

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Mar 17 2025
S.C. SUPREME COURT

Certiorari to Florence County

Honorable Walton J. McLeod, IV, Circuit Court Judge

DIONDRAE E. JACKSON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2024-000952

APPENDIX

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1 there and got it.

2 She tried to get Jackson to calm down by taking him
3 outside. Tried to get Jackson to leave only to get shoved
4 aside by him when she saw him pull the gun and start
5 shooting. And now, we don't have to just take Latesha
6 Newton's word for it. We now have Diondrae Jackson who fully
7 admits he pulled the gun and started shooting.

8 Lawanda Johnson. She told you she'd never met Jackson
9 before that night. She took her pistol out and left it in
10 the car. She was in the back bar area. She saw Jackson
11 leave and come back in. She heard a commotion. She saw
12 Jackson with a pistol in his hand. She heard the shots and
13 rushed back to the car and she was concerned that Latesha was
14 about to leave without her fiancé.

15 Now, that's chivalry. But we don't just have to take
16 her word for it now. Diondrae Jackson told you, yeah, I
17 pulled a gun and I shot Malcolm Spates and I shot Ronald
18 Oliver, neither of whom he could identify when he talked to
19 Investigator Tilton right after this happened, but now he
20 knows who it was by name and exactly everything they had on
21 that night.

22 Ernestine Mack. She'd never met Jackson before that
23 night. She was at Everett and Lawanda's house when Latesha
24 and Jackson arrived. She was in the back bar area when
25 Jackson left and came in. Heard the commotion. Saw Jackson

1 with a pistol in his hand. Heard the shots.

2 She also raced to the car and she was terrified, you
3 know, of Jackson in court. She could hardly look at him in
4 here. I had to ask her a couple times to point to the man
5 you saw with the gun in his hand. She was almost trying to
6 crawl through that back wall. She was kind of recoiling
7 back. Did you see your reaction? She was scared of him
8 then. She's scared of him now.

9 Charles Everett Frierson had never met Jackson before
10 that night. Was in the back bar area and heard what the
11 initial problem started over. Four quarters on a pool table.
12 Life is cheap in Diondrae Jackson's world. Human life is
13 worth one dollar. Four quarters, to be exact.

14 She saw that Jackson -- or he saw that Jackson -- his
15 testimony was that each time the other guys tried to calm
16 Jackson down. Saw Jackson leave and come back in. Saw
17 Jackson staring down the guys who were in the back of the
18 room. Saw Jackson knock Latesha out of the way, pull the
19 gun, and start shooting.

20 And Everett Frierson also told you, yeah, he saw the
21 guys doing this and he saw what he described in a way as gang
22 signs, but when asked he didn't know what gang signs are. He
23 saw guys doing something with their hands, but the important
24 thing about seeing their hands, regardless of what they were
25 doing, he could see that they didn't have a gun, didn't have

1 a knife, didn't have a baseball bat, not even a water pistol.
2 They were completely unarmed and in the back of the club or
3 back of that room, nowhere near him in terms of being a
4 present threat.

5 He raced back to the car and was the last one in. Saw
6 Deputy Bazen turn around to get behind them near McCall Farms
7 on Highway 52. Heard Jackson roll down the passenger window
8 and heard him throw the pistol out.

9 Now, when Roger Tilton asked in that interview with
10 Diondrae Jackson, he was right indignant. I didn't. You
11 said I threw the pistol out. I didn't say I threw the pistol
12 out. And Roger said, Diondrae, you just said just a minute
13 ago when I asked you if you threw the pistol out and you said
14 yeah. I didn't say that. You said that.

15 He said it here today. Which do you believe? Today or
16 then?

17 Samantha Gibson. She's the bartender at the Downbeat
18 Club. She never saw Jackson there before that night. She
19 was working behind the bar. Heard a commotion and a shot,
20 saw Jackson with a pistol in his hand. She could pick
21 Jackson right out of a photo lineup and she testified there's
22 no gang activity at the club, then or now. People come in
23 with red shirts. They come in with blue shirts, black
24 shirts. Red is a popular color.

25 Now, when Diondrae Jackson describes what everybody had

1 on to Roger Tilton back on May the 7th, one guy with a red
2 shirt on. He may have been a Blood. Today, everybody is a
3 sea of red, red pants, red shirt, red everything.

4 What do these eyewitnesses all have in common? None,
5 with the exception of Latesha Newton, knew Jackson before
6 that night; so why would they lie? They had no axe to grind,
7 no past wrongs to avenge. None, including Latesha Newton,
8 saw anyone else besides Jackson in the back room with a gun.
9 None heard anyone threaten Jackson. Each testified in a
10 consistent manner.

11 And now we don't just have to take their word for it.
12 Diondrae Jackson now freely admits he had the gun and was the
13 one shooting, but they all told you nobody else had a gun,
14 nobody else was doing any shooting, nobody else was
15 threatening anybody except Diondrae Jackson.

16 Ronald Oliver. Man, is he lucky to be alive. Had never
17 met Jackson before that night. Never had words with Jackson
18 before that night. Came out of the back bathroom, saw
19 Jackson with a pistol, tried to get back in the bathroom with
20 other fleeing people, saw Jackson push the door open, looking
21 him in the face, shot him in the stomach. In the hospital
22 for over two months and he almost died.

23 Knew Malcolm Spates practically his entire life. He'd
24 never seen him with a gun. Never saw anyone else in the back
25 room with a gun except Jackson. If others had guns, why

1 didn't they shoot back at Jackson? Why hide in the bathroom
2 like fish in a barrel? Doesn't that raise an interesting
3 question? Why would they all run and hide if they had a gun?
4 Why wouldn't they just continue firing?

5 There was no other gun. There was only three shell
6 casings, all of which came from the same firearm. There
7 weren't two from his gun and one from someone else. They all
8 three came from the same gun. And who had that gun?
9 Diondrae Jackson. He had a gun in his hand and he had murder
10 in his heart.

11 The physical evidence. Gunshot residue. Jackson tested
12 positive for gunshot residue, meaning he had recently fired a
13 gun or was in proximity to one when it was fired. Of course,
14 now we know. He admits, yeah, I fired it. So we know that
15 was correct then.

16 Malcolm Spates tested positive for gunshot residue, but
17 that can be explained by the fact that he was shot and he
18 died as a result. Of course, you heard the trace evidence
19 expert say if you're in proximity to a gun when it's fired.
20 Being shot could put you in proximity to GSR.

21 Ronald Oliver. Well, he was shot. Why didn't he have
22 GSR? Well, you also heard being treated for gunshot wound
23 could result in it. In other words, he's jostled around.
24 He's being prepped by hospital folks. He's going into
25 surgery. And the trace evidence expert told you gunshot

1 residue is volatile. It can dissipate very quickly. It can
2 be removed fairly quickly and even inadvertently.

3 Shell casings. Three 9-millimeter shell casings were
4 recovered from the scene. All three were the same caliber.
5 All three were fired from the same gun. None of the three
6 were fired from the gun taken from the console, which is
7 Lawanda Johnson's pistol. Not only were there no other
8 individuals except Jackson seen with a gun, there's
9 absolutely no evidence one was ever fired. Why didn't anyone
10 shoot back if they had a gun?

11 The jail video. They say you can tell a lot about a
12 person based on what they will do when they think no one is
13 looking. You can also tell a lot about a person by what they
14 say when they think no one is recording.

15 Diondrae Jackson didn't think anybody was recording when
16 he was in booking. He had no idea everything he was saying
17 was being picked up. Jackson says several times toward the
18 end of the jail video I caused one murder, I hope the other
19 one dies too. My mama is gonna cry. Theirs is gonna cry
20 too. Both Sgt. McFadden and Cpl. Fludd told you what they
21 heard him say.

22 Again, going back to the statement that he gives Roger
23 Tilton, he admits the initial confrontation in the club is
24 over four quarters on a pool table, not some prior gang issue
25 or ongoing gang issue. He admits to knowing or he knew there

1 was a gun in the glove box before he went into the club. He
2 admits to feeling around inside the glove box. He admits to
3 coming outside and sitting in the car after the initial
4 confrontation, but then things got a little hazy because of
5 that drink. He says he doesn't know if he went back in the
6 club with the gun. He can't remember. That's what he told
7 Roger Tilton on May the 7th right after this thing happened.

8 He tells a different story today, doesn't he? Oh, he's
9 got all his bases covered or so he thinks. He doesn't feel
10 like he shot anybody. He just can't remember because of that
11 drink. The next time he remembers is getting back in the car
12 after everybody starts running. He remembers everything else
13 with great clarity except for those few minutes when he shot
14 two people. That's what he tried to convince Roger Tilton of
15 when he took that initial statement, but he knows that won't
16 fly and he's had a whole year to come up with a different
17 version.

