police?

19 A. No. Nothing happened with me having a gun until
20 he approached the gun.

21 Q. Okay. Did you think Telly was going to come in
22 and kill you or something?

23 A. I had no idea what was going on in his mind that
24 day.

25 Q. But he never hurt you before?

1 A. He never tried, no.

2 Q. Okay. Now -- so you have the gun, and you would
3 agree with me that Telly went for the gun. He wasn't
4 trying to get you, he was trying to get the gun; is that
5 right?

6 A. I don't know what he wanted to do to me or what he
7 wanted to do. I have no idea.

8 Q. I think on direct you said he reached for a gun
9 and I think a minute ago you said he reached for a gun.

10 A. He had the gun in his sight, and he's quick enough
11 to do that.

12 Q. So he reached for the gun. He didn't reach for
13 you?

14 A. He reached for my hand with the gun, so that's
15 grabbing the gun and my hand.

16 Q. I agree with that, so he reached for the gun, and
17 how long was this tussle for the gun?

18 A. When he reached for the gun, I tensed up and I
19 tensed up, and now we got this thing going where he's
20 trying to get it, I'm trying to get it.

21 Q. How are you holding the gun before he reached for
22 it? Can you show me?

23 A. I had the gun in my right hand, down by my side.

24 Q. Down by your side, and your hand was on the
25 handle, right here, your right hand?

1 A. Yeah.

2 Q. Down by your side?

3 A. Yeah.

4 Q. Where was your finger?

5 A. I was holding on the trigger.

6 Q. It was on the trigger like you were ready to shoot
7 somebody?

8 A. Yeah, slide it back, and then on the shoot I would
9 have to pop the slide.

10 Q. So the slide was back. Why did you have the slide
11 back?

12 A. I was told something that -- I had never owned a
13 pistol before in my life.

14 Q. You were a 20-year Navy veteran. You're telling
15 me we got people in the Navy 20 years who don't know how
16 to use a pistol?

17 A. I never owned one. I fired a 45 once a year. I
18 didn't go through clips on a 45 every year because we had
19 to stand watches, so I knew how to shoot a 45. I knew
20 how to shoot that pistol, and since I bought that pistol,
21 I never fired that pistol.

22 Q. So why was the slide back?

23 A. Like I said, something somebody told me about
24 having a round ready to pop in, and evidently I might
25 have got it wrong. I put it wrong in. I dropped a clip

1 and put that bullet back in it, put the clip back in it.

2 Q. Okay. And so you're telling me 20 years in the
3 Navy, shooting once a year to qualify for the Navy?

4 A. It wasn't every year. I shoot once a year. Once
5 you reach a certain plateau where you have to do watch,
6 they allow you to carry a weapon on watch is when you
7 have to go qualify, and that was after you reach E-5 that
8 you actually have to stand watches, so forth and so on.
9 And once I got past E-5, I didn't even have to carry a
10 weapon because the other guy carried a weapon.

11 Q. But in all those years in the Navy, did they ever
12 teach you when do you put your finger on the trigger?

13 A. Supposed to be outside the trigger guard.

14 Q. Unless you want to shoot something, right?

15 A. Yeah, yeah. Like I said, I never owned a pistol,
16 so it didn't -- I mean, from the back of my hand to the
17 front of that trigger guard, it wasn't too easy to reach.

18 Q. So you had -- it was basically just like it is
19 right now, with it slight open?

20 A. Yeah.

21 Q. And you had your finger on the trigger and you
22 were standing there?

23 A. Uh-huh.

24 Q. So Telly goes for the gun. Where are you standing
25 exactly when Telly goes for the gun?

1 A. Right foot toward the living room.

2 Q. And the other one is going toward the porch?

3 A. I'm stepping on the little four-inch, five-inch
4 ledge going into the living room and right foot is up
5 there already.

6 Q. Okay.

7 A. Left foot is still on the porch.

8 Q. So you're in the doorway?

9 A. So the gun is to my -- inside, inside the house,
10 and how I got turned around and the tussle became is he
11 pulled me around, but I didn't turn around, so they have
12 to pull me around, right?

13 So I guess when he come around, I had to balance
14 myself because he pulled me. The gun come up. He's
15 going for it, right? We tussle with it and we tussle
16 with it, and eventually it's bang, and when he fell was,
17 like, just flipped.

18 Q. Do you remember seeing him fall?

19 A. Yes. It's like --

20 Q. How many times did you shoot him?

21 A. I recall him get shot one time.

22 Q. And you said he walked into the barrel of the gun.

23 A. He turned around and reach, and I don't know what
24 he pulled me, caused me to come toward him or he come
25 toward me, hit the gun. When he hit the gun, he come up

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1 with the gun down in the lower section of his pants or
2 the lower section of his right side of his body, you
3 know.

4 Q. So when the gun went off, it was on him? Was it
5 touching him?

6 A. I thought it was at a downward state, but, like I
7 said, if he's pulling on it -- I'm trying to pull down.
8 He's trying to pull up. He's trying to take it.

9 Q. Okay.

10 A. He's above me and all this other stuff.

11 Q. But I think on direct and in your statement to
12 Lieutenant Roach you said he walked into it. What I'm
13 trying to be clear on was it here, was it here? How
14 close was it when it went off?

15 A. It was on this side of his body. That's where I
16 thought it was.

17 Q. Okay.

18 A. And, like I said, him pulling -- I'm pulling,
19 trying to take it, he's pulling, trying to take it up.
20 How did it discharge in the direction that it discharged?
21 I don't know, whether he did it, I did it -- like I say,
22 my hand was on the trigger.

23 Did he cause it to happen like that? Was he just
24 trying to block the slide from moving or what, I don't
25 know what he was trying to do.

1 Q. But when you say walked into it --

2 A. He walked up to me.

3 Q. Okay. And he walked into the gun?

4 A. The gun was in between us.

5 Q. So the gun was there. It was in between you, and
6 he walked into it?

7 A. Walked into me, yeah, or come into me.

8 Q. He came into you. How far was the barrel of this
9 gun when it went off? How far was it from his chest?

10 A. On his body.

11 Q. It was on his body?

12 A. I thought it was on his body.

13 Q. Okay. So you think this barrel was actually
14 touching --

15 A. Yeah.

16 Q. -- his body, touching his shirt?

17 A. I do.

18 Q. Okay. So that was the first shot. Is that the
19 only time you shot at Telly?

20 A. That's the only shot that I remember, period.

21 Q. The only shot you remember, period.

22 A. That's the one I remember, the one where he went
23 down.

24 Q. Okay. Where was Michelle when you shot Telly?

25 A. I have no idea.

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1 Q. Okay. Do you remember her coming up to the porch
2 after you shot Telly?

3 A. I have no idea where she was.

4 Q. So you remember a lot of details from that night.
5 You could tell me what you were drinking, tell me what
6 you watched on TV, tell me you were to move a doghouse.
7 You then come home, tell me exactly how many times the
8 girls went in and out, but as soon as you shoot Telly,
9 you don't remember anything?

10 A. Everything went away.

11 Q. Okay. Do you deny you shot Michelle?

12 A. I can't deny it, because she was shot with the
13 weapon that I own right there, yeah. I mean, I don't
14 think nobody else did it, you know. As a matter of fact,
15 the weapon was mine, and she was shot with the same
16 weapon that Telly was shot with. Now, when did it
17 happen, I don't know.

18 Q. So you agree you shot Michelle?

19 A. I would have to. I have no doubt.

20 Q. But you have no idea how you did it, when you did
21 it?

22 A. I don't remember when it happened. I was just on
23 the fact I shot my boy and the fact that, hey, what just
24 happened, you know? What just happened? And it took me
25 a while to figure out -- it was, like, really Saturday or

1 Friday, whenever they came and served me that warrant
2 that I truly realized that I had killed my son, you know?
3 I actually caused my son to be shot to death.

4 Q. All right. But Michelle, you don't remember if
5 she went for the gun or anything like that?

6 A. I remember something that I was told that she did.

7 Q. And don't tell me what people told you. Tell me
8 what you remember.

9 A. What I heard on the tape that they had me listen
10 to, she says she was trying to knock the bullets out of
11 my hand. I don't even remember her being that close to
12 me, all right, as far as the fact she was reaching out.

13 Q. So do you remember coming to the porch then?

14 A. No. I don't remember that, but I'm saying they
15 made me listen to a tape where she made that statement.

16 Q. Okay. And so you don't remember her coming to the
17 porch; you don't remember lifting the gun; you don't
18 remember shooting her?

19 A. No, I do not.

20 Q. You would agree with me there were three spent
21 shell casings found on the porch?

22 A. What I looked at, that's what I saw.

23 Q. So you would agree with me there were three found
24 on the porch?

25 A. True that.

JOHNNY LEE IRBY - CROSS BY MR. OZMENT

1 Q. And you remember only making one shot?

2 A. Right.

3 Q. So there were two more shots, that, would you
4 agree, you shot those two other shots?

5 A. I don't remember two other shots. I remember a
6 round laying on the porch that they saw, which went after
7 discussion and thinking about it that, I guess, when you
8 drop a slide, the round that was already there in the
9 barrel, the round has -- what goes in the barrel had
10 nowhere to go.

11 Q. But you don't know how those -- other than you
12 admit they were there, you don't know how those two other
13 shell casings would have gotten on the porch. You don't
14 remember taking those shots?

15 A. I don't remember.

16 Q. But you agree you probably shot Michelle.

17 A. I had to have.

18 Q. Do you remember Michelle having a gun?

19 A. Get real, man, no.

20 Q. So you're not scared of Michelle?

21 A. I guess not, no.

22 Q. She's a short, petite woman. You're not scared of
23 her or intimidated by her?

24 A. No, I wasn't.

25 Q. Afterwards, do you remember Michelle and the kids

1 running away?

2 A. When I come out of the house, after Telly went
3 down and I fired that gun in the yard, I then remember
4 them running over to my neighbor's house.

5 Q. You do remember that?

6 A. I remember they were out there. It looked like
7 they were playing in the car, is what they usually do.
8 When they get a chance, they play ring around the rosy in
9 and around the car, and when I fired gun the last time,
10 it looked like they came out of the car and run over to
11 the house.

12 Q. So at that point, the kids were still there and
13 you started shooting a gun?

14 A. I shot a gun in the air.

15 Q. Do you agree that could come down and hit
16 somebody?

17 A. Straight up in the air?

18 Q. You think the bullet just goes up there and stays
19 up there?

20 A. It could come down and hit somebody, but not hurt
21 somebody.

22 Q. So you were still firing gun with the kids there?

23 A. I fired the gun. I fired it and threw the gun on
24 the ground.

25 Q. Just to finish the clip off?

1 A. Just to make sure it was done.

2 Q. Is that what they taught you in the Navy, that you
3 empty a gun by shooting it up into the air?

4 A. No, they didn't teach me that.

5 Q. And then you remember the cops coming?

6 A. I remember -- the first cop come, I could see him
7 outside of my peripheral vision. He opened his trunk up,
8 and I didn't know if he was going to open the trunk up
9 and get a big gun out, and I told him he didn't need that
10 because I wasn't going to shoot no more.

11 Q. Okay. Now, you have a daughter, correct?

12 A. True that.

13 Q. What is her name?

14 A. Anastasia.

15 Q. Did she ask you some questions, wanting to know
16 what happened that night, in some letters?

17 A. She wrote me a letter and told me that if I
18 couldn't tell her what happened, I might want to write
19 her off as a daughter. So I wrote her, I guess, what,
20 three pages I wrote her, and I went on and on and on,
21 trying to get her understand there wasn't anything
22 malicious about this.

23 I didn't plan to hurt my boy. I didn't plan to
24 just come out and shoot my boy, so she didn't buy that
25 because she had what the police had said. She was going

1 with what she had got -- and I guess she got it off
2 Facebook, and that's the only thing I know about it. She
3 had to get it that fast. For her to know what happened,
4 she had to get it from somewhere.

5 Q. Did you tell her the truth in that letter?

6 A. I think so.

7 Q. So you would agree the letter you wrote her is
8 true?

9 A. As I believed at the time.

10 Q. Does the truth change?

11 A. If you got something twisted in your mind, twisted
12 in your memory, yeah, it could change.

13 (State's Exhibit 46 was marked for
14 identification and admitted into evidence.)

15 BY MR. OZMENT:

16 Q. Well, I'm going to hand you State's Exhibit 46.
17 I'm going to ask you to look at it. Is that the letter
18 you wrote your daughter?

19 A. I would think so.

20 Q. I want to ask you to go to the third page of that
21 letter. The third page starts with the word Facebook, so
22 make sure we're on the right page together.

23 A. Uh-huh.

24 Q. Do you see where you wrote a fly in the soup?

25 A. Uh-huh.

1 Q. I want to you start reading there for me, and
2 we're going to kind of go through it. So you would start
3 reading the first word? I want you to read all along.

4 A. Say again?

5 Q. I want you to start reading the letter out loud,
6 and start with the words, All along.

7 A. All what.

8 MR. OZMENT: May I approach, Your Honor?

9 THE COURT: Uh-huh.

10 THE WITNESS: Oh, all along. All along we
11 have been working together on various projects to -- I
12 can't even read my own writing -- oh, around the house.
13 I go out that evening to Ms. Mamie house and come back
14 around 8 p.m. and so now --

15 BY MR. OZMENT:

16 Q. Let me stop you for a second. So you went to Miss
17 Mamie's house, came back about 8 p.m. Are we talking
18 about the night this happened, the killing?

19 A. I think so, yeah.

20 Q. What happened?

21 A. Now it's conference time back in my home. Kids
22 are all outside playing, so I bring up about the drama,
23 that I told them that if they were to -- while he was
24 going to be there, they would have to find someplace else
25 to live.

1 Q. All right. So at this point you said you went to
2 Mamie's house, came back at 8 p.m., and then you had a
3 conference back in your room.

4 A. That's the way my mind was clicking at that
5 particular point.

6 Q. Okay. And then keep going.

7 A. I am trying to make it light. If I say you guys
8 don't get it together then you should -- I say I'll shoot
9 you myself, ha ha.

10 Q. So this letter said you brought them back for a
11 conference in your room, and now you told them, if you
12 don't get together, I'm going to shoot you myself, haha?

13 A. Uh-huh.

14 Q. What did you mean by that?

15 A. Well, it was just -- I don't know, some
16 conversation that come up about something had to do with
17 guns.

18 Q. That's terrible, that you would write this and
19 then by happenstance the same day that you did, in fact,
20 shoot both of them.

21 A. True that, true that.

22 Q. Read me the next line.

23 A. And to prove their intentions, to show them that I
24 really did have a gun, all right, and it was down on the
25 floor by my bed at the same time I had thought to move

1 the gun because the girls watch TV back there.

2 Q. And what you're saying is you got the gun out
3 after you said I'm going to shoot you, haha. To show you
4 were kind of being a little more serious, you actually
5 showed them the gun; is that right?

6 A. True that.

7 Q. And that's this gun right here, State's Exhibit 48
8 that we've been talking about, correct?

9 A. True.

10 Q. Okay. So after you showed them the gun, what do
11 you do next?

12 A. I showed them the gun, the box with the slide
13 back, one in the chamber. I turned around with the
14 pistol with intentions of closing the slide. Evidently I
15 had my hand on the trigger and, believe it or not, that
16 gun went off.

17 Q. So it went off in your bedroom, according to this
18 letter?

19 A. That's what I saw in my mind for a long time.

20 Q. Okay. So for a long time you remembered the gun
21 going off in the bedroom first.

22 A. Uh-huh.

23 Q. Were Telly and Michelle there when the gun went
24 off in the bedroom?

25 A. Yes, they were there.

1 Q. After the gun goes off in the bedroom, tell me
2 what the letter says next.

3 A. Believe it or not, the gun went off, and I think I
4 was -- I said I was going to move the gun because the
5 girls watch TV back there, but I didn't take the gun out
6 to the truck.

7 Q. Let me stop you there. So the gun goes off
8 accidentally in the bedroom with Telly and Michelle
9 there, and then you were going to take the gun out to the
10 truck.

11 A. Right.

12 Q. So according to this letter, you got the gun out
13 to show them you're serious, and the reason you kept the
14 gun out is you were going to take it out to the truck,
15 right?

16 A. Uh-huh.

17 Q. All right. Now, you agree with me that's
18 completely different than what we talked about earlier.

19 A. Completely different, yes.

20 Q. All right. Now, let's -- I think we now got to go
21 to the next page, but now keep reading for me.

22 A. Telly came behind me, said, You're going to shoot
23 me over there? And I say yes. I told --

24 Q. Let me stop you there. Where are you when Telly
25 came up behind you and said, Are you going to shoot me

1 over that?

2 A. In my mind's eye, right then we're in the hallway.

3 Q. Is that the hallway that goes back to your
4 bedroom?

5 A. The hallway going toward the front.

6 Q. Is it from your bedroom to the front of the house,
7 the hallway we're talking about?

8 A. True that.

9 Q. Telly approaches you, asks you if you're going to
10 shoot me. You say yes. What happens next?

11 A. I said, Telly, as he came up behind me in the
12 hallway and grabbed the gun.

13 Q. So you're in the hallway, facing the front of the
14 house, and Telly comes up behind you.

15 A. Right.

16 Q. Okay. Now, you would agree with me again that
17 this is completely the opposite. Earlier, you said it
18 happened when you were in the doorway and he was coming
19 up from the porch, correct?

20 A. True.

21 Q. So he comes up to the hallway and a tussle begins.
22 Tell me what happens next.

23 A. And then he grabs the gun and we tussle and we
24 tussle and we tussle for the longest in the hallway to
25 the living room, and then somehow the gun went off.

1 Q. So you tussled down the hallway and into the
2 living room?

3 A. Uh-huh.

4 Q. And then the gun went off. Where, by this memory,
5 was Telly and yourself when the gun went off?

6 A. Well -- and from nowhere now, I have a gun with
7 Telly laying on the floor. I go out into the yard. I
8 fire remaining rounds into the air and threw the gun on
9 the ground.

10 Q. Let me go back. So when the gun went off, in this
11 story, where are you and Telly?

12 A. Right there on the -- six feet from where the
13 front door.

14 Q. So in this version of events, the shooting happens
15 in the house?

16 A. Right there by the front door, yeah.

17 Q. And it doesn't say anywhere in here anything about
18 Michelle?

19 A. No, doesn't.

20 Q. It also doesn't say anything about Telly running
21 into the gun and then somehow the gun went off, right?

22 A. I said Telly -- Telly moved in and grabbed the top
23 of the gun to make an attempt to take it from me.

24 Q. Okay. And it says so we tussle and tussle, and
25 I -- can't read it -- I don't know how long, but to the

1 hallway to the living room and then somehow the gun went
2 off.

3 A. Uh-huh.

4 Q. So in this version it doesn't say Telly walked
5 into it.

6 A. Well, like I said, he rolled in and grabbed the
7 top of the gun.

8 Q. Okay. So then you remember going outside. You
9 remember firing the remaining rounds into the ground.
10 You dropped to your knees, and that's how the story goes.

11 A. That's what I remember for all the way up until, I
12 think, when I wrote this letter. That's what I believed.

13 Q. All right. Look at the front letter, and tell me
14 when you wrote this letter?

15 A. On the 18th.

16 Q. Of what month?

17 A. It says 10. I'm pretty sure I had the date wrong.

18 Q. You think you got the date wrong?

19 A. That's in October.

20 Q. When do you think that was?

21 A. Shortly after I got an opportunity to write my
22 daughter, after I had the opportunity to acquire some
23 paper.

24 Q. Is this the first letter you wrote your daughter?

25 A. I don't know if this is the first one or the

1 second one. I know it was more than once.

2 Q. I showed you one dated September 28, 2012.

3 A. That would have to be before this one.

4 Q. Okay. So would the date be wrong on both of
5 those?

6 A. Could be.

7 Q. All right. So the dates could be wrong, but it
8 could have been in October?

9 A. I doubt it, that long before me having some kind
10 of communication or some kind of -- I don't even know why
11 I talked to her or not, but I know it would have been
12 before that one. It's a closer date than this one.

13 Q. Okay. Let me -- may I approach, Your Honor?

14 Is this the other letter you wrote your daughter,
15 the first one?

16 A. Where is the top of it?

17 Q. I think the top of that page is the top of it. I
18 see. There's a date up there.

19 A. It looks like my writing, anyway.

20 MR. SHELTON: Your Honor, could I see?

21 THE WITNESS: It looks like I jut put a
22 salutation on it.

23 BY MR. OZMENT:

24 Q. And you would agree with me the top of this letter
25 says 9/28/2012?

1 A. Right.

2 Q. And then the top of the next letter says
3 10/18/2012, but you're not sure if those dates are
4 correct?

5 A. It could not be.

6 Q. Okay. So you would agree with me now that this
7 letter to your daughter that tells this version of the
8 events is not true.

9 A. That's -- as what I learned since then, as to what
10 the evidence that I've seen in my Rule 5 motion, yes,
11 where things actually ended up at, it ended up on the
12 front porch.

13 Q. There is a lot in here that, you would agree with
14 me, now that you've seen the evidence, now that you've
15 seen the Rule 5, is not true.

16 A. Right.

17 Q. Because this says y'all went back in the bedroom
18 and you showed them the gun and joked you were going to
19 shoot them. You agree that's not true?

20 A. It's not true as happened at the time it happened.
21 I did have a conference with the two of them that
22 afternoon.

23 Q. Did you show them the gun?

24 A. I may have; I don't know. I know they knew where
25 it was already because they told me they knew where it

1 was already.

2 Q. At some point did you show them a gun?

3 A. I don't remember when I pulled out that gun if I
4 show it.

5 Q. So this may have never happened?

6 A. May have never happened.

7 Q. But you wrote to your daughter as it having
8 happened?

9 A. Yeah.

10 Q. So you're not sure if that's true?

11 A. I'm not sure if I wrote it having actually done
12 this or not, you know, and --

13 Q. Okay. And then you go on to say that you and
14 Telly start tussling, to use your words, in the hallway,
15 and it goes in into the living room and you shoot him?

16 A. That's not where he fell at. I could see him
17 falling on the font porch as I could see him falling in
18 that front door on that carpet.

19 Q. So you kind of have dual memories of how this
20 happened?

21 A. Yeah. Something happened, and how did it happen,
22 why did it happen, I don't know.

23 Q. So what you testified to today, are you sure
24 that's what's happened, or could this letter be what
25 happened?

1 A. Like I say, the pictures you have, you have seen,
2 shows him on the front porch.

3 Q. So your testimony today, the way you remember it
4 today, is in part based on seeing the evidence against
5 you?

6 A. Yeah.

7 Q. So when you saw that evidence, you made sure your
8 story fit with that evidence?

9 A. Nothing active. I didn't make a story up to
10 corroborate what I saw. That's just what I saw. I have
11 nothing other to go with than this is what happened.

12 Q. But when you wrote this letter, you told me you
13 thought it was true.

14 A. I did, at the time.

15 Q. So you changed this story when you saw this
16 evidence, right?

17 A. When I saw the pictures that I saw.

18 Q. So you changed this story when you saw the
19 pictures?

20 A. That's what I thought I saw.

21 Q. This is what you thought you saw?

22 A. There's is a date on it.

23 Q. I'm not worried about the date. What I'm saying
24 is when you wrote this, you thought it was true, correct?

25 A. In my mind, yeah.

1 Q. Well, so you thought it was true?

2 A. Yeah.

3 Q. When you wrote it?

4 A. Uh-huh.

5 Q. And then you saw the evidence against you,
6 including those pictures, and you realized this can't be
7 true; is that correct?

8 A. I don't know.

9 Q. Okay. And then you told the story that you
10 testified to today as the truth; is that right?

11 A. Yeah.

12 Q. Okay. So you would agree with me that once you
13 saw the evidence, the story changed as to what happened
14 that night in your mind's eye.

15 A. I reckon, yeah.

16 Q. So we should disregard this letter as not being
17 truth?

18 A. Part of the story about him going to the house,
19 yes.

20 Q. So we're clear -- I'm going to take the letter
21 back from you. So we're clear, the letter we're talking
22 about is State's Exhibit 46, which is in that -- we
23 should believe what you remember today we should believe
24 what is true?

25 A. You should believe what I remember as much as what

1 everybody remembers.

2 Q. We have established your memory isn't that good,
3 and that's based on the letter significantly changed
4 during certain parts of this?

5 A. True that.

6 Q. Okay. I want to talk a little bit more, and just
7 as you remember it, when Telly -- when you got the gun,
8 did you think Telly was going to come and kill you?

9 A. I have no idea what was on his mind.

10 Q. Did you think he was going to seriously injure
11 you, send you to the hospital?

12 A. I thought I knew he could.

13 Q. But he never had before.

14 A. He never raised up at me like that before either.

15 Q. Did you have an imminent fear this was going to
16 happen?

17 A. Yes, I did.

18 Q. So you thought -- he had never done this to you
19 before, but you thought now he was going to come and kill
20 you because he told the girl to come back in the house?

21 A. I don't think that was all the reason, the whole
22 thing when he was blown out of shape about; everything,
23 he was out of shape about everything the night before.

24 He was blown out of shape about people questioning
25 his abilities to have a relationship that he wanted to

1 have. He was questioning being a full-grown man, and for
2 him to be a full-grown man, they shouldn't have come back
3 to daddy. He should have did what he had to do. You go
4 take care of your business.

5 Q. You think that had built up, and for the first
6 time in his 35 years he was going to lay hands on you?

7 A. When he come back to the house, when he had a
8 place to lay his head, he was going to come back to the
9 house with a full-grown family in a two-bedroom house.

10 He shouldn't have come back like that, not without
11 telling me or asking me could he come back like that, you
12 know. I mean, just as to things had gotten to the point
13 where he was ready to make a change and he want some
14 help, I was willing to give him some help.

15 Q. That night you said he raised up at you, or did he
16 hit you or anything like?

17 A. When I says raised up at me, he talked like that
18 to me. I mean, now it's a line between manners and
19 respect, but he had both of them. The average person
20 would talk to him, would be yes, sir or no ma'am, or yes,
21 ma'am. He said that. He talked like that to everybody,
22 all right, but a lot of people, young people, do today.

23 Q. You would agree with me that night when he raised
24 up at you, you don't mean he had physically attacked.
25 You mean his attitude and disrespect, that's what you

1 mean?

2 A. Somewhat, yeah.

3 MR. OZMENT: No further questions, Your
4 Honor.

5 THE COURT: Redirect?

6 MR. SHELTON: Yes.

7 REDIRECT EXAMINATION

8 BY MR. SHELTON:

9 Q. Johnny, you went over that letter a lot and those
10 statements, but the night of, when you went back to the
11 police station, you talked to Sergeant Norvell.

12 A. Uh-huh.

13 Q. You remember that?

14 A. Yeah.

15 Q. And your memory was where it was in October, what
16 you just testified to, right?

17 A. In October. It was August, wasn't it?

18 Q. October through your letter. But that night, you
19 remember talking to -- telling what you told Norvell
20 about the porch?

21 A. Somewhat.

22 Q. Okay. And what did you tell Norvell about the
23 porch?

24 A. I think I mentioned how big and strong Telly was
25 and the fact that if he and I would get in a fight, I

1 wouldn't stand a chance of winning a fight with him.

2 Q. And do you remember telling him that your son came
3 at you on the porch?

4 A. Yeah.

5 Q. And that was that night?

6 A. That was that night, yeah.

7 Q. August 16th.

8 A. Yeah.

9 Q. 2012.

10 A. Right.

11 Q. And the date on the letter is 2012?

12 A. 2012, right, but October, good God.

13 Q. Say it was October. How long were you in jail at
14 that point in time?

15 A. I had been in jail three months.

16 Q. Okay.

17 A. Yeah.

18 Q. And has it been the easiest thing?

19 A. No, no. It took me a whole weekend to get zoned
20 in and figure out myself, like I said, for me to find out
21 exactly what had transpired, and it just -- I kept trying
22 to see pictures of how that happened, what had happened,
23 where did it happen. I kept trying to see this, and it
24 just didn't click in, like it didn't click in.

25 Q. And what do you do during the day while you're

1 over at the jail?

2 A. Right now --

3 Q. Back then. What were you doing over at the jail?

4 A. I had to figure out -- I had to figure out how to
5 be in jail, first of all. You know, what do you do when
6 you're in jail?

7 Q. You have a lot of time to yourself?

8 A. No, not to myself, per se, you know, the cell I
9 was in had four people in it. You know.

10 MR. OZMENT: Your Honor, I would object.
11 This is beyond the scope of direct. I'm also not sure of
12 the relevance.

13 THE COURT: Sustained. It is beyond the
14 scope of direct.

15 BY MR. SHELTON:

16 Q. You were asked about Telly and his reaction, and
17 you said something was wrong with the kid today.

18 A. I say what's wrong with this kid today.

19 Q. Was he acting different?

20 A. Yes. Like I say, he had never raised up at me
21 like that. I mean, what he would actually raise his
22 voice, I mean, to say, talk derogatory, to say something
23 contrary to what I just told him to do. He would say
24 yes, sir and do what I asked him to do, or no, sir, I
25 haven't got it done yet. I'm working on it or whatever,

1 but for him to come and tell me what he's not going to
2 do, he had never done that before. Even when he was a
3 little kid away from home he had never said that to me.

4 Q. Had he ever reacted the way he did?

5 A. Not up until that time.

6 Q. The reaction Telly had, was it physical?

7 A. I thought it would be.

8 Q. Now, you talked about the gun, talked about
9 putting a bullet in the barrel. Why was that?

10 A. I guess I had discussed it -- matter of fact, I
11 discussed it with the guy I bought the pistol from, and
12 he was a constable, and he was telling me how to have the
13 gun ready to go.

14 Q. And by ready to go, was there a reason for that?

15 A. Well, I mean, some stuff had been happening in the
16 neighborhood, and that's why I went for a pistol. At the
17 time I had, like, a rifle at the house, and I just didn't
18 think that I could lift a rifle down; plus it was one of
19 those chop things I had to do, so I basically traded that
20 for a pistol.

21 Q. So that was for protection?

22 A. For the house protection, yes.

23 Q. Beg the Court's --

24 MR. SHELTON: No further questions.

25 MR. OZMENT: Very briefly, Your Honor.

1 RECROSS-EXAMINATION

2 BY MR. OZMENT:

3 Q. Mr. Shelton asked you about the statements you
4 made to Norvell that night at the police station.

5 A. Uh-huh.

6 Q. And you kind of said that those were consistent
7 with your testimony today; is that correct?

8 A. I don't know. I don't know what you're talking
9 about.

10 Q. Do you remember talking to Norvell at the police
11 station?

12 A. Vaguely.

13 Q. Vaguely?

14 A. I mentioned that he was a big person and if we had
15 a fight that I wouldn't stand a chance.

16 Q. And your memory is kind of foggy of that too?

17 A. As of now, yeah.

18 Q. Do you remember talking to Lieutenant Roach?

19 A. Vaguely.

20 Q. You don't remember the details of exactly what you
21 said?

22 A. Not outside of reading it, no.

23 Q. Do you think that your statement to them would
24 have been closer to what's in the letter or closer to
25 your testimony?