18 And why did he lie? Well, he said Roger Tilton had
19 already made his mind up. Why bother him with something as
20 important as what actually happened? That should have been
21 the first thing and would have been the first thing out of a
22 reasonable person's mouth if the facts had occurred just like
23 Mr. Jackson described for you here today.

24 He never says in his statement to Investigator Tilton
25 Malcolm Spates or Ronald Oliver or anyone else for that

1 matter threatened him. He never says anyone, particularly
2 Spates or Oliver, ever displayed a gun, knife or weapon of
3 any kind and threatened him with it. He even admits that the
4 guy with the white wife beater on and the investigation later
5 revealed that Malcolm Spates tried to calm the situation
6 down. He admits to throwing the gun out of the window at one
7 point and then says he didn't, but now he says today he did.

8 He could have chosen or just taken the four quarters
9 when offered. He chose not to. He could have just stayed
10 outside after the initial argument. He chose not to. He
11 could have just climbed in the backseat of the car and went
12 to sleep until the others came out to go home. He chose not
13 to. Jackson chose to take the gun out of the glove box and
14 with the gun in his waistband and murder in his heart, he
15 chose to go back inside and settle things.

16 Folks, this is a case about senseless violence, this is
17 a case about needless tragedy, and this is a case about a man
18 who lost his life over one dollar. Four quarters, to be
19 exact. That man is Malcolm Spates, a 23-year-old brother,
20 son, and friend. He did nothing more on the early morning
21 hours of May 6th, 2018, than try to calm a tense situation,
22 and he got shot to death for his efforts.

23 This is a case about Ronald Oliver, who did nothing more
24 than come out of a bathroom at the wrong time, only to have
25 to flee for his life along with several others back in that

1 same bathroom, where he was shot in the stomach by Diondrae
2 Jackson.

3 But, folks, this is a case that today can finally be
4 about justice and accountability as Jackson now faces his
5 reckoning. He said at the jail and the video picked up my
6 mama gonna cry, theirs gonna cry too Diondrae Jackson said in
7 the booking area of the detention center on May 6th, 2018, and
8 to him I would say, Mr. Jackson, you succeeded wonderfully
9 because I bet you there ain't been a night from May the 6th to
10 last night and through tonight that Malcolm Spates' mother
11 probably hasn't cried herself to sleep. So to him I say
12 congratulations because his mama did cry and she cried a lot.

13 THE COURT: All right. Defense?

14 MR. EDGEWORTH: Thank you, Your Honor.

15 CLOSING ARGUMENT ON BEHALF OF THE DEFENDANT

16 MR. EDGEWORTH: We talked about at the very beginning of
17 this case that it was going to be uncomfortable and what's
18 really uncomfortable is that the State wants you to believe
19 that this is some kind of game, a game in which four
20 quarters, like a football game, is what sets the stage for
21 something that's even more uncomfortable, which is, yes, we
22 have a man that's dead, yes, we have a person who was injured
23 and, yes, we have a man sitting here accused of those crimes.

24 But in games you generally have rules, and many of those
25 rules were just completely ignored. One of the most telling

1 things you heard throughout this trial was why would I talk
2 to those people? They don't want to talk to me. The
3 investigator of the case said that. Why would I want to talk
4 to those people?

5 The first responding officer on the scene said that he
6 saw 20 to 30 people there. They interviewed four. Four.
7 And those four people, while they were in the car with Mr.
8 Jackson, they all said -- they all said -- don't let the
9 State confuse you. They all said we do not know what was
10 going on beyond the doorway. We only saw what Mr. Jackson
11 did. And he admitted that. That is not in dispute.

12 But don't let them fool you into thinking that just
13 because they said they saw him shoot doesn't mean that they
14 didn't see -- that they know what was happening beyond the
15 door. No one was looking that way.

16 Mr. Frierson did not say -- he did not say -- I'm sure
17 you heard him right there. He said he saw them making the
18 signs in the -- in the mirror, the street signs, the gang
19 signs, egging it on, and then when he turned to look at Mr.
20 Jackson as he pulled the gun, he has no idea, zero idea
21 what's going on that way. So don't be fooled by that. Don't
22 be fooled.

23 Don't be fooled by the fact that when they tell you all
24 these things that no one proved is because they didn't do the
25 investigation to prove it and they didn't do it because why

1 would I talk to them, they're not going to say anything to
2 me, and why would they do that? Because they all know each
3 other. They're all there. They're all in support of each
4 other.

5 Ronald Oliver said that Mr. Spates was his boy, his man.
6 He was down there to hang out with him. And I know you
7 noticed how nervous that guy was. I know you did. He didn't
8 want to say anything, zero, don't recall this, don't recall
9 that, but he used -- he used terms, wearing colors. He
10 didn't admit to wearing colors, but he knew the phrase.

11 So yeah, why would you talk to them? Why would you do
12 that? Because you don't really want to know. We got our guy
13 in 30 minutes. Case over.

14 We have these weird things called unofficial and
15 official statements, and official ones are the ones we're
16 going to record. You know, they know. This is our official
17 one and if they say something different, we'll just call this
18 one the official one. The same one that comes here, but for
19 some reason -- for some reason, the story they want to go
20 with is the story that only one person said. One person says
21 that the argument occurred in a different way, the opposite
22 way where this other random person was calming the situation
23 down and it was Mr. Jackson who was upset about the four
24 quarters. Only one person out of the 30 people.

25 So do we just pick and choose what story we're going to

1 go with? Just that one because it fits their theory of the
2 crime? No. Their theory of the crime has been the whole
3 time Mr. Jackson comes in here and he gets mad over a pool
4 game and guns a blazing. That's what they told you in
5 opening. Guns a blazing.

6 Is that what the facts said? Anybody guns a blazing? I
7 mean they're sitting there telling you three shell casings.
8 Is that guns a blazing? They are just trying to just get you
9 to forget everything that you need to know.

10 And what do you need to know? Well, let's go over it.

11 Like we said, Cpl. Mack is on the scene, the first
12 person on the scene 12 minutes after the call comes in. He
13 got there within 10 minutes and then for the first two
14 minutes he's talking to the bouncer. The bouncer, by the
15 way, who is on the side of the road conveniently, like he
16 hasn't been in the doorway all night because, apparently,
17 he'll go out to the car and check on people, see if they're
18 doing okay. He's down the street. What's he doing over
19 there? He's not helping anybody.

20 Is he running from all these other people too? He
21 must've been scared. He didn't know what to do. He
22 certainly wasn't manning the door. Mr. Jackson says he came
23 in from the very first moment with that gun because Ms.
24 Newton said this stuff could happen here. Stuff could happen
25 at the Downbeat.

1 And every single one of the four witnesses, one of which
2 they want you to believe the story, says, yeah, man, I don't
3 go there without a gun. I mean he -- Mr. Frierson, the one
4 who they want you to believe his version of events, sat there
5 and said we don't go there without our gun. My fiancée's
6 gun. Why do you think they do that? It ain't really the
7 place to be. It's the Downbeat. You go there, you got red.
8 You got red.

9 Is it a coincidence? Is it really a coincidence all
10 these people would have on a memorial shirt for Mr. McBee,
11 Mr. Spates, and it's red? Is that really a coincidence? Are
12 you kidding me?

13 Image. The same image that is on the T-shirt. Long
14 live Bloody. Do you think is that his nickname though? His
15 nickname is McBee. Bloody. The Bloods. Is that a
16 coincidence? No. But no one -- we're not -- apparently,
17 we're conveniently forgetting about that stuff.

18 The whole reason why we're here is because, first, the
19 fact that Mr. Jackson said he pulled the gun on him randomly
20 all of a sudden. All of a sudden.

21 Now, the pathologist did not say this by the way. You
22 were listening. At no time did she say he must've been like
23 this. No. He was like this. The gunshot came from here,
24 entered into his shoulder, stayed there. That's what killed
25 him. You can't get that shot from the front. You can get it

1 like this. Your arm is exposed right here. It came in right
2 here. If his arm was down, it would hit him in the arm.
3 There would have been an x-ray that said, you know, broke
4 this arm too. Never. That ain't in there.

5 This man was intoxicated, .185. Does that sound like a
6 person who would be like, whoa, whoa, whoa, let's -- let's
7 calm down here. It's just a pool match. No. Every single
8 one of you know what a drunk person does. Crazy. Crazy,
9 unreasonable, can be violent, aggressive.

10 Was he really going over there and saying, hey, man?
11 No. There was no weed in his system. The only thing he had
12 was alcohol. He was drunk and violent. Mad enough to pull a
13 gun out at Mr. Jackson, whom he had argued with.

14 Don't fall for this whole white shirt nonsense. I don't
15 know if you recall and I'm sure that you do because they
16 showed the pictures numerous times, but what was sitting on
17 top of that pool table? What was sitting on top of that pool
18 table? Watch -- look at the photos. I'll let you just look
19 at them. I won't even pull them out because I want you to
20 see. Look at the photos, the crime scene photos they took of
21 that scene. Guess what's on the pool table? A red shirt.