1 A. I have no idea.

2 Q. All right.

3 A. I mean, they don't have down there on what I read
4 from them. What's in that letter, I mean, it's not
5 what's in the detective's statements or anything like
6 that. It's as if the whole time I'm sitting there in the
7 room with them talking, it just didn't focus on my mind.
8 It's like I'm in shock. What just happened? You know,
9 what has happened?

10 Q. So it wasn't clear in your mind yet then as to
11 what happened?

12 A. It didn't dawn on me. I mean, I got these guys
13 to call me out and have me to sign these warrants, and
14 when he told me that they was going to charge me with
15 murder and attempted murder, all I could say then was
16 murder? You know, I mean, what happened? You know, and
17 stuff like that, so it was --

18 Q. So when you made those statements that night, it
19 really wasn't clear to you what had happened yet?

20 A. It hadn't dawned on me that everything that
21 happened had happened. Like, I think I kept asking, I
22 kind of sort of remember.

23 Do you remember what happened? Michelle got shot.

24 I said I didn't even know what happened, and so it
25 just goes around and around and around and around, went

1 around like that for a long time.

2 Q. So the first statement made that night, it wasn't
3 really clear what happened that night, you would agree
4 with that?

5 A. I would have to.

6 Q. And then you wrote the letter which you agree now
7 is not the truth?

8 A. Like I say, at the time it was in my mind's eye
9 this is what I saw.

10 Q. But it's not what happened, you would agree with
11 that?

12 A. As far as I can see, what I've looked at since
13 then, no.

14 Q. And your testimony today, though, is finally the
15 truth. Is that true?

16 A. I would have to guess so because -- I mean, it's
17 there in black and white as to what really happened.

18 Q. Because when you look at this evidence, that's
19 what has got to have happened?

20 A. That's what they have proved has happened so far.
21 They're fine with this and they're fine with that and
22 this is what they're saying happened.

23 Q. That doesn't fit with the other stories?

24 A. No, it probably doesn't.

25 MR. OZMENT: No further questions.

1 THE COURT: I think, folks, what we'll do
2 right now is let's break to 1:30, take a little bit
3 shorter of a lunch so we can come back and get this
4 finished up and get it to you for deliberations, so if
5 you would, be back in the jury room at 1:30.

6 Don't talk about the case with anyone,
7 including each other. Don't comment on witness demeanor.
8 Again, same instructions. Don't go by the scene, don't
9 put anything on social media, and if anybody does try to
10 contact you, please let me know when you get back. See
11 you at 1:30.

12 (In open court, jury not present.)

13 MR. SHELTON: It rebuts claims of
14 fabrication, recent fabrication.

15 THE COURT: All right. You can call him. So
16 you got who now, Norvell?

17 MR. SHELTON: Norvell just on -- regarding
18 the statement. I have Elijah Haynes regarding
19 credibility and reputation and Carolyn Smith and
20 Mr. Coaxum for reputation.

21 THE COURT: What was Carolyn Smith testifying
22 about?

23 MR. SHELTON: She's the one that made the
24 first 911 call and reputation. She knows him.

25 THE COURT: Okay. All right.

BRADLEY NORVELL - DIRECT BY MR. SHELTON

1 MS. WILLIAMS: We would ask for a limiting
2 instruction about not charging self-defense with
3 Michelle.

4 THE COURT: We're not having a charge
5 conference yet. All right.

6 (Recess taken.)

7 A F T E R N O O N S E S S I O N

8 THE COURT: All right. The jurors back?
9 Bring them in.

10 (In open court jury present.)

11 THE COURT: Okay. Next defense witness.

12 MR. SHELTON: Defense calls Sergeant Norvell.

13 THE COURT: You testified earlier. I'll
14 remind you you're still under oath.

15 THE DEFENDANT: Yes, sir, Your Honor.

16 THE COURT: Okay.

17 BRADLEY NORVELL,

18 having been previously duly sworn,

19 was examined and testified as follows:

20 DIRECT EXAMINATION

21 BY MR. SHELTON:

22 Q. Sergeant Norvell, how are you?

23 A. Yes, sir, good. How are you?

24 Q. Good. You testified earlier about performing a
25 gunshot residue test on Mr. Irby?

1 A. Correct.

2 Q. At that time you were performing a gunshot residue
3 test, did he provide any statements to you?

4 A. He did.

5 Q. And essentially what did he say?

6 A. He said a couple of things during the test that I
7 was giving him. He mentioned that --

8 Q. Would it help to refresh your memory if you saw a
9 copy of your report?

10 A. Sure. If you have it, that would be great.

11 Q. Okay. Does that help refresh your memory?

12 A. Yes, sir.

13 Q. What essentially did he say?

14 A. When I was giving Mr. Johnny Irby the gunshot
15 residue kit, he started making comments to me
16 unsolicited. I wasn't asking him any questions. He was
17 telling me this on his own, that earlier that night,
18 during the incident -- well, excuse me. Let me step
19 back.

20 He said he made a comment that he had raised
21 Telly, the victim, from when he was a baby, stating that
22 he's not his biological son, but he always felt that he
23 was his son and that he raised him as his own. And he
24 mentioned to me that he had moved away from the area for
25 a little while and he had moved back to the area with his

BRADLEY NORVELL - DIRECT BY MR. SHELTON

1 fiancée, and Mr. Johnny Irby told me he had allowed his
2 son Telly and his fiancée and his children to reside with
3 him at the incident location until they got on their
4 feet.

5 He mentioned they had a -- they had an
6 altercation, a verbal altercation, that ultimately, as
7 you know, turned violent. The details he didn't really
8 give me, but it was basically that he had told Telly that
9 he was going to have to move out and Telly basically told
10 him that, You're not going to be able to do that. You
11 know, I'm not going anywhere, and that a physical
12 altercation ensued and that that is why -- or that led up
13 to the shooting.

14 Q. And did he mention anything about Telly's size?

15 A. He did. He mentioned, you know, that Telly was a
16 big, strong man, and he also mentioned that he was a good
17 football player at Berkeley High School.

18 Q. That was the substance of what he had told you?

19 A. Yes, sir. That was basically it in a nutshell.

20 Q. And that's August 16th of 2012 is when he said
21 that?

22 A. That was the night of the incident.

23 MR. SHELTON: No further questions.

24 CROSS-EXAMINATION

25 BY MR. OZMENT:

BRADLEY NORVELL - DIRECT BY MR. SHELTON

1 Q. Sergeant Norvell, did Mr. Irby tell you where his
2 son had come at him?

3 A. No, sir. I don't believe -- let me rephrase that,
4 if I can. He didn't -- I don't recall him specifically
5 mentioning where, no, but I was under the assumption it
6 was on the porch.

7 Q. If I showed you your statement, would that refresh
8 your memory again?

9 A. If I wrote it down, that's probably --

10 MR. OZMENT: May I approach?

11 THE COURT: You may.

12 BY MR. OZMENT:

13 Q. What does your report say?

14 A. Irby stated that his son came at him on the porch
15 as he alluded to his son's size and strength, resulting
16 in his shooting him.

17 MR. OZMENT: No further questions, Your
18 Honor.

19 MR. SHELTON: No questions.

20 THE COURT: You can step down. Thank you.

21 THE WITNESS: Thank you, Your Honor.

22 THE COURT: All right. Next witness?

23 MR. SHELTON: Defense calls Elijah Haynes.

24 ELIJAH HAYNES,

25 having been first duly sworn,

1 was examined and testified as follows:

2 DIRECT EXAMINATION

3 BY MR. SHELTON:

4 Q. How are you doing? I appreciate you coming back.
5 What -- and you've known Johnny for how long again?

6 A. Several years.

7 Q. Okay. And you met through the church?

8 A. No, I met through his brother, Gene.

9 Q. And you guys went to church together?

10 A. Correct.

11 Q. What can you tell us about his character and his
12 reputation for honesty and veracity?

13 A. Well, we spent a lot of time together. I would
14 say he was -- I don't think there should be too much
15 question about his integrity at all. He's been a
16 straight A guy as long as I've been with him. Things
17 just happened, and during the time we were together, I
18 could really respect him for his integrity.

19 Q. And he's an honest person?

20 A. Somewhat, yes. I guess you could say that as
21 well.

22 MR. SHELTON: Thank you. No further
23 questions.

24 CROSS-EXAMINATION

25 BY MS. WILLIAMS:

CAROLYN HAYNES SMITH - DIRECT BY MR. SHELTON

1 Q. Mr. Haynes, you testified before about the
2 unfortunate incident that you witnessed?

3 A. Correct.

4 Q. And you also testified that the girls were there.
5 Did you know the girls before?

6 A. No, not --

7 THE COURT: The examination of this witness
8 is limited to questions about character.

9 MS. WILLIAMS: Okay. No further questions.

10 THE COURT: Okay. You can step down. Next
11 witness.

12 MR. SHELTON: Defense calls Carolyn Smith.

13 MS. WILLIAMS: May we approach, Judge,
14 briefly?

15 (Discussion held at sidebar.)

16 CAROLYN HAYNES SMITH,

17 having been first duly sworn,

18 was examined and testified as follows:

19 DIRECT EXAMINATION

20 BY MR. SHELTON:

21 Q. Hi, Ms. Smith. How are you?

22 A. Fine. How are you?

23 Q. Do you know Johnny?

24 A. Yes, sir, I do.

25 Q. How do you know Johnny?

1 A. My neighbor.

2 Q. Okay. Is there another type of relationship,
3 landlord or --

4 A. Yes, sir. I hold the mortgage to his home.

5 Q. Okay. And how long have you known Johnny?

6 A. I've known Johnny since 2000.

7 Q. Okay. Does he -- what would you say as to his
8 reputation for honestly and truthfulness?

9 A. I have found him to be a very honest person, very
10 truthful. For example, if he doesn't have his mortgage
11 money, he would come across the street and let me know
12 that he didn't have it and when he would have it, and he
13 would stand to his word.

14 Q. The night of August 16th, 2012, you were -- where
15 were you at that point?

16 A. I was on my front porch.

17 Q. You weren't out in Johnny's yard or --

18 A. No, sir.

19 Q. Do you know anything about this other than what
20 you observed that night?

21 A. I really didn't observe anything. I heard. I was
22 standing on my porch saying goodbye to a guest, and I
23 heard the loud talking, and then I heard someone said he
24 had a gun -- he's got a gun, and then I heard shots.

25 Q. Okay. And what did you do after that?

1 A. I called 911.

2 Q. And do you recognize this? Do you recognize this?
3 It's been marked for identification as --

4 A. Yes, sir.

5 Q. -- Defendant's 1. And what is that?

6 A. That's the recording of the 911 call.

7 Q. And how can you tell that?

8 A. My initials on the back, and I listened to this --
9 was it Tuesday? One evening this week.

10 Q. Okay. And is that a fair and accurate depiction
11 of the phone call that night?

12 A. Yes, sir.

13 Q. Okay. There hasn't been any changes or deletions?

14 A. No, sir.

15 MR. SHELTON: Your Honor, at this time,
16 defense introduces the 911 call for evidence.

17 MS. WILLIAMS: No objection.

18 THE COURT: Admitted. You can publish.

19 (Defendant's Exhibit No. 1 was marked for
20 identification and admitted into.)

21 BY MR. SHELTON:

22 Q. That's what you remember from that night?

23 A. That's correct.

24 MR. SHELTON: No further questions.

25 THE COURT: Cross?

JOHNNY COAXUM - BY MR. SHELTON

1 MS. WILLIAMS: Nothing from the State, Your
2 Honor.

3 THE COURT: You can step down. Thank you.
4 What's next?

5 MR. SHELTON: Defense calls Mr. Coaxum,
6 Johnny Coaxum.

7 JOHNNY COAXUM,
8 having been first duly sworn,
9 was examined and testified as follows:

10 DIRECT EXAMINATION

11 BY MR. SHELTON:

12 Q. How are you?

13 A. Great.

14 Q. Do you know Johnny?

15 A. Yes, sir.

16 Q. How do you know Johnny?

17 A. As a member of the church.

18 Q. Okay. So how long have you known him?

19 A. About a year and a half, two years.

20 Q. Okay. And in that year-and-a-half, two years,
21 have you had a chance to talk with him and meet with him?

22 A. Yes, sir.

23 Q. Okay.

24 A. I'm -- I meet with him quite regularly. I'm one
25 of the elders of the church, and I usually visit folks.

1 Q. Okay. And so that's one of your positions in the
2 church. What is an elder?

3 A. An elder is an overseer of the church.

4 Q. Okay.

5 A. We talk to people, keep them encouraging the Lord,
6 and try to get everybody to do the right thing.

7 Q. And in that time that you have gotten to know
8 Johnny, do you have an opinion as to what his reputation
9 is for truth and honesty?

10 A. From the time I've known Johnny, to me, he has
11 been a wonderful person. He does what he is asked to do,
12 especially in the church. Most of them that I deal with,
13 they don't do it. Honestly, I think he's a honest
14 person.

15 Q. And that's what you see as far as his reputation?

16 A. Reputation, he's a nice person.

17 MR. SHELTON: No further questions.

18 THE COURT: Cross?

19 CROSS-EXAMINATION

20 BY MR. OZMENT:

21 Q. How are you today, Mr. Coaxum?

22 A. Great. Fine.

23 Q. Good. You said you meet with Mr. Irby quite
24 regularly?

25 A. Yeah. Yes, sir.

1 Q. What do you mean by --

2 A. Well, I'm a neighbor. Every time I come to the
3 block, if I see him, we'll talk.

4 Q. Have you visited with him since this happened at
5 all?

6 A. Since this has happened?

7 Q. Yes.

8 A. Oh, yeah.

9 Q. You go see him and talk to him?

10 A. You mean at the prison?

11 Q. Yes.

12 A. Yes, sir.

13 Q. Okay. Has he ever told you what happened that
14 night?

15 A. I don't think, not fully. When I'm coming here
16 mostly to visit him in the prison, we talk mostly church,
17 church-related issues, or trying to encourage him while
18 he's here.

19 Q. But did he ever tell you any of what happened that
20 night?

21 A. I don't -- I don't recall we talking about that
22 too much, I really don't.

23 MR. OZMENT: No further questions.

24 MR. SHELTON: At this time, defense rests.

25 THE COURT: You can step down.

1 Does the State have any rebuttal?

2 MS. WILLIAMS: No, Your Honor.

3 THE COURT: Okay, folks. You have heard all
4 of the testimony that you're going to hear in this trial
5 now, and we're going take a little break right now so we
6 can take care of some legal matters. We have to have a
7 final charge conference where we go over the charges to
8 make sure that what I tell them I'm going to say we've
9 all agreed on or not, and then we'll bring you back here
10 in about 15 minutes.

11 We'll have then the closing arguments, then
12 I'll charge you on the law, and then you'll retire to
13 consider what your verdict will be. So while you've
14 heard all the evidence now, it's still premature to begin
15 your deliberations or discussions about the case, so
16 don't talk about the case yet, all right? See you in a
17 few minutes.

18 (In open court, jury not present.)

19 THE COURT: All right. Any motions?

20 MS. WILLIAMS: Your Honor, we have a
21 different copy of the charge. Did you print it out over
22 here before we left for lunch?

23 THE COURT: Do you have any motions?

24 MR. SHELTON: We would renew our directed
25 verdict motion based on the same arguments as prior.

1 THE COURT: All right. Well, unless you have
2 something new to argue, I'll deny them on the same
3 grounds that I denied them earlier.

4 Take a moment. Look these over. I think the
5 only thing that is different on that is the State
6 requested an intoxication charge, which is on page ten,
7 and then on page seven, under self-defense, the bulleted
8 point, the following elements are all required to be
9 present for self-defense.

10 Is there anything further from the State?
11 Let's take it up one at a time, murder indictments and
12 then the attempted murder indictment. Is there anything
13 as to the murder indictment?

14 MS. WILLIAMS: No, Your Honor. We don't have
15 any motions regarding the murder indictment. I'm
16 wondering what the Court's position is about charging --
17 and I might have just missed it, self-defense upon the
18 charge of attempted murder.

19 THE COURT: Well, I'll get to that.

20 MS. WILLIAMS: Okay. We don't have any
21 motions or objections to the charge.

22 THE COURT: All right. How about the
23 defense? I know I handed it to you. Essentially, I'm
24 giving you involuntary, voluntary, self-defense, and
25 accident on the murder charge.

1 MR. SHELTON: There's the prior violence of
2 the victim, imminent danger, size and age, and
3 intoxication --

4 THE COURT: What about it?

5 MR. SHELTON: I think there is evidence that
6 he had prior knowledge of violence by the victim and ask
7 that that be a part of the imminent danger and that size
8 and age can be taken in consideration as far as imminent
9 danger.

10 THE COURT: Specifically, I guess I'm asking
11 you, what is it you want that I don't have in here?
12 Because I asked y'all to e-mail me anything you wanted
13 that I didn't have in here, so do you have something that
14 you propose?

15 I know you said yesterday whatever is in the
16 standard charges. Well, this is what is in the standard
17 charges.

18 MR. SHELTON: Sorry, Judge. Let me grab
19 that. Specifically in the standard charge, there is
20 something on the prior violence by the victim, and
21 there's a charge that prior instances of violence by the
22 victim may be considered in whether the defendant
23 actually believed he was in imminent danger of death or
24 serious bodily injury, or is actually in imminent danger.

25 There is also --

1 THE COURT: Could you give me what you are
2 requesting there?

3 MR. SHELTON: Yes, Your Honor. And there's
4 this -- size and age, I think, is -- and the size and age
5 on the other side.

6 THE COURT: All right. Do you have a problem
7 with that sentence?

8 MS. WILLIAMS: No, Your Honor.

9 THE COURT: All right. I'll add that on. On
10 page seven, where it's under imminent danger, in between
11 the first and second sub-bullet point, so it will read
12 the second element of self-defense is that the defendant
13 was actually in imminent danger of death or serious
14 bodily injury or that the defendant actually believed he
15 was in imminent danger of death or serious bodily injury.

16 Prior instances of violence by the victim may
17 be considered in deciding whether the defendant actually
18 believed he was in imminent danger of death or serious
19 bodily injury or was actually in imminent danger. Okay?

20 MR. SHELTON: And then the size and age on
21 the back sheet of that, the one I handed up.

22 THE COURT: All right. I'll read that right
23 afterwards as well. Do you have anything else on the
24 murder indictment?

25 MR. SHELTON: No, Your Honor. Thank you.

1 THE COURT: All right. On the attempted
2 murder, what's the State's position on the attempted
3 murder charges?

4 MS. WILLIAMS: We don't have any objection to
5 the charge as the Court has proposed. The only thing
6 that we would ask the Court to do is give a limiting
7 instruction about self-defense because it is confusing to
8 them.

9 They're getting a lot of charges. They're
10 getting a lot of lessers, and there is absolutely no
11 evidence in the record of any self-defense. I think the
12 defendant testified himself that he wasn't afraid of
13 Michelle. He had no memory of her coming at him, and so
14 we would just ask the Court to clarify that.

15 THE COURT: What's your position on that?

16 MS. WILLIAMS: And no accident on Michelle,
17 excuse me, Your Honor.

18 MR. SHELTON: I can understand the
19 self-defense, taking that out as far as the attempted
20 murder, but I do believe that there is some evidence that
21 the State -- or that the jury could find that there was
22 an accident with the attempted murder or ABHAN, Your
23 Honor, so I would ask that accident be allowed for that
24 one.

25 THE COURT: Amongst the many different

1 versions of what happened today that we've heard over the
2 last couple days, I heard today Mr. Irby testified that
3 after Telly got shot that he really didn't remember
4 anything that happened after that point; however, he was
5 trying to empty out the chamber and the gun just, I
6 guess, went off, is how he said it.

7 If he was, in fact -- had a valid
8 self-defense against Telly and as a result the gun went
9 off accidentally and struck Michelle, then I think that
10 she -- that he would be entitled to the accident charge
11 for the attempted murder charge but not self-defense.

12 So I will limit them to say they're not to
13 consider self-defense on attempted murder, but they can
14 consider whether it was an accident because there is
15 evidence in the record that he was validly exercising his
16 right to self-defense, and the law is pretty clear that
17 if you are validly exercising your right to self-defense
18 and a gun goes off accidentally, then that is a defense.
19 Whether or not it's believable is for them to decide.

20 MS. WILLIAMS: And I agree with the Court on
21 that, and the one thing I would ask the Court to consider
22 with the limiting instruction is instead of bringing more
23 attention to the accident, just give them a limiting
24 instruction, that for self-defense only, you could not
25 consider that defense. For the charge of attempted

1 murder, instead of saying but you can consider -- I think
2 that kind of gives that more emphasis, so if you can just
3 mention that they can't consider self-defense for the
4 charge of attempted murder, that would be what we would
5 request.

6 MR. SHELTON: Our argument would be that
7 would be confusion, Your Honor, confusion to each
8 different charge, that there's something different, then
9 we need to also explain what could be considered for that
10 charge.

11 MR. OZMENT: Your Honor, on the accident
12 charge, defendant said he was trying to unload the gun by
13 shooting it. Part of the accident is you must have due
14 care in using a weapon. Firing a weapon in a residential
15 neighborhood to unload the gun is not due care of a
16 weapon.

17 THE COURT: We can go back and pull it, but I
18 wrote a note down, and I'm pretty sure his testimony
19 today was not that he was stating that he -- he didn't
20 remember, but that he was trying to clear the chamber or
21 the magazine. He didn't say that he was shooting it off
22 to clear the chamber but that it must have gone off, was
23 the testimony.

24 There were other people that said he shot it
25 into the air, but his testimony was he was just trying to

1 clear the chamber with the magazine.

2 MR. OZMENT: Okay. I must be recalling that
3 differently than Your Honor.

4 THE COURT: Okay. All right.

5 See if this solves our limiting problem, all
6 right? I charge you that you may consider self-defense
7 only for the murder charge. However, you may consider
8 the defense of accident for both murder and attempted
9 murder charges.

10 That sounds non-confusing to me. Does it
11 come across as non-confusing?

12 MS. WILLIAMS: No, no. I hate to even take
13 the position, but we may need to clarify they may also
14 consider self-defense for the lesser included, just
15 because they may get the impression -- sometimes we talk
16 to jurors after and they take everything so literally.
17 They may get the impression that they can't consider
18 self-defense for voluntary for or involuntary, you know.

19 We respect the Court is going to do -- it
20 sounds fine. We would request that you not highlight
21 accident again because it's going to be clear to them
22 that they can consider accident because you're only
23 limiting them on the self-defense, and even if you said
24 only for the charge of self-defense is limited to murder,
25 we would prefer you not highlight accident again, but,

1 you know, overall, it sounds fine to the State.

2 THE COURT: Well, I think it's probably
3 asking a lot to say you can consider only self-defense
4 and then, by implication, leave accident in there. I
5 think they need that clarification. I don't think it's a
6 comment on the facts.

7 MS. WILLIAMS: And I guess to that same
8 thought, if you're including ABHAN, maybe we need to say
9 you can't consider self-defense for the charge of
10 attempted murder and ABHAN. So --

11 THE COURT: Say that again?

12 MS. WILLIAMS: Just as we're going to remind
13 them they can consider self-defense for murder and the
14 lessers, we probably need to say we can't consider it for
15 attempted murder and ABHAN.

16 THE COURT: All right. I charge you that you
17 may consider self-defense only for the murder charge and
18 its lesser included charges; however, you may consider
19 the defense of accident for all of the charges, including
20 lesser included offenses.

21 Does that work for you?

22 MR. SHELTON: Yes, Your Honor.

23 THE COURT: While I'm doing this, why don't
24 y'all get together -- make sure all this is together,
25 it's in, and what didn't come in isn't accidentally over

1 there, and then how long do you need? You want to close
2 in full? Who's doing it?

3 MS. WILLIAMS: We're going to do two
4 closings. Mr. Ozment is going to do first close on the
5 law, and I'll do the second close, and they're not going
6 to be particularly lengthy. I'll say mine might be 15,
7 20 minutes.

8 MR. OZMENT: Shorter than that.

9 THE COURT: So 30 total, 10 and 20, and then
10 you want 30?

11 MR. SHELTON: Sure.

12 THE COURT: All right. Anything from the
13 State before we begin?

14 MS. WILLIAMS: Nothing from the State.

15 THE COURT: From the defense?

16 MR. SHELTON: No, Your Honor.

17 THE COURT: All right. Let's bring the jury
18 in.

19 (In open court, jury present.)

20 THE COURT: Folks, we are now into the final
21 phase of the trial where you will now have the closing
22 arguments and I'll charge you on the law and you will
23 retire and consider your verdict.

24 Our procedures are that the State, who has
25 the burden of proof, gets to open and close. They'll

1 open on the law, short, about ten minutes, where you'll
2 hear from the solicitor, basically going over what the
3 law is.

4 Then you'll hear from the defense, and then
5 the State has the right to close in full and then you'll
6 hear from the State last. So we'll hear from both sides,
7 roughly, maximum around 30 minutes, but it's going to be
8 10 and 20 on the State and 30 on the defense, but you'll
9 hear first from the State, then the defense, and then the
10 State again. After that, I will go over the law with
11 you.

12 Now, remember, you've heard all of the
13 evidence that you're going to hear in this trial, and
14 that's what you'll make your decision on, based on what
15 you heard in here. The lawyers aren't witnesses. They
16 aren't testifying. They weren't testifying. They're
17 only going over the evidence that you've heard with you
18 in an attempt to persuade you to render a verdict on
19 their client's behalf.

20 So they're only discussing the evidence.
21 What they say is not to be considered as evidence. It's
22 argument, all right? So we'll have the closing
23 arguments, and I will charge you on the law.

24 So, Mr. Ozment, if you are ready, you may
25 begin.

1 MR. OZMENT: Thank you, Your Honor. May it
2 please the Court, Mr. Shelton, Mr. Schwacke:

3 I'm going to talk briefly about the law in
4 this case. The judge -- after the lawyers are finally
5 done talking, the judge is going to close and tell you
6 what the law is you should consider. If anything I said
7 or anything Mr. Shelton says or Ms. Williams says is
8 different from what the judge says, the judge is wearing
9 the robe. He's always right.

10 Now, in this case, Mr. Irby is charged with
11 the death of Telly Irby, which I'm going to talk about
12 first. He's charged with murder. Then we'll talk about
13 Michelle Wiggins and the attempted murder.

14 South Carolina, this is what murder is. It's
15 the unlawful killing of another with malice aforethought.
16 What does that mean? Obviously, Telly Irby was killed,
17 but what I want to talk to you a little bit about is
18 malice aforethought.

19 Malice is hatred or ill will, hostility
20 toward another person. It's the intentional doing of a
21 wrongful act. I think that's important in our case.
22 It's the intentional doing of a wrongful act. Some
23 people also describe this as an evil heart. It's that
24 moment that the anger, the madness, that kind of pushes
25 somebody over the edge, and malice doesn't mean it's

1 premeditated. It doesn't mean it was planned out for a
2 month, a week, a day. It doesn't mean it's planned out
3 for a minute. Malice does not have to exist for any
4 particular amount of time. It can be that split second:
5 I'm going to pull this trigger. That's all you need for
6 malice.

7 And malice applies to both these charges, the
8 murder of Telly and the attempted murder of Michelle. He
9 had malice when he squeezed that gun and shot Michelle.
10 That's attempted murder.

11 The next thing I'm going to talk about is
12 there is something under murder you're going hear about,
13 and that is voluntary manslaughter. Voluntary
14 manslaughter is unlawful killing of another. So the same
15 as murder, but this is without malice.

16 So if you hear in this case that, you know,
17 We all agree that Mr. Irby shot Telly, but I don't think
18 it was with malice. I don't think he had an evil heart.
19 I don't think he had gotten to that madness. I don't
20 think he was angry, I think he was just caught up in the
21 moment and that he was provoked somehow to do it, that's
22 what voluntary manslaughter is.

23 Like I said, that's kind of a lesser charge
24 than murder.

25 Lastly, there is a defense, both of these

1 defenses, and that is self-defense. Four elements must
2 be established for self-defense. Now, in this case,
3 you're going to hear self-defense. That means just like
4 the other charges, it's our job, the State's job, to
5 disprove self-defense. That sounds weird, just like
6 we're trying to prove something that is assumed to exist.

7 I want you to notice on each of these four
8 self-defense elements, each of them is going to have an
9 and after it. That means if any of them are not present,
10 Mr. Irby is not entitled to self-defense. He has to
11 click all four.

12 To get a run in baseball, you have to hit
13 every base. If you miss second base, you're still going
14 to be out when they toss the ball to second base. It
15 doesn't matter if you hit a home run. Same four things
16 on these elements: The defendant must not be at fault in
17 bringing on the difficulty.

18 What you think about in this case, the
19 defendant had a gun. He was the only person to have a
20 gun. He was the only person who had a weapon. So if
21 that gun hadn't come out that day, we wouldn't be here.
22 Telly Irby would still probably be living in Moncks
23 Corner. That gun is what brought on the difficulty.

24 The reason anybody put any hands on anybody
25 is because that gun came out, and that was the

1 defendant's decision to bring that gun.

2 So I would certainly put it to you, the
3 defendant has some fault in this case in bringing on the
4 difficulty, in bringing on the death of Telly Irby.

5 Defendant must have actually believed he was
6 in imminent danger of losing his life or serious bodily
7 injury or was in actual imminent danger of losing his
8 life or serious bodily injury. Remember, these are all
9 ands.

10 Now, I asked Mr. Irby about that, and he said
11 he believed he was in imminent danger, but the judge is
12 going to charge you, you can consider the past activity
13 between the defendant and Telly. I asked Mr. Irby, in 34
14 years, Telly never once laid hands on him. Telly had
15 never once raised up to him. Telly had never beat him.

16 Telly had never hit him, but for some reason,
17 this time, Mr. Irby thought, From the way he was talking
18 to me, I thought he was about to come to kill me. Never
19 done anything to me before. He was a perfect son; yes,
20 sir; no, sir; great son, but today I had a funny feeling
21 he was going to kill me. I don't know.

22 Next, now, this is the same one as the last
23 one. The last one is what Mr. Irby thinks. This one --
24 and this is kind of legal language here. Would a
25 reasonably prudent man of ordinary firmness and courage

1 have had the same belief? You can read it, but a
2 reasonably prudent man of ordinary firmness and courage
3 is just a normal person off the street, so a normal
4 person with common sense in our community. What would
5 they think?

6 If they had been in Mr. Irby's shoes that
7 night, would they have been scared for their life to the
8 point they would need to go get a gun? Would they have
9 thought Telly Irby is about to kill me. I need a gun to
10 protect myself? I don't think they would.

11 And, lastly, so, finally, home plate, the
12 defendant had no other probable means of avoiding the
13 danger of losing his life or sustaining bodily injury.
14 If he had stayed in the house, if he had called the
15 police, if he had not gotten out a gun, if he hadn't gone
16 back out to confront -- there are many ways he could have
17 avoided this. He got a gun, he went back out front, and
18 that's the only time that any tussle started, and it was
19 over that gun.

20 That's what this is about. I think on all
21 four of these there is a good argument that the defendant
22 does not get self-defense. I don't think he hit any of
23 them. I'm not sure he got to first base, but he has to
24 hit a home run and hit every base to get self-defense.