22 So do you really want to fall for the trap? I don't
23 think so. Don't fall for the trap that, you know, this GSR
24 is from the gunshot wound. Okay? Let's don't fall for that
25 trap. Because if as they say, you know, the GSR came from

1 that, if he's doing this, his hands are way back here.
2 They're back here, not here. How's he going to get GSR? The
3 expert told you they take it from the hands. From the hands.
4 Where does that come from? From here. Not from here. From
5 here.

6 Not to mention the fact that the testimony is he was on
7 the other side of the room. The other side of the room, not
8 that close. He wasn't so close that it could get on him on
9 his hands.

10 Every single one of the witnesses that they interviewed,
11 they all knew what kind of stuff went down at the Downbeat.
12 Ms. Newton had been there many times before and you know
13 what? What did she do? Drove in her Dodge, gun in the glove
14 box. There's no testimony that Mr. Jackson told her to put
15 that gun in the glove box. She said she put it in the glove
16 box.

17 Ms. Lawanda Johnson. That was her gun in the console,
18 same one that Ms. Newton tried to claim when she got there
19 when the cops pulled up. She knew her gun wasn't in the --
20 in the glove -- in the center console. She was just trying
21 to claim a gun real fast because she had already told Mr.
22 Jackson to take the gun inside the club. She knew what was
23 possible. She just wanted to claim the gun real fast. Whoa.
24 Not her gun.

25 Mr. Frierson. Ms. Mack. If you recall, Mr. Frierson,

1 whose version of events that they want y'all to believe about
2 who started what, he acknowledged -- he acknowledged that the
3 bouncer came outside to check on everybody. The door is wide
4 open again and maybe you don't even need the door to be wide-
5 open because apparently his, you know, bouncer skills and
6 security skills are terrible. It's probably fake skills just
7 for appearances purposes because, as you heard from law
8 enforcement, there's been plenty of things that's happened at
9 the Downbeat. Maybe not since, but plenty of things have
10 been happening.

11 Now, let's talk about the magical bullet. Okay? This
12 magical bullet that struck Mr. Oliver who claimed that he,
13 according to the State, came outside the bathroom and was no
14 worse for the wear and then there here's gunfire and then he
15 runs in there. Okay?

16 How could that be possible? They just said -- they just
17 said randomly that he was shot twice. Where did that come
18 from? I guess that came from nowhere. There's been no
19 medical testimony to that, but let's just assume that for a
20 moment.

21 He was shot twice, but he didn't say he got shot outside
22 of the bathroom. He testified that he was in the bathroom
23 with four to five people and he wasn't even the first one in
24 a room that is no bigger than at least five feet deep. The
25 pictures are in evidence. You'll see. It's a small

1 bathroom. If you could get five people in there, you'd be
2 cramped, and he wasn't even the first one.

3 So if Mr. Jackson would have actually walked back there,
4 pointed a gun, and didn't kill somebody, especially not a
5 person that's allegedly in the front, it's a fricking
6 miracle. It's a magical bullet. It missed the first two
7 people. He was number three. It hit him in the stomach. Do
8 you believe that? You don't believe that.

9 Now, the statement at the jail. How many different
10 versions of this thing could we possibly hear? The most
11 recent one is is that now Mr. Jackson has started to utilize
12 the -- the legal terminology of murder at the jail. When did
13 we hear that?

14 You saw on this PowerPoint thing that they tried to show
15 you to try to make you remember all the wrong things. You
16 know that stuff? They put, oh, I murdered one so the other
17 one is going to die quick or too or whatever. We don't even
18 know what he said because one person says quick, one person
19 says too, and now it says that he said he murdered them, and
20 he didn't say that.

21 They just want you to believe that it's murder. Well,
22 listen to the tape. You heard it. He didn't say murder. He
23 said they said I killed somebody and the other one need to
24 die too. They. They said. They.

25 He's talking to the other individual. Don't be fooled

1 by this, oh, you say things when no one's listening. He's
2 talking to somebody else and telling him why he's there.
3 That makes more sense. They said I killed somebody and the
4 other one needed to die too. They. He didn't say murder.
5 They just want you to -- they want you to believe that.

6 Now, filling in gaps. Why do they feel the need to fill
7 in these gaps? It's the same reason why they're trying to
8 point your attention to the multiple stories.

9 Yesterday, you heard Investigator Tilton. Not only was
10 he talking about, like, well, there's no reason to talk to
11 anybody else, they're not going to talk to me, you know why
12 that is? He also testified that there was no one -- no one
13 made any threats.

14 Yet Mr. Frierson -- remember, the version of the events
15 they want you to believe, but they don't want you to believe
16 the part about the threats part. Every single one of these
17 people were scared and they want you to believe it was of Mr.
18 Jackson. They're scared. They were scared before they even
19 went there. They took guns. That's why they're still scared
20 today. They don't -- they don't know what's going to happen.
21 All red. They know it. They know it.

22 That's the reason why when Investigator Tilton was on
23 the stand he claimed -- and I know you knew it when you heard
24 it. He claimed that at no time did Mr. Jackson mention
25 anything about Bloods. He went so far as to say, oh, no, he

1 must have been talking about blood. You didn't believe that.
2 There ain't no way you could believe that. Filling in the
3 gaps. Filling in those gaps. Kind of like a football game,
4 filling in the gaps, four quarters.

5 Don't be fooled. They want you to think that this is a
6 game, a pool game, and you get mad and you guns ablaze, but
7 that ain't what this is about. Mr. Jackson had the gun, saw
8 all these people in red, being threatened, having had been in
9 an argument, talking to his friend who he has known for 30
10 years, and when he sees Mr. Spates pull a gun, he throws her
11 out of the way and shoots. Unfortunately, that shot killed
12 him. He didn't hit him in the head. He hit him in the rib.
13 Right? That's just shooting and running.

14 Don't be fooled. He was protecting his friend and then
15 they ran and then he got scared, just like anybody else in
16 this room would do. And when you get scared, you don't tell
17 the truth. Ask your children. You don't even need to ask
18 them because you already know because that's the way you're
19 treated by the law enforcement. You feel like a kid and you
20 start to lie because you don't know what to do, and they want
21 you to think that this is the golden opportunity to tell the
22 truth.

23 No, it's not. Mr. Jackson went into that interview and
24 he had every intention of trying to tell them what happened,
25 but he knew. He got the feeling. He wanted a cigarette,

1 they said, no, not right now. And after a few minutes, he
2 saw the warrants sitting on the table and he's, like, I'm
3 screwed. I don't know what to do. Oh, shoot. I didn't
4 throw the gun away. I don't know what to do. That's what
5 happens and you know it. That's how you react.

6 So don't let them make you think that it was just some
7 scheme or plan or somehow that I've sat in jail for a year
8 and came up with this. No. That's the truth and they can't
9 disprove it because every single witness says I did not see
10 what was going on beyond the wall.

11 Self-defense. He was protecting himself and his friend.
12 He ran and got scared, and that's the truth. He is not
13 guilty of murder, not guilty of attempted murder. Not
14 guilty.

15 THE COURT: All right. Reply?

16 REPLY CLOSING ON BEHALF OF THE STATE

17 MR. TUCKER: Folks, I'll be brief because I know you're
18 tired. You've heard a lot and you've heard us talk a lot
19 today. I want to remind you of a couple things when you are
20 back in that room deliberating on this case.

21 Mr. Edgeworth talked about not making sense. What
22 doesn't make sense to me is why it takes you a year and two
23 opportunities to tell the truth. There's many ways to tell a
24 lie. There's only one way to tell the truth and there's only
25 one time to tell the truth, when you're asked what happened

1 right after it happened.

2 But he didn't. He waits a year, doesn't say what
3 happened, this version you heard today, to anybody until he
4 comes in here today because he's had a year to work on it.

5 Mr. Edgeworth told you, well, he got scared. That's why
6 he didn't say anything. Just think of your kids. Well, you
7 ask a kid did you knock that over, did you make that mess?
8 Yeah, if you're five years old you might say, no, it wasn't
9 me, because you're maybe going to get punished. But when
10 you're a 40-year-old man and you're accused of what you're
11 accused of and you've done what you've done, when law
12 enforcement asks you what happened, you tell them. You tell
13 it the one way, the right way, that day. You don't wait a
14 year.

15 The gunshot residue on Malcolm Spates in proximity.
16 Malcolm Spates could have had his hands up and he could've
17 come back when he shot, which would be a logical response.
18 He could've got gunshot residue there, but he was shot, make
19 no mistake about it, and he was shot by Diondrae Jackson.