25 Next, we'll talk about Michelle, and I told

1 you this. Now, in this case -- and the judge is going to
2 explain this to you. Self-defense doesn't apply to
3 attempted murder. It only applies to Telly's murder, and
4 the judge will tell you that, so this is the same thing
5 as murder, like we just talked about. It just means you
6 didn't die.

7 It's called malice aforethought. You still
8 have to try to kill the person, but, obviously, Michelle
9 is not dead.

10 In this case, I think the facts speak for
11 themselves. Mr. Irby says he has memory problems. He
12 remembers every detail of that day. After it happens, he
13 remembers going out on the lawn. He remembers shooting a
14 gun off. He remembers going to the police department.
15 He remembers what he told the police.

16 He conveniently doesn't remember the ten
17 seconds that he almost killed Michelle Wiggins. Can't
18 explain it. Doesn't even know he shot her.

19 He admitted, Yeah, I guess I had to have shot
20 her, but I don't know anything about it.

21 Suspicious memory loss, to me.

22 Lastly, I'm going to talk to you for a minute
23 about reasonable doubt. In any criminal case, the State
24 has to prove the defendant guilty beyond a reasonable
25 doubt, every element. Malice, unlawful killing, that's

1 murder. Both beyond a reasonable doubt. Beyond a
2 reasonable doubt means that you have to be firmly
3 convinced of the defendant's guilt.

4 It doesn't mean proof beyond all doubt. It
5 doesn't mean -- it's not like a math problem, one plus
6 one equals two, and very few things that you have no
7 doubt about, very few things, and you don't have to have
8 no doubt about this. You just have to be convinced
9 firmly. You have to think he did it, and that's all you
10 need.

11 I appreciate your paying attention. I'm
12 going to sit down. Ms. Williams is going to get up after
13 Mr. Shelton and finish our part of the close.

14 Thank you for your attention. In this case,
15 you should vote guilty.

16 MR. SHELTON: May it please the Court: Sixty
17 years old, coming into his home, pulling into his yard.
18 What does he see? He sees the child he raised, a child
19 that became a teenager and excelled, a child that became
20 a young man and started making mistakes.

21 He sees a man that reached a low point and
22 had a lot of pain, sees a man that he helped raise, he
23 helped heal with that pain. He sees that man, and that
24 man was doing anything to get back to that pain.

25 It didn't matter what anyone said to him. It

1 didn't matter that someone was pointing out that he's
2 making the wrong choices. It didn't matter. Johnny was
3 hoping, Johnny was hoping that he wouldn't have to
4 protect himself, that that man that wasn't listening,
5 that wanted to go to pain, he forced Johnny to protect
6 himself.

7 Johnny was hoping it would be that child that
8 looked up to him. Johnny was hoping it was going to be
9 that teenager that asked him for advice. Johnny was
10 hoping it was going to be that young man that wanted him
11 to come to those family functions. Johnny was hoping it
12 was going to be that young man, that man that called him
13 on his birthday. Johnny was hoping it was going to be
14 that man that committed himself to Christ.

15 It wasn't that man. That person that stood
16 up to Johnny, that wasn't that man. That was a different
17 person, and Johnny felt threatened, felt scared,
18 intimidated. Somebody that could snap him, never reacted
19 this way. He had to protect himself.

20 Let's talk about maliciousness. The State,
21 in their opening, used a pot to boil, boiling, reaching a
22 boiling point. That's not real life. We're not cartoons
23 that start getting red and red and red and then blows up
24 the top. That's not real life.

25 Every day is different. He was starting to

1 feel good. Things were starting to go well. He didn't
2 want that night to happen. He didn't want what happened.
3 That's not what he wanted. He didn't want this person
4 and these people that he was helping, that he was fixing
5 up his house, that he was trying to put on the right
6 track -- he did not want that to happen.

7 He didn't disapprove of the relationship. It
8 wasn't because of race, it was because of the pain. As a
9 father, he helped. He helped Telly overcome that pain,
10 and he sees that pain coming back. What matters is that
11 person that caused the pain.

12 Telly wasn't listening, so his choice. He's
13 a grown man, but he's going to leave. He's going to get
14 out, and that was it. That was it for Telly. He's not
15 listening, but that wasn't what Telly was going to do.
16 He was going to physically get up to him. Telly knew
17 that Johnny would be mad about the drinking. Michelle
18 said they already talked about it. Johnny testified he
19 talked about it the day before. Telly knew that, but
20 they did it anyway.

21 It doesn't take advantage of Johnny to go out
22 of the house. You could leave. You could do things on
23 your own. That's when Telly lost control. He had
24 nowhere else to go. He couldn't go back to Florida. He
25 didn't have a place that he built up, he didn't have a

1 place that he worked for, so he had to do the one thing:
2 He had to gain control. He had to intimidate. He had to
3 fight. He had to force somebody to give him what was
4 somebody else's, was his father's. He had to force that,
5 and that's what he did.

6 The thing is, all he had to do was give
7 Johnny a little bit of space, a little bit of respect,
8 and this never would have happened. If he would have
9 shown Johnny that he was that child that looked up to
10 him, if he would have shown Johnny that he was that
11 teenager that sought his advice, if he would have shown
12 Johnny that he was that young man that wanted him to come
13 and visit for family functions, if he would have shown
14 Johnny that he was that man that called on birthdays, if
15 he would have shown Johnny that he was that man that
16 recommitted to the church, this never would have
17 happened. Instead, he wanted to confront. He wanted to
18 be aggressive.

19 From that moment, Telly was not the person
20 that Johnny hoped. He was a different person. He
21 confronted, he attacked, he fought, and he would have
22 killed Johnny. He was desperate. Johnny had no other
23 choice.

24 Self-defense: Without fault. It's not
25 available if your conduct is reasonably calculated to

1 provoke a deadly attack, or your language is so
2 contemptuous would expect to bring on a physical
3 encounter. So what did Johnny do? He's telling him,
4 Move out.

5 Is that contemptuous language? Is that an
6 action that's going to tell you to come fight me? Come
7 kill me? Because that's what Telly did. That's how
8 Telly reacted, from telling him to move out. He
9 approached him. He attacked him. He confronted him, so
10 he protected himself. There is nothing wrong in that.
11 It's his house, his home. It's not unlawful.

12 He wanted to be alone. What's wrong with
13 that? Is that an action to provoke violence? And he's
14 standing in his home. He was in the doorway to his home.
15 How is that an action that provokes violence?

16 Telly's actions, though, drinking outside,
17 standing alone, that's not anything except for he knows
18 that Johnny gets upset about that. Michelle testified
19 about that. Confronting Johnny. He got up on him. He's
20 6 foot 3, 245 pounds, 250 pounds. Johnny, at the time, 5
21 foot 9, 179 pounds.

22 Johnny is 60 years old; Telly, 35. He's
23 showing his size. He's coming on to the porch. He went
24 up there. He confronted Johnny going on the porch.
25 Johnny was in his home. He was on his porch. Telly went

1 up there, physical confrontation. Gene says he heard it,
2 or saw it, before he got the gun. He saw it on the
3 porch. He saw it on the steps.

4 Johnny said there's a struggle for a gun.
5 Michelle says there's a struggle for the gun. Roger,
6 Elijah, the only person that was there, couldn't see what
7 was happening on the porch, fighting over the gun, in the
8 doorway, and you'll get these pictures and you'll see
9 that he was in the doorway, Telly was in the doorway.
10 Imminent danger.

11 Whether you felt you were in imminent danger,
12 you have the right to act on appearances. Telly
13 confronted him. Telly got big. Telly was scary. He was
14 intimidating him. Words accompanied by hostile acts:
15 It's not just words, hostile acts, and he confronted him.

16 He showed himself. Size and age: You can
17 take that into consideration. Prior violence by the
18 victim: You heard Johnny knew what Telly had done to his
19 mom. Intoxication: Consider that Telly was intoxicated.
20 Take that into consideration with whether Johnny felt
21 that he was in imminent danger. Consider all that and no
22 way to avoid danger.

23 It's his house. Telly was coming no matter
24 what. He made it clear he was coming no matter what. It
25 didn't matter. If Johnny would have went in the house

1 and shut the door, Telly would have came right in after
2 him, because Telly wasn't letting those girls go back
3 inside. He was going to take control. He was going to
4 take control of that house.

5 So what about Michelle? Johnny, he tolerated
6 Michelle. I guess you could say that. Yes, this was the
7 a person that hurt Telly, hurt his son, put him in pain,
8 but she also came up with him. She brought those kids,
9 those kids that came and hugged him, those kids that
10 started bringing joy. She also cleaned up the house.

11 Little things: She helped cook, but just
12 starting making it feel like more than just a bachelor
13 pad around there, and she started working. She got a job
14 really quick, and, plus, started going to church. She
15 sought his advice.

16 And he cared about those kids, grandkids.
17 Started them in school, got them sleeping bags for what
18 they had, and he made decisions based on those kids. He
19 changed the shower, the bathroom. He cared about them.
20 He cared about her. He cared -- he didn't want to hurt
21 her.

22 He didn't want that to happen, so he had the
23 convenient memory because he didn't remember what
24 happened with Michelle. You judge his credibility.
25 That's part of his job, believability, credibility, and

1 on that tape, he generally does not remember what
2 happened with Michelle. That's the night of. He says,
3 Oh, my God, I hope there was only one.

4 That's the only thing he remembers. He's
5 being honest. He told you he doesn't remember.

6 He told Norvell that. He told the police he
7 doesn't remember, so accident you can consider for both.
8 Unintentional act, didn't mean for it to happen. Didn't
9 want it to happen. Acting lawfully. He armed himself in
10 self-defense. That is lawful. It's the law. You can
11 arm yourself with self-defense. He's acting lawfully
12 with reasonable care used.

13 He doesn't remember, but Michelle's oldest
14 daughter does, her reaching for the gun. How far away is
15 reaching? Close enough that she had gunshot residue on
16 her hand. So what was Michelle doing? She was drinking.

17 She ran on to the porch after Telly. Her
18 testimony was that she was outside when things are
19 happening.

20 We'll get to that. She ran on to the porch
21 after Telly. There is Elijah saying that she was on the
22 porch. She says that, and she says by her feet was where
23 his head was.

24 Well, you'll get this picture, and you'll see
25 it's in the doorway. His head is in the doorway. She

1 says her own words, her feet were in by his head -- his
2 head is in the doorway. So how close is she to Johnny?
3 She got gunshot residue on her hands. Her feet are by
4 his head. That's where he fell. He fell in the doorway,
5 and you'll get that picture and you'll see the blood that
6 was on the ground. It wasn't moved.

7 So why was there only gunshot residue on the
8 back palm? And you heard the gunshot residue expert talk
9 about how you can wipe it off. It's wiped off easily.
10 That's why the bag the hands. They didn't bag her hands
11 until 2130. This happened at 2005.

12 Another hour and a half later is the
13 testimony was that she had the gunshot in the front and
14 she's putting pressure on it, she said, like ER. If
15 you're putting pressure, you're going to wipe that
16 gunshot residue off. You can't. It's not -- you can
17 wipe it off.

18 Why did he make a point of going through all
19 the gunshots? Because there were five shots, five shots,
20 three on the porch, and then, according to Elijah, two
21 were where no one else was around, and here
22 Mr. Robinson's 911 call, and he says -- he's still
23 firing, but at that point in time Michelle and the girls
24 are already in the house. You heard it on the 911 call.
25 Let them in, let them in.

1 So he's letting them, in and then he's still
2 firing. He's still shooting. They only found five
3 bullet casings, five shots. Elijah said, Man, five or
4 six, because he didn't remember how many happened in the
5 yard. He remembered how many happened on the porch.

6 Why did I have Ms. Smith come testify? Her
7 911 call, she is clear: Three shots. She heard those
8 first three shots, three shots on the porch. Why does it
9 matter? Because what Michelle said, that there were four
10 shots, two at her, two at Telly. Kids, saying that they
11 shot -- two with Telly, at least two with Telly, three
12 with Michelle because the evidence shows only three on
13 the porch and two outside, so now, I have to put the
14 gunshot outside because she said two, and she says she
15 was shot inside on the porch, her statements.

16 It doesn't match the evidence. I asked her
17 that in opening. Memory is not the best, but evidence
18 can't change. That's the three shots on the porch, two
19 outside, matches what Elijah is saying based on the
20 neighbor's 911 call.

21 So Michelle's statement to the girls, they're
22 contradicted by Elijah, Gene, neighbors, by the 911 call
23 and the screen door, because the screen door, you can't
24 see up top. What did the girls say? That they were
25 outside, outside the porch when they saw their mom get

1 shot.

2 Because they say that, we had to put Michelle
3 outside, you know, or we got to put a bullet casing
4 outside now. Johnny, when he testified, is big on this
5 letter, and he's big on what he remembers, but what he
6 testified today matches what he told the police that
7 night that Telly approached him on the porch. Telly is
8 bigger and stronger than him. He's intimidated.

9 Does it matter? Does it matter to Detective
10 Roach and the State that Michelle's statement doesn't
11 match the evidence? No. You don't want to look at that,
12 what Mr. Roach stated. Does it matter to Detective Roach
13 and the State that Michelle's girls' statements don't
14 match the evidence? No. We're here today.

15 Does it matter to Detective Roach and the
16 State that Gene's statement established self-defense?
17 Gene provided the statements to police that night.
18 Talked to the State. It wasn't all by the State.
19 Detective Roach had Gene's statement but decided he's not
20 going to do gunshot residue on Telly. They want you to
21 ignore this because it doesn't go with what they want.
22 These things should matter. It didn't matter to them.
23 It has to matter to you, has to matter for Johnny.

24 I think I'm getting to a couple different
25 charges, and the judge will have that. Unintentional

1 killing -- involuntary manslaughter: The unintentional
2 killing without malice. This is an unlawful activity not
3 naturally tending to cause the death or great bodily
4 injury, lawful activity is reckless disregard of the
5 safety of others. Voluntary manslaughter: Took life of
6 another in the sudden heat of passion without
7 provocation.

8 Johnny's actions are justified. The argument
9 was loud. Ms. Smith said that. There was threats.
10 Gene, Johnny -- physically assaulted. The facts,
11 according to Gene, facts, according to Johnny, struggle
12 over the gun, wounding Michelle, Telly confronted as
13 Johnny was trying to go back inside his home.

14 He tried to leave the argument Telly was
15 starting, and Johnny just wanted to be left alone. He
16 just wanted peace and quite in his own home. Telly
17 couldn't have it, and he was not the same person.

18 I'm going to ask you to consider all the
19 evidence and all the testimony and find Johnny not guilty
20 for the murder and attempted murder.

21 Thank you.

22 THE COURT: Ms. Williams, we need to take a
23 short break for just a few minutes.

24 Folks, we'll just take a short rest room
25 break because she'll take about 30 minutes and then mine

1 will take about 30 minutes, so let's -- again, don't
2 begin deliberations or discussions. We'll have you back
3 in just a few minutes.

4 (Recess taken.)

5 THE COURT: All right. Bring the jury in.

6 (In open court, jury present.)

7 THE COURT: Okay, folks. We'll resume now
8 with the State on the final closing argument.

9 MS. WILLIAMS: Thank you, Your Honor. May it
10 please the Court: There are many, many, many people in
11 the world, in this community, that can relate to
12 disrespectful children. Probably if we took a poll in
13 the county, it would be pretty high, aggravating
14 children. They will aggravate the fire out of them, but
15 you don't get to kill them. You don't get to shoot them,
16 and that's the tragedy in this case.

17 You know, we can try to make Michelle look
18 bad, make Telly look bad. They weren't doing what they
19 were supposed to do. They just won't listen. But is
20 that okay? You just get out a gun and shoot them? I
21 mean, let's be serious. Even if you believe that somehow
22 Telly Irby provoked his dad into shooting him, what the
23 heck is the excuse for shooting Michelle? There's no
24 excuse. There's no explanation, and that's why none is
25 given except this ingenious, "I just don't remember."

1 Telly Irby didn't get shot because he was
2 disrespectful. Telly Irby got shot because he was always
3 respectful, except for that night. That was something
4 new, and no one says that is right. It's never all right
5 to disrespect your parents, especially a parent that is
6 trying to help you, and that is not the way this was
7 supposed to go. This was always a boy who always said,
8 Yes, sir; no, sir. That night, inappropriately maybe, he
9 stood up to his dad, and his dad didn't like it, and what
10 we have that night was a really bad combination of
11 alcohol, anger, and a firearm.

12 And that was a deadly combination, and now
13 there is a man who is 35 years old who is gone, and
14 somehow that's gotten lost in all this baloney about
15 Facebook and jawing back and forth and this petty stuff,
16 but that's what this is about. This man is gone.

17 There were three little girls on that porch
18 that could have died. We could have been sitting here
19 with five counts of murder. Michelle Wiggins almost
20 died. This man had a gun, out on that porch, in front of
21 three little girls. Did you see the size of that porch?
22 And he's shooting it even after everybody is gone.

23 How easy would it have been for one of them
24 to get shot? You want to talk about malice, anger? Is
25 there any question that Mr. Irby was very angry that

1 night? Oh, my goodness. He rants and raves about all
2 the stuff that is aggravating him in his confession, in
3 the jail tapes, in the letter. I mean, I think he's
4 still angry about it, and I don't blame him.

5 Like I said, children are aggravating. Kids
6 these days are disrespectful. They don't do right, but
7 you can't let that make you walk down a hall, Okay. I'm
8 going to get my gun.

9 Go under your bed. He had the time to open
10 the box, get the gun out, get the magazine, and walk back
11 on that porch with those little girls, and this business
12 about the little girls were in the yard when the shooting
13 occurred? No, not true. Not only do the girls tell you
14 that, but in his confession, Roach says, Where were the
15 girls when this happened?

16 Oh, they ran in the yard.

17 Before and after the shooting?

18 And he said after. That's what he says in
19 one of his statements.

20 Now, let's talk about what happened on the
21 porch. Mr. Shelton would have you believe that Telly was
22 so angry that he came up to confront his dad about him
23 telling him to leave. That's not what happened. That's
24 not what anyone says happened.

25 What happened was they had an argument in the

1 yard about leaving. Telly didn't go up on that porch
2 until he saw the little girls come out. Right or wrong,
3 he didn't want the kids in the yard when they were
4 drinking alcohol. He wanted them in the house.

5 The little girls come out. He doesn't go up
6 there to confront his dad. He goes up there and says,
7 Y'all go back in the house.

8 That's when he sees his dad with the gun, so
9 the gun is already there. Mr. Irby has the gun, and he
10 may have the gun to his side, I don't know, but his
11 finger is on the trigger and the slide is back. He has
12 been trained with weapons. He was in the Navy.

13 Anyone that handles a gun knows when your
14 finger is on the trigger, you're ready to shoot. That's
15 what was going on there, and he was still angry and he
16 was very drunk. And then what does Telly do? What would
17 anyone do? Talk about self-defense. Is the man just
18 supposed to get shot? He sees the gun and he's upset
19 that he's brought a gun around the kids.

20 What did Diamond tell you? What did Michelle
21 tell you? He used awful language, but he said, I can't
22 believe you brought a gun around these girls.

23 And that's when he goes for the gun, and that
24 is probably the most consistent piece of evidence you get
25 from everybody. He was going after the gun. He's trying

1 to get the gun away because he was afraid that he or the
2 girls or his fiancée was going to get shot. That's what
3 happened.

4 And then, after the gun goes off once, what
5 does the GSR lady tell you? He's got gunshot powder on
6 both palms and both backs. That is most consistent with
7 two hands on the weapon, and how far away was Telly Irby
8 when he got shot? Three to four feet. That's what you
9 heard from the pathologist. You want to talk about
10 evidence, that's evidence, because there is no stippling
11 around the wound, and that was -- he was challenged, the
12 pathologist was challenged on that.

13 He said, No, it's consistent with three to
14 four feet.

15 So this big scary guy is not -- what
16 difference does it make how big he is? If you've got a
17 gun pointed at him, he's gone.

18 Now, I have no doubt that Mr. Irby regrets
19 that his son is dead now, but at the time, he was
20 enraged. That is clear by his actions. It's so sad,
21 but, I mean, this man was so angry that he not only
22 shoots his son, he turns the gun and shoots Michelle, all
23 five foot two and 110 pounds of her, and then he's still
24 so angry he's still shooting the gun.

25 That's not emptying a clip. That's not how

1 responsible gun owners empty a clip for a magazine.
2 Nobody would do that with any training in guns. He's
3 shooting because he's pissed. He is still angry.
4 Remember, he is still shooting that gun after the girls
5 have gone down the path, out the gate, around the cars,
6 and into another house. That's how long he continues to
7 shoot, and I don't know how many shots there are.

8 I know Mr. Shelton wants to match up the
9 exact number of shell casings they found with the shots.
10 Maybe it was five. That is five too many, but it was
11 probably more. It was very dark. If you look at those
12 pictures, by the time the police get there and the crime
13 scene tape is up, it's dark. They might not have found
14 every shell casing, I don't know, but does it matter?

15 Malice, that's malice. It doesn't have to be
16 premeditation. Now, Mr. Shelton talked to you about a
17 lot of different things, and one of the things that I
18 find so difficult is this memory loss thing, because it's
19 painful to watch.

20 When you came into this process the most
21 important asset you brought with you is your common
22 sense. Y'all judge people every single day of your life.
23 It's what we do. We sort of evaluate situations with
24 people.

25 You are the sole judge of the credibility for

1 every single witness that sits in this chair. Anybody
2 that is being honest with themselves knows Mr. Irby was
3 lying. I hate to say it, because you have a very
4 difficult job. You have to sit in judgment of an elderly
5 man who is a church-going guy who all these people
6 marched up here to say he's a man of God, he's a good
7 man, he's got a good reputation.

8 But as hard as it's going to be, you're going
9 to have to put that aside and really be honest. He was
10 not telling the truth. I mean, the whole business about
11 the letter being a dream, he remembers exactly what he
12 was watching on TV, but he doesn't remembering shooting
13 Michelle, and that's just silly. We all know he wasn't
14 telling the truth.

15 He is a man of God, but you know what? Jesus
16 never said we didn't have consequences. He just said he
17 would help us through them, and, unfortunately, he did a
18 horrible thing, and now he regrets the fact that he's
19 going to have to face some consequences.

20 Now, I promised you I was going to be brief
21 and I meant it. I'm going to very, very, very briefly go
22 through a little bit of the evidence, briefly, and then
23 I'm going to sit down.

24 Can you put up -- Officer Auclair was the
25 first person on the scene, and if you remember -- it

1 seems like ages ago, but if you remember his description,
2 pulls up. He didn't even see Mr. Irby at first, and it's
3 the way he says it.

4 He says, Mr. Irby goes, I shot my son.

5 And he says, Well, is he okay?

6 And he goes, He's dead.

7 I mean, it's just like -- I don't know if it
8 just hit him then or what, but he says, Mr. Irby said,
9 that he doesn't even remember that he killed his son
10 until, like, a day or two later when they give him the
11 warrant.

12 Clearly, that's not true. That's just one
13 more example of the fact that he can't be honest about
14 it, and, you know, maybe he just can't. Maybe he just
15 can't face it. Probably the most important witness in
16 this case, in my opinion, is Elijah Haynes.

17 The reason that Elijah Haynes is so important
18 is because from a credibility perspective, he has no
19 reason to lie. He is Mr. Irby's friend. He was put in a
20 very, very difficult position, and just -- his demeanor,
21 the way he told the story, you could tell he was being
22 truthful, even though it was difficult for him.

23 What does Elijah Haynes tell you? That
24 Michelle's on the steps when she gets shot. He also
25 tells you that there is no physical confrontation between

1 Telly and the defendant before they get in the house,
2 none whatsoever, whether it's on the steps or anything,
3 which contradicts what Gene says.

4 He also tells that you Mr. Gene runs toward
5 the right side of the house to call 911, which is
6 completely different than what Mr. Gene says, the
7 defendant's brother. So I think he's a very important
8 witness. I think he was being very honest, and he was
9 also close enough to come see what was going on. So that
10 was Officer Auclair.

11 The 911 tape, this just underscores the fact
12 that Michelle is already at the house. Telly is dead.
13 There is no more threat. This man is still so angry that
14 he is shooting this gun into the air.

15 Dr. Batalis was the pathologist who I just
16 spoke about, and he said that the range for Telly was
17 three to four feet away. Not only does that go to malice
18 because he shoots him when he's not right on him, but it
19 completely contradicts Mr. Irby's story that Telly walked
20 into the gun and that the gun was right up against his
21 shirt. That just didn't happen.

22 There is also so much blood in this wound,
23 and Dr. Batalis talked about how much blood Telly lost.
24 If you notice, and you'll have an opportunity to look at
25 the pictures, all the blood is on the bottom of

1 Mr. Irby's hands. There is no blood that belongs to
2 Michelle or Telly on his shirt, on his hands, anywhere on
3 his person except for like the very, very bottom of his
4 pants and his socks and his shoes.

5 So if Telly was really struggling with him
6 and on him the way he said, you know, you would expect to
7 find some DNA, some blood DNA, some touch DNA, but she
8 specifically said that Michelle and Telly were excluded
9 from all the DNA that was on his shirt, and the DNA
10 belonged to someone else and to Mr. Irby.

11 The children: It's very hard to drag
12 children into court, especially when they have to talk
13 about something traumatic, and I think the children were
14 being very honest and they were telling about something
15 that they're never, ever going to forget.

16 They were good witnesses. They do remember
17 what happened, unlike Mr. Irby. They gave you the best
18 details they could. The last one, we asked her if she
19 saw it. She said she didn't. I mean, they didn't try to
20 corroborate each other. Them just told it like they saw
21 it.

22 If you remember Diamond's testimony, the
23 judge asked her to explain what she was doing with her
24 hand. After the first shot was fired, he raised up and
25 points the gun, and that's what she described to you. He

1 shoots Michelle while she's still outside on the porch.
2 That's consistent.

3 How easy would it have been for these kids to
4 have been shot? But for the grace of God those kids were
5 not hit by any bullet. Diamond describes him shooting
6 after them because she's over there hiding by the cars,
7 and she kind of sees him go and look around, so she got a
8 very good view of what is going on, and they -- just as I
9 just said, they say that he already had the gun when
10 Telly got to the porch, so this nonsense about him going
11 to get the gun because Telly was so threatened, it just
12 didn't happen that way.

13 Lieutenant Roach: One thing to think
14 about -- I don't know what the average person drinks, but
15 Mr. Irby had drank quite a bit that night. I think it
16 was his practice to drink a lot because when Mr. Shelton
17 asked how much he had to drink and he said half a pint,
18 he said, That's not that much. Half a pint in two
19 drinks.

20 That's eight shots, so, you know, that's a
21 lot of alcohol, and that probably added to the madness of
22 that night. By the time he's interviewed about by
23 Lieutenant Roach, he had two hours to sober up. I'm sure
24 the arrest and everything else probably sobered him up.
25 There is nothing like getting arrested for murder to

1 sober your, but listen to his demeanor on that tape, or
2 try to remember his demeanor: He's still angry.

3 His son is dead, and he is still going on and
4 on and on about that Facebook junk, on and on, about all
5 that stuff, all that stuff, about the kids eating his
6 bacon, his eggs -- you can tell it's really, really
7 bothering him still.

8 His never says Telly put his hands on him.
9 There is one more reason why Gene Irby's testimony is
10 just not credible. Not even the defendant says that
11 Telly walked up behind him and shoved him and pushed him.
12 Nobody says that. Elijah doesn't say it, Michelle
13 doesn't say it, and the defendant doesn't say it. That
14 didn't happen.

15 He never says Michelle put her hands on him.
16 He never says he was threatened by Michelle. He pretends
17 he doesn't remember it, so this implication of Mr.
18 Shelton that Michelle was a threat is silly. Not even
19 the defendant says that.

20 One of the things that is painful to listen
21 to about that is that he's talking to Lieutenant Roach on
22 that tape two hours before that he has killed his son,
23 and he's joking about football. It's just difficult to
24 listen to.

25 An important thing for you to look at with

1 regard to Lieutenant Roach is that period of time that he
2 was with Lieutenant Roach is they took pictures of him.
3 There are no injuries on Mr. Irby. So if Telly Irby
4 attacked him, you think there would be a scratch. There
5 is nothing, his hands, his arms, his face, the back of
6 his head -- there is not one injury on him, and that is
7 something to consider.

8 I don't know what to say about Gene Irby. I
9 think he's a very nice man who is trying to protect his
10 brother, but I don't think he's credible, and there is
11 reasons for that.

12 Like I said, Elijah never sees Telly touch
13 his father and shove people. Michelle doesn't see it.
14 The defendant doesn't see it. He also said that he only
15 had one drink. Corporal Scarborough testified Gene was
16 so drunk he was staggering and he had to kind of hold him
17 up. Also, when you go back there, one of the pictures
18 that you should consider is this picture where Gene
19 says where he's standing he can see everything that is
20 going on the porch. That's just not possible.

21 What he says he can see, it's just -- I don't
22 see how it could be possible, and this door isn't even
23 the door that was there. The door that was there was
24 halfway closed up with metal.

25 So think about that as you evaluate Gene

1 Irby's testimony. Michelle: Why is it attempted murder?
2 Well, she could have died. When you are a trained
3 veteran of the Navy and you point a nine millimeter
4 pistol at someone's chest and shoot them, you're trying
5 to kill them. There is really no other ending to that.
6 She is a very, very lucky lady, and you heard the doctor
7 testify about how close that bullet came to some of those
8 major arteries, her heart, to begin with.

9 I'm not suggesting you listen to all the
10 defendant's statements. I just want to remind you of how
11 many there were, and, again, common sense: If you're
12 telling the truth, it's pretty easy to remember it. If
13 you're lying, you're going to keep changing it up because
14 you can't remember it.

15 He says in the letter that they tussled all
16 the way down the hall. He says in the jail tape, He
17 wasn't attacking me, he was just trying to get the gun
18 from me.

19 And that's the second jail tape you heard
20 where his sister says, Was he attacking you?

21 And he said, No, he wasn't attacking me. He
22 was just trying to get the gun from me. He says, I just
23 got the gun to intimidate him.

24 But then skip one down, he says, I was
25 bringing the gun to my truck, and Telly came behind me

1 and the gun just went off.

2 So, you know, I don't know which of those is
3 true. I think he was getting the gun because he was so
4 angry he was going to shoot somebody, but he certainly
5 doesn't keep a straight story. He also says Telly walked
6 into the gun at some point, but none of those statements
7 are consistent with the others.

8 Some other things that he says. This is very
9 telling: Lieutenant Roach says, I know it's your house
10 and everything, Mr. Irby. Why didn't you call the
11 police? If it was that bad, if your son was such a
12 threat to you that you are so afraid of him, why didn't
13 you just call the police?

14 I wasn't going to call the police. It was my
15 house, and he should have left.

16 I'm not suggesting that people should call
17 the police every time someone is disrespectful. What I'm
18 suggesting is if Mr. Irby's telling the truth on the
19 stand and he was in such fear, why didn't he just walk in
20 and call the police? Why did he shoot his son? It's
21 because he wasn't in fear of his life.

22 He told you himself this boy had never
23 attacked him before, never, so there was no reason for
24 him to think he was going to attack him then. They were
25 arguing about the kids. We made you listen to that first

1 jail tape, and I apologize for that. It was very long,
2 but at the very end of that tape, there is a little
3 something on there that is very important for you to
4 think about.

5 He says, He wasn't trying me, but he was
6 going to try me.

7 And they were talking about the murder, and
8 what that means is, he wasn't trying me then, but he was
9 going to; in other words, he wasn't after me then. He
10 wasn't hitting me then, but he was going to. Obviously
11 all these statements are different.

12 If he's telling the truth, why does he keep
13 changing his story? Ask yourself that question.

14 This was not an accident, y'all. This was
15 not an accident. You don't approach a situation with the
16 slide back on the gun and your finger on the trigger
17 unless you intend to shoot one. I mean, I might, because
18 I don't know a lot about guns, but not someone that does
19 know something about guns.

20 You don't put your finger on the trigger
21 unless you're going to shoot. He knows that. He's been
22 trained, and if we're going to talk about accident, how
23 logical is that? Was the first shot an accident? What
24 about the second shot? What about the third shot? What
25 about the fourth shot, the fifth shot? Five accidents?

1 Does that make any sense?

2 Don't ever forget that those kids were on
3 that porch. I think that's a very important factor for
4 you to consider.

5 Timing: I think the defense would like you
6 to analyze these two shootings of these two people
7 separately, but you really can't do that because what
8 does the shooting of Michelle tell you about the shooting
9 of Telly? If the shooting of Telly was self-defense, why
10 does he have to shoot Michelle?

11 There's just no reason. She's not a threat.
12 She's not armed. She's tiny. Apparently she's drunk, so
13 how is he a threat to him? If the shooting of Telly is
14 an accident, why does he have to shoot Michelle? Why
15 does he have to go in the yard and keep shooting?

16 So it's tempting to look at each one
17 separately, but it's okay to use common sense and look at
18 the whole situation. These shootings occurred within
19 seconds of each other. The whole self-defense,
20 accidental thing might make sense until he turns and
21 shoots the next person and walks out and keeps shooting.

22 That tells you that it wasn't self-defense
23 and it wasn't an accident. If it's an accident, you stop
24 and you're distraught: I just shot someone by accident.

25 If it's self-defense, once he drops, that

1 threat is gone and you stop shooting. That's how you
2 know it's not self-defense, and that's how you know it's
3 not an accident.

4 Why? We don't have to prove why, but I think
5 it's human nature to just wonder, why did this happen?
6 Why did this happen? Anger, as seen by the evidence,
7 alcohol, and a gun. That's the deadly combination that
8 caused this tragedy to happen, no question.

9 What was he angry about? What was this man
10 so angry about? Because we all know because we heard it
11 over and over and over again: His football career.
12 Telly was a disappointment. He didn't get to go to
13 Clemson. He went to junior college. Grandma died. He
14 didn't want to play football anymore. Threw away his
15 life. He brought Michelle's kids, not his own. Can't
16 take care of own kids.

17 Didn't want that drama back here. He was
18 also angry with him driving Michelle to work: It's only
19 a mile. Can't she walk?

20 These kids are eating all his food. He said
21 some very unkind things about these kids: Chubby kids.
22 They're eating all our bacon. They're eating sausages.
23 I buy all these eggs, and the eggs are gone.

24 He's just kind of fuming, even two hours
25 after the murder. He's upset about the church, and

1 that's understandable. You know, these are people that
2 respect him in the community, and he was so proud of his
3 son when he gave his life back to Christ, and now the
4 church is coming over saying they disapprove of this
5 shacking up thing, and that's embarrassing. That's
6 embarrassing to him.

7 And, you know, the elder from the church
8 comes over the very night before, and Michelle says she
9 kind of looks over and he looked embarrassed. The very
10 next day, they're in the yard drinking, and he's afraid
11 someone from the church is going to go by, and that's one
12 more thing that upsets him. And, don't forget, Telly had
13 never stood up before.

14 Like I said when I started, he was a good
15 son. He said he was a good son. He was shocked because
16 he had always been respectful before. He had never
17 challenged his father before, and I think that was the
18 straw that broke the camel's back because he stood up,
19 and Telly said, You want to talk? Let's talk about what
20 you did to my mama.

21 And that was it. That set him off. He went
22 in that house. Those kids had to come out, and he went
23 walking down the hall and he got his gun.

24 This was something I was going to show you,
25 where the blood was. When you look at the little stick

1 figure, if you look at the photos, all the blood is on
2 the bottom of the pants. There is no DNA from Telly or
3 Michelle on the top.

4 This is a little timeline that kind of tells
5 you basically what happened because there has been some
6 dispute about the timeline. Everyone is in the yard
7 around 6:30 or 7:00. Everyone is having a good time.
8 The first 911 call goes about 8:06, and they arrive
9 shortly after, and that's when Mr. Irby says, I shot my
10 son.

11 After that, you know, he's still shooting.
12 She's next door, and they develop both of those crime
13 scenes.

14 This is the critical question in this case:
15 How do you explain the girlfriend being shot? There is
16 this very, very interesting part of the interview when
17 Mr. Irby is so chatty, talking, talking, talking,
18 talking, and, all of a sudden, Lieutenant Roach says,
19 Well, how do you explain the girlfriend getting shot?

20 Nothing.

21 Oh. How did she get shot?

22 And that's the question for you: You start
23 considering self-defense or accident, how do you explain
24 the girlfriend getting shot? Because it just doesn't
25 make sense. There is no way that you can make sense of

1 that.

2 You have such a difficult task. As I said
3 before, you're charged with the truth, finding the truth.
4 Sometimes that's easier; sometimes it's hard. In this
5 case you have to sit in judgment of an old man who goes
6 to church, who, on any other day, this might have been
7 just fine, but it's important. It's important for the
8 rule of law, the State of South Carolina, and this
9 community for you to really apply the law in this case,
10 and it's going to be very tempting for some of you to
11 sort of fold because it's a difficult job to do, very,
12 very difficult job to do.

13 And what I'm asking you to do is to go back
14 there and have the courage of your convictions. If you
15 know that he had malice in his heart and anger in his
16 heart and he killed his son dead, don't fold. Stick by
17 your guns. Have the courage to tell the truth, even when
18 it's an unpleasant truth, and when you go back there and
19 consider the lesser included offenses, remember
20 something: You don't even get to the lesser included
21 offenses until you've all decided that the greater
22 offense, that he's not guilty of that.

23 You don't consider them all at once. And,
24 again, if I say something that is different from what the
25 judge says, by all means, go with the judge, but there is

1 a sentence that the judge gives you before every single
2 lesser included offense, and he says if you find that the
3 State has failed to prove beyond a reasonable doubt that
4 the defendant committed murder, in this case murder, you
5 may consider whether the State has proved beyond a
6 reasonable doubt that the defendant committed voluntary
7 manslaughter.

8 So what that means is that you need to have a
9 full discussion about murder before you even think about
10 voluntary manslaughter. Please go back there and take
11 this seriously.

12 You have been so attentive this whole week,
13 and I thank you for your service. I'm asking you to
14 speak the truth in this case.

15 Thank you.

16 THE COURT: All right. Well, folks, we are
17 now to the part of the trial where I am to charge you on
18 the law, and then you'll retire to consider your verdict.
19 Remember, I told you at the beginning of the trial that
20 you have duties, I have duties, and part of my job as the
21 trial judge was to preside over the trial and rule on
22 such things as admissibility of evidence, following
23 procedures, those sort of things.

24 Your job as the jurors is to consider only
25 the evidence that you have before you in this courtroom.

1 That's why I've been stressing to you all week long,
2 don't go out and try to do anything on your own. Under
3 the oath that you took, you're only to consider the
4 evidence that was presented to you in this courtroom this
5 week.

6 Evidence are statements from the witness
7 stand, exhibits that got made part of the record, and any
8 stipulations of counsel. I also told you I have another
9 duty, and that is to charge you on the law that is
10 applicable to this case. It's your duty as jurors to
11 accept and apply the law as I now state it to you. If
12 you think you have any idea as to what the law is or what
13 it ought to be and it does not agree with what I tell you
14 the law is, you must forget that idea because you are
15 sworn to accept the law and apply the law exactly as I
16 state it to you.

17 Now, I told you, you're the judges of the
18 facts. You're the sole judges of the facts. It's not
19 part of my job at all. You determine how much weight to
20 give testimony and evidence. You alone determine how
21 much credibility to give a witness's statements. You can
22 decide whether or not a witness has a bias, a prejudice,
23 or an interest in the outcome. You can judge such things
24 as their appearance and demeanor on witness stand and the
25 reasonableness of a witness's statement.

1 You are not bound to decide this case based
2 on the number of witnesses that the State produces, and
3 you can believe one witness over many or many against
4 one. You can accept all of a witness's statement or you
5 can reject it entirely. You can also accept part of a
6 witness's statement and reject part of it, so if you
7 reject part of it, you are still able to accept the
8 remainder of a witness's statement if you desire.

9 I also told you about expert witnesses, and I
10 told you, normally we don't let people come in and
11 testify and give their opinion about evidence. We make
12 an exception for expert witnesses, and those are people
13 that are considered experts because of their experience
14 or their education or specialized training in some area.

15 They may give you their opinion, and they can
16 state their reasons for their opinion. You decide how
17 much weight to give an expert's testimony. You give it
18 as little or as much weight as you think it deserves. If
19 you don't think it's based on sufficient educational
20 experience, or you conclude that an expert's opinions
21 aren't sound or that they're outweighed by other
22 evidence, then you can disregard the opinion entirely.

23 You're not compelled to blindly accept an
24 expert's opinion. You have the right to consider their
25 testimony in light of all of the circumstances and give

1 it such weight as any that you think it's entitled to.

2 Now, I also want to remind you that the fact
3 that the defendant was arrested, charged, and indicted in
4 this case is not evidence in this case and cannot be
5 considered by you as evidence of guilt in this case, nor
6 does it create any presumption of -- or inference of
7 guilt. This document, those indictments, as I told you,
8 are simply the formal written instruments by which the
9 defendant is put on notice of the charges that are
10 against him, and it gives this Court jurisdiction to hear
11 the case.

12 The defendant pled not guilty to those
13 indictments, and that plea therefore casts the burden on
14 the State to prove that the defendant is guilty beyond a
15 reasonable doubt. A person who is charged with
16 committing a criminal offense in South Carolina is never
17 expected to prove that he is innocent. This is an
18 important rule of law in this country. The defendant in
19 a criminal trial will always be presumed to be innocent
20 of the crime for which he is indicted unless and until
21 his guilt has been proven by evidence satisfying you of
22 that guilt beyond a reasonable doubt.

23 The presumption of evidence is not just some
24 mere legal theory. This isn't just a legal phrase. This
25 is a substantial constitutional right to which every

1 defendant is entitled. This presumption of innocence
2 accompanies the defendant from the time he is charged
3 throughout the trial and unless and until you reach a
4 verdict of guilt based upon evidence satisfying you of
5 that guilt beyond a reasonable doubt.

6 We've talked about reasonable doubt. The
7 State has the burden of proving guilt beyond a reasonable
8 doubt. Some of you may have served as a juror in a civil
9 case where you were told it was only necessary to prove
10 that a fact is more likely true than not true, such as by
11 the greater weight or a preponderance of the evidence.

12 In criminal cases, the State's proof must be
13 more powerful than that. It must be beyond a reasonable
14 doubt. Proof beyond a reasonable doubt is proof that
15 leaves you firmly convinced that the defendant -- of the
16 defendant's guilt. There are very few things in this
17 world that we know with absolute certainty, and criminal
18 law does not require proof that overcomes every possible
19 doubt.

20 If, based on your consideration of the
21 evidence you are firmly convinced that the defendant is
22 guilty of the crime charged, you must find the defendant
23 guilty. If, on the other hand, you think there is a real
24 possibility that he is not guilty, then you must give the
25 defendant the benefit of the doubt and find him not

1 guilty.

2 Now, in a trial, we have two types of
3 evidence: There is direct evidence and there is
4 circumstantial evidence. Direct evidence directly proves
5 the existence of a fact and does not require deduction.
6 Circumstantial evidence is proof of a chain of facts and
7 circumstances that indicate the existence of a fact.
8 Crimes can be proven by circumstantial evidence.

9 Law makes no distinction between the weight
10 or value to be given either direct or circumstantial
11 evidence; however, to the extent that the State relies on
12 circumstantial evidence, all of the circumstances must be
13 consistent with each other and, when taken together, can
14 point conclusively to the guilt of the accused beyond a
15 reasonable doubt.

16 If the circumstances merely portray the
17 defendant's behavior as suspicious, then the proof has
18 failed. The State has a burden of proving the defendant
19 guilty beyond a reasonable doubt. This burden rests with
20 the State regardless of whether the State relies on
21 direct evidence, circumstantial evidence, or some
22 combination of the two.

23 Now, I told you, there are two indictments:
24 One is for murder; one is for attempted murder. I'm
25 going to go over the elements of the charge of murder

1 first, and then what we call our lesser included
2 offenses, along with some possible defenses for the
3 charge of murder. Then I'll do the same separately for
4 attempted murder.

5 Now, the defendant's charged with murder.
6 The State must prove beyond a reasonable doubt that the
7 defendant killed another person with malice aforethought.
8 Malice is hatred, ill will, or hostility towards another
9 person. It's the intentional doing of a wrongful act
10 without just cause or excuse and with an intent to
11 inflict an injury or under circumstances that the law
12 will infer an evil intent. Malice aforethought is not
13 required if malice exists for any particular time before
14 the act is committed. Malice must exist in the mind of
15 the defendant just before and at the time the act is
16 committed. Therefore, there must be a combination of the
17 previous evil intent and the act.

18 Malice aforethought may be expressed or
19 inferred. These terms, express or inferred, do not mean
20 different kinds of malice, but merely the manner in which
21 malice may be shown to exist; that is, either by direct
22 evidence or by inferences from the facts and
23 circumstances which are proved.

24 Express malice is shown when a person speaks
25 words which express hatred or ill will for another or

1 when a person prepared beforehand to do the act which was
2 later accomplished. For example, lying in wait for a
3 person or any other acts of preparation going to show
4 that the deed was within the defendant's mind would be
5 malice, express malice. Malice may also be inferred from
6 conduct showing a total disregard for human life.

7 Now, I want to discuss with you what we call
8 a lesser included offense. If you find that the State
9 failed to prove beyond a reasonable doubt the defendant
10 committed murder, then you may consider whether the State
11 has proved beyond a reasonable doubt that the defendant
12 committed voluntary manslaughter.

13 To prove voluntary manslaughter, the State
14 must prove beyond a reasonable doubt that the defendant
15 took the life of another in the sudden heat of passion,
16 based upon sufficient legal provocation. Both heat of
17 passion and sufficient legal provocation must be present
18 at the time of the killing to constitute voluntary
19 manslaughter.

20 Sudden heat of passion may, for a time,
21 affect a person's self-control and temporarily disturb a
22 person's reasoning. The sudden heat of passion must be
23 the type that would make an ordinary person unable to
24 coolly reflect on his actions and would produce an
25 uncontrollable impulse to do violence.

1 Sufficient legal provocation must be the type
2 that would make a person of ordinary reason and caution
3 become enraged and lose control temporarily. The
4 provocation needed for voluntary manslaughter must come
5 from some act of or related to the victim. Words alone,
6 however vulgar or insulting, are not enough to be legal
7 provocation. Where death is caused by the use a deadly
8 weapon, the words must be accompanied by some overt
9 threatening act which could have produced the heat of
10 passion. The exercise of a legal right, no matter how
11 offensive it is to another, is never sufficient legal
12 provocation for voluntary manslaughter.

13 If the heat of passion has cooled or if there
14 was enough time between the provocation, if any, and the
15 killing for the passion of a reasonable person to cool,
16 the killing would not be voluntary manslaughter. In
17 deciding whether a person, a reasonable person, would
18 have had enough time to cool off, you should consider all
19 the circumstances surrounding the killing. You may
20 consider the nature of the provocation, if any, the
21 defendant's mental and physical state, and the
22 circumstances and relationships between the parties.

23 There is a second lesser included offense
24 that you may consider as well. If you find that the
25 State has failed to prove beyond a reasonable doubt the

1 defendant committed a voluntary manslaughter, you may
2 consider whether the State has proved beyond a reasonable
3 doubt the defendant committed involuntary manslaughter.

4 To prove involuntary manslaughter, the State
5 must prove beyond a reasonable doubt that the defendant
6 unintentionally killed the victim without malice but
7 while engaged in an unlawful activity not naturally
8 tending to cause death or great bodily harm, or that the
9 defendant unintentionally killed the victim without
10 malice while engaged in a lawful activity with reckless
11 disregard for the safety of others.

12 Unintentional means that the defendant did
13 not intend for anyone to be killed or seriously injured.
14 Reckless disregard for the safety of others is more than
15 mere negligence or carelessness. Mere negligence or
16 carelessness is the failure to use the care that a person
17 of ordinary reason would use under the same
18 circumstances.

19 Recklessness is a conscious failure to use
20 ordinary care. Reckless disregard for the safety of
21 others means that you are not interested in the
22 consequences of your acts or the rights and safety of
23 others. If a person who knows or should know that the
24 ordinary care requires that cautions be taken for the
25 safety of others when using a dangerous instrumentality

1 such as a gun or a car, when that person fails to use
2 those precautions without concern, the person's actions
3 are considered reckless.

4 The State must also prove beyond a reasonable
5 doubt the defendant's act was the proximate cause of the
6 death. Proximate cause is the direct cause. It is the
7 immediate cause. It is the efficient cause. It is that
8 cause without which the victim, the death of the victim,
9 would not have resulted.

10 There must be a chain of causation from the
11 time of the injury inflicted by the defendant until the
12 time of the victim's death. Proximate cause does not
13 necessarily mean that it occurred immediately prior to
14 death. There may be more than one proximate cause. The
15 acts of two or more persons may combine together to be a
16 proximate cause of the death of a person.

17 The defendant's acts may be regarded as a
18 proximate cause if it is a contributing cause of the
19 death of the victim. The fact that other causes also
20 contributed to the death of the victim does not relieve
21 the defendant from responsibility. The defendant's acts
22 need not be the sole causes of death, but must be a
23 proximate cause or contributing to the death of the
24 victim.

25 It's not a defense to show that the victim

1 might have recovered had he been treated according to the
2 most approved surgical or medical standards or as a
3 reasonably prudent doctor would have treated him in the
4 case or even by showing the treatment was negligent. If,
5 however, the death was not caused by the wound or the
6 injury that the victim had but was caused by the gross,
7 erroneous, willful, deliberate treatment, the defendant
8 would not be liable.

9 In other words, negligence on the part of
10 someone would not relieve the defendant from liability if
11 the injury was the proximate cause of the victim's death;
12 however, gross negligence or intentional activity on the
13 part of the practitioners would relieve the defendant of
14 liability. The propriety of the medical procedures is an
15 integral question in determining causation. The
16 violation of a statute, if it is the proximate cause of
17 an injury, is evidence of recklessness.

18 Now, you may also consider the defense of
19 self-defense. The defendant has raised that.
20 Self-defense is a complete defense, and if it is
21 established, you must find the defendant not guilty. The
22 State has the burden of disproving self-defense by proof
23 beyond a reasonable doubt.

24 If you have a reasonable doubt of the
25 defendant's guilt after considering all of the evidence,

1 including evidence of self-defense, then you must find
2 the defendant not guilty. On the other hand, if you have
3 no reasonable doubt of the defendant's guilt after
4 considering all the evidence, including the evidence of
5 self-defense, then you must find the defendant guilty.

6 The following elements are all required to be
7 present to establish self-defense: First, the defendant
8 must be without fault in bringing on the difficulty. If
9 the defendant's conduct was the type which was reasonably
10 calculated to and did provoke a deadly assault, the
11 defendant would be at fault in bringing on the difficulty
12 and would not be entitled to an acquittal based on
13 self-defense.

14 Self-defense is not available to a person who
15 uses language which is so contemptuous that a reasonable
16 person would expect to bring on a physical encounter and
17 which did, actually, contribute to the physical
18 encounter. The second element of self-defense is that
19 the defendant was actually in imminent danger of death or
20 serious bodily injury or that the defendant actually
21 believed he was in imminent danger of death or serious
22 bodily injury.

23 Prior instances of violence by the victim may
24 be considered in deciding whether the defendant actually
25 believed he was in imminent danger of death or serious

1 bodily injury or was, actually, in imminent danger.

2 The relative size, ages, and weights of the
3 defendant and the victim may be considered in deciding
4 the apparent or actual need for force and self-defense
5 and the amount of force needed. If the defendant was
6 actually in imminent danger, it must be shown that the
7 circumstances would have warranted a person of ordinary
8 firmness and courage to strike a fatal blow to prevent
9 death or serious bodily injury. If the defendant
10 believed he was in imminent danger of death or serious
11 bodily injury, it must be shown that a reasonably prudent
12 person of ordinary firmness and courage would have the
13 same belief.

14 In deciding whether the defendant actually
15 was or believed he was in imminent danger of death or
16 serious bodily injury, you should consider all of the
17 facts and circumstances surrounding the crime, including
18 the physical condition and characteristics of the
19 defendant and the victim.

20 The defendant does not have to show that he
21 was actually in danger. It is enough that if the
22 defendant believed he was in imminent danger and a
23 reasonably prudent person of ordinary firmness and
24 courage would have had the same belief. The defendant
25 has the right to act on appearances even though the

1 defendant's belief may have been mistaken. It's for you
2 to decide whether defendant's fear of imminent danger of
3 death or reasonable bodily injury was reasonable and
4 would have been felt by an ordinary person in the same
5 situation.

6 Words accompanied by hostile acts may,
7 depending on the circumstances, establish self-defense.
8 The intoxication of the victim may also be considered in
9 deciding whether the defendant's fear of death or bodily
10 harm was reasonable, and then the final element of
11 self-defense is that the defendant had no other probable
12 way to avoid the danger of death or serious bodily injury
13 than to act as the defendant did in this particular
14 instance.

15 The defendant has also raised the defense of
16 accident. An act may be excused on the ground of
17 accident if it is shown that the act was unintentional,
18 that the defendant was acting lawfully, and that
19 reasonable care was used by the defendant in the handling
20 of the weapon.

21 For example: If a person is lawfully armed
22 in self-defense and the gun accidentally discharges, the
23 defense of accident would apply. It is lawful for a
24 person to possess a weapon in his own home; however, he
25 may not handle a dangerous weapon in a negligent,

1 careless, or unlawful manner. The burden is on the State
2 to prove beyond a reasonable doubt that the act was not
3 an accident but was caused by the negligence or
4 carelessness on the part of the defendant in handling --
5 in the handling of a dangerous instrumentality or by the
6 dangerous activity of the defendant.

7 Now, the second indictment is for attempted
8 murder, and there is one possible lesser included offense
9 on that one that I will go over with you as well.

10 On the attempted murder charge, in order to
11 prove this crime, the State must prove that the
12 defendant, with the intent to kill, attempted to kill
13 another person with malice aforethought, either express
14 or implied. Again, malice is hatred, ill will, hostility
15 towards another person. It's the intentional doing of a
16 wrongful act without just cause or excuse and with intent
17 to inflict injury or under circumstances that the law
18 will infer an evil intent.

19 Malice aforethought does not require that
20 malice exists for any particular time before the act is
21 committed, but malice must exist in the mind of the
22 defendant just before and at the time the act is
23 committed; therefore, there must be a combination of
24 previous evil intent and the act.

25 Malice aforethought may be expressed or

1 inferred. Again, the terms express or inferred do not
2 mean different types of malice but merely the manner in
3 which malice may be shown to exist. That is, either by
4 direct evidence or by inference from the facts and
5 circumstances which are proved.

6 Express malice is shown when a person speaks
7 words which express hatred or ill will for another or
8 when the person prepared beforehand to do the act which
9 was later accomplished, for example, lying in wait for a
10 person or any other acts of preparation going to show the
11 deed is within the defendant's mind would be express
12 malice.

13 If a facts are proved beyond a reasonable
14 doubt sufficient to raise an inference of malice to your
15 satisfaction, this inference would simply be an
16 evidentiary fact to be considered by you, the jury, along
17 with the other evidence in the case, and you may give it
18 the weight you decide it should receive.

19 An intent to kill is an element of attempted
20 murder, and the context of an attempted crime, specific
21 attempt means the defendant intended to complete the act
22 comprising the underlying offense. Intent means not
23 accidentally or involuntarily. Intent may be shown by
24 acts and conduct of the defendant and other circumstances
25 from which you may naturally and reasonably infer intent.

1 Evidence of the character of the act, the
2 character of the instrument used, the manner in which it
3 was used, the purpose to be accomplished, and the
4 resulting wounds or injuries may be considered in
5 determining the intent with which the act was committed.

6 Intent may also be inferred when it is
7 demonstrated that the defendant involuntarily and
8 willfully commits an act, the natural tendency of which
9 is to destroy another's life.

10 If you find the defendant has not proven that
11 the defendant is guilty of attempted murder, you must
12 then determine whether the State has proven the defendant
13 is guilty of assault and battery of a high and aggravated
14 nature. A person commits the offense of assault and
15 battery of a high and aggravated nature if the person
16 unlawfully injures another person and great bodily injury
17 to another person results or the act is accomplished by
18 means likely to produce death or great bodily injury.

19 Assault and battery of a high and aggravated
20 nature includes all of the elements of attempted murder,
21 except malice aforethought. In addition, the State must
22 prove beyond a reasonable doubt an aggravating
23 circumstances. Circumstances of aggravation include use
24 of a deadly weapon, the intent to commit a felony, the
25 infliction of serious bodily injury, a great disparity

1 between the ages or physical conditions of the parties, a
2 difference in genders of the parties, the taking of
3 indecent liberties or familiarities with a female through
4 the use of force, the purposeful infliction of shame and
5 disgrace, and the resistance of lawful authorities.

6 These are only examples of circumstances of
7 aggravation. I charge that you may consider self-defense
8 only for the murder charge and its lesser included
9 offenses; however, you may consider the defense of
10 accident for all of the charges, including the lesser
11 included offenses.

12 Insanity caused by the use of drugs or
13 alcohol may be a defense if insanity is permanent and
14 destroys the defendant's ability to know right from
15 wrong. When voluntarily intoxication has not produced
16 permanent insanity, it is not a defense to a crime. A
17 person who voluntarily becomes intoxicated is just as
18 responsible for the acts committed while intoxicated as
19 when the person is not intoxicated.

20 In determining your verdict of guilty or not
21 guilty, you cannot consider any possible penalty for any
22 particular crime. Punishment for a crime is a matter for
23 me to determine and should never be considered by you in
24 any way in arriving at the verdict of guilty or not
25 guilty. You cannot find the defendant guilty based on

1 suspicion, conjecture, or speculation, no matter how
2 strong.

3 A conviction only can be based upon proof of
4 guilt beyond a reasonable doubt. If the proof does not
5 meet that standard, you must find the defendant not
6 guilty.

7 Finally, your verdict must be unanimous. In
8 other words, all 12 jurors must agree. Now, Mr. Foreman,
9 this is where you have your extra duties with no extra
10 pay, all right?

11 Two indictments, and I told you, these are
12 the two pieces of paper that go back that are not
13 evidence. The reason they're going back is because you
14 write the verdict form on it, and you'll see on one side
15 it's got the elements of the charges, on the other side,
16 it's got the language that says this is what the number
17 of it is, and you'll see this stamp right there that says
18 true billed. That means the grand jury reviewed it and
19 passed it on for trial.

20 Below that is the word verdict, all right?
21 There are, between these two indictments, seven possible
22 verdicts.

23 On the murder charge, there are four possible
24 verdicts for you to consider. There is murder, then
25 there is the lesser included charge of voluntary

1 manslaughter, involuntary manslaughter, and not guilty.

2 So if the jury finds unanimously that he is
3 guilty of murder, you write guilty, sign it, and date it.
4 You don't have to do anything more with that indictment.
5 If, on the other hand, y'all find not guilty on the
6 murder, then you should consider voluntary manslaughter.

7 If you find guilty on voluntary manslaughter,
8 you write guilty of voluntary manslaughter, sign and date
9 it. On the other hand, if you find him not guilty of
10 voluntary manslaughter as well, then you consider
11 involuntary manslaughter, and if the jury unanimously
12 finds he is guilty of involuntary manslaughter, you write
13 guilty of involuntary manslaughter, sign it and date it.

14 On the other hand, if you find he's not
15 guilty of murder, voluntary manslaughter, and involuntary
16 manslaughter, then you just write not guilty. You only
17 have to write that once, but if you write that, that
18 means you found him not guilty on all three of the
19 others. Okay? Sign and date it.

20 Then, after you have come up with a verdict
21 on that one, you consider this one separately, and that's
22 the attempted murder indictment, and there are three
23 possible verdicts on this one: Verdict for attempted
24 murder, and then there is a lesser included of assault
25 and battery of a high and aggravated nature and then

1 there is a not guilty.

2 So if the jury unanimously finds him guilty
3 of attempted murder, that's the indicted offense, you
4 just have to write guilty. If you find him not guilty of
5 that, though, then you consider assault and battery of a
6 high and aggravated nature, and if the jury unanimously
7 finds guilty of a high and aggravated nature, you put
8 ABHAN for assault and battery of a high and aggravated
9 nature. You can just write guilty of ABHAN, sign it, and
10 date it.

11 If, on the other hand, you find he is not
12 guilty of that as well, then you write not guilty. That
13 means you found him not guilty of attempted murder and of
14 assault and battery of a high and aggravated nature.

15 Okay? Now, I'm going to send you back in the
16 jury room with the bailiff. Don't begin your
17 deliberations just yet, because I have to give the
18 lawyers the opportunity to say if I misspoke something
19 because we've gone over all this, but sometimes I just
20 say something wrong. It just happens from time to time,
21 in which case, I'll bring it out and straighten it up,
22 but you have to give them that opportunity.

23 If I get it all right, if I've done
24 everything I'm supposed to, I'll send it back, the
25 verdicts, or the indictments back, with the evidence with

1 the bailiff. The bailiff will say, The judge says you
2 can begin your deliberations, and we'll pull the two
3 alternates out at that point.

4 Now, it's 4:30. You can take as long as you
5 want. All right? We'll stay as late as you want. But
6 after a while, if you have not reached a verdict, a
7 couple options at that point. I know sometimes people
8 have child care issues, and if you need to call home and
9 say, I got to be here for a while, make child care
10 arrangements, just let the bailiffs know. Everybody has
11 to stop, and you go make your phone calls, all right?

12 If you get going for a while and you go, You
13 know what? I think we've been here for a little while,
14 but I think we just need to work here a little bit more,
15 everybody has to have time to talk, we would like you to
16 order dinner, we can order you pizza any time you tell us
17 to.

18 On the other hand, after you've gone a while
19 and you say, We really just need to come back fresh
20 tomorrow, we can do that too.