20 Mr. Edgeworth talks about these people that Roger Tilton
21 didn't talk to. Well, it's hard to talk to people if they
22 don't hang around and give you a statement. It's hard to
23 find these people if they don't hang around and give names
24 and addresses and phone numbers.

25 But he says that points to something else. Well, as we

1 heard Mr. Jackson tell today, what would those 20 people have
2 said? We needed 20 additional people to tell us what
3 happened? No. Mr. Jackson admitted, yeah, I shot him. I
4 shot Malcolm Spates. I shot Ronald Oliver.

5 And they've made a lot about the color red and blood.
6 None of these people were in that Downbeat Club that night.
7 You can have friends. You can be in a group. That doesn't
8 mean you're part of a gang and that certainly doesn't give
9 someone the right to shoot you down because you're wearing
10 something. It doesn't give somebody the right to shoot you
11 down because you had a few drinks.

12 I leave you with this, ladies and gentlemen. The only
13 blood that matters in this case and the only color red that
14 matters in this case is the red blood that Malcolm Spates
15 bled when he was shot by Diondrae Jackson. The only red and
16 the only blood that matters in this case is the blood color
17 red that Ronald Oliver bled when he was lying on the floor
18 completely defenseless and he was shot by Diondrae Jackson.

19 Not in self-defense, not because Mr. Jackson was
20 protecting himself or somebody else. He shot two men, killed
21 one and almost killed the other and, folks, it is that
22 simple. It was over one dollar. Four quarters, to be exact.

23 CHARGE ON THE LAW

24 THE COURT: Members of the jury, it is now my duty to
25 instruct you on the law applicable to this case. It is your

1 duty as jurors to accept and apply the law as I now state it
2 to you.

3 Furthermore, it is your exclusive duty to decide all the
4 issues of fact in this case and to determine the effect,
5 value, and weight of the evidence presented. Both the State
6 and the defendant have the right to expect that you will
7 carefully consider and evaluate the evidence and apply the
8 law of the case to it so that, in the end, both the State of
9 South Carolina and this defendant will have received a fair
10 and impartial trial.

11 I want you to understand that when I use the word
12 defendant, I am referring to Diondrae Jackson. The State in
13 this case alleges several offenses against the defendant.

14 The charges are Count I, murder, and Count II, attempted
15 murder. Each charge is a separate and distinct offense. You
16 must decide each charge separately on the evidence and the
17 law applicable to it, uninfluenced by your decision as to any
18 other charge.

19 The defendant may be convicted or acquitted on any or
20 all of the offenses charged. You will be asked to write a
21 separate verdict of guilty or not guilty for each charge.

22 To these charges, the defendant has entered a plea of
23 not guilty. This plea of not guilty places the burden of
24 proof on the State to prove the guilt -- the defendant guilty
25 beyond a reasonable doubt on each charge.

1 It is vital to understand that the defendant is presumed
2 under the law to be innocent of the charges. It is a
3 fundamental rule of our law that the defendant, regardless of
4 the seriousness of the charges against him, is always
5 presumed innocent of the crimes for which he is charged
6 unless and until his guilt has been proven by evidence that
7 satisfies you beyond a reasonable doubt.

8 The presumption of innocence is not a mere legal theory
9 or legal phrase. The presumption of innocence is very
10 important and you need to understand that this presumption
11 accompanies the defendant from the time of his arrest and
12 appearance in this court and continues with the defendant
13 even after you retire to the jury room to deliberate.

14 In other words, the defendant receives the benefit of
15 the presumption of innocence until the very end of this trial
16 when you, the jury, will deliberate upon the evidence and
17 decide whether the State has proven his guilt on each and
18 every charge beyond a reasonable doubt.

19 Proof beyond a reasonable doubt is proof that leaves you
20 firmly convinced of the defendant's guilt. There are few
21 things in this world that we know with absolute certainty.
22 So even in criminal cases, the law does not require proof
23 that overcomes every possible doubt.

24 However, if based on your consideration of the evidence,
25 you are firmly convinced that the defendant is guilty of the

1 crimes charged, you must find him guilty. If, on the other
2 hand, you think there's a real possibility that he is not
3 guilty, you must give him the benefit of the doubt and find
4 him not guilty.

5 Please understand that reasonable doubt may arise from
6 evidence which has been presented in this case or from the
7 lack of evidence in this case. It is your responsibility to
8 determine whether or not reasonable doubt exists as to the
9 guilt of this defendant on each charge.

10 I charge you that the defendant is entitled to every
11 reasonable doubt arising in the whole case. If, upon any
12 issue of fact essential to conviction and a verdict of
13 guilty, you have a reasonable doubt as to how that would be
14 resolved, it would be your duty to resolve that reasonable
15 doubt in favor of the defendant.

16 Thus, in summary, it is important to understand that the
17 defendant is not required to prove his innocence. Instead,
18 the State is required by law to prove every essential element
19 of the charges against the defendant by evidence which
20 satisfies you of his guilt beyond a reasonable doubt. Only
21 then can you convict the defendant and find him guilty.

22 During this trial, you and I have separate duties to
23 perform. As the trial judge, it is my responsibility to
24 preside over this trial. Therefore, I have the duty to rule
25 upon the admissibility of the evidence offered during this

1 trial. In that regard, you are to consider only the
2 testimony which has been presented from this witness stand,
3 together with any exhibits submitted into the record of this
4 case.

5 Furthermore, I have the additional duty to charge you on
6 the applicable law to this case and, in that regard, it is
7 your duty to accept and apply the law as I now state it to
8 you. If you have any preconceived ideas as to what the law
9 is or what the law ought to be and it does not agree with
10 what I tell you the law is, then you are obligated under your
11 oath to abandon these preconceptions and accept the law as I
12 now state it to you.

13 In this trial, you are the sole and exclusive judge of
14 the facts and I am the judge of the law. Do not infer that I
15 have any opinion about the facts in this case from anything I
16 have said or done during the course of this trial. In this
17 regard, the law simply does not permit me to have an opinion
18 about the facts. As jurors, it is your duty alone to
19 determine the effect, value, and weight of the evidence
20 presented during the course of this trial.

21 Furthermore, it is your job as jurors to determine the
22 credibility and believability of the witnesses who have
23 testified in this case. You must evaluate the evidence and
24 determine which evidence convinces you.

25 In determining the believability of witnesses who have

1 testified in this trial, you may believe one witness over
2 many or many over one. You may believe a part of the
3 testimony of a witness and reject the remaining part. You
4 may believe the testimony of a witness in its entirety or
5 reject it in full.

6 You may consider whether the witness has an interest in
7 the result of the trial, whether the witness is prejudiced
8 toward either party, the opportunity for the witness to have
9 seen the matters and things about which the witness may
10 testify, and the way the witness acts on the witness stand.

11 Evidence may be direct or circumstantial. Direct
12 evidence is testimony by a witness about what that witness
13 personally saw or heard or did. Circumstantial evidence is
14 indirect evidence. That is, it is proof of one or more facts
15 from which you can find another fact. You are to consider
16 both direct and circumstantial evidence equally.

17 The defendant is charged with murder. The State must
18 prove beyond a reasonable doubt that the defendant killed
19 another person with malice aforethought.

20 Malice is hatred, ill will or hostility towards another
21 person. It is the intentional doing of a wrongful act
22 without just cause or excuse and with the intent to inflict
23 an injury or under circumstances that the law will infer an
24 evil intent.

25 Malice aforethought does not require that malice exist

1 for any particular time before the act is committed, but
2 malice must exist in the mind of the defendant just before
3 and at the time the act is committed. Therefore, there must
4 be a combination of the previous evil intent and the act.

5 Malice aforethought may be expressed or inferred. These
6 terms express and inferred do not mean different kinds of
7 malice, but merely the manner in which malice may be shown to
8 exist. That is by direct evidence or by inference from the
9 facts and circumstances which are proved.

10 Express malice is shown when a person speaks words which
11 express hatred or ill will for another or when the person
12 prepared beforehand to do the act which was later
13 accomplished. For example, lying in wait for a person or any
14 other acts or preparation going to show that the deed was
15 within the defendant's mind would be express malice. Malice
16 may be inferred from conduct showing a total disregard for
17 human life.

18 If you find that the State has failed to prove beyond a
19 reasonable doubt that the defendant committed murder, you may
20 consider whether the State has proved beyond a reasonable
21 doubt that the defendant committed voluntary manslaughter.

22 To prove voluntary manslaughter, the State must prove
23 beyond a reasonable doubt that the defendant took the life of
24 another in the sudden heat of passion based on sufficient
25 legal provocation. Both heat of passion and sufficient legal

1 provocation must be present at the time of the killing to
2 constitute voluntary manslaughter.

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

8 Sufficient legal provocation must be the type that would
9 make a person of ordinary reason and caution become enraged
10 and to lose control temporarily. The provocation needed for
11 voluntary manslaughter must come from some act of or related
12 to the victim. Words alone, however vulgar or insulting, are
13 not enough to be legal provocation.