21 Totally up to you, so we'll work as late as
22 you want. When you decide you've got a verdict, you let
23 us know, but if you decide you want to get to a certain
24 point and come back tomorrow, you let us know. We'll
25 work with you on it, okay?

1 So go back, but don't begin your
2 deliberations until I send the indictments back along
3 with the evidence, and that's when the bailiffs will say
4 you can begin your deliberations. We're almost there,
5 all right? Thank you.

6 (In open court, jury not present.)

7 THE COURT: Is there anything from the State?

8 MS. WILLIAMS: Nothing from State.

9 THE COURT: From the defense?

10 MR. SCHWACKE: Your Honor, I believe you
11 omitted or actually added turned with without.

12 THE COURT: What page are you talking about?

13 MR. SCHWACKE: On page nine, attempted
14 murder, in the section bullet point. I believe what you
15 said is --

16 THE COURT: What paragraph are you on? What
17 bullet point?

18 MR. SCHWACKE: Bullet point is the second one
19 on attempted murder.

20 THE COURT: Attempted murder beginning with
21 malice is?

22 MR. SCHWACKE: Yes, sir. And you said it's
23 the intentional doing of -- at least my recollection, the
24 intentional doing of a wrongful act without just cause or
25 excuse and without an intent to inflict an injury or

1 under circumstances that --

2 THE COURT: You're saying I said "without"
3 twice?

4 MR. SCHWACKE: Yes, sir.

5 THE COURT: All right. Can you pull that up
6 real quick? If I did, I'll just bring them back real
7 quick.

8 (Whereupon, the record was read back.)

9 THE COURT: She says that I said "with".

10 MS. WILLIAMS: I have that you say "with".

11 THE COURT: Are you okay then?

12 MR. SCHWACKE: Yes, sir.

13 THE COURT: And y'all have made sure all of
14 this is in? Okay.

15 Now, last thing: Do you have any problem
16 with me sending the jury charges back?

17 MS. WILLIAMS: I don't. I think it's helpful
18 because it's so complicated.

19 THE COURT: Are you okay with it?

20 MR. SHELTON: No objection.

21 (Court's Exhibit No. 3 was marked for
22 identification and admitted into evidence.)

23 (Whereupon, at 4:42 jury began
24 deliberations.)

25 THE COURT: Let the record reflect I have

1 discharged the alternates.

2 (8:21 p.m., in open court, jury present.)

3 THE COURT: All right. Mr. Foreman, I
4 understand the jury has reached a verdict; is that
5 correct?

6 THE FOREPERSON: That is correct.

7 THE COURT: Is it unanimous as to both?

8 THE FOREPERSON: Yes, it is.

9 THE COURT: Would you hand it to the bailiff,
10 please.

11 All right. The defendant will rise. We'll
12 publish the verdict.

13 THE CLERK: State of South Carolina, County
14 of Berkeley versus Johnny Lee Irby, indictment number
15 2012-GS-08-2100, indictment for murder: The jury find
16 the defendant guilty. Signed by the foreperson.

17 State of South Carolina, County of Berkeley
18 versus Johnny Lee Irby, indictment number
19 2012-GS-08-2101, indictment for attempted murder, the
20 jury find the defendant guilty, signed by the foreperson.

21 If I have accurately published your verdict,
22 please indicate by raising your right hand at this time.

23 THE COURT: Let the record reflect all the
24 jurors have raised their right hand. Do you wish to have
25 the jury polled?

1 MR. SHELTON: Yes, Your Honor.

2 THE COURT: Poll the jury. You may be
3 seated.

4 (Whereupon, the jury was polled.)

5 THE CLERK: I polled the jury, and the
6 verdict stands.

7 THE COURT: Well, ladies and gentlemen: Let
8 me thank you for your jury service this week. Some weeks
9 we have difficult cases, some weeks we have less
10 difficult cases. They're all important cases by the time
11 they work their way to this level of court.

12 This has been a difficult week. You've heard
13 a most unusual set of circumstances, and any time you're
14 dealing with a charge of murder, it's a serious case.
15 They don't get more serious than this, and so, you know,
16 this may be the only time you ever get to serve on a
17 jury.

18 I'm certain that you won't hear one that has
19 probably been more difficult for you, and the fact that
20 you folks have set and listened for the last couple days
21 and been very attentive and obviously gave very thorough
22 consideration to your verdict in the amount of time that
23 you spent deliberating shows that have you done
24 everything anybody could ever ask.

25 It's a very difficult set of facts, and the

1 only thing I could ever say on a verdict like this is
2 thank you for doing your service. I know that you have
3 given up time from your home, your life, your work.
4 We've disrupted your lives this week. You'll probably
5 remember this case for the rest of your life, I'm sure
6 you will, but we want to thank you for your service on
7 behalf of the citizens of South Carolina.

8 You know, I told you a little bit earlier in
9 the week about how back in the old days people, kings,
10 just pulled people off the street, put them up for trial.
11 They never knew what they were up for, and it was a very
12 rough form of justice, but you see how things play out
13 here, and we have, along the way a legal system, a
14 criminal justice system that I think in the adversarial
15 system that we have, the facts are presented to you.
16 Both sides get to show you the facts in different lights,
17 and 12 people who are random to probably each other -- I
18 would be very surprised if any of y'all knew each other
19 more than superficially before you ever came in here, all
20 different races, backgrounds, go in there and 12 people
21 agreed on these verdicts.

22 It seems like an impossible task, and yet you
23 did it, so we thank you for that. We can't ask you to do
24 any higher public service than what you have done this
25 week, so we have taken up enough of your time.

1 You don't have to come back tomorrow. We're
2 finished for the week. They'll get you a check here to
3 take which is just a small token for, obviously, the
4 amount of time you've spent here and given us this week,
5 but we want to thank you for your service, and you're now
6 free to go. All right?

7 (Jury dismissed.)

8 THE COURT: All right. Do you have any
9 sentencing sheets?

10 MS. WILLIAMS: I'm going to get them, Your
11 Honor, and I think there is two people that want to speak
12 and they're kind of collecting their thoughts, if we
13 could have just a couple minutes.

14 THE COURT: Any motions the defense wants to
15 make before we go into sentencing?

16 MR. SHELTON: Yes, Your Honor. We renew all
17 motions, pretrial motions, including the motion for a
18 continuance and all motions made during trial and
19 pretrial and during trial, and in addition, Your Honor,
20 we move for a new trial.

21 It appears that at least three of the jurors
22 had difficulty in expressing their verdict. Though they
23 ultimately said yes, it was their verdict, it's possible
24 their verdict was not based on facts alone but was unduly
25 influenced and the result of -- unduly influenced by

1 other jurors and passion and not facts alone, and we ask
2 that you grant a new trial.

3 THE COURT: Motions are denied. No evidence
4 of undue influence on the jury either.

5 All right. What would the State like to tell
6 me?

7 MS. WILLIAMS: Your Honor, Mr. Irby has a
8 criminal domestic violence from 1991. That's against
9 Mrs. Irby, and he has two DUI charges from '97 and 2010.
10 At this time, the victims would like to address Your
11 Honor, Mrs. Antoinette Irby, and then I think Michelle
12 Wiggins.

13 THE COURT: Well, what would you like to tell
14 me?

15 ANTOINETTE IRBY: First of all, I would like
16 to thank everybody for listening and for trying to
17 understand what actually happened.

18 I'm not saying that Telly was a great kid,
19 but he was my son, and I married Mr. Irby with him
20 knowing that he was not his biological father, and in 35
21 years, he had never, never told no one that was not his
22 child. He always say, That's my son.

23 And for him to do what he did to him and then
24 say that he was not his biological son, does that make a
25 difference? No. Telly might have been 6'2", 240 some

1 pounds, but this is all I have right here, this little
2 box. And, yes, I have memories of him, and I will always
3 have those memories and not one time, not one time has he
4 told me he was sorry.

5 How do you kill your own child and not tell
6 the mother that you're sorry? I don't care what led up
7 to that. Nothing children do to make you want to pull a
8 trigger on them. Who do that? And the sad part about
9 this all is we have three other kids that have to live
10 with losing a brother and now they losing a dad.

11 I don't think he gets it yet, but I just
12 wanted to thank the Courts for everything that they done,
13 for Telly and for me. Thank you.

14 THE COURT: All right.

15 MICHELLE WIGGINS: Good evening, Judge.

16 I just wanted to say, Mr. Irby, I just want
17 him to know that his son loved him and respected him more
18 than he would have ever known. He took a son, a father,
19 a stepfather, and the love of my life, but so he knows,
20 he will forever live on. His legacy will live on through
21 his son, his daughters, his stepdaughters, and his family
22 forever.

23 He forever changed me and my children's life.
24 It is really, really -- the ripples, he said you never
25 know how far they spread. Well, they spread even further

1 than he could ever knew, or could ever know, and I just
2 want to say something.

3 A few months ago I was riding in the car with
4 my children and we were discussing what happened, and
5 they said, Mama, why are you so mad?

6 And I turned around, and I said, Y'all ain't
7 mad?

8 They said, No, ma'am.

9 I said, Why?

10 They said, 'Cause we forgive him.

11 And I said, How can you forgive him?

12 They said, Well, you make him stronger when
13 you stay mad, Mama. You got to let it go.

14 So no matter how angry I am, I forgive him,
15 and I pray to God that he really helped me and my
16 children get through this because it's not over with us.
17 With this trial, it's not over for us.

18 This is going to last a lifetime for my
19 children and I, my step-kids, and their family and my
20 parents. All I got to say is I'm going to pray for you,
21 'cause this isn't where it ends for you. You still got
22 to face the Lord one day. That's all I got to say.

23 THE COURT: Thank you.

24 MS. WILLIAMS: That's it from the State, Your
25 Honor.

1 THE COURT: All right. Mr. Shelton?

2 MR. SHELTON: Thank you, Your Honor. May it
3 please the Court: Judge, I know that Johnny wants to
4 address Your Honor. Obviously, the jury has spoken, and
5 we respect their decision. Your Honor, the faith and the
6 talk of church that Johnny -- that you saw a little bit
7 of with his testimony, I can tell, I feel is genuine.

8 I have come to know Johnny over these two
9 years of representing him, and I've met clients that I
10 really don't believe them being genuine in their faith,
11 and it's an excuse to try to get out of jail or to make
12 them look better, and I don't sense that. I haven't
13 sensed that from day one with Johnny, and he's continued
14 to show that through my representation of him, Your
15 Honor.

16 Obviously, with these types of cases, there's
17 certain decisions, certain arguments that are made that
18 are part of the process, but I know that he would like to
19 address Your Honor, and we were faced, from my
20 perspective, from a legal perspective, with spending the
21 rest of his life in jail on a plea versus trial.

22 Even the minimum, he's going to be over 90
23 years old, day for day, 30 on the murder, Your Honor, and
24 you know that, and so this was just a decision that was
25 made, but I would ask for Your Honor to hear from Johnny

1 as far as sentencing.

2 THE COURT: Mr. Irby, would you like to say
3 anything?

4 THE DEFENDANT: Very little, Your Honor.

5 Listening to my ex-wife saying that I didn't
6 ever say I was sorry, I haven't talked to her since this
7 thing went down. I talked to her the weekend that I went
8 down to talk with her about Telly, and we made the
9 decision to have Telly come up here with me.

10 I haven't talked with her. She haven't
11 written me. I didn't have her telephone number, so I
12 couldn't say I was sorry because I hadn't been in
13 communication with her. I am sorry that that happened, I
14 really am. It wasn't supposed to happen.

15 If I had to do that again, I would have left
16 him in Jacksonville I would have left him get in the
17 scrap that he would. Two, three weeks he didn't
18 retaliate against those guys, I wouldn't have bring him
19 up here in the first place. He should have taken care of
20 his family down there.

21 To make it look like they are so much in love
22 and doing this and not stabilizing, just remember
23 conversations that I've had with Michelle, say, Why don't
24 you just go home to your mother, all right?

25 She couldn't go home with her mother because

1 she couldn't take Telly with her. When she got up here,
2 I asked her why she didn't go to the kids' grandmother up
3 here in Sumter? She couldn't go there because she had
4 Telly with her, so she chose that life so they chose to
5 be together. They shouldn't have had that difficulty to
6 be together.

7 To say that I killed my son, no, sir, I did
8 not, all right? I got God as my witness, and my heart is
9 clear and my conscious is clear. I did not murder my
10 son, and I still state again, I did not remember pulling
11 that trigger on Michelle. I do not, and to this date I
12 still do not, and I'll go to my grave still believing
13 that I did not, and I do not remember anything happening
14 to Michelle.

15 As far as that particular day, I do not
16 remember anything, but I gave them the best. I wanted to
17 give them all my best, and if this is what I get for
18 that -- like she say, God forgives. I've already
19 repented, and I know everything is going to be all right
20 with me, with my soul. My soul is at rest. My mind and
21 my consciousness is at rest, so all I can say again is
22 I'm sorry that it happened.

23 It didn't have to happen. It shouldn't have
24 happened. It just do. We did what we supposed to do.

25 THE COURT: All right. Well, you got to do

1 what you got to do to sleep at night, and I guess if you
2 have to believe what you got to believe, but the evidence
3 was there to convict you, and the jury convicted you of
4 murder and of attempted murder.

5 Sentence on murder is 30 years; attempted
6 murder is 30 years. Murder is 30 -- murder is day for
7 day. You'll get credit for the time you've served.
8 Attempted murder is no parole. Could have just as easily
9 been life, but I imagine a 30-year sentence for somebody
10 your age and your health is probably a life sentence
11 anyway, but on the outside chance that, you know, prison
12 works well for you, you might get to see the outside
13 again some day. We'll see.

14 Good luck to you. They'll run concurrent.

15 - - -

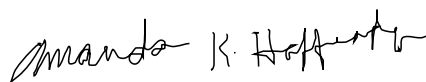
16 (Whereupon, the proceedings were concluded.)

17 - - -

I, the undersigned Amanda K. Haffenden, RPR, CRR, Official 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 all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Berkeley County, South Carolina, on the 24th of July 2014.

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

October 20, 2014

A handwritten signature in cursive script, reading "Amanda K. Haffenden".

Circuit Court Reporter

FORM 5

STATE OF SOUTH CAROLINA)

COUNTY OF Berkley)Johnny L. Irby 360844)

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

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2016-CP-08-1168

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Lieber C.I., P.O. Box 205, Ridgeville, S.C. 29472
2. Name and location of Court which imposed sentence General Session
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2012 GS 0802101 Attempted Murder
 - (b) 2012 GS 0802100 Murder
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) Aug. 21, 2014
 - (b) _____

FILED
2015 MAY 23 PM 3:41
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

Revised 3/2003

121

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
YES
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. The State of S.C. Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Appeal Dismissed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. March 30, 2016
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. dismissing pursuant to the Anders v. California procedure
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully: 4th, 5th, 6th, 8th, 13th, 14th Amend Violated; due process violation! Fraud upon the Court: Subject in error Jurisdiction! Ineffective Counsel.

- (a) revised PCL will follow: Brief will follow
- (b) _____
- (c) _____

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

- (a) Brief will follow
- (b) _____
- (c) _____

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

- (a) any petition in a State Court under South Carolina Law? N/A
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? N/A
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A
- (d) any other petitions, motions or applications in this or any other Court? N/A

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

- (a) the specific nature thereof:
- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A
- (b) the name and location of the Court in which each was filed:
- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A
- (c) the disposition thereof:
- i. N/A
- ii. N/A
- iii. N/A

- iv. _____
- (d) the date of each such disposition:
- i. _____
- ii. _____
- iii. _____
- iv. _____

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

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

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

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

(a) which grounds have been presented:

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

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

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

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

- (a) _____
- (b) _____
- (c) _____

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

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

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

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

- i. Chad D Shelton, Public Defender
- ii. P.O. Box 1687, Murrells Creek, S.C. 29461
- iii. _____

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

- i. Trial Court
- ii. Appeal Court
- iii. _____

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

Sentence and Conviction Vacated, Order Issue Expunging Record
Name and DNA Record from all derogatory files; All money returned

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

NO

STATE OF SOUTH CAROLINA)

County of)

VERIFICATION

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

Johnny Deley

SWORN to and subscribed before me this 13th
day of May, 2016

Notary Public (L.S.)

My Commission Expires: 8/20/2016

FILED
MAY 23 PM 3:41
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF BERKELEY	)	
	)	
Johnny L. Irby, #360844,	)	Case No.: 2016-CP-08-1168
	)	
Applicant,	)	
	)	
v.	)	RETURN AND PARTIAL MOTION TO
	)	DISMISS AND MOTION FOR MORE
State of South Carolina,	)	DEFINITE STATEMENT
	)	
Respondent.	)	
_____	)	

In response to the post-conviction relief application filed on May 23, 2016, Respondent would show this Court:

I.

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Berkeley County Clerk of Court's orders of commitment. Applicant was indicted by the November 2012 term of the Berkeley County Grand Jury for murder (2012-GS-08-2100), and attempted murder (2012-GS-08-02101). Chad Shelton and David Schwacke, Esquires, represented Applicant. Anne Miller and Matt Ozment prosecuted the case. On June 21, 2014, Applicant proceeded to trial before the Honorable Roger M. Young, Sr. and a jury. The jury found Applicant guilty of both charges as indicted. Judge Young sentenced Applicant to concurrent terms of imprisonment for 30 years for each charge.

Applicant filed a timely notice of appeal. Lara Caudy, Esquire, represented Applicant on appeal and filed a brief pursuant to Anders v. California, 386 U.S. 738 (1967) on his behalf. The South Carolina Court of Appeals dismissed Applicant's appeal. State v. Irby, Op. No. 2016-UP-147 (Ct. App. filed March 30, 2016). The Remittitur was returned on April 29, 2016.

II.

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

1. “4th, 5th, 6th, 8th, 13th, 14th Amendment Violation”
2. “Due Process Violation”
3. “Fraud upon the court”
4. “Subject Matter Jurisdiction”
5. “Ineffective Counsel”

For the purpose of this Return, Respondent incorporates the Clerk of Court records, the South Carolina Department of Corrections’ records, the trial transcript, appellate records, and the application. Respondent reserves the right to amend this Return upon receipt of any relevant materials. Applicant indicates in his application that an amended PCR and brief will follow.

III.

Respondent submits Applicant’s allegation of ineffective assistance of counsel is without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that “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); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland v. Washington, 466 U.S. 668. First, Applicant must prove that counsel’s performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures 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 the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. “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, counsel's deficient performance must have 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.

Respondent submits Applicant can satisfy neither requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

The Respondent construes Applicant's first and second claims as an allegation of infringement upon the Applicant's constitutional rights. However, the Applicant does not explain with any specificity the grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires the Applicant to “specifically set forth the grounds upon which the application is based.” S.C. Code Ann. § 17-27-50 (1985). Before the Court will hold an evidentiary hearing, the Applicant must make a *prima facie* showing that he is entitled to relief. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). This allegation is so vague that it is impossible for the State to respond. Respondent submits Applicant has failed to set forth a *prima facie* showing that he is entitled to relief on these bases. Therefore, the Court should dismiss these grounds for failure to comply with

the Uniform Post-Conviction Procedure Act.

VI.

Applicant's allegation of "fraud upon the court" should be dismissed for failure to state a claim cognizable under the Post-Conviction Procedure Act, S.C. Code Ann. §17-27-10 to -160. An Applicant may commence a post-conviction relief action on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy....

S.C. Code Ann. § 17-27-20.

"Fraud upon the court" is not a claim cognizable under the act. For this reason and pursuant to Rule 12(b)(6), SCRCPP, Respondent moves to dismiss this allegation for failure to state a cognizable claim for which relief can be granted under the Post-Conviction Relief Act.

VI.

Applicant alleges "subject matter jurisdiction." Respondent interprets this as an allegation the trial court lacked subject matter jurisdiction. "[S]ubject matter jurisdiction is the power of a court to hear and determine cases of the general class to which the proceedings in question belong," and "issues related to subject matter jurisdiction may be raised at any time." Gentry, 363 S.C. 93,100, 610 S.E.2d 494, 499 (2005) (citing Brown v. State, 343 S.C. 342, 540 S.E.2d 846 (2001); Pierce v.

State, 338 S.C. 139, 526 S.E.2d 222 (2000)). Circuit courts obviously have subject matter jurisdiction to try criminal matters. State v. Gentry, 363 S.C. 93, 101, 610 S.E.2d 494, 499 (2005) Applicant was convicted of a criminal offense in General Sessions court within the Ninth Judicial Circuit Court. Thus, the trial court clearly had subject matter jurisdiction over Applicant's charges. Accordingly, Respondent moves to summarily dismiss this allegation.

VII.

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRPC. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRPC. Pro se filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRPC.

VIII.

Respondent also hereby moves for a more definite statement. Applicant has failed to set forth any facts to "support each ground" or to explain with any specificity whatsoever the facts upon which his claims are based. The Uniform Post-Conviction Procedure Act requires the Applicant to "specifically set forth the grounds upon which the application is based." S.C. Code Ann. § 17-27-50 (1985) (emphasis added). Respondent respectfully submits that it is incumbent upon Applicant, through counsel, to amend his application to set forth specific facts upon which his allegations are based so that Respondent may adequately prepare for an evidentiary hearing. Therefore, Respondent

requests that Applicant be required to amend his application to set forth specifically the grounds on which his claims are based.

IX.

Respondent therefore requests that this Court convene an evidentiary hearing on the allegations of ineffective assistance of counsel. As to all other allegations, Respondent moves for summary dismissal pursuant to § 17-27-70 of the South Carolina Code of Laws on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

X.

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

{Signature block on following page}

XI.

WHEREFORE, Respondent moves for a more definite statement, and requests that an evidentiary hearing be held on the claims of ineffective assistance of trial counsel.

Respectfully submitted,

ALAN WILSON
Attorney General

ROBERT BOLCHOZ
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

ALICIA A. OLIVE
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Post Office Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

May 15, 2017

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BERKELEY	)	
	)	
	)	2016-CP-08-1168
JOHNNY L. IRBY,	)	
S.C.D.C. No. 360844,	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
_____	)	

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

Lance S. Boozer, Esquire
807 Gervais Street, Suite 203
Columbia, South Carolina 29201

DATED this 15th day of May, 2017.


 Brianna Arnone, Legal Assistant
 For Respondent

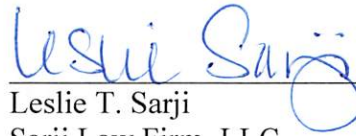
STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF BERKELEY	)	
	)	CASE #.: 2016-CP-08-1168
	)	
JOHNNY IRBY,	)	
SCDC Inmate #.: 360844	)	AMENDED APPLICATION FOR
	)	POST CONVICTION RELIEF
Applicant,	)	
	)	
vs.	)	
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
_____	)	

The Applicant, JOHNNY IRBY, now having the benefit of appointed counsel alleges the following, in addition to the grounds previously stated:

1. JOHNNY IRBY is detained at Correctional Institution under Inmate Number: 360844.
2. Applicant, by and through undersigned counsel, submits this Amended Application for Post Conviction Relief, and alleges the following errors by trial counsel in addition to those already alleged, which rendered trial counsel's assistance ineffective and but for which, there is a reasonable probability that the result of the proceeding would have been different:
 - a. **Trial counsel provided ineffective assistance of counsel by failing to have the DNA on the 9 MM semi automatic pistol tested prior to trial;**
 - b. **Trial counsel provided ineffective assistance of counsel by failing to procure Applicant's jail calls in advance of trial and to listen to those jail calls in order to determine if exculpatory evidence existed or if information pertinent to cross examination existed within those calls; and**
 - c. **Trial counsel provided ineffective assistance of counsel by failing to hold a Castle Doctrine hearing prior to trial.**

Wherefore, based on this Amended Application as well as all grounds previously alleged, the Applicant requests that a hearing on the merits be scheduled.

Respectfully submitted,



Leslie T. Sarji
Sarji Law Firm, LLC
171 Church Street, Suite 210
Charleston, South Carolina 29401
(843)722-5354

Attorney for Applicant

Charleston, South Carolina
March 22, 2021

STATE OF SOUTH CAROLINA)

COUNTY OF BERKELEY)

Johnny L. Irby, #360844,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
C/A NO: 2016-CP-08-1168**ORDER FOR DNA TESTING**

FILED
2018 MAR -8 PM 3:04
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

By Motion made on October 13, 2017, Applicant requested this Court to order DNA testing of a pistol involved in Applicant's trial to assist in proving his PCR claims against trial counsel. A hearing into the Motion was heard by this Court on December 4, 2017. Applicant and Applicant's counsel, Lance S. Boozer, Esquire, were present for the hearing. Assistant Attorney General Julie Coleman appeared on behalf of the State.

Applicant was convicted of murder and attempted murder following a trial on July 24, 2014. Applicant was accused of shooting his son and his son's fiancée. His main defense at trial was self-defense. Applicant's direct appeal was denied on March 30, 2016. Applicant filed this Application for PCR on May 23, 2016. Mr. Boozer was then appointed. Subsequently on February 21, 2017, Applicant filed a *pro se* Application for Forensic DNA testing pursuant to S.C. Code Ann. 17-28-10, et. seq. In the *pro se* Application, he alleged that had the pistol been tested for DNA, it would have shown that the victim's DNA was present on the weapon to further his claim that he and the victim struggled over the pistol while Applicant was defending himself, and the victim attempted to get the pistol from him. Applicant asserted this testing

Boozer

would have assisted in his self-defense claim. Mr. Boozer was appointed per the statute to represent Applicant in that proceeding. The State through the Berkeley County Solicitor's office opposed Applicant's request.

A hearing was held on the matter on April 18, 2017, before the Honorable Kristi L. Harrington. By Order dated April 20, 2017, Judge Harrington denied Applicant's request for DNA testing finding that Applicant "failed to demonstrate how his own identity was or should have been an issue in this case" and Applicant "failed to satisfy all requirements of the 2008 Access to Justice Post-Conviction DNA Testing Act."

In support of Applicant's current Motion before this Court, he argues that DNA testing of the pistol is necessary to support his claim that his trial counsel was ineffective for failing to request that the pistol undergo such testing to assist in bolstering his self-defense claim that he and the victim fought over the pistol. The State opposes the Motion. This Court finds that Applicant's request is separate and distinct from the prior request he made in his general sessions matter pursuant to the 2008 Access to Justice Post-Conviction Relief Testing Act. The Motion before this Court is unrelated to his prior request and is made to assist Applicant in pursuing his claims that trial counsel was ineffective. This Court notes that it is not changing, modifying or attempting to overturn Judge Harrington's Order dated April 20, 2017. This Court recognizes that Applicant's current request is a distinctly separate claim as it relates to his PCR Application.

For these reasons, this Court grants Applicant's Motion and orders that the State, following proper and standard protocol, submit the pistol that was the subject of Applicant's trial to SLED and that the pistol undergo SLED DNA testing to determine whether the victims' DNA or any

other person's DNA is found on the pistol.¹ This Court further orders that the report containing the results of the test be made and delivered to both counsel for the State and the Applicant upon the completion of the test.

AND IT IS SO ORDERED this 1 day of March, 2018.

[Signature], South Carolina

[Signature]
The Honorable Michael G. Nettles
Presiding Judge
Ninth Judicial Circuit

¹ The deceased victim is identified as Telly Irby and the surviving victim is Michelle Wiggins. The trial transcript reflects DNA profiles for both victims were available to the State and SLED. See tr. pg. 166-167.

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

COURT OF
GENERAL
SESSIONS
FOR THE
9TH CIRCUIT
Case no.
2016CP081168

JOHNNY L. IRBY,

Applicant

-against-

STATE OF SOUTH CAROLINA,

Respondents.

PCR HEARING

DATE: March 24, 2021

TIME: 2:20 p.m.

HON.: CLIFTON NEWMAN

Natalie A. Williams
Court Reporter
(914)610-8863
natalieawilliams726@gmail.com

I N D E X

<u>WITNESS</u>	<u>DESCRIPTION</u>	<u>PG./LN.</u>
Johnny Irby	Direct Exam.	10/17
	Cross Exam.	22/4
	Redirect Exam.	26/9
Mary Ann Boehm	Direct Exam.	29/4
	Cross Exam.	32/5
	Redirect Exam.	33/3
Chad Shelton	Direct Exam.	36/1
	Cross Exam.	49/2
	Exam. by Court	55/20
	Redirect Exam.	61/19

E X H I B I T SRESPONDENT'SDESCRIPTIONPAGE

N/A

1 MR. LIMBAUGH: Can I approach?

2 THE COURT: Yes.

3 (Whereupon, all the parties
4 approached the bench for an off-the-record
5 discussion.)

6 THE COURT: We're on the Webex
7 platform as well as here, in person, in
8 Berkeley County. Parties ready to proceed?

9 MR. LIMBAUGH: Yes, Your Honor.

10 THE COURT: All right. And for
11 the record we have Mr. Limbaugh for the
12 State. That's not Ms. Sarji, is it?

13 MS. SARJI: It is, Judge. It's
14 good to see you, it's been 20 years.

15 THE COURT: Yes, 20 years. And
16 next to you is Mr. Irby?

17 THE APPLICANT: Yes, sir.

18 THE COURT: Mr. Irby, how are
19 you doing today?

20 THE APPLICANT: I could do
21 better, you know that.

22 THE COURT: I understand. All
23 right, well we're ready to begin the
24 hearing and Mr. Limbaugh, who is wanting to
25 join?

1 MR. LIMBAUGH: We have one of
2 the victims in the case, Your Honor. I'm
3 not entirely sure which victim it is and it
4 looks like our victim's advocate just
5 stepped outside.

6 THE COURT: One of the victims?

7 MR. LIMBAUGH: Yes, Your Honor.

8 THE COURT: Well, you only have
9 two victims, right? One is deceased?

10 MR. LIMBAUGH: Well, victims
11 can be listed by people that were also
12 there, Your Honor. So, it could be one of
13 the kids, it could have been--

14 THE COURT: Okay, I understand.

15 MR. LIMBAUGH: Yes, Your Honor.

16 THE COURT: Okay. And who is
17 the lady that went to try and find that
18 person?

19 MR. LIMBAUGH: That was
20 Ms. Laura Hutchinson, she's our victim's
21 advocate for the A.G.'s Office.

22 THE COURT: Do you want us to
23 wait till she comes in and tells us the
24 status of that person?

25 MR. LIMBAUGH: I would

1 appreciate it, Your Honor.

2 THE COURT: Okay.

3 MR. LIMBAUGH: Your Honor,
4 would you like me to step out and see how
5 that's going?

6 THE COURT: Yes, sir.

7 MR. LIMBAUGH: She is working
8 on connecting now. It is Michelle, the
9 main surviving victim.

10 THE COURT: Tell me the person
11 again?

12 MR. LIMBAUGH: Michelle
13 Wiggins, Your Honor, the surviving victim.

14 THE COURT: Well, lets proceed,
15 Mr. Limbaugh, if you'll call the case.

16 MR. LIMBAUGH: May it please
17 the Court, Your Honor.

18 THE COURT: Yes, sir.

19 MR. LIMBAUGH: This is the case
20 of a Mr. Johnny Irby, case number
21 2016CP081168. Mr. Irby is incarcerated
22 with the South Carolina Department of
23 Corrections, pursuant to orders of
24 commitment of the Berkeley County Clerk of
25 Court. Applicant was indicted by the

1 November 2012 term Berkeley County Grand
2 Jury for Murder and Attempted Murder.

3 Mr. Chad Shelton and David
4 Schwacke, Esq. represented the applicant.
5 Anne Miller and Matt Osman prosecuted the
6 case.