14 Where death is caused by the use of a deadly weapon, the
15 words must be accompanied -- must be accompanied by some
16 overt act, threatening act, which could have produced the
17 heat of passion.

18 The exercise of legal right, no matter how offensive it
19 is to another, is never sufficient legal provocation for
20 voluntary manslaughter.

21 If the heat of passion has cooled or if there was enough
22 time between the provocation, if any, and the killing for the
23 passion of a reasonable person to cool, the killing would not
24 be voluntary manslaughter. In deciding whether a reasonable
25 person would have had enough time to cool off, you should

1 consider all the circumstances surrounding the killing. You
2 may consider the nature of the provocation, if any, the
3 defendant's mental and physical state, and the circumstances
4 and relationships between the parties.

5 The defendant in this case is also charged with one
6 count of attempted murder. In order to prove this crime, the
7 State must prove the defendant attempted to kill another
8 person with malice aforethought, either expressed or implied.
9 Malice aforethought, either expressed or implied, has already
10 been explained to you in this charge.

11 The defendant has raised the defense of self-defense.
12 Self-defense is a complete defense and, if it is established,
13 you must find the defendant not guilty. The State has the
14 burden of disproving self-defense by proof beyond a
15 reasonable doubt.

16 If you have a reasonable doubt of the defendant's guilt
17 after considering all the evidence, including the evidence of
18 self-defense, you must find the defendant not guilty. On the
19 other hand, if you have no reasonable doubt of the
20 defendant's guilt after considering all the evidence,
21 including the evidence of self-defense, then you must find
22 the defendant guilty.

23 The following elements are required to establish self-
24 defense.

25 First, a defendant must be without fault in bringing on

1 the difficulty. If the defendant's conduct was the type
2 which was reasonably calculated to and did provoke a deadly
3 assault, the defendant would be at fault in bringing on the
4 difficulty and would not be entitled to an acquittal based on
5 self-defense.

6 Self-defense is not available to a person who uses
7 language which is so contemptuous that a reasonable person
8 would expect it to bring on a physical encounter and which
9 did actually contribute to the physical encounter.

10 If the defendant voluntarily participated in mutual
11 conduct for purposes other than protection, the killing of
12 the victim would not be self-defense. This is true even if
13 during the combat the defendant feared death or serious
14 bodily injury. However, if before the killing is committed
15 the defendant withdraws and tried in good faith to avoid
16 further conflict and either by word or act makes the fact
17 known to the victim, he would be without fault in bringing on
18 the difficulty.

19 For mutual combat, there must be a mutual intent and
20 willingness to fight. This intent may be shown by acts and
21 conduct of the parties and the circumstances surrounding the
22 combat. In addition, it must be shown that both parties were
23 armed with a deadly weapon.

24 The second element of self-defense is that the defendant
25 was actually in imminent danger of death or serious bodily

1 injury or that the defendant actually believed he was in
2 imminent danger of death or serious bodily injury.

3 If the defendant was actually in imminent danger, it
4 must be shown that the circumstances would have warranted a
5 person of ordinary firmness and courage to strike the final
6 blow to prevent death or serious bodily injury. If the
7 defendant believed he was in imminent danger of death or
8 serious bodily injury, it must be shown that a reasonably
9 prudent person of ordinary firmness and courage would have
10 had the same belief.

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

16 The defendant does not have to show that he was actually
17 in danger. It is enough if the defendant believed he was in
18 imminent danger and a reasonably prudent person of ordinary
19 firmness and courage would have had the same belief.

20 The defendant has the right to act on appearances, even
21 though the defendant's beliefs may have been mistaken. It is
22 for you to decide whether the defendant's fear of immediate
23 danger of death or serious bodily injury was reasonable and
24 would have been felt by an ordinary person in the same
25 situation.

1 Words accompanied by hostile acts may, depending on the
2 circumstances, establish self-defense.

3 Evidence of prior difficulties between the defendant and
4 the victim may be considered in deciding whether a threat
5 existed, whether the defendant had a reason to believe a
6 threat existed, and how serious that threat was.

7 The relative sizes, ages, and weights of the defendant
8 and the victim may be considered in deciding the apparent or
9 actual need for force in self-defense and the amount of force
10 needed.

11 The reputation of the victim as a violent person may be
12 considered in deciding whether there was a need for force,
13 whether the defendant had a reason to believe there was a
14 need for force, and whether deadly force was reasonably
15 necessary.

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

22 The intoxication of the victim may be considered in
23 deciding whether the defendant's fear of death or bodily harm
24 was reasonable.

25 The final element of self-defense is that the defendant

1 had no other probable way to avoid the danger of death or
2 serious bodily injury than to act as the defendant did in
3 this particular instance. The defendant had no duty to
4 retreat if by doing so the danger of being killed or
5 suffering serious bodily injury would increase.

6 A person cannot be required to make an exact calculation
7 as to the degree or amount of force which may be needed to
8 avoid death or serious bodily harm. Therefore, in self-
9 defense, the defendant has the right to use the force needed
10 to avoid death or serious bodily harm.

11 The force used in self-defense does not have to be
12 limited to the degree or amount of force used by the victim.
13 The defendant has the right to use so much force as appeared
14 to be necessary for complete self-protection and which a
15 person of ordinary reason and firmness would have believed to
16 be needed to prevent death or serious bodily harm.

17 If the defendant is justified in defending himself and
18 others and in firing the first shot, the defendant is also
19 justified in continuing to shoot until it is apparent that
20 the danger of death or serious bodily injury was completely
21 ended.

22 Ms. Bailiff, if you would, hand that to the foreman for
23 me, please, ma'am.

24 Ladies and gentlemen, I'm now drawing near the end of my
25 charge and I want you to clearly understand that you are not

1 partisans or advocates for the State or the defendant. You
2 do not serve as jurors to reward your friends or punish your
3 enemies. In this regard, you have been selected by both the
4 State of South Carolina and the defendant to be fair and
5 impartial jurors.

6 It is your duty by your joint deliberations to determine
7 the facts in this case, giving the defendant the benefit of
8 every reasonable doubt on each and every issue. Then to the
9 facts which you determine to be correct, you should take and
10 apply the law which has been given to you by this Court and
11 thus arrive at a verdict. When you have accomplished these
12 responsibilities, you will have satisfied your oath as jurors
13 and you will have discharged your duty to this Court.

14 Now, Mr. Foreman, I have handed you the verdict form.
15 When you arrive at a verdict in this case, you will write
16 your verdict on the form.

17 For the charges, if the State has failed to prove the
18 guilt of the defendant beyond a reasonable doubt, your
19 verdict would be two words: not guilty. However, should the
20 State have proved their case against the defendant beyond a
21 reasonable doubt, then your verdict would be one word:
22 guilty.

23 Foreperson, once the decision has been made, just check
24 whichever is your verdict on the verdict form and sign it for
25 each charge.

1 Also, please understand that the verdict that you render
2 in this case must be the verdict of each and every juror. It
3 must be your unanimous verdict. All twelve jurors must agree
4 on the verdict which you authorize the foreman to write for
5 the jury.

6 Mr. Foreman and members of the jury, I want you to
7 further understand that the order in which the choices of
8 verdict appear on the verdict form are not suggestive of any
9 verdict on the part of this Court. The verdict in this case
10 is to be determined by you and not the Court.

11 Furthermore, ladies and gentlemen, please understand
12 that even though I have given the verdict form to the
13 foreman, it is not his verdict alone. It is the verdict of
14 all twelve of you, and I emphasize again your verdict must be
15 unanimous.

16 Now, you will retire to the jury room. However, I would
17 ask that you do not begin your deliberations at this time.
18 The law requires that I consult with these attorneys first.
19 After I have done so, the bailiff will bring in the items of
20 evidence and instruct you to begin your deliberations at that
21 time.

22 Also, should you have any questions during your
23 deliberations, you must put them in writing and send them to
24 me by way of the bailiff. The court bailiff will be placed
25 immediately outside of the jury room door to provide security

1 and assistance for you during your deliberations.

2 Once you have reached your verdict, please knock on the
3 jury room door and advise the bailiff to advise the Court
4 that you have reached a verdict, and I will return you to the
5 courtroom as promptly as possible thereafter.

6 Thank you. You may retire to the jury room at this
7 time, but do not begin your deliberations until told to do
8 so.

9 (WHEREUPON, the jury exited the courtroom at 12:35 p.m.)

10 THE COURT: All right. Any objections to the charge as
11 given from the State?

12 MR. TUCKER: Nothing from the State, Your Honor.

13 THE COURT: The defense?

14 MR. EDGEWORTH: None from the defense, Your Honor.

15 THE COURT: All right. If you want to take a look at
16 the items that are in evidence? Make sure they're in order
17 and let me know if they are. We'll send them back, bring out
18 the alternates, and tell them to begin.