7 On June 21, 2014 applicant
8 proceeded to trial before the Honorable
9 Roger M. Young, Sr. and the jury. The jury
10 found applicant guilty of both charges as
11 indicted. Judge Young sentenced applicant
12 to the current terms of imprisonment for 30
13 years for each charge.

14 Applicant filed a timely Notice
15 of Appeal, Lara Caudy, Esq. represented the
16 applicant on appeal and filed a brief
17 pursuant to Anders v. California. The
18 South Carolina Court of Appeals dismissed
19 applicant's appeal. Remitter was returned
20 on April 29, 2016.

21 Your Honor, applicant did file
22 an initial application for Post Conviction
23 Relief on May 23, 2016. In that, he
24 alleged the fourth, fifth, sixth, eighth,
25 thirteenth, fourteenth amendment

1 violations. Due process violation, fraud
2 upon the Court, subject matter
3 jurisdiction, ineffective counsel.

4 Subsequently, Your Honor -- and
5 this was forwarded to me by Ms. Sarji prior
6 to being filed, however, an amended
7 application was filed on March 22nd of this
8 year. In this application, Mr. Irby
9 alleges trial counsel provided ineffective
10 assistance of counsel by failing to have
11 the DNA on the 9 millimeter semi-automatic
12 pistol tested prior to trial. Trial
13 counsel provided ineffective assistance of
14 counsel by failing to procure applicant's
15 jail calls in advance of trial, and to
16 listen to those jail calls in order to
17 determine if exculpatory evidence existed
18 or if information pertinent to
19 cross-examination existed within those
20 calls. And finally, trial counsel provided
21 ineffective assistance of counsel by
22 failing to hold a Castle Doctrine hearing
23 prior to trial.

24 I'll hand it over to Ms. Sarji
25 at this time, Your Honor.

1 THE COURT: Before we do that,
2 regarding the other victim.

3 VICTIM'S ADVOCATE: It's
4 Michelle Wiggins.

5 THE COURT: Ms. Wiggins?

6 THE WITNESS: Yes, this is
7 Michelle Wiggins.

8 THE COURT: Okay. How are you?

9 THE WITNESS: I'm all right,
10 sir, how you doing?

11 THE COURT: Good. We're
12 beginning the hearing on Mr. Johnny Irby's
13 PCR and we'll get to you in due time, if
14 need be. Okay?

15 THE WITNESS: You have to
16 repeat that again, sir.

17 THE COURT: We'll get to you in
18 due time if need be, if you're a witness or
19 have some comment to give the Court.

20 THE WITNESS: Yes, sir.

21 THE COURT: All right, thank
22 you. Ms. Sarji?

23 MS. SARJI: Thank you, Your
24 Honor. I'll call Johnny Irby to the stand.

25 THE COURT: Let me ask you

1 first, the amended application, does that
2 supersede the initial application?

3 MS. SARJI: Judge, these are
4 the additional grounds. I don't -- I
5 incorporate the prior grounds that were
6 filed, and should Mr. Irby wish to address
7 anything to the Court beyond what I've
8 included in my amended application, I
9 intend to give him the chance to do so.
10 Once I have done the basis that I have in
11 my amended application. I feel that those
12 are his strongest basis.

13 THE COURT: Okay, very good.

14 MS. SARJI: May I call him to
15 the stand, Your Honor?

16 THE COURT: Yes.

17 J O H N N Y I R B Y , the Applicant in
18 this case, having been first duly sworn by
19 the Clerk, was examined and testified as
20 follows:

21 THE CLERK: Please state your
22 full name for the record.

23 THE APPLICANT: Johnny L.
24 Irbry.

25 DIRECT EXAMINATION BY MS. SARJI:

1 Q Mr. Irby, where do you
2 currently live?

3 A Currently, I'm in Ridgeland
4 Correctional Institution right now.

5 Q What were you convicted of?

6 A Murder and Attempted Murder.

7 Q Who was your trial lawyer?

8 A My trial lawyer was Chad
9 Shelton.

10 THE COURT: Let's hold it just
11 a second. Ms. Wiggins, can you hear what's
12 being said?

13 THE WITNESS: Yes, sir, I can.

14 THE COURT: You can hear Mr.
15 Irby?

16 THE WITNESS: No, sir. I
17 haven't heard him yet. That's better.

18 THE COURT: You may proceed.

19 MS. SARJI: Thank you, Judge.

20 Q Mr. Irby, I believe that we
21 have discussed that Mr. Shelton on was your
22 trial lawyer, is that right?

23 A That's correct.

24 Q And did he represent you prior
25 to trial, right? He didn't just come in

1 and start at trial, is that correct?

2 A No, ma'am.

3 Q I'm sorry?

4 A He was there, he was there.

5 Q Did you tell him -- did you
6 discuss with him your version of the events
7 that related to the night that you were
8 charged with?

9 A Yes, I did.

10 Q Can you tell us what you told
11 him or what you recall telling him?

12 A Basically what I told him, that
13 my son and I had an altercation, where I
14 told him that he needed to leave my house.
15 Now, the reason he come to be at my house
16 in the first place was that he called me
17 earlier from Jacksonville -- that he said
18 Michelle had had him beat up. So, I went
19 to Jacksonville and brought him to my
20 house. He stayed at my house about 30
21 days.

22 I come home one day, he's going
23 back to Jacksonville. Then he shows back
24 up after he called my brother to bring
25 Michelle and her kids to my house. I put

1 up with it for a while and it's getting
2 close to school time, y'all need to go
3 ahead and do something.

4 Q I need you to slow down a
5 little bit, because the court reporter has
6 to type in what you're saying.

7 A Okay. She come right there and
8 got a job, he could have been had a job
9 because he's from the area, being as to the
10 representation that he had when he played
11 football and such. He should have had a
12 job. But I was under the impression that
13 he didn't want a job.

14 Q Okay. What did you tell him
15 about the night in question?

16 A Okay, the night in question,
17 like I said we had altercations about
18 partying in the front yard, is basically
19 what it boils down to. They're sitting
20 around the table in the front yard, while
21 the traffic passes by. And I just told him
22 don't do that. I simplified that. He
23 wasn't married to her and he had three kids
24 out there of his own. And he done left his
25 kids and brought her kids to my house with

1 no place to really sleep at, you know? One
2 or two bedrooms, me and my brother was
3 there, so. And the fact that whoever was
4 buying my house from, if he just got a job,
5 I could have talked to her and she could
6 have put in for some apartment, because all
7 the apartments around us just -- so, he
8 wouldn't have had a problem getting up out
9 of the house real quick if he decided he
10 wanted to, but he didn't want a job.

11 Q Okay. On the night of the
12 shooting, you said you came home and Telly
13 Irby was in the yard drinking, is that
14 right?

15 A Him, my brother, Michelle,
16 they're just sitting around at the table in
17 the front yard.

18 Q Did you tell that to Mr.
19 Shelton?

20 A I'm sure I did, yes.

21 Q Then at that point what else
22 did you tell Mr. Shelton about that night
23 and what happened that night?

24 A Well, that night I had my
25 weapon, believe it or not. My son was like

1 6'3", 6'4" and I was like 180 something
2 pounds, and I had it. When I got through
3 talking with him and tell him he needed to
4 leave, I turn around, I went back up my
5 steps through the front door into the
6 house. I was stepped into the living room,
7 he came up behind me and attempted to take
8 the weapon from me.

9 Q Did you tell Mr. Shelton that
10 Telly Irby had tried to take the gun away
11 from you?

12 A Yes, I did.

13 Q Did you tell Mr. Shelton that
14 Telly Irby had ever touched the gun or that
15 ya'll had struggled with the gun?

16 A We struggled with the gun
17 because he put his hand over the gun trying
18 to take the gun away from me. I didn't
19 want him to take the gun, I didn't know if
20 he was going to use it on me or not, right?
21 Once I got back in the house I can put it
22 back up and lock my room or something.

23 Q Okay. I still need you to slow
24 down a little bit. Because I know what
25 you're trying to say and I'm having a hard

1 time understanding you.

2 A Okay, okay. All right.

3 Q Did you tell Mr. Shelton that
4 Telly had his hands on the gun?

5 A Yes, I did.

6 Q Did you tell Mr. Shelton as
7 well that you had told Telly that he had to
8 leave your house?

9 A Yes.

10 Q Did you tell Mr. Shelton that
11 Telly refused to leave your house?

12 A He wasn't going nowhere.

13 Q Okay. The question that I'm
14 asking you though, is if you told Mr.
15 Shelton that?

16 A Yes, I did.

17 Q Okay, perfect. Now, after all
18 the talking that you and Mr. Shelton did
19 about what happened that night, did you and
20 Mr. Shelton ever talk about having the DNA
21 on the gun tested?

22 A I would have to assume we did
23 because I told him that he had -- he was
24 trying to take the gun from me. So, if he
25 was trying to take the gun from me, he had

1 to have had his hand on the gun trying to
2 take it from me. I'm right handed and he
3 had his whole hand on the top of that gun.
4 And the fact that they said that they found
5 no--

6 Q Okay -- we're going to get to
7 that in a minute. I'm asking if you and
8 Mr. Shelton discussed having the DNA on the
9 gun tested. If you don't recall, that's
10 okay.

11 A As much as I knew to have DNA
12 tested, yeah, I'm sure -- I mean, I thought
13 it was supposed to happen already.

14 Q Do you recall having a
15 conversation with your trial lawyer about
16 having your gun tested?

17 A Like I said, I just assumed
18 that they're supposed to do that.

19 Q Okay. To your knowledge, do
20 you know whether, before your trial, the
21 DNA on the gun was ever actually tested?

22 A Before my trial?

23 Q Yes, sir.

24 A I don't know that for sure.
25 They had the gun so I don't know whether

1 they did or not.

2 Q Okay. To your knowledge, did
3 Mr. Shelton have the gun tested for either
4 Telly or Michelle Wiggin's for DNA?

5 A I can't say they did.

6 Q Part of what -- and you
7 testified at your trial, right?

8 A Yes, ma'am.

9 Q Did you tell the jury at the
10 trial about the struggle between you and
11 Telly Irby over this gun?

12 A Yes, ma'am.

13 Q How about jail calls, do you
14 remember an issue about jail calls coming
15 up?

16 A I did hear somebody I made
17 1,000 telephone calls, but I doubt it if I
18 even made 20 telephone calls. Since I been
19 back here, I made much more than 20, 30,
20 calls, I just don't talk on the telephone.

21 Q Do you recall any issue about
22 telephone calls from the jail being given
23 to Mr. Shelton right before trial?

24 A No, I do not.

25 Q You don't remember?

1 A I don't remember.

2 Q Okay, okay. Well, this is
3 going to move us along pretty quickly. Do
4 you remember ever talking to Mr. Shelton
5 about the Stand Your Ground law, have you
6 ever heard that?

7 A Yes, I had heard that. I guess
8 you call it jailhouse lawyers, right? And
9 I was under the impression that I had the
10 right to defend myself within my home.
11 I had the right to defend myself and for
12 him to attempt to take my weapon, in my
13 house, should have been no, no.

14 Q Did you and Mr. Shelton talk
15 about the Castle Doctrine or the Stand Your
16 Ground law? Did y'all discuss whether or
17 not Mr. Shelton would have a hearing before
18 trial on that issue?

19 A I can't remember.

20 Q Do you remember whether you did
21 have a hearing on the Stand Your Ground
22 law?

23 A I don't know if that's what
24 they called it or what. But prior to me
25 going to trial Mr. Shelton and I talked a

1 few times about various things that was
2 concerning the trial. But to say that he
3 called it what you just said or Castle
4 Doctrine, or so on and so on, I don't know.

5 Q Do you remember Mr. Shelton
6 talking to you about self defense?

7 A That's what I told him it was.

8 Q Okay. But you don't
9 remember -- were there any strategic
10 discussions that you remember between you
11 and Mr. Shelton about whether or not to
12 have a Stand Your Ground hearing?

13 A No, I do not.

14 Q Okay. Those are all the things
15 that we have in this amended application
16 that we're saying that were Mr. Shelton
17 didn't do right for you, do you understand
18 that?

19 A I understand that.

20 Q Is there anything else that you
21 want to tell the judge about --
22 specifically that you feel like Mr. Shelton
23 did not do right for you or that he did
24 something that he shouldn't have done? Is
25 there anything else you want to tell the

1 judge?

2 A Not really. Other than the
3 fact that like I said, this was my house
4 and I had the right to defendant my home
5 after I told him that if he's going to be
6 there, he needs to be there, not -- I
7 mean -- not doing what he did. I mean he
8 slipped back to Jacksonville and came back
9 to my house without his kids. He brought
10 somebody else's kids to my house. We only
11 have two bedrooms and me and my brother had
12 those two taken up.

13 Q Okay. But this hearing is what
14 Mr. Shelton did or did not do, that you
15 think that he should or shouldn't have
16 done. So, I just want to make sure -- this
17 is your chance to tell the judge if there
18 is anything else that you feel like you
19 need to say that you felt Mr. Shelton
20 should have done for you.

21 A I can't tell you anything right
22 now.

23 MS. SARJI: All right, thank
24 you. I don't have anything further, Judge.

25 THE COURT: Mr. Limbaugh?

1 MR. LIMBAUGH: May it please
2 the Court, Your Honor.

3 THE COURT: Yes.

4 CROSS-EXAMINATION BY MR. LIMBAUGH:

5 Q Good afternoon, Mr. Irby.

6 A How you doing?

7 Q So, you said you did testify
8 about you and Telly having an altercation
9 over the gun or a scramble for the weapon,
10 is that true?

11 A Mhm, yes.

12 Q And I believe Michelle also
13 testified at the trial that there was a
14 struggle between you and Telly over the
15 weapon, remember that?

16 A Yes, mhm.

17 Q So, what purpose did you want
18 the DNA tested, if it was clear and brought
19 out to the jury on multiple occasions that
20 you and Telly struggled over the weapon?

21 A Because we were struggling over
22 a weapon that was -- physically, the weapon
23 belonged to me. And for him to try and
24 take it from me and the fact that he caused
25 it to go off by trying to take it from me.

1 So, it went off and shot him, and of
2 course, you know, killed him. So that -- I
3 just think that it should have been
4 something in my defense that protected me
5 on the other side of my front door. I
6 mean, this is in my house, right? For him
7 to take a weapon from me and then to tell
8 me that he wasn't going to leave. I
9 mean -- that's -- oh, God.

10 Q I understand all that. But
11 what purpose does having DNA tested, what
12 does that do when all of the testimony is
13 saying that you and this one person, your
14 son, Telly, struggled over the weapon?
15 Isn't it just saying what's already been
16 said?

17 A I can't say that because they
18 want to make it that they can't find his
19 DNA on it. They can't find no DNA on it
20 but mine.

21 Q My question is, even if it
22 comes back the way you want it that, yes,
23 it's your and Telly's DNA on the weapon,
24 isn't that exactly what all the testimony
25 says anyway?

1 A No, it don't seem like it. It
2 don't seem like it would benefit me at all.
3 I mean, for them to say that my DNA is on
4 there, when I was reading through my
5 transcript they say that there was no
6 powder on him, there was no powder on his
7 hands. How can there not be when his hand
8 was on the weapon when it fired?

9 Q Okay. Do you remember a jail
10 call where you said that Telly wasn't
11 attacking you, he was trying to take the
12 weapon from you?

13 A Say that again?

14 Q A jail call where you said that
15 Telly wasn't attacking you, he was just
16 trying to take the weapon from you?

17 A I don't recall that. I mean,
18 if he's trying to take my weapon, he's
19 trying to attack me. I sure wasn't going
20 to give it to him.

21 Q What was the conversation like
22 on the front porch? Was it involving
23 whether or not the kids should be inside
24 the house or outside the house?

25 A It started in the front yard.

1 Kids came outside, and Telly and Michelle
2 told the kids go back inside the house,
3 which is where I was headed. And if they
4 weren't going to listen to me and do what I
5 told them to do -- it's time to go.

6 Q Did you go all the way back
7 into your bedroom, under your bed and get
8 the weapon, then come back out to the front
9 porch to have another altercation with
10 Telly?

11 A Not another one, that was the
12 initial altercation.

13 Q Which broke off when you went
14 inside to get the weapon, correct?

15 A I tried to come back out and
16 talk to him.

17 Q And reengage him?

18 A No. I didn't said much to him
19 when I first went in. That conversation
20 had happened a couple of days before. Do
21 not do what you're doing in my front yard.

22 Q So, it's a conversation about
23 whether the kids should be inside or not,
24 and then you go grab weapon and come back
25 to the porch?

1 A That's when the kids came
2 outside and he wont send them back in the
3 house.

4 MR. LIMBAUGH: That's all I
5 have of this witness, Your Honor.

6 THE COURT: Ms. Sarji?

7 MS. SARJI: Thank you, Your
8 Honor. Just very briefly.

9 REDIRECT EXAMINATION BY MS. SARJI:

10 Q Mr. Irby, do you believe that
11 if there was other DNA than yours on the
12 gun, that it might have served to
13 corroborate what your version of events was
14 to the jury or to backup what you were
15 saying?

16 A Yes. I am pretty sure it would
17 because those were some busy little kids,
18 they were some busy kids. And I've caught
19 them under my bed, in my closet, so they
20 just were busy kids. I mean, young kids,
21 busy kids.

22 Q I want to make sure that you're
23 understanding my question. I'm asking you
24 if you think that the DNA had shown that
25 there was other DNA than yours on the gun,

1 would that have served to backup your story
2 to the jury?

3 A I would think so.

4 Q Okay, thank you.

5 MS. SARJI: I don't have
6 anything further of this witness, Judge.

7 THE COURT: Mr. Limbaugh?

8 MR. LIMBAUGH: Nothing further,
9 Your Honor.

10 EXAMINATION BY THE COURT:

11 Q In what way would it have
12 backed up your story?

13 A Say that again?

14 Q In what way would that have
15 backed up your story?

16 A The fact that they literally
17 found his DNA on the weapon. They're
18 saying they did not find his DNA on the
19 weapon. I'm saying how can it not be on
20 the weapon if he and I were both struggling
21 for the weapon?

22 Q When you say, 'they,' who are
23 you talking about?

24 A Well, whoever wrote that down
25 that did the DNA. I have a DNA record that

1 said that his DNA and my DNA were matched
2 so closely, because he was my son and I was
3 his father, right? But the fact that he
4 was not my biological son, they should be
5 able to split the DNA easily I thought.

6 THE COURT: Thank you. Further
7 questions, Ms. Sarji?

8 MS. SARJI: Nothing, Judge.
9 Thank you.

10 THE COURT: Mr. Limbaugh?

11 MR. LIMBAUGH: Nothing, Your
12 Honor.

13 THE COURT: Thank you, sir, you
14 may step down.

15 THE APPLICANT: Thank you.

16 MS. SARJI: I would call Mary
17 Ann Boehm to the stand. Judge, at the
18 outset, Mr. Limbaugh has been kind enough
19 to stipulate to the chain of custody on the
20 DNA testing, as well as -- is it Dr. Boehm
21 or Ms. Boehm?

22 THE WITNESS: Ms. Boehm.

23 MS. SARJI: As well as to
24 Ms. Boehm's qualification as an expert.

25 THE COURT: Is that correct?

1 MR. LIMBAUGH: That's correct,
2 Your Honor.

3 THE COURT: Okay.

4 M A R Y A N N B O E H M, a Witness called
5 on behalf of the Applicant, having been
6 first duly sworn by the Clerk, was examined
7 and testified as follows:

8 THE CLERK: Thank you. Please
9 be seated. State your full name for the
10 record and spell your name.

11 THE WITNESS: My name is Mary
12 Ann Elizabeth Boehm, B-O-E-H-M.

13 DIRECT EXAMINATION BY MS. SARJI:

14 Q Ms. Boehm, where do you
15 currently work?

16 A I work at the South Carolina
17 Law Enforcement Division, commonly known as
18 SLED.

19 Q What are your job duties?

20 A I am a DNA analyst. I work in
21 the DNA casework department, where I
22 analyze evidence from crimes across the
23 state and compare them with known standards
24 submitted in the case and write a report on
25 my findings.

1 Q Okay. Did you have occasion to
2 do any testing on items of evidence in Mr.
3 Irby's case?

4 A I did.

5 Q And was that your testing
6 from -- looks like September 24, 2018 was
7 the date of your test, is that right?

8 A That is the date that the
9 report was issued. My testing would have
10 been done before that date.

11 Q So, to your knowledge was this
12 testing performed after Mr. Irby's trial
13 and conviction?

14 A It was.

15 Q Okay. Well, I guess, just tell
16 me, if you could, what you tested and what
17 your results were.

18 A Sure. I tested swobs from an
19 exterior of a 9 millimeter semiautomatic
20 pistol, as well as known standards for
21 comparison. Buckle swobs from Johnny Irby,
22 a blood sample from Telly Irby and an
23 alternate known standard from Michelle
24 Wiggins.

25 Q What were the results of your

1 testing?

2 A The DNA profile developed from
3 item 1.1, which was swabs from the gun, is
4 a mixture of at least four individuals.
5 The partial DNA profile of the major
6 contributor, matches the DNA profile of
7 Johnny Irby.

8 The probability of randomly
9 selecting an unrelated individual having a
10 DNA profile matching the major contributor
11 to this item is approximately one in
12 100 billion. Due to the inability to
13 calculate statistics, no further
14 interpretation will be offered regarding
15 the minor contributors to this fixture.

16 Q Okay. So, does that mean that
17 there's evidence that other people, other
18 than Johnny Irby, touched the pistol?

19 A There's at least three other
20 profiles on that item.

21 Q Could those people have
22 included Telly Irby and Michelle Wiggins?

23 A It may. As a minor contributor
24 I was unable to make those comparisons.

25 MS. SARJI: Thank you. I don't

1 have any further questions.

2 THE COURT: Mr. Limbaugh.

3 MR. LIMBAUGH: May it please
4 the Court, Your Honor.

5 CROSS-EXAMINATION BY MR. LIMBAUGH:

6 Q Ms. Boehm, does that also mean
7 that the DNA on that gun could have come
8 from any other known person on the earth?

9 A Yes, sir. Yes, I could not
10 make any comparisons, because I could not
11 do statistics on the minor contributors at
12 that time.

13 Q So, that gun being in the
14 household, given the kids, manufacturer,
15 any human being on the earth could have
16 been the other mixture of that DNA other
17 than Mr. Irby, is that correct?

18 A It's possible. I would not be
19 able to make those comparisons to anybody
20 on the earth.

21 Q Okay. So, your DNA testing
22 certainly didn't conclude that the other
23 DNA found on the weapon was Telly Irby?

24 A No, sir.

25 MR. LIMBAUGH: Thank you, Your

1 Honor, that's all I have of this witness.

2 MS. SARJI: Very briefly.

3 REDIRECT EXAMINATION BY MS. SARJI:

4 Q Ms. Boehm, does that mean that
5 it could also have been law enforcement
6 that mishandled the weapon or maybe even
7 the SLED lab prior to you getting it or
8 members of the prosecution?

9 A When I was requested to work
10 this, I did speak to someone who requested
11 an item to be tested. My concerns for
12 the -- since it had been to trial, it also
13 had been through the firearms department.
14 So, if there is not a DNA request on the
15 item, they don't handle that item as they
16 would if there was a DNA request on the
17 item. It could have also been passed
18 around during the trial. They were going
19 to check on it, they never responded to my
20 request, so I can't tell you how the DNA
21 got there, just that there is a mixture of
22 at least four individuals on that gun.

23 Q So, if Mr. Shelton, Mr. Irby's
24 trial counsel, had requested that the gun
25 be DNA tested prior to trial, we could have

1 cut out all of those other possibilities to
2 see about what was on that gun, is that
3 right?

4 A Can you repeat that question?
5 I don't understand it.

6 Q You said if there was a request
7 for DNA testing the gun would have been
8 handled differently than if there was not,
9 is that right?

10 A Right, yes.

11 Q So, presumably, if there had
12 been a DNA request by either the state or
13 by a defense expert, y'all would have
14 preserved that evidence to be tested
15 effectively, correct?

16 A Right. The firearm would have
17 been swabbed prior to going to the Firearms
18 Department for testing.

19 Q So, if defense counsel had
20 gotten his own DNA testing prior to trial,
21 the evidence that was on the weapon would
22 likely have -- if there was any, granted
23 you can't say when all this happened. But
24 all of those chain of events that you just
25 said that could have added to the

1 contamination, so to speak, of the DNA on
2 the gun, none of that would have happened,
3 right?

4 A It also would depend when that
5 testing happened. So, if it went to SLED
6 first before the defense counsel got it, it
7 wouldn't be the same results, possibly.
8 It's hard to talk about hypothetical like
9 that, I can't tell you.

10 Q Understood?

11 MS. SARJI: Thank you.

12 MR. LIMBAUGH: Nothing further
13 from the State, Your Honor.

14 THE COURT: All right, thank
15 you.

16 MS. SARJI: Judge, may this
17 witness be excused?

18 THE COURT: Yes.

19 THE WITNESS: Thank you.

20 MS. SARJI: Thank you so much
21 for coming.

22 THE COURT: Next witness.

23 MS. SARJI: Judge, I'll call
24 Chad Shelton to the stand.

25 THE COURT: Okay.

1 C H A D D . S H E L T O N, a Witness
2 called on behalf of the Applicant, having
3 been first duly sworn by the Clerk, was
4 examined and testified as follows:

5 THE CLERK: Thank you. Please
6 be seated and state your name for the
7 record.

8 THE WITNESS: Chad Daniel
9 Shelton.

10 DIRECT EXAMINATION BY MS. SARJI:

11 Q Mr. Shelton, where do you
12 currently work?

13 A Price Benowitz, LLP.

14 Q Is that a law firm?

15 A Yes, a law firm.

16 Q Back in 2014, in July at the
17 time of Mr. Irby's trial, where were you
18 working?

19 A The Berkeley County Public
20 Defender's Office.

21 Q Okay. And you did represent
22 Mr. Irby, is that right?

23 A That's correct.

24 Q And during the trial,
25 there's -- David Schwacke is also involved.

1 Were you Mr. Irby's primary attorney or was
2 Mr. Schwacke?

3 A I was his primary attorney.

4 Q Did Mr. Irby and you have
5 conversations before trial about his
6 version of events?

7 A Numerous conversations. I
8 can't remember exactly when I started the
9 representation, but Johnny and I talked a
10 lot.

11 Q Okay. And you were sitting in
12 the courtroom for Mr. Irby's earlier
13 testimony, is that right?

14 A That's correct.

15 Q And he recalls having talked to
16 you about a struggle for the gun between
17 Telly Irby and himself. Do you recall him
18 telling you that prior to trial?

19 A Yes.

20 Q And did he tell you that Telly
21 had actually put his hand on the gun?

22 A Yes.

23 THE COURT: Just a moment,
24 please. Ms. Wiggins disappeared from the
25 screen.

1 VICTIM'S ADVOCATE: Her phone
2 overheated. She is charging it so she is
3 trying to get back on.

4 THE COURT: You may proceed.

5 MS. SARJI: Thank you, Judge.

6 Q Did you know that there was the
7 potential for their to be DNA evidence on
8 the weapon?

9 A Yes, there was a potential.

10 Q And did you consider having the
11 gun tested for DNA?

12 A We thought about it, and that
13 was just talking with others in the Public
14 Defender's Office. I think the main idea
15 was that there was other witnesses that
16 were also corroborating that there was a
17 struggle over the gun and I didn't want to
18 necessarily request something that I didn't
19 know the answer to, in defense.

20 Q So, you weighed whether to do
21 it or not, and decided you didn't want to
22 know the answer?

23 A That's -- well, we had other
24 witnesses that were going to testify that
25 there was a struggle over the gun. We had

1 interviewed Gene Ibry, and he had known
2 that there was a struggle over the gun.
3 So, there was others that were going to
4 corroborate that struggle.

5 Q So, you didn't see any value
6 and some objective -- potentially objective
7 evidence, scientific evidence, that would
8 have also backed up what Mr. Irby was
9 saying?

10 A It could have helped. I mean,
11 it would have corroborated the physical --
12 there being evidence. Yes, that would have
13 corroborated it. But not knowing -- I also
14 had the argument that there was a struggle
15 over the gun.

16 Q Are you aware that you can
17 retain your own defense experts to do that
18 type of testing?

19 A Yes.

20 Q Are you also aware that if you
21 don't reduced their findings to a report
22 that it's not discoverable?

23 A That's true.

24 Q So, if you found something out
25 that you didn't really want to know, you

1 wouldn't have had the obligation to tell
2 the State about it if you didn't call the
3 witness. Are you aware of that?

4 A That's true.

5 Q Do you think that if -- knowing
6 now that there was a mixture of individuals
7 on the gun, do you think in hindsight, do
8 you wish that you would have tested it?

9 A I think it would have
10 definitely been helpful, especially with
11 potential self defense on Michelle also.

12 Q As to the jail calls, do you
13 recall asking the judge -- and I think it
14 was two different judges. I think you made
15 a motion to Judge Jefferson for a
16 continuance at the beginning of the term,
17 perhaps?

18 A It was the Judge Young that I
19 did ask for the continuance, and he went
20 down to Charleston County and had the
21 hearing there to ask for the continuance.

22 Q Okay. Perhaps it was the court
23 reporter just typed it up wrong. It looks
24 like on the transcript it says Judge
25 Jefferson, so I wasn't sure whether it was

1 two separate judges, but you're saying it
2 was Judge Young that you asked for the
3 continuance?

4 A Yes, I believe in the
5 transcript Judge Jefferson is who went for
6 the handwriting exemplar.

7 Q Okay.

8 A But Judge Young was who we
9 asked for the continuance.

10 Q Do you recall why you asked for
11 a continuance?

12 A Last minute the State handed me
13 1,000 phonecalls and said that we're only
14 going to play these, so that's all that's
15 relevant that you need to listen to.

16 Q And there was some discussion
17 during that motion about you needing a
18 continuance to listen to the rest of it, do
19 you recall that?

20 A I recall that.

21 Q Why did you feel at that point
22 that it would have been necessary for you
23 to listen to the rest of those calls?

24 A Well, it's evidence. And to
25 listen to the evidence and to be able to

1 possibly explain some of the other phone
2 calls to possibly -- Mr. Irby was having
3 memory issues, so to possibly help with
4 some of the memory issues. If there is
5 going to be any impeachment against Mr.
6 Irby, if he decided to testify, which he
7 did. And some phone calls that could have
8 corroborated, possibly, his testimony. But
9 not knowing -- not having that -- not being
10 able to go through that evidence, that
11 is -- I just didn't know.