19 (WHEREUPON, there was a pause in the proceedings while
20 the evidence was checked, after which the proceedings
21 resumed as follows.)

22 THE COURT: All right. Everything is fine with the
23 State for the record?

24 MR. TUCKER: Yes, sir.

25 THE COURT: Everything in order from the defense?

1 MR. EDGEWORTH: From the defense, yes, Your Honor.

2 THE COURT: All right. Let's go ahead and send in the
3 items, tell them to begin, and send the alternates out. I'll
4 talk to them.

5 (WHEREUPON, jury deliberations began at 12:39 p.m.)

6 (WHEREUPON, the alternates entered the courtroom at
7 12:39 a.m.)

8 THE BAILIFF: I have the two alternates.

9 THE COURT: Okay. All right. I want to let you two
10 know that you were alternates in this trial. You were the
11 backup quarterbacks. If the quarterback broke a leg or
12 something like that, you had to step in. So in order to step
13 in, you had to be here for the whole game, and you've done
14 that. So you've accomplished your duties. We're going to
15 feed you, but not with the jury.

16 If you'll make sure they have another room?

17 THE BAILIFF: Yes.

18 THE COURT: You can have your lunch or you can take it
19 with you, whatever suits you, and then you're free to go.
20 Thank you for being here. It's a pleasure to meet you.

21 (WHEREUPON, the alternate jurors were released at 12:41
22 p.m.)

23 THE COURT: All right.

24 (WHEREUPON, there was a break in the proceedings from
25 12:42 p.m. until 1:33 p.m., after which the proceedings

1 resumed as follows.)

2 THE COURT: We have a plethora of questions.

3 (WHEREUPON, the jury note was marked as Court's Exhibit
4 Number 2.)

5 THE COURT: Thank you.

6 All right. What we have, we have three specific
7 questions.

8 The first one is "What exactly is voluntary
9 manslaughter?" I figured I could just recharge them on that.

10 The second one, "Can we get a printed copy of the court
11 transcript from the bartender, all passengers of the car, and
12 the survivor of the shooting?" We could replay whatever
13 parts they want to hear or all of it, if they want to.
14 That's my opinion.

15 MR. TUCKER: That's the only thing we can do.

16 THE COURT: What do you think?

17 MR. EDGEWORTH: Your Honor, I think that's probably the
18 most efficient.

19 THE COURT: Yeah. And then the third one, "Was Malcolm
20 right-handed or left-handed?"

21 MR. TUCKER: And I would certainly say there's no
22 evidence one way or another.

23 THE COURT: Just all the evidence is before you.

24 MR. EDGEWORTH: All the evidence.

25 THE COURT: You have to take it as it is. Yeah.

1 All right. So I guess let's bring them out and --

2 MR. TUCKER: Judge, did you want them to -- we might
3 could rig something up if they want to watch it back there.
4 That way they can stop it and start it.

5 MR. EDGEWORTH: Just so I'm clear, they're wanting to
6 hear the testimony?

7 THE COURT: Technically, they want a printed copy, but
8 there isn't a printed copy.

9 MR. EDGEWORTH: Right.

10 THE COURT: So we could play it for them. Yeah. Of the
11 bartender, everybody in the car, and Richard [sic] Oliver.

12 MR. EDGEWORTH: So basically, just replay their
13 testimony?

14 THE COURT: That's what they want it sounds like. I
15 figured I'd ask them if that's what they -- if they want all
16 that and, if they do, we'll just do it. If they want one or
17 not the others after thinking, we'll just walk through it and
18 --

19 MR. EDGEWORTH: Sure.

20 THE COURT: -- if I do something objectionable, just let
21 me know.

22 MR. TUCKER: Yes, sir.

23 MR. EDGEWORTH: Yes, Your Honor.

24 THE COURT: We'll make sure they get what they need.

25 (WHEREUPON, the jury entered the courtroom at 1:37 p.m.)

1 THE COURT: All right. I have three questions from you.
2 I'm going to go to the third one first. Was Malcolm
3 right-handed or left-handed?

4 You have heard all of the evidence in this trial and you
5 have to take it as you've heard it and have it. So that's it
6 on that and you can continue your deliberations.

7 In regards to can we get a printed copy of the court
8 transcript from the bartender, all passengers of the car, and
9 the survivor of the shooting, it is not printed yet. It's
10 all on tape. We can replay all of it or some of it or
11 portions of it. Whatever you want to hear in that regard, we
12 can do it.

13 If y'all would like to discuss that among yourselves
14 quickly and let me know, the court reporter says it's about
15 -- what? Two hours? It's about two hours in total.

16 So two hours at least. But if you want to hear it,
17 we're fine with that. We can plug it up and let you hear it
18 and go from there.

19 As far as voluntary manslaughter goes, I'll just read
20 that to you again. It's not long. And then you just let me
21 know about which witnesses or all that you want to hear and
22 I'll do it for you.

23 To prove voluntary manslaughter, the State must prove
24 beyond a reasonable doubt that the defendant took the life of
25 another in the sudden heat of passion based on sufficient

1 legal provocation. Both heat of passion and sufficient legal
2 provocation must be present at the time of the killing to
3 constitute voluntary manslaughter.

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

9 Sufficient legal provocation must be the type that would
10 make a person of ordinary reason and caution become enraged
11 and to lose control temporarily. The provocation needed for
12 voluntary manslaughter must come from some act of or related
13 to the victim. Words alone, however vulgar or insulting, are
14 not enough to be legal provocation.

15 Where death is caused by the use of a deadly weapon, the
16 words must be accompanied by some overt threatening act which
17 could have produced the heat of passion. The exercise of a
18 legal right, no matter how offensive it is to another, is
19 never sufficient legal provocation for voluntary
20 manslaughter.

21 If the heat of passion had cooled or if there was enough
22 time between the provocation, if any, and the killing for the
23 passion of a reasonable person to cool, the killing would not
24 be voluntary manslaughter. In deciding whether a reasonable
25 person would have had enough time to cool off, you should

1 consider all the circumstances surrounding the killing. You
2 may consider the nature of the provocation, if any, the
3 defendant's mental and physical state, and the circumstances
4 and relationships between the parties.

5 That is voluntary manslaughter.

6 Would you all like to go into the jury room and then
7 maybe send the foreman back out and let me know what you all
8 want to hear?

9 THE FOREPERSON: Yes, sir.

10 THE COURT: Is that okay?

11 THE FOREPERSON: Yes, sir.

12 THE COURT: All right. Why don't you go ahead and do
13 that? And then just we'll wait right here and hear from you.

14 (WHEREUPON, the jury exited the courtroom at 1:40 p.m.)

15 THE COURT: Any objections as to the charge I just gave
16 them?

17 MR. TUCKER: None from the State, Your Honor.

18 MR. EDGEWORTH: None from the defense, Your Honor.

19 THE COURT: All right. Let's wait and hear from the
20 foreman.

21 (WHEREUPON, there was a pause in the proceedings until
22 the foreperson entered the courtroom, after which the
23 proceedings resumed as follows.)

24 THE COURT: All right. Mr. Foreman, what is it that the
25 jury wants to hear?

1 THE FOREPERSON: Judge, the jury would like to hear the
2 testimony of Latesha, Lawanda, Charles, Ernestine, Oliver,
3 and Samantha. They've also asked if it's possible can each
4 of us get a pad and pen so we can make sure we take proper
5 notes?

6 THE COURT: Any objections to taking notes from the
7 State?

8 MR. TUCKER: I do not have an objection, Your Honor.

9 THE COURT: Defense?

10 MR. EDGEWORTH: No objection, Your Honor.

11 THE COURT: All right. Can you get them pads and a
12 piece of paper and we'll go ahead and be lining up the
13 testimony?

14 THE BAILIFF: Okay.

15 THE COURT: And just bring them back whenever they're
16 ready.

17 THE BAILIFF: Okay.

18 THE COURT: All right.

19 THE FOREPERSON: Thank you, Your Honor.

20 THE COURT: Thank you.

21 (WHEREUPON, there was a pause in the proceedings from
22 1:48 p.m. until 1:58 p.m., after which the proceedings
23 resumed as follows.)

24 THE COURT: All right. I'm ready whenever they are.

25 (WHEREUPON, the jury entered the courtroom at 1:58 p.m.)

1 THE COURT: All right. Let's begin with the testimony.

2 (WHEREUPON, the requested testimony was played back from
3 recording of the following witnesses: Latesha Newton, Lawanda
4 Johnson, Ernestine Mack, Charles Everett Frierson, Samantha
5 Gibson, and Ronald Oliver.)

6 THE COURT: Is that it? All right.

7 Members of the jury, if you would, continue your
8 deliberations in the jury room.

9 (WHEREUPON, the jury exited the courtroom at 4:11 p.m.)