12 Q Were you aware that you could
13 have subpoenaed those calls prior to the
14 trial of the case?

15 A Yes.

16 Q Why didn't you do that?

17 A I wasn't aware of any type of
18 evidence that could have come from those
19 phone calls by Mr. Irby telling me about
20 any phone calls or talking about particular
21 people. He didn't indicate that there was
22 anything from the phone calls.

23 Q So, all the stuff that you just
24 told us about being the reason why you were
25 going to ask for the continuance to listen

1 to those calls, you don't think that those
2 would have been as valid prior to trial?

3 A I didn't know there were phone
4 calls that had any evidentiary issues until
5 the State presented those at the last
6 minute.

7 Q Did you have a chance,
8 because -- was it two different days
9 between when you asked for the continuance
10 or did y'all just go right from that into
11 jury selection?

12 A Um, it was, I think, July 11th
13 and then July 21st was jury selection. So,
14 I think it was about 10 days, but this last
15 minute trial, things that you're getting
16 together and that come up and witnesses and
17 such, so.

18 Q So, were you able to listen to
19 any of calls that the solicitor gave you?

20 A I think I tried to listen
21 through some of the calls, and I'm not -- I
22 just don't recall right now off the top of
23 my head how many.

24 Q Y'all don't have a large staff
25 at the Berkeley County Public Defender's

1 Office, do you?

2 A No. There is more now.

3 Q So, you didn't have access to
4 staff that could have sifted through those
5 phone calls for you over the 10 days?

6 A No.

7 Q In retrospect, is that
8 something that you think may have made a
9 difference or is there no way for you to
10 tell?

11 A There's no way for me to tell.

12 Q Okay. And you talked a little
13 bit about Mr. Irby's memory problems. Was
14 that something that you faced leading up to
15 trial?

16 A Some of it, yes. And just
17 blacking out during the incident, type of
18 things. It was hard to explain, hard to
19 prepare everything.

20 Q Now, you chose not to requests
21 a Castle Doctrine hearing pretrial in this
22 case, is that right?

23 A That's correct.

24 Q Okay. Why not?

25 A Well, there's -- as I was

1 reading the statute at the time, and still
2 do -- there's different sections. One of
3 the sections is the Castle Doctrine with
4 your home, and that's the section -- if you
5 don't mind if I read the section?

6 Q Sure.

7 A So, the section is 16-11-440.
8 And (a) is -- in part (a) and then part (b)
9 is for the home, the dwelling. And (b)(1)
10 is this presumption, providing subsection
11 (a) does not apply against whom the deadly
12 force is used has the right to be in, or is
13 a lawful resident of the dwelling,
14 residence or occupied vehicle.

15 So Telly, the son, was living
16 there. So, that's where I was -- I had
17 some question on whether we should bring a
18 Castle Doctrine hearing. However, on
19 section (c), is a person who is not engaged
20 in an unlawful activity and who's attacked
21 at another place where he has a right to
22 be, including, but not limited to his place
23 of business, has no duty to retreat, and
24 has the right to stand his ground and meet
25 force with force.

1 As the trial played out that
2 was one of the State's biggest arguments to
3 the jury, that it wasn't self defense. Was
4 because Johnny went into his home, grabbed
5 a gun and caused some of the issues and
6 should have retreated. He had the last
7 duty to not cause harm. So, they used that
8 fact at trial against Johnny. Versus, if
9 we would have went on the Stand Your Ground
10 ,with section (c), I don't know if it would
11 have been successful or not ,but we would
12 have at least had an argument there.

13 Q Okay. And so, I just want to
14 back you up just a little bit. So, the
15 Castle Doctrine, your understanding is --
16 or do you know that it's a preponderance of
17 the evidence standard --

18 A Yes.

19 Q -- and you have to bar
20 prosecution?

21 A Yes.

22 Q And Telly was a guest in Mr.
23 Irby's home, is that right?

24 A It was my understanding he had
25 been living there, and so it was my thought

1 that he would have had to go through the
2 eviction process, as far as officially
3 kicking him out.

4 Q And Mr. Irby obviously
5 disagreed with you, didn't he? He thought
6 he could tell him to leave. He was there,
7 he was ready for him to go, he told him to
8 leave. Did he tell you that?

9 A Yes. We did some research and
10 I think he actually -- they registered the
11 kids to school with that address I believe.

12 Q So, you disagreed with the
13 value of trying to create a record or
14 trying to go and do a Castle Doctrine
15 hearing at all in the case?

16 A Right, at the time.

17 Q Are you aware that the lawful
18 guest is the one that has the duty retreat
19 under South Carolina Case Law?

20 A I'm not, no.

21 Q If you had known about that
22 case law, and I'm referring to, for the
23 Court's benefit, it's State versus Brown,
24 321 S.C. 184. It's a 1996 case that deals
25 with applying the common law that the

1 Castle Doctrine was built on. And it
2 indicates that even where the attacker is
3 the homeowner, that a lawful guest would
4 have a duty to retreat. If you had known
5 that that was some South Carolina
6 precedent, would that have impacted how you
7 handled this case at all?

8 A Yes.

9 Q Do you think that if you had --
10 well, do you regret not bringing a Castle
11 Doctrine hearing?

12 A I do.

13 Q Why?

14 A I mean, I think -- I mean, I
15 argued it at trial, that self defense. And
16 I believe it was self defense and that
17 Johnny had a right to do what he did, as
18 far as retrieving the gun. And I wish I
19 would have brought that, and had that
20 heard. I did not anticipate the State
21 using what they did against him at trial.

22 MS. SARJI: I don't have
23 anything further, thank you.

24 MR. LIMBAUGH: May it please
25 the Court, Your Honor.

1 THE COURT: Yes, sir.

2 CROSS-EXAMINATION BY MR. LIMBAUGH:

3 Q Good afternoon, Mr. Shelton.
4 So, Telly was staying in the house with Mr.
5 Irby, correct?

6 A That's my understanding, yes.

7 Q And had been living there for
8 some time?

9 A That's my understanding.

10 Q Okay. And I'm going on the
11 DNA, I'll go in the same order as Ms.
12 Sarji. His DNA being on the gun, if it had
13 been tested, wouldn't have necessarily
14 meant it had been from the struggle, would
15 it?

16 A No, because there is no really
17 timeframe on the DNA.

18 Q Right. And he had been in that
19 house where that gun was, since he had been
20 living there, correct?

21 A That's correct.

22 Q Wouldn't that not mean that
23 direct testimony from witnesses who
24 observed the event, would it have been
25 stronger evidence than the DNA?

1 A DNA can be very strong and can
2 overcome a lot of eyewitness testimony.
3 So, I wouldn't say it would be stronger,
4 but it was -- that was the strategy.

5 Q Even if the attempted murder
6 victim testified that there was a struggle
7 between Telly and Mr. Irby over the weapon?

8 A Right.

9 Q And she wouldn't have any
10 reason to misremember that or lie about
11 that on her testimony, would she? Do you
12 recall?

13 A No.

14 Q So, on the phone call issue,
15 you did make your motion for a continuance
16 on that basis, correct?

17 A That's correct.

18 Q And that was denied?

19 A That's correct.

20 Q And since the trial or from Mr.
21 Irby or Mr. Irby's counsel, have you
22 reviewed or seen any phone calls that would
23 have helped him in this case?

24 A No.

25 Q So, you're not aware of any of

1 those that would have been helpful?

2 A No.

3 Q Did you -- again, I believe you
4 testified this on direct, but you didn't
5 have any reason to go subpoena all those
6 phones calls from Mr. Irby, did you?

7 A No.

8 Q So under the Castle Doctrine,
9 can you kind of just walk me through a
10 little bit your remembrance of the facts of
11 that altercation and what happened?

12 A Of the altercation?

13 Q Yes.

14 A Mr. Irby went to his friend's
15 house, girlfriend, I'm not sure what their
16 relationship was. Came back, and when he
17 came back to the home, outside the home was
18 Telly, Michelle and his brother, Gene, and
19 they were drinking. There was an argument,
20 it was about the drinking, about them being
21 out there. Johnny was a very proud person
22 for his home, for his life, and he did not
23 want the community that he was a part of,
24 the church, to see his son just getting
25 drunk outside. And that -- to have that

1 type of home, and that's not what he was
2 trying -- that he wanted.

3 So, he got upset and asked them
4 to leave or got -- I don't know exactly the
5 wording, but then went back into the home,
6 had the kids leave. Was confronted by
7 Telly on the porch. There was a struggle
8 for the gun and the gun went off. And then
9 Michelle at some point came up and he shot
10 Michelle.

11 Q Okay. So, again, I just want
12 to make sure I'm understanding this right.
13 There's a conversation about them leaving,
14 whether the kids should be in the house or
15 outside the house, and at some point Mr.
16 Irby goes and grabs a weapon because of
17 this and comes back out onto the porch?
18 From even a heated conversation about
19 whether they should leave and where the
20 kids should be, is that accurate?

21 A That's correct. He was
22 following him up the porch as he was going
23 in. So, there was words that were had
24 outside the home.

25 Q Okay. I'm just trying to wrap

1 my head around how that leads to going
2 inside, grabbing a weapon, shooting your
3 son and then subsequently standing up and
4 shooting his girlfriend in the chest. It
5 just doesn't seem like a Castle Doctrine
6 issue or self defense. I hadn't reviewed
7 testimony where he used force against Mr.
8 Irby. Can you try and help me connect some
9 of these dots?

10 A Well, I don't believe that he
11 ever intended to shoot his son. So, I
12 don't know that that was ever the intent.
13 I think it was a situation that there was
14 alcohol involved, there was a hard
15 headedness on father/son on what should
16 happen. There was a struggle for power, I
17 guess, on who's going to tell who what.
18 And Telly was a much bigger individual than
19 Johnny, especially at the time. And Johnny
20 went and grabbed his gun for his protection
21 and telly went and grabbed for that gun.

22 Q Again, protection against what,
23 though? Because they're having words and I
24 understand that he was a larger man than
25 Mr. Irby, but they were having words.

1 There was no, from my account, physical
2 altercation prior to the weapon being
3 grabbed. Again, I don't see -- you keep
4 talking about retreat and a Castle
5 Doctrine, but there is nothing to retreat
6 from.

7 A Well, Johnny had known about
8 some previously domestic violence or
9 violence that Telly had committed on
10 Telly's mom.

11 Q That, according to her, never
12 happened, correct?

13 A According to her. But Johnny
14 had known about Telly being physical, that
15 he had gotten in fights, that was one of
16 the reasons he came up from Jacksonville.
17 So, Johnny had known about that. And when
18 someone is drinking--

19 Q Okay. Even with all that said,
20 and my clear interpretation of the events,
21 he still did ultimately get, upon your
22 request, a self defense instruction to the
23 jury, correct?

24 A That's correct.

25 Q Okay. As well as voluntary

1 manslaughter, involuntary manslaughter and
2 accident, I believe. Is that correct?

3 A That's correct.

4 Q So, this wasn't one of those
5 incidents that we see quite often where the
6 jury just got to consider murder or
7 nothing, or an attempted murder or nothing,
8 correct?

9 A That's correct.

10 Q And just to be clear, the self
11 defense didn't come in as part of the
12 attempted murder instruction, is that
13 accurate?

14 A That's correct. And I think
15 accident did not come in for the murder,
16 but only for the attempted murder, if I'm
17 correct on that.

18 MR. LIMBAUGH: That's all I
19 have of this witness, Your Honor.

20 EXAMINATION BY THE COURT:

21 Q You said you were under the
22 impression that the deceased, Telly, that
23 he was living there?

24 A Yes.

25 Q And someone had been registered

1 for school. He had been living there for
2 how long?

3 A I don't remember off the top of
4 my head.

5 Q Months?

6 A Yes, a couple of months at
7 least.

8 Q So, that you, in your mind, is
9 there a distinction between a guest
10 visiting versus use a resident?

11 A Yes.

12 Q And is that why you thought
13 that if, in order to get someone -- force
14 someone to leave who is living in a house,
15 you have to go through an eviction versus
16 someone who is visiting?

17 A That's correct, yes, Your
18 Honor.

19 Q And the facts of this case that
20 Ms. Sarji gave me and submitted to the
21 Court for consideration, this is State v.
22 Brown, you had read it briefly while you
23 were speaking. Interestingly, came from
24 the 3rd Circuit. He was convicted of
25 manslaughter and admitted shooting Patrick

1 Young, who was claiming self defense. And
2 Brown was a guest in Young's home. So,
3 Brown killed him.

4 Brown was a guest in the home
5 and Brown was walking to his car to leave.
6 His brother Henry exited the house and
7 described an altercation that had taken
8 place between Henry, Young's sister and
9 Young. He went back in the house to see
10 what's happening. According to Brown, when
11 he reentered, Young, the decedent, threw
12 kerosene on him, approached him while
13 striking a lighter and said he was going to
14 set the house on fire. So, Brown than shot
15 Young three times, killing him.

16 As it relates to a self defense
17 charge, Brown gave a written request to the
18 judge to include a self defense charge, and
19 included in that, to instruct the jury that
20 a guest or invitee who is lawfully on the
21 premises has no duty to retreat from the
22 owner unless he has been first ordered to
23 leave. And the judge charged self defense,
24 but declined to read the specific charge.
25 I guess that being the portion that says

1 the guest has no duty to retreat unless the
2 owner orders him to leave.

3 He claimed the judge erred in
4 not giving that charge. Court of Appeals
5 disagreed, and agreed with the trial judge,
6 stating under the law, self defense, one
7 who is attacked on his own premises is
8 immune from the duty to retreat. Likewise,
9 a guest attacked in the owner's home has no
10 duty to retreat, where the attacker is an
11 intruder. Whether a lawful guest has a
12 duty to retreat when attacked by the owner
13 is an issue of first impression, whether a
14 lawful guest has the duty to retreat when
15 attacked by the owner is an issue of first
16 impression by the court.

17 And they cited the case of
18 State v. Chambers. Court of Appeals held
19 that where the attacker is the homeowner, a
20 lawful guest has a duty to retreat before
21 claiming self defense. Brown's request to
22 charge was in direct opposition to the
23 ruling in Chambers, thus we find no error
24 in the trial judge's charge. So, in the
25 instance of this Brown case, Brown was the

1 guest who did the killing.

2 A Right.

3 Q And he's claiming that the
4 judge should have told the jury that he had
5 no duty to retreat. Court of Appeals
6 addressed in the issue, disagreed with that
7 requested charge and held that where the
8 attacker is the homeowner, a lawful guest
9 has a duty to retreat before claiming self
10 defense. The guest can't claim self
11 defense if the owner says, get out of my
12 house, you got to go. You can't stay and
13 shoot the homeowner and then say I shot him
14 in self defense, unless you retreated as
15 far as you can go.

16 Therefore, I have two questions
17 to you, now that you were concerned about
18 this issue in connection with having
19 requesting a Castle Doctrine hearing, of
20 course in this State v. Brown, it wasn't a
21 Castle case, it was a case on the issue of
22 whether or not a self defense instruction
23 should have been requested. And the Court
24 says, fine, you can request it but the duty
25 of retreat doesn't apply to a visitor in

1 asking owner to leave.

2 In any event, any of that would
3 have applied to a person, in your mind,
4 looking at this case and making your
5 decision, would any of that apply to a
6 resident of the home? Being a father, son,
7 both of who -- and visiter, all of whom
8 lived in the same house. Would you put it
9 in the category as it relates to some other
10 folks in the yard drinking, and the owner
11 told them to leave, and whether they have
12 to go as opposed to having a different
13 legal standard as it relates to someone who
14 is a resident of the property?

15 A I think -- I don't -- I'm
16 sorry, I'm confused on the question, but I
17 don't think that case would apply to this
18 situation.

19 Q I just read it for you to see
20 whether -- because you said you were
21 slightly confused a little earlier about
22 something.

23 A I don't know that that case
24 would apply to this situation as Johnny was
25 the owner of the home.

1 Q And the son was a resident of
2 the home.

3 A Correct.

4 Q And did you distinguish between
5 a resident and guest?

6 A Yes.

7 Q And if he's a resident, it's
8 your belief that he would have to be
9 evicted as a resident?

10 A That's my belief.

11 Q As opposed to ordering them to
12 leave and they have to go, or you can kill
13 them or shoot them.

14 A That's my belief.

15 Q Or forcibly eject them.

16 THE COURT: Any other
17 questions?

18 MS. SARJI: Yes, Your Honor.

19 REDIRECT EXAMINATION BY MS. SARJI:

20 Q Mr. Shelton, just a couple of
21 things. When your client was telling you
22 about Telly being in his home, did he tell
23 you or -- he didn't tell you that Telly was
24 living there, Telly was a temporary -- this
25 was a temporary stop until Telly could move

1 on out with his girlfriend and her kids.
2 Is that what Mr. Irby told you about the
3 residential situation?

4 A Yes.

5 Q So, you made yourself the judge
6 about what to believe in this case, in
7 terms of whether this was a guest or a
8 resident, is that right?

9 A That's true.

10 Q And you talked about an
11 affidavit that was done to get the girls in
12 school, but have you ever heard about
13 people doing that kind of thing to get
14 children into school?

15 A Yes.

16 Q And it could be that somebody
17 has their friend who lives on James Island
18 to do an affidavit so that their kids can
19 get into a better school than what they're
20 zoned for, for example.

21 A That's correct.

22 Q And you've heard of this going
23 on in Charleston in particular?

24 A Yes.

25 Q So, you didn't even -- you only

1 had a preponderance of the evidence
2 standard at a Castle Doctrine hearing,
3 correct?

4 A Correct.

5 Q And you didn't give Mr. Irby a
6 chance to put his position before the
7 Court?

8 A That's correct.

9 Q Mr. Limbaugh was asking you
10 about why the Castle Doctrine may have
11 applied. Telly was a much bigger man than
12 Mr. Irby at the time, is that right?

13 A Correct.

14 Q Mr. Irby's put on some weight
15 in prison, is that right?

16 A I was going to say that, but,
17 yes.

18 Q And you said, when you were
19 testifying in response to Mr. Limbaugh's
20 questions, that Telly was advancing on Mr.
21 Irby. Is that right?

22 A That's correct.

23 Q Mr. Irby was telling him to go
24 and Telly was the one who was coming after
25 him?

2 Q And that the issue -- you told
3 Mr. Limbaugh that the mother, Telly's
4 mother who would have been Mr. Irby's wife,
5 denies the CDV by her son, is that right?

7 Q But that is not the issue.
8 Wouldn't the issue have been that Mr. Irby
9 believed him to be violent and knew that he
0 would hit one of his parents?

12 Q They were divorced, he wanted
13 me to clarify they were divorced.

16 THE COURT: Mr. Limbaugh?

19 THE COURT: All right. Thank
20 you, sir.

23 THE COURT: All right, Mr.

24 Limbaugh?

25 MR. LIMBAUGH: No witnesses

1 from the State. State rests, Your Honor.

2 THE COURT: All right, nothing
3 further from either of you?

4 MS. SARJI: No, Your Honor. We
5 would just rest on the testimony and the
6 case law that I had previously cited.

7 I do think that Mr. Irby should
8 have had the benefit of a Castle Doctrine
9 hearing and the benefit of an impartial
10 judge to make the decisions that would have
11 been raised at that hearing.

12 Mr. Shelton himself said that
13 he wished that he would have held that
14 hearing. And we don't know what the DNA
15 would have shown if it had been tested at
16 the time of trial, but certainly having
17 objective, as Mr. Shelton also said, DNA
18 evidence is much favored by juries, Judge.
19 So, we would just ask that Mr. Irby's
20 convictions be reversed and remanded.
21 Thank you.

22 THE COURT: Mr. Limbaugh?

23 MR. LIMBAUGH: May it please
24 the Court, Your Honor. The State doesn't
25 believe that the DNA is really much of an

1 issue at all, Your Honor. It wasn't even
2 really contested at trial that there was a
3 struggle over the weapon. Michelle
4 Wiggins, the victim -- the surviving
5 victim, testified as such, that Telly and
6 Mr. Irby struggled over the weapon. As Mr.
7 Shelton testified to and other witnesses
8 who testified to that exact same thing,
9 Your Honor.

10 The DNA test, Mr. Telly was in
11 the house prior to the incident occurring,
12 living there and staying there with the
13 surviving victim and her kids, he could
14 have touched that weapon at any other
15 point. So, even if the DNA had been
16 tested -- or the gun had been tested for
17 DNA and come back with Telly's DNA on the
18 weapon, that still doesn't prove that that
19 DNA was there as a result of the struggle.
20 What does is the testimony of those
21 witnesses, Your Honor.

22 THE COURT: How many witnesses
23 testified that they struggled over the gun?

24 MR. LIMBAUGH: We have Michelle
25 Wiggins, we had -- Mr. Irby testified to

1 it. I don't have the exact number offhand,
2 Your Honor, I can get that for you after
3 the hearing if you'd like me to, and go
4 through it with a fine tooth comb.

5 THE COURT: Well, I mean you
6 have people in the yard, various people
7 around.

8 MR. LIMBAUGH: I don't know of
9 anybody that testified to something other
10 than there was a struggle over the weapon.

11 THE COURT: Do you know, Ms.
12 Sarji?

13 MS. SARJI: Your Honor, I
14 believe that there was Michelle Wiggins
15 testified to it, Mr. Irby testified to it
16 and maybe one of the girls testified to it.
17 And his brother. Four.

18 THE COURT: Four people, all
19 right.

20 MR. LIMBAUGH: The phone call
21 issue, Mr. Shelton made his motion for a
22 continuance, that motion was denied. The
23 judge considered, essentially, the same
24 testimony and argument from Mr. Shelton, as
25 you heard from his testimony today. And

1 more importantly, I believe there's no
2 evidence before Your Honor that any of
3 those phone calls would have been helpful.
4 There's no way to -- it's prejudice when we
5 don't know what that evidence would have
6 shown had Mr. Shelton gotten it and gone
7 through it all, Your Honor. And that's the
8 applicant's burden.

9 As to the Castle Doctrine
10 issue, it would have been more of an
11 interesting issue, but I don't believe that
12 he would have been successful, which is his
13 burden. He has to show that if Mr. Shelton
14 should asked for it, that the judge would
15 have granted him immunity and that that
16 wouldn't have been overturned on an appeal,
17 had one been filed. And I don't believe he
18 can meet that standard, Your Honor.

19 Walking through my testimony
20 with Mr. Shelton, there was -- well, first,
21 as Your Honor pointed out with the Brown
22 case, Telly was living there. He had been
23 there, he stayed there for at least some
24 period of time with his girlfriend, Miss
25 Wiggins and her kids. He is not just

1 someone that, you know, he invited over for
2 dinner and there was an altercation that
3 occurred and there was a shooting. It's
4 his son, who his girlfriend and the kids
5 were staying in the house. I believe that
6 there is a difference in the duties and the
7 rights of the parties involved when that is
8 the case.

9 I also don't believe that there
10 was an altercation as such to which retreat
11 was even necessary or legally not
12 necessary. There was a verbal altercation,
13 if you want to even call it that much,
14 where Mr. Irby potentially asked him to
15 leave, and the kids come outside, Telly
16 tells the kids to go back inside, Telly
17 follows Mr. Irby up onto the porch where
18 the kids are, the kids are sitting on the
19 porch not sure where to go, Mr. Irby goes
20 back inside, brakes up the confrontation,
21 goes back inside, where the door easily
22 could have been closed behind him, which
23 again, isn't a retreat. There's no
24 confrontation to retreat from. There's no
25 physical altercation. Goes to the back of

1 the house, under his bed, grabs the 9
2 millimeter pistol, walks all the way back
3 through the house, comes back onto the
4 front porch where Mr. Telly was. Mr. Telly
5 sees a weapon, the situation has been
6 escalated, he tries to deescalate it by
7 getting the weapon from the, now,
8 assailant, Mr. Irby. I don't see a Castle
9 Doctrine case here, Your Honor. There
10 isn't some physical altercation where Mr.
11 Irby is defending his household from his
12 son, Mr. Telly. It's an oral conversation
13 that ends up with his son and then his
14 son's girlfriend being shot in the chest.
15 And one, as according to -- I believe it
16 the EMS or the doctor at the ER said it was
17 a flatout miracle that she didn't die on
18 scene as well, because the trajectory only
19 needed to be a few centimeters higher for
20 her to bleed out on the scene.

21 So, Your Honor, I believe this
22 is just a case that Mr. Shelton, all credit
23 to him, tried very well. He, again, got
24 voluntarily, involuntarily, self defense
25 and accident all charged to a jury and they

1 came back with murder and attempted murder,
2 straight up, Your Honor. Thank you.

3 THE COURT: Just a question for
4 you, regarding the judge's charge. It says
5 on page 16 or something like that, of the
6 transcript. That on the judge's self
7 defense charge, did he talk about a duty to
8 retreat? Did he instruct the jury about --
9 concerning it? It's not a part of what I
10 have in the transcript that was submitted
11 to me, and it may not be relevant because
12 y'all have not given it to me, I don't
13 know, I'm just asking.

14 MR. LIMBAUGH: Would Your Honor
15 mind if I sit and look through?

16 THE COURT: Sure. I read the
17 long exhortation at the beginning
18 concerning the Magna Carta, but I couldn't
19 find the charges -- I don't believe it's
20 there, not in which you all--

21 MR. LIMBAUGH: Just double
22 checking. I don't see anything about
23 retreating in the instruction, Your Honor.

24 MS. SARJI: The self defense
25 begins on 627.

THE COURT: 627?

MS. SARJI: Mhm, at the bottom. Well, all he says is, "now you may also consider the defense of self defense." And then he talks about the elements.

THE COURT: On 627?

MS. SARJI: Yes, sir. At the bottom of 627 he says, "now you may consider the defense of self defense." It's line 18 on page 627 of the appellate record, I'm sorry.

THE COURT: Just read that elements that he said.

MS. SARJI: Yes, sir. He says, "the following elements are all required to be present to establish self defense. First, the defendant must be without fault in bringing on the difficulty. If the defendant's conduct was the type which was reasonably calculated to and did provoke a deadly assault, the defendant would be at fault in bringing on the difficulty and would not be entitled to an acquittal based on self defense.

Self defense is not available

1 to a person who uses language which is so
2 contentious that a reasonable person would
3 expect to bring on a physical encounter in
4 which did actually contribute to the
5 physical encounter.

6 The second element of self
7 defense is that the defendant was actually
8 in eminent danger of death or serious
9 bodily injury or that the defendant
10 actually believed he was in eminent danger
11 of death or serious bodily injury. Prior
12 instances of violence by the victim can be
13 considered in terms of whether or not he
14 believed he was in eminent danger."

15 Do you want me to keep reading?
16 It goes on for a couple of pages.

17 THE COURT: Yeah, just keep
18 going, because I don't have it.

19 MS. SARJI: He says, "the
20 relative size, age and weight of the
21 defendant and the victim may be considered
22 in deciding the apparent or virtual need
23 for force in self defense and the amount of
24 force needed.

25 If the defendant was actually

1 in eminent danger it must be shown that the
2 circumstances would have warranted a person
3 of ordinary firmness and courage to strike
4 a fatal blow to prevent death or serious
5 bodily injury.

6 If the defendant believed he
7 was in eminent danger of death or serious
8 bodily injury, it must be shown that a
9 reasonably prudent person of ordinary
10 firmness and courage would have the same
11 belief."

12 I mean, he goes on to talk
13 about the eminent danger and serious bodily
14 injury. He talks about the hostile acts.
15 On page 630, line six, he says, "words
16 accompanied by hostile acts may, depending
17 on the circumstances, establish self
18 defense. The intoxication of the victim
19 may also be considered in deciding whether
20 the defendant's fear of death or bodily
21 harm was reasonable.

22 And then the final element of
23 self defense is that the defendant had no
24 other probable way to avoid the danger of
25 death or serious bodily injury than to act

1 as the defendant did in this particular
2 instance."

3 So, I guess he did actually say
4 that he would have had the duty to retreat.

5 THE COURT: That's another way
6 of saying duty to retreat?

7 MS. SARJI: Don't you think? I
8 mean I don't -- I think it's--

9 THE COURT: No other probable
10 way to avoid danger.

11 MS. SARJI: That he had no
12 other probable way to avoid the danger. To
13 me, that applies that he would have had to
14 do anything else that he possibly could
15 have to avoid the danger.

16 THE COURT: And the jury
17 rejected that, obviously? So, that leads
18 me to my next question for Mr. Limbaugh.
19 How do you distinguish Castle Doctrine from
20 self defense?

21 MR. LIMBAUGH: Your Honor, my
22 understanding would just be that in this
23 instance it would be because he's -- I
24 mean, self defense can be anywhere in his
25 home, it's more--

1 THE COURT: Let me give you a
2 head start on thinking.

3 MR. LIMBAUGH: Sure.

4 THE COURT: Mr. Shelton said
5 his reading of the statute said that under
6 this subparagraph, he didn't think it
7 applied, I guess, because the son was a
8 resident. So, the Castle did not apply.

9 And of course in cases these
10 days, there are some of the Castle hearings
11 as if Castle and self defense are the same
12 thing. As if there is no distinction
13 between the two. Like if you're entitled
14 to self defense, then you're entitled to
15 not face a trial under the Castle Doctrine.
16 So, how do you distinguish the two?

17 MR. LIMBAUGH: Your Honor, I'm
18 not sure, because -- I mean, just to be
19 honest with you, I don't know. Because I
20 was reading cases in preparation for this
21 and it was kind of going the way Your Honor
22 was just speaking to this.

23 THE COURT: It's not an easy
24 question. If it was I wouldn't have asked
25 it. All right, I understand.

1 MR. LIMBAUGH: I don't want to
2 give an incorrect statement of the law on
3 the record, Your Honor.

4 THE COURT: All right, Ms.
5 Sarji?

6 MS. SARJI: You want me to
7 address that, Judge?

8 THE COURT: No. I've heard his
9 closing argument, I'm ready for yours.

10 MS. SARJI: Oh. Well, I mean I
11 would just say that I think that Mr.
12 Limbaugh has inaccurately stated the
13 standard that we would have to prove in
14 order to succeed at a PCR based on the lack
15 of the Castle Doctrine hearing. Mr.
16 Limbaugh indicated that we would have had
17 to prove that Mr. Shelton should have asked
18 for it, and that we would have won it, and
19 that it would have stood up on appeal.
20 Those are issues that are impossible for a
21 petitioner to prove.

22 What I can say is that it's a
23 much lower burden of proof at a Castle
24 Doctrine hearing. He only has to prove it
25 to a preponderance of the evidence.

1 Mr. Shelton himself stated that he wishes
2 that he would have had that hearing, and
3 that he believes -- I believe he said that
4 he thought that it would have made a
5 difference if he would have had that
6 hearing.

7 THE COURT: Of course hindsight
8 is always 20/20.

9 MS. SARJI: Always, Judge. I
10 wish that we could press rewind a lot of
11 the time. But I think that we can't
12 prove -- when there is such a prejudicial
13 depravation of an applicant's right to a
14 fair trial, and to a defense attorney fully
15 and fairly presenting his case, to both the
16 judge and the jury, and to not putting
17 himself in as the decider of fact when he
18 has his client telling him something and he
19 disregards it, in the face of alternative
20 arguments, I think that that's sort of a
21 depravation of procedural due process, is
22 the kind of thing that the United States
23 Supreme Court addressed in the United
24 States versus Cronin. I believe it's -- I
25 don't have the cite off the top of my head

1 but it's --

2 THE COURT: How do you spell
3 it?

4 MS. SARJI: C-R-O-N-I-C. In
5 that case it talks about where the
6 procedure itself is so flawed that there is
7 no way to make it right but to allow a
8 reversal and a new trial. That that's the
9 appropriate remedy.

10 And I think that we're in a
11 situation where Mr. Irby cannot possibly
12 prove what a judge would have said or done,
13 had Mr. Shelton brought that Castle
14 Doctrine hearing. We can't possibly prove
15 whether or not it would have stood up on
16 appeal, I mean, I don't know that on cases
17 where there wasn't this kind of potential
18 issue. I think that that's when the
19 proceedings themselves become so infected
20 with a lack of procedural due process, that
21 it would warrant a reversal.

22 THE COURT: So, regarding a
23 lawyers professional judgment as to what
24 applies and doesn't apply, they concluded
25 well, he wasn't a guest, he was a resident.

1 And that's his professional judgment.
2 You're saying he doesn't know whether a
3 judge would have agreed with that or not,
4 or whether he has a duty to retreat or not,
5 or whether or not a DNA test would have
6 mattered even though there is no dispute
7 that they're both holding the gun or
8 struggling over the gun. That a lawyer is
9 required pretty much to take the kitchen
10 sink approach and just request all those
11 things?

12 MS. SARJI: No, Judge. But I
13 think that a lawyer is required to explain
14 to a client, this is what I think, this is
15 what the case law says. This is what a
16 judge may do. How do you want to proceed?
17 These are the consequences of proceeding
18 this way or not proceeding this way.

19 So, I do think that an attorney
20 has an obligation, Mr. Shelton had an
21 obligation to say to Mr. Irby, look man,
22 you did this affidavit and they had been
23 there for a couple of months, and, you
24 know, I think that they were probably
25 residence and this probably isn't going to

1 apply. How do you want to proceed and
2 pursue this Castle Doctrine approach? And
3 to explain to him in a meaningful way, what
4 the options are and what Mr. Shelton's
5 advice was and what his assessment was of
6 what he should do. The client can choose
7 to agree with counsel's advice or disagree
8 with it. But I think that the conversation
9 has to be had. It doesn't sound like the
10 conversation was had. Mr. Irby told him
11 one thing and Mr. Shelton says he believed
12 another, and that was the end of the
13 conversation. And that, I think, is where
14 there was a sort of a depravation of his
15 procedural due process rights. I think
16 that he needed to be a part of that
17 conversation. But, I do also think, Judge,
18 I don't think Mr. Shelton or Mr. Irby
19 probably had a lot to lose by bringing a
20 Castle Doctrine hearing, and it's a very
21 low standard of proof. And so--

22 THE COURT: So, it's easier to
23 win a case on Castle than due process? I'm
24 sorry -- than self defense?

25 MS. SARJI: I don't know the

1 answer to that, Judge.

2 THE COURT: Of course it's
3 easiest, absolutely, if the officers come
4 to a scene and the son is -- if the
5 officers conclude or law enforcement can
6 conclude, the solicitor can conclude, we're
7 not bringing charges because, you know, he
8 had a right to act in self defense. He
9 shot an intruder.

10 MS. SARJI: But isn't that the
11 same kind of thing, we don't ask our law
12 enforcement officers to be judges, and we
13 also don't ask your lawyers to be judges.

14 THE COURT: But they are
15 judges, all the time, as to whether or not
16 charges should be brought.

17 MS. SARJI: I guess, you're
18 right.

19 THE COURT: Not a police office
20 officer, necessarily. He might write a
21 report and turn it over to the solicitor
22 and the solicitor gives an assessment and
23 makes a judgment. That's how cases are
24 brought or not brought.

25 MS. SARJI: You're right.

1 THE COURT: And regarding your
2 question of nothing to lose, presumably Mr.
3 Irby would testify at a Castle hearing most
4 likely.

5 MS. SARJI: As he did at trial.

6 THE COURT: Yeah, well -- but
7 before trial, outside of the presence of
8 the jury, and Mr. Irby testifies and the
9 solicitor cross-examines him and learns
10 everything that Mr. Irby has to say through
11 cross-examination prior to the trial, most
12 solicitors that I've seen at these Castle
13 hearings, I mean, they love it when a
14 defendant testifies at a Castle hearing
15 prior to the trial where they can have a
16 transcript knowing what the defendant is
17 going to say, lock them into the story, his
18 version of the facts, prior to any
19 testimony and prior to any opportunity to
20 know how the trial unfolds. And so -- and
21 these witnesses get up, part of the State's
22 case and testify to various things,
23 whatever is rolling through the defendant's
24 mind. He can't modify it, because he's
25 locked in based on the Castle hearing. So,

1 it's -- when you say he has nothing to
2 lose, that's just a consideration. And,
3 yes, these are all very interesting issues
4 that -- I didn't used to like PCR hearings,
5 but I'm kind of liking them now. Nothing
6 like reading through 800 pages of a trial
7 that happened how many years ago? Seven,
8 eight years ago.

9 MS. SARJI: Seven years, yes,
10 Your Honor.

11 THE COURT: Of course Mr. Irby
12 has his opportunity to come back to Monks
13 Corner and to try one more time. It's been
14 through appeal, it's been through various
15 things and now it's PCR. So, what else is
16 there to be said?

17 MS. SARJI: Nothing from us,
18 Your Honor. Thank you.

19 MR. LIMBAUGH: I think we've
20 said it all, Your Honor.

21 THE COURT: Thank you. Well,
22 I'll take it under advisement. I'd like
23 proposed orders submitted. Michelle
24 Wiggins, I mean she doesn't testify on the
25 PCR she just wants to --

1 MR. LIMBAUGH: Yes, Your Honor.

2 THE COURT: -- know what's
3 going on. Well thank you, Ms. Wiggins.
4 So, proposed orders will be submitted and
5 what timeline do you want?

6 MR. LIMBAUGH: 30 days would be
7 appreciated, Your Honor.

8 THE COURT: 30 days. And you
9 can wait till he submits his, if you'd
10 like, Ms. Sarji, and then have 15 days to
11 respond.

12 MS. SARJI: Great, Judge. I
13 don't think I've ever had the benefit of
14 that bite at the apple, I appreciate that.

15 THE COURT: Well, I mean both
16 of you sending simultaneously, it doesn't
17 help as much. Of course, if he prevails
18 you'll never agree anyway.

19 MS. SARJI: Yes, Your Honor.
20 Thank you.

21 THE COURT: All right.

22 MR. LIMBAUGH: Thank you, Your
23 Honor.

24 THE COURT: Thank you all.

25 MS. SARJI: It's nice to see

you again.

(Time noted: 4:11 p.m.)

C E R T I F I C A T I O N

Certified to be a true and accurate
transcript of the aforesaid proceeding.

Natalie A. Williams

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

Johnny Irby, SCDC #360844,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

Case No.: 2016-CP-08-1168

ORDER OF DISMISSAL

2024 JUL 23 PM 4:13
LEAH GUERRY DUPREE
CLERK OF COURT
BERKELEY COUNTY, SC

FILED

This matter is before the Court by way of an application for post-conviction relief (PCR) filed by Johnny Irby (Applicant) on May 23, 2016. On March 24, 2021, an evidentiary hearing convened. Applicant was present and represented by Leslie T. Sarji, Esquire. Assistant Attorney General Benjamin H. Limbaugh represented the State. At the hearing, Applicant testified on his behalf and called expert Mary Ann Boehm and trial counsel Chad Shelton. Following a thorough review of the record, testimony, and the evidence presented, I the Applicant did not meet his burden of proof. Thus, this Court denies the relief requested and dismisses this application with prejudice.

Procedural History

Applicant is incarcerated in the South Carolina Department of Corrections serving a thirty-year sentence. In November 2012, the Berkeley County Grand Jury indicated Applicant for murder (2012-GS-08-2100) and attempted murder (2012-GS-08-02101). On June 21, 2014, Applicant had a jury trial before the Honorable Roger M. Young, Sr. Chad Shelton and David Schwacke represented Applicant. Anne Miller and Matt Ozment prosecuted the case. The jury convicted Applicant and Judge Young sentenced him to concurrent terms of thirty years on each charge.

Applicant filed a timely notice of appeal, which was perfected by Appellate Defender Lara Caudy through the filing of a brief pursuant to Anders v. California, 386 U.S. 738 (1967). The appeal was dismissed by the South Carolina Court of Appeals pursuant to Anders, and the remittitur was sent on April 29, 2016.

SUMMARY OF PERTINENT TRIAL TESTIMONY

The charges against Applicant arose from the fatal shooting of Telly Irby (Telly), the son of Applicant, on August 16, 2012. At the time of the shooting, Telly, his girlfriend Michelle Wiggins, and Wiggins's three daughters had been living with Applicant since early August 2012. (R. 480).

At trial, Elijah Haynes, Applicant's friend, testified he was at Applicant's home the evening of the shooting; Applicant and Telly had been arguing. (R. 132-34). He stated Telly and Applicant had a verbal argument near the screen door, and Haynes then heard "bam bam." (R. 134). After he heard the second shot, Haynes stated Wiggins ran to the porch yelling, "You shot my boyfriend." Haynes stated he could not see what happened on the porch, but when Wiggins returned, "she was holding her arm, like carrying it." (R. 135-36). Haynes stated Haynes left with her children; thereafter, Applicant fired three shots into the air. (R. 139). He stated police arrived and arrested Applicant at the scene. (R. 140).

Wiggins testified that on the evening of the shooting, Applicant and Telly had been arguing. She testified Applicant pulled a gun out, and Telly replied, "I know you ain't pulling that motherf***ing firearm out in front of these girls," and he went for the gun." (R. 283). Wiggins clarified Telly was trying to get the gun from Applicant. (R. 314). She stated as Applicant and Telly were wrestling for the gun, they fell and the gun went off. (R. 283). She stated they stood up, and Applicant "lifted the gun and shot [Telly]." (R. 283). Thereafter, Wiggins testified, "[H]e

lifted the gun and he point[ed] it at me and he shoots me.” (R. 283-84). Both Telly and Wiggins were shot in the chest.

Destiny, the daughter of Wiggins, recalled seeing Applicant and Telly wrestle over the gun. (R. 264). She testified Applicant shot Telly and then shot Wiggins; they ran to a neighbor’s house, and Applicant “shot again” but missed. (R. 364). Diamond, Wiggins’ other daughter, recalled sitting inside with her sisters when Applicant came inside and told them to go outside. She stated Applicant was “falling around a little bit” and “walking toward his bedroom.” (R. 371-72). Diamond testified she and her sisters went outside and Applicant followed them. She recalled Telly saying, “Are you going to pull that firearm in front of these girls?” (R. 374). Thereafter, she stated Applicant and Telly began wrestling over the gun, and the gun discharged. Diamond stated Applicant then fired the gun at Telly and fired again at Wiggins. (R. 374-75). She testified they ran to the neighbor’s house; Applicant fired two more times but missed. (R. 375). Deanna, Wiggins’ other daughter, recalled seeing Applicant with a gun and hearing shots. (R. 387-88).

At trial, Applicant argued self-defense. He testified that on the evening of the shooting, he came home around 8:00 pm to find Telly, Wiggins, and his brother drinking in his front yard. This angered Applicant, who had told Telly he did not want him drinking in front of his neighbors. Applicant confronted Telly and told him if he did not respect his rules, he, Wiggins, and Wiggins’ daughters would have to move out. (R. 496). Applicant testified that when he told Telly to leave, Telly stood up and stated he was a man and “he [would] do what he want[ed] to do.” (R. 496). Applicant testified he walked to the front porch and noticed Wiggins’s children watching television; Applicant told them to go outside. When the girls went outside, Telly told them to go back inside, and a back and forth ensued where Applicant ordered the girls outside while Telly ordered them inside. (R. 498). According to Applicant, Applicant went to his bedroom and

retrieved his firearm. (R. 498). After retrieving the firearm, Applicant walked back outside, and Telly was standing on the front porch in front of Applicant. Telly lunged for the gun and the two men struggled over it. (R. 499-502). He testified the gun discharged during the struggle, although he could not recall if he pulled the trigger. (R. 501).

The trial court charged self-defense. Ultimately, the jury convicted Applicant of murder and attempted murder.

Current Application

In his PCR application, Applicant alleges he is being held in custody unlawfully based on:¹

1. "4th, 5th, 6th, 8th, 13th, 14th Amendment Violation"
2. "Due Process Violation"
3. "Fraud upon the Court"
4. "Subject Matter Jurisdiction"
5. "Ineffective Counsel"

On May 26, 2021, Applicant amended his application to allege counsel was ineffective for:

- a. Failing to test DNA on the 9-millimeter semi-automatic pistol prior to trial;
- b. Failing to procure and listen to Applicant's jail cell calls in advance of trial to determine if they contained exculpatory evidence or information pertinent to cross-examination;
- c. Failing to request a pretrial immunity hearing.

At the evidentiary hearing, Applicant presented testimony and evidence only on the claims in his amended application. To the extent the allegations set forth in Applicant's original application can be construed as separate grounds for relief, this Court finds Applicant abandoned those claims, and they are therefore denied and dismissed with prejudice.

¹ On February 21, 2017, while his PCR application was pending, Applicant filed a pro se Forensic DNA Testing motion to obtain DNA and gun residue testing on pistol and Tellys clothing. On April 18, 2017, a hearing was held before the Honorable Kristi Harrington. Judge Harrington denied Applicant's motion, finding Applicant "Failed to demonstrate how his own identity was or should have been an issue in this case" and thus "failed to satisfy all requirements of the 2008 Access to Justice Post-Conviction DNA Testing Act."

FINDINGS OF FACT & CONCLUSIONS OF LAW

This Court has had the opportunity to review the records, including the Berkeley County Clerk of Court records of the underlying conviction, 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, pass upon their credibility, and weigh their testimony. 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 the findings of fact and conclusions of law of this Court as required by section 17-27-80 of the South Carolina Code (2017).

Ineffective Assistance of Counsel

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

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668. First, an applicant must prove counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether an attorney provided

representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Id. (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, a PCR applicant must prove that counsel’s deficient performance prejudiced the applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Failure to Request DNA Testing on Firearm

Applicant first contends counsel was ineffective for failing to request DNA testing of the firearm prior to trial to support his testimony that Telly struggled with Applicant over the gun prior to the shooting. This Court finds Applicant did not prove this ground.

At the PCR hearing, Applicant recalled informing counsel that he and Telly had been arguing. Applicant stated he had his gun, and Telly—who was larger than him—approached him from behind and attempted to take the gun. (PCR 10-13). Applicant testified he was sure he informed counsel that Telly had tried to take the gun from him and Telly’s hands had been on the gun. (PCR 13-14). Applicant also testified he informed counsel that he told Telly to leave and Telly refused. (PCR 14).

Applicant assumed he discussed the possibility of Telly’s DNA on the gun but could not specifically recall. (PCR 14-15). Applicant did not know whether the gun was tested for DNA before trial. (PCR 15-16). He averred that if Telly’s DNA was on the gun, it could corroborate his version of events. (PCR 23-24). Applicant acknowledged Wiggins also testified that Applicant and Telly struggled over the gun. He believed that although there was

no dispute about the struggle, DNA evidence could establish that the gun went off when Telly tried to take the weapon from him. (PCR 19-20).

Boehm, a stipulated expert in DNA analysis, analyzed swabs from the gun after trial. She opined the results contained a mixture of at least four individuals, with the major contributor being Applicant. (PCR 27).. Boehm was unable to determine the minor contributors and could not conclude Telly contributed to the mixture. (PCR 25-28). She testified she had concerns about testing the gun because it had been handled by the firearms department prior to trial and used in trial. (PCR 29). She explained that if the State or defense had requested DNA analysis of the gun prior to trial, the gun would have been swabbed before to being handled by the firearms department. (PCR 30).

Trial counsel recalled Applicant informing him that he and Telly struggled over the gun and Telly touched the gun. (PCR 32-33). He stated he considered having the gun tested for DNA but decided against it because Wiggins corroborated Applicant's claim of struggling with Victim over the gun, and counsel was unsure if the tests would be helpful. (PCR 33). Trial counsel testified Wiggins—who had no reason to lie—testified Telly and Applicant struggled over the gun. (PCR 43-44). Counsel acknowledged he could have retained an expert and had no obligation to tell the State about the findings. (PCR 34-35). He averred that even if Telly's DNA had been on the gun, that would not necessarily corroborate the struggle because Telly could have touched the gun before that night. (PCR 43).

Based on the testimony of trial counsel, which this Court finds credible, trial counsel articulated a valid reason for not requesting further testing. Specifically, counsel explained Wiggins herself—who had no reason to lie—corroborated Applicant's testimony that he and Telly struggled over the gun. Thus, Applicant did not prove deficiency.

Moreover, Applicant did not show how such testing would have benefited him or caused a different result in the outcome of his trial. At the PCR hearing, Boehm stated she could not conclude Telly's DNA had been on the gun. Even if prior testing had revealed the presence of Telly's DNA, this Court finds it is not reasonably likely that finding would have impacted the outcome of trial—especially since Wiggins and two of her daughters corroborated the struggle over the gun. Thus, Applicant failed to prove deficiency or prejudice, and this claim is denied.

Failure to Subpoena Jail Calls

Applicant next contends counsel was ineffective for failing to subpoena his jail calls prior to trial. He contends counsel did not have sufficient time to review all the calls to determine if any helpful evidence existed. This Court finds Applicant did not prove this claim.

At the PCR hearing, Applicant did not recall any issue about the jail calls at trial. (PCR 16). Applicant likewise did not recall a call wherein he stated Telly was only trying to take the weapon from him and did not attack him. (PCR 21).

Trial counsel testified the State gave him 1,000 jail calls to review at the last minute, and he requested a continuance. (PCR 35-36). He stated he did not subpoena the calls in advance of trial because he was not aware of evidence that could have come from the calls. (PCR 37). Trial Counsel testified he had about ten days to review the calls and did not have time to review all of them. (PCR 38). He testified his motion for continuance was denied, and he was not aware of any calls that would have been helpful at trial. (PCR 44).

This Court finds counsel's testimony credible. This Court further finds counsel's failure to subpoena Applicant's jail calls did not fall below prevailing professional norms and was not deficient. Likewise, Applicant did not enter any calls at the PCR hearing that could have been

helpful in his defense and merely speculated the calls may have been helpful. Applicant thus did not meet his burden of proving prejudice, and this claim is denied.

Failure to Request Pretrial Immunity Hearing

Finally, Applicant contends counsel was ineffective for failing to request a pretrial immunity hearing under the Protection of Persons and Property Act² (the Act). This Court finds Applicant did not prove this claim.

Pursuant to the section 16-11-440 of the South Carolian Code,

(A) A person is presumed to have a reasonable fear of imminent peril of death or great bodily injury to himself or another person when using deadly force that is intended or likely to cause death or great bodily injury to another person if the person:

(1) against whom the deadly force is used is in the process of unlawfully and forcefully entering, or has unlawfully and forcibly entered a dwelling, residence, or occupied vehicle, or if he removes or is attempting to remove another person against his will from the dwelling, residence, or occupied vehicle; and

(2) who uses deadly force knows or has reason to believe that an unlawful and forcible entry or unlawful and forcible act is occurring or has occurred.

(B) The presumption provided in subsection (A) does not apply if the person:

(1) against whom the deadly force is used has the right to be in or is a lawful resident of the dwelling, residence, or occupied vehicle including, but not limited to, an owner, lessee, or titleholder;

(C) A person who is not engaged in an unlawful activity and who is attacked in another place where he has a right to be, including, but not limited to, his place of business, has no duty to retreat and has the right to stand his ground and meet force with force, including deadly force, if he reasonably believes it is necessary to prevent death or great bodily injury to himself or another person or to

² S.C. Code Ann. § 16-11-410 to -450.

prevent the commission of a violent crime as defined in Section 16-1-60.

The General Assembly enacted the Act to codify the common law Castle Doctrine. State v. Curry, 406 S.C. 364, 372, 752 S.E.2d 263, 267 (2013). “Consistent with the Castle Doctrine and the text of the Act, a valid case of self-defense must exist, and the trial court must necessarily consider the elements of self-defense in determining a defendant’s entitlement to the Act’s immunity.” Id. at 371, 752 S.E.2d at 266. “This includes all elements of self-defense, save the duty to retreat.” Id.

“[T]he legislature intended for defendants to be shielded from trial if they use deadly force as outlined under the Act.” State v. Duncan, 392 S.C. 404, 410, 709 S.E.2d 662, 665 (2011). Thus, upon motion, the issue of immunity under the Act must be decided prior to trial. Id. A party seeking immunity under the Act must show entitlement to immunity by a preponderance of the evidence. Id. at 411, 709 S.E.2d at 665. Moreover, the Act is predicated on the absence of aggression or fault on the defendant’s part in bringing on the difficulty. State v. Curry, 406 S.C. 364, 752 S.E.2d 263 (2013), citing State v. Grantham, 224 S.C. 41, 45, 77 S.E.2d 291, 292 (1953). Notably, the Act is a procedural provision that “does not contain any substantive provisions of law”; thus, it “is not relevant to the work of a jury.” State v. Marin, 404 S.C. 615, 625, 745 S.E.2d 148, 154 (Ct. App. 2013).

At the PCR hearing, Applicant recalled discussing self-defense with counsel but did not recall discussing a pretrial immunity hearing. (PCR 16-18). Applicant acknowledged the argument began in the front yard, and Applicant went inside to get his gun. (PCR 21-22).

Trial counsel testified he read the Act and concluded the presumption in subsection (A) did not apply because Telly was a lawful resident. (PCR 39). Trial counsel was not sure if subsection (C) would apply based on the State’s argument that Applicant caused the events.

(PCR 39-40). Counsel reiterated that Telly was a resident of the home—not a guest. He explained Telly’s children were registered at school as living with Applicant. (PCR 40-41). After reviewing State v. Brown,³ counsel testified this case would have impacted his decision about whether to request an immunity hearing, and he regretted not requesting one. (PCR 41-42). Trial counsel did not believe Applicant intended to shoot Telly, but there was alcohol involved, Applicant was stubborn, and Telly was bigger than Applicant. (PCR 46).

Trial counsel testified that although Applicant informed him Telly was temporarily in his home, counsel determined Telly was a resident based on the facts. (PCR 53). Trial counsel further testified Telly was bigger than Applicant, and Applicant stated Telly advanced on him when he told Telly to leave. (PCR 54-55). Trial counsel testified Applicant believed Telly had a history of domestic violence. (PCR 55)

See State v. Jones, 416 S.C. 283, 786 S.E.2d 132 (2016) (Court denied the defendant the Castle Doctrine presumption where she stabbed her live-in boyfriend while in their shared living space).

Initially, based on counsel’s foregoing testimony—which this Court finds credible—this Court finds counsel articulated a valid reason in not requesting a pretrial immunity hearing. Counsel properly concluded the presumption in subsection (A) would not apply because Telly was a resident of the home. See S.C. Code Ann. § 16-11-430(3) (defining a person’s residence as a “dwelling in which a person resides *either temporarily* or permanently or is visiting as an invited guest” (emphasis added)); 16-11-440(B) (providing the presumption in subsection (A) does not apply if the person “against whom the deadly force is used has the right to be in or is a lawful resident of the dwelling”). Likewise, although counsel was unsure if the presumption of subsection (C) would apply, counsel properly determined Applicant would not be entitled to immunity if he

³ 321 S.C. 184, 467 S.E.2d 922 (1996) (holding a lawful guest has a duty to retreat when attacked by the homeowner).

was at fault in bringing on the difficulty. By his own testimony, Applicant went inside to retrieve the gun when he and Telly began arguing. Based on this, this Court finds Applicant was at fault in bringing on the difficulty, and counsel was not deficient for concluding he would not be entitled to pretrial immunity. See Curry, 406 S.C. at 371 n.4, 752 S.E.2d at 266 n.4 (providing a defendant must be without fault in bringing on the difficulty to establish self-defense).

This Court further finds Brown is inapplicable to the question of whether counsel was ineffective for not requesting a pretrial immunity hearing. In Brown, the South Carolina Supreme Court concluded the trial court did not err in declining to charge that an invitee has no duty to retreat from the owner as part of its self-defense charge. 321 S.C. at 187-88, 467 S.E.2d at 924. Brown predated the Act and did not deal with the Act; rather, it dealt with the self-defense charge. Here, Applicant received a self-defense charge, and he has not raised any issue with the charge provided by the Court. Thus, Brown is inapplicable to the question before this Court. Cf. Marin, 404 S.C. at 625, 745 S.E.2d at 154 (providing the Act is a procedural provision that “does not contain any substantive provisions of law” and “is not relevant to the work of a jury”).

Finally, this Court finds it is not reasonably likely Applicant would have been granted immunity had counsel requested a pretrial immunity hearing, and Applicant thus did not prove prejudice. Initially, this Court had the opportunity to assess Applicant’s demeanor at the immunity hearing and finds the testimony of the Applicant that he was afraid of Telly not credible. This Court further finds Applicant retrieved the gun *after* arguing with his son Telly, and based on his testimony about the evening, a reasonably prudent person would not have believed he was in imminent danger prior to him retrieving the gun. Thus, I find that Applicant did not show a reasonable likelihood he would have been granted immunity and he did not prove prejudice. Therefore, this allegation is **DENIED** and **DISMISSED** with prejudice.

CONCLUSION

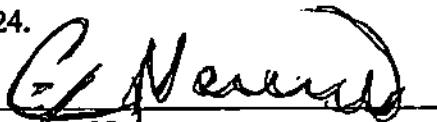
Based on the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant relief. Thus, this application is denied and dismissed with prejudice.

Should Applicant wish to secure appellate review, he must file and serve a notice of appeal within thirty days of receipt by counsel of written notice of entry of judgment. See Rule 203, SCACR. Applicant has the right to the assistance of an appellate counsel on appeal. Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). If Applicant wishes to appeal, PCR counsel must serve and file a notice of appeal on behalf of Applicant. 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 5th day of July, 2024.


CLINTON NEWMAN
Presiding Judge

Columbia, South Carolina

COR2012-08-01339

Roach

WITNESSES

Moncks Corner Police Department

AGENCY CASE NUMBER

20121607

ARREST WARRANT NUMBER

2012A0820500080

DATE OF ARREST

August 17, 2012

ACTION OF GRAND JURY

True Bill

[Signature]
Foreperson of Grand Jury

Date: *11/14/12*

VERDICT

GUILTY

[Signature]
Foreperson of Petit Jury

Date: *7/24/2014*

INDICT

DOCKET NO. 2012GS0802100

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

November Term 2012

THE STATE

Vs

JOHNNY LEE IRBY

DOB: 1952-*[REDACTED]*
B/M

Indictment for

Murder

12 NOV 14 AM 11:33
MARY F. HIGDON
CLERK OF COURT
BERKELEY COUNTY, S.C.

FILED

[Signature]

766

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)

INDICTMENT

At a Court of General Sessions, convened on November 14, 2012 the Grand Jurors of Berkeley County present upon their oath:

Murder

That Johnny Lee Irby did in Berkeley County on or about August 16, 2012, with malice aforethought, kill and murder Telly Irby by means of a gun, and that Telly Irby did die in Berkeley County as a proximate result thereof on August 16, 2012; in violation of Section 16-3-10 of the South Carolina Code of Laws (1976) as amended.

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


ASHLEY B CORNWELL
ASSISTANT SOLICITOR

COR2012-08-01339

WITNESSES

Moncks Corner Police Department

AGENCY CASE NUMBER

20121607

ARREST WARRANT NUMBER

2012A0820500081

DATE OF ARREST

August 17, 2012

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury

Date: 11/14/12

VERDICT

GUILTY

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2012GS0802101

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

November Term 2012

THE STATE

Vs

JOHNNY LEE IRBY

DOB: 1952-
B/M

Indictment for

Attempted Murder

RECEIVED

JUL 31 2014

SC Court of Appeals

MARY F. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

12 NOV 14 AM 11:33

FILED

768

JH

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)

INDICTMENT

At a Court of General Sessions, convened on November 14, 2012 the Grand Jurors of Berkeley County present upon their oath:

Attempted Murder

That Johnny Lee Irby did in Berkeley County, South Carolina, on or about August 16, 2012, willfully, feloniously, and intentionally attempt to kill another person, Michelle Wiggins, with malice aforethought, either expressed or implied, by means of a gun, in violation of §16-03-0029 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.


ASHLEY B CORNWELL
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Berkeley
 STATE VS.
Johnny Lee Irby

AKA:

Race: BLACK Sex: M Age: 62DOB: -1952 SS#: Address: City, State, Zip: Moncks Corner, SC 29461DL#: SID#: SC00787041*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Murder

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2012GS0802100A/W#: 2012A0820500080Date of Offense: 8/16/2012S.C. Code § : 16-03-0010, 0020CDR Code #: 0116

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSin violation of § 16-03-0010, 0020 of the S.C. Code of Laws, bearing CDR Code # 0116
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ § 17-25-45
The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Williams, Anne M.76463
SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2012GS082101☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

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

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ <u>5.00</u>
3% to County (if paid in installments)	\$	\$ <u>3.98</u>
TOTAL		\$ <u>133.98</u>

PTUP

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly payments of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund JUL 31 2014

Other: _____

SC Court of Appeals

☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court (Deputy Clerk)

Court Reporter: Amanda Haffner

SCCA/217 (03/2011)

Presiding Judge

Judge Code: 2139Sentence Date: 7/27/14

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Berkeley
STATE VS.Johnny Lee Irby

AKA:

Race: BLACK Sex: M Age: 62DOB: -1952 SS#: [REDACTED]Address: [REDACTED]City, State, Zip: Moncks Corner, SC 29461DL#: [REDACTED] SID#: SC00787041*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Murder / Attempted MurderINDICTMENT/CASE#: 2012GS0802101A/W#: 2012A0820500081Date of Offense: 8/16/2012S.C. Code § : 16-03-0029CDR Code #: 3410

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSin violation of § 16-03-0029 of the S.C. Code of Laws, bearing CDR Code # 3410☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC §17-25-45 w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.ATTEST: [Signature]Williams, Anne M.76763
SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the

☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

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

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine: \$ _____

§ 14-1-206 (Assessments 107.5 %) \$ _____

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

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

§ 56-5-2995 (DUI Assessment) \$12 \$ _____

§ 56-1-286 (DUI Breath Test) \$25 \$ _____

Proviso 47.9 (Public Def/Prob) \$500 \$ _____

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

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

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

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

Proviso 90.5 (SCCA Surcharge) \$5 \$ 5.003% to County (if paid in installments) \$ 3.90TOTAL \$ 133.90

PTUP _____

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

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

\$ _____ paid to Public Defender Fund

Other: _____

RECEIVED

JUL 31 2014

☐ Appointed PD or appointed by Court, § 47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge _____

Judge Code: 2134Sentence Date: 7/24/14Clerk of Court/ Deputy Clerk L. HillCourt Reporter: Amanda Haffenden

SCCA/217 (03/2011)