10 THE COURT: Does the State have any objections to all
11 that was done?

12 MR. TUCKER: None from the State, Your Honor.

13 THE COURT: How about the defense?

14 MR. EDGEWORTH: None from the defense, Your Honor.

15 THE COURT: All right. We will be at ease until
16 something happens.

17 (WHEREUPON, there was a break in the proceedings from
18 4:11 p.m. until 5:42 p.m., after which the proceedings
19 resumed as follows.)

20 THE COURT: All right. Let me advise the people in the
21 back of the courtroom when this verdict comes out, I don't
22 want any emotions, I don't want any sounds, I don't want good
23 or bad sounds.

24 This jury has a hard job to do. They've done their job
25 and we need to respect whatever their decision is and I want

1 to make myself clear. If I hear one peep out of anybody, I'm
2 going to lock you up. You'll be in jail over Easter. If you
3 don't think you can sit there like a knot on the log, you
4 need to get up and leave now.

5 All right. Y'all have been warned. If I tell you to
6 lock somebody up, you do it.

7 Go ahead and bring out the jury.

8 (WHEREUPON, the jury entered the courtroom at 5:43 p.m.)

9 THE COURT: All right. Mr. Foreman, do you have a
10 verdict?

11 THE FOREPERSON: Yes, sir, we do.

12 THE COURT: All right. If you would, hand it to the
13 bailiff right there, please, sir. Thank you.

14 All right. I find the verdict form in order.

15 If you'll publish it.

16 VERDICT

17 THE CLERK: State of South Carolina, County of Florence,
18 the State of South Carolina versus Diondrae Emanuel Jackson
19 in the Court of General Sessions, Twelfth Judicial Circuit,
20 Indictment Number 2018-GS-21-01599.

21 As to the charge of murder, we, the jury, unanimously
22 find the defendant, Diondrae Emanuel Jackson, not guilty.

23 As to the charge of voluntary manslaughter, we, the
24 jury, unanimously find the defendant, Diondrae Emanuel
25 Jackson, guilty.

1 As to the charge of attempted murder, we, the jury,
2 unanimously find the defendant, Diondrae Emanuel Jackson, not
3 guilty.

4 Signed April the 18th, 2019, Florence, South Carolina,
5 5:35 p.m., Foreperson, Darryl Page.

6 Jury, is this your verdict?

7 (WHEREUPON, all jurors replied in the affirmative.)

8 THE CLERK: Is this still your verdict?

9 (WHEREUPON, all jurors replied in the affirmative.)

10 THE COURT: All right. Need for further polling from
11 the State?

12 MR. TUCKER: No, Your Honor.

13 THE COURT: From the defense?

14 MR. EDGEWORTH: None, Your Honor.

15 THE COURT: All right. Members of the jury, I want to
16 thank you for your service. You've earned a three-year
17 exemption by being here and you'll be paid a little bit for
18 your service and it will by no means compensate you for the
19 effort you have given, but if you're not happy with how much
20 you're being paid, you just blame that man right there and
21 he'll take care of it.

22 All right. If you'll escort them out, I would
23 appreciate it.

24 THE BAILIFF: Yes, sir.

25 THE COURT: Thank you.

1 (WHEREUPON, the jury was released and exited the
2 courtroom at 5:46 p.m.)

3 THE COURT: All right. Any motions from the State or
4 the defense?

5 MR. TUCKER: None from the State, Your Honor.

6 MR. EDGEWORTH: None from the defense, Your Honor.

7 THE COURT: All right. If you'll get everything ready,
8 we'll proceed with sentencing.

9 MR. TUCKER: Your Honor, if I could get two minutes? My
10 assistant went to get the sentencing sheet for the voluntary
11 manslaughter.

12 THE COURT: All right.

13 MR. TUCKER: She should be back in two minutes and we'll
14 be ready to proceed.

15 THE COURT: All right. Sounds good.

16 (WHEREUPON, there was a pause in the proceedings, after
17 which the proceedings resumed as follows.)

18 MR. TUCKER: If I may I approach, Your Honor?

19 THE COURT: Yes. Thank you. All right. I'm ready when
20 you are.

21 MR. TUCKER: Okay. Your Honor, of course, the jury has
22 spoken with regards to the charge. Certainly, you've heard
23 all the facts in this case.

24 Just to reiterate, by way of prior record, he has a 1997
25 conviction for possession or distribution of crack cocaine

1 and received a YOA sentence not to exceed six years.

2 He got a 2000 manufacture and distribution of cocaine.
3 Received a three-year sentence in 2000.

4 A 2001 conviction for what looks like possession with
5 intent to distribute cocaine. Received a three-year
6 sentence.

7 Use of vehicle conviction, 2006, which he was convicted
8 and received four months' sentence.

9 And of course, the Court is aware of the criminal sexual
10 conduct, third-degree, 2009 conviction.

11 After that, it's mostly magistrate and municipal level
12 offenses.

13 A 2014 conviction of burglary, third-degree, and then,
14 of course, a receiving stolen goods charge.

15 He also has a pending drug charge that will more than
16 likely be dismissed by virtue of the trial and the verdict
17 here.

18 Your Honor, there is one, I believe, family member from
19 the Spates family that wishes to address the Court at this
20 particular time.

21 Your Honor, I know that the Court heard the facts of
22 this case. I can tell you I know the jury struggled with the
23 verdict and reached one of voluntary manslaughter.

24 As you heard, the victim in this case, Malcolm Spates,
25 did nothing more than try to settle the situation down and,

1 unfortunately, as the jury found, wasn't armed and, of
2 course, he was shot and killed for his efforts. But
3 apparently, he was doing nothing more than trying to make
4 peace in the club and, of course, Mr. Jackson shot him.

5 Again, I would just ask the Court to hear from one of
6 the family members before imposing sentence.

7 THE COURT: All right. Right now will be fine.

8 THE VICTIM'S ADVOCATE: Judge, I don't think they want
9 to speak anymore.

10 THE COURT: Okay. I'll be glad to hear from the
11 defendant.

12 MR. TUCKER: I believe there is one.

13 MR. EDGEWORTH: Thank you, Your Honor.

14 MR. TUCKER: I believe there is one, Your Honor.

15 THE COURT: There is one? Okay. I'm sorry.

16 All right. Yes, ma'am?

17 MS. MCFADDEN: First, Your Honor, I would like to give
18 honor to the Lord and Savior Jesus Christ who is first in our
19 life. I want to give honor to you and everyone here in this
20 respected place.

21 I just want to say it's been hard. It's been hard. I'm
22 glad this part is over because Malcolm's older brother, John,
23 he had -- he cries every week about his brother. And I was
24 telling his mother that he just need -- he need constantly.
25 He need someone to talk with him to help him through this.

1 And his children, Maurion and Button and Little -- Little
2 Malcolm -- he was born after -- after his daddy was killed;
3 so he'll never get to know his father.

4 I want to thank the State. I want to thank the lawyers.
5 I want to thank the judge. I want to thank you, but this
6 family need prayer. This family need help. And I hope that
7 someone -- because I was sitting out there trying to hear
8 what the judge said about a benefit of a doubt.

9 There's a scripture in Micah where God asks us what do
10 he require of us. That we love mercy, that we do just, and
11 that we walk humbly with God, and we can't do that with a
12 hate heart. We have to do that with a humble heart.

13 So I talked to my niece. I prayed with her and
14 hopefully that she will get better too. Thank you so much.

15 THE COURT: All right. Thank you.

16 All right.

17 THE COURT REPORTER: Her name?

18 THE COURT: Do you mind giving me your name, please, for
19 the court reporter? I thought she did.

20 MS. MCFADDEN: My name is Elta Stella McFadden.

21 THE COURT: All right. Thank you.

22 Yes, sir?

23 MR. EDGEWORTH: Thank you, Your Honor. May it please
24 the Court.

25 And on behalf of Mr. Diondrae Jackson, we're here asking

1 you for leniency and -- and part of that request is that the
2 Court has heard from Mr. Jackson. He's already spoken.

3 He testified, and he told the Court that he's 41 years
4 old. He's got four children, two of which are girls and two
5 of which are boys. Although they may be adult children, some
6 of them, he still, you know, is in their lives to the point
7 where, you know, it was pretty difficult for him to present
8 in this case without any support. I'm sure Your Honor saw
9 that no one was here, and that was at his direction. He was
10 in fear of any type of retribution that may come about as a
11 result of this trial and continues to fear that.

12 And we believe that in this particular case, you know,
13 Your Honor, he's -- you know, he does have some disabilities.
14 He's suffered from flareups and bouts of pancreatitis while
15 he's been incarcerated. He suffers from high blood pressure
16 and other medical conditions that have limited his ability to
17 work in the most recent years of his life.

18 However, he has been working to some extent and that's
19 why he lives at home or had lived at home with his mother and
20 was helping her with the finances the best he could in her
21 life. He also, you know, was in a relationship or is in a
22 relationship and, although they don't have any children,
23 obviously he would want to have the ability to come back into
24 her life, if that's what's in the cards.

25 So on behalf of -- and one last thing, Your Honor. I

1 did want to point out that as you did see in the testimony
2 that there was remorse and I think it was genuine remorse
3 that this went down the way it did, and I think -- and I hope
4 that the Court takes that into consideration when it enters
5 its judgment.

6 SENTENCE

7 THE COURT: All right. The sentence of the Court is
8 that the defendant is committed to the State Department of
9 Corrections for a term of 28 years.

10 Thank you, all.

11 MR. TUCKER: Thank you, Your Honor.

12 THE COURT: Court is concluded and adjourned.

13 (WHEREUPON, the proceedings ended at 5:58 p.m.)

14

15 --- END REQUESTED TRANSCRIPT ---

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Florence Co. Judicial Center
RANDOM STRIKE SHEET

4/15/19

JUDGE NAME : Seals, William H.

TRIAL TYPE : Criminal

PANEL ID : 2018GS2101599

COURTROOM 3B

DESCRIPTION : State VS Diondrae Emanuel Jackson

Sorted by: Random Nbr

Trial

NAME	JUROR NBR	RACE	SEX	ST/PLTFF	DEF	CRT	REMARKS
1 Smith, Wanda D	133	W	F	()	()	()	1
2 Page, Darryl C	108	B	M	()	()	()	2
3 Tomlinson, Michael T	139	W	M	()	(✓)	()	
4 Washington, Freddie	144	B	M	()	(✓)	()	
5 Peele, Monica R	111	W	F	()	()	()	3
6 Sessions, Juaquine A	127	B	M	(✓)	()	()	
7 Jones, Lynne B	67	W	F	()	()	()	4
8 White, Cynthia D	147	W	F	()	(✓)	()	
9 Welch, Christina M	146	W	F	()	()	()	5
10 Peacock, Betty Carol	109	W	F	()	(✓)	()	
11 Crawford, Bruce A	33	W	M	()	(✓)	()	
12 Mcmillan, Tracey E	89	B	F	()	(✓)	()	
13 Odom, Lisa H	106	W	F	()	(✓)	()	
14 Timmons, Salyn B	138	W	F	()	(✓)	()	
15 Smith, Sonya D	132	W	F	()	()	()	6
16 Levisen, Julia M	75	W	F	()	()	()	7
17 Lewis, Kenneth O	76	W	M	()	()	()	8
18 Barr, Shaikelia T	9	B	F	()	()	()	9
19 Clemons, Amy L	155	W	F	()	(✓)	()	
20 Lynch, Tina C	79	W	F	()	()	()	10
21 Singletary, Ashleigh B	128	B	F	()	()	()	11
22 Barr, Rosa Lee	8	B	F	()	()	()	12
23 Graham, Amanda K	46	B	F	()	(✓)	()	
24 Marsh, Aletha C	82	W	F	()	()	()	alt 1

**Florence Co. Judicial Center
RANDOM STRIKE SHEET**

JUDGE NAME : Seals, William H.

TRIAL TYPE : Criminal

PANEL ID : 2018GS2101599

COURTROOM 3B

DESCRIPTION : State VS Diondrae Emanuel Jackson

Sorted by: Random Nbr

Trial

NAME	JUROR NBR	RACE	SEX	ST/PLTFF	DEF	CRT	REMARKS
25 Johnson, Amy	65	W	F	()	(✓)	()	
26 Keller, Sarah C	69	W	F	(✓)	()	()	
27 Hewitt, Shirley L	57	B	F	()	()	()	<i>alt 2</i>
28 Polk, Michelle	116	W	F	()	()	()	
29 Gardner, Cameron J	45	W	M	()	()	()	
30 Calverley, Zyare S	23	B	F	()	()	()	
31 Daniels, Lee A	36	B	M	()	()	()	
32 Berry, Sherry H	14	W	F	()	()	()	
33 Miles, Beth P	93	W	F	()	()	()	
34 Hardee, Sally M	52	W	F	()	()	()	
35 Hanna, Troy	51	W	M	()	()	()	
36 Turner, Anthony S	141	W	M	()	()	()	
37 Gregg, James C III	49	W	M	()	()	()	
38 Mitchell, Kathleen M	97	B	F	()	()	()	
39 Moses, Colin	101	B	M	()	()	()	
40 Moore, Brian C	98	W	M	()	()	()	

Total Number of Jurors:

40

** END OF REPORT **

State of South Carolina	)	
	)	Certificate
County of Florence	)	

I, the undersigned, Krystal J. Smith, Notary Public and Official Court Reporter for the Twelfth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing pages, numbered 1 through 555, constitute a true, accurate, and complete Transcript of Record of all the proceedings had and evidence introduced in the hearing of the above captioned case, relative to appeal, in the Court of General Sessions for Florence County, South Carolina, on the 15th through 18th days of April, 2019.

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

s/Krystal J. Smith

Court Reporter

Florence, South Carolina

November 20, 2019

STATE OF SOUTH CAROLINA	)	
COUNTY OF FLORENCE	)	COURT OF GENERAL SESSIONS
	)	2018-GS-21-01599
	)	
	)	
	)	
State of South Carolina	)	TRANSCRIPT OF RECORD
vs.	)	
Diondrae E. Jackson	)	
	)	
<u>DEFENDANT</u>	)	May 23, 2019
		Marion, South Carolina

B E F O R E:

THE HONORABLE WILLIAM H. SEALS, JR.

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

TODD TUCKER, DEPUTY SOLICITOR
Attorney for the State

WILLIAM F. EDGEWORTH, III, ESQ.
Attorney for the Defendant

KESHIA REED
Official Court Reporter

I N D E X

(WHEREUPON, a pause in the proceedings.)

1 THE COURT: All right, I'm ready when you are.

2 MR. TUCKER: Thank you. This is indictment
3 2018-GS-21-1599 The State of South Carolina vs. Diondrae
4 Emanuel Jackson. As his Honor will recall, Mr. Jackson
5 was tried over in Florence County. The trial began April
6 15th culminating on April the 18th. There were three
7 charges submitted to the jury the first was murder, the
8 second was attempted murder and voluntary manslaughter as
9 a lesser included of the murder was also submitted to the
10 jury. The jury convicted the defendant for voluntary
11 manslaughter. He received a sentence of 28 years. This
12 is a defense motion here today to set aside the verdict.

13 THE COURT: All right. Mr. Edgeworth, be glad
14 to hear from you.

15 MR. EDGEWORTH: Thank you, Your Honor. May it
16 please the Court.

17 THE COURT: Yes, sir.

18 MR. EDGEWORTH: And thank you for allowing us to
19 come over here to Marion County today to argue the motion
20 that I filed on April 25th 2019. And I'm certain that the
21 Court has read the motion, but I like to elaborate on
22 that.

23 THE COURT: Sure.

24 MR. EDGEWORTH: Thank you, Your Honor. As you
25 know during this case, the State prosecuted this matter on

1 the basis of a murder charge. And the motive of which was
2 the primary theme of their case was that there was a pool
3 game gone awry. And then as a result of a disagreement
4 arising out of a pool match, that Mr. Jackson shot Malcolm
5 Spates. And then followed the other victim, Mr. Ronald
6 Oliver, into a bathroom where he attempted to murder him.
7 Obviously, Mr. Spates was killed as a result of the
8 gunshot.

9 And as Your Honor will recall, my client's
10 defense was, of course, a self-defense claim. He
11 testified at the trial that Mr. Spates and a group of
12 other persons were in the backside of the bar that
13 Mr. Jackson was at with the other friends that he went
14 with so to speak or persons that he had met earlier in the
15 night. And his testimony was that following some of these
16 threatening acts, that Mr. Spates pulled a gun. And that
17 Mr. Jackson had already had a gun because one of the
18 persons that he rode to this bar with had told him that
19 this isn't really the greatest place to be. And Mr.
20 Jackson testified that it was his first time ever being
21 there and he didn't really know what to expect. Ms.
22 Newton told him to get the gun out of the glove box and he
23 took into a bar and it passed the bouncers scrutiny that
24 apparently wasn't all that -- it didn't work.

25 So in this particular case, one of the primary

1 witnesses that were involved or that testified at the
2 trial was Mr. Ronald Oliver. He was the victim of the
3 other -- one of the gunshots and he had to go to the
4 hospital et cetera. They took some statements from him,
5 but at the trial he testified in a like manner that the
6 State was producing its theory and motive that he was
7 friends with Mr. Spates and that there had been an
8 argument earlier in the night, although he didn't really
9 know what the argument was about. And that he had gone
10 into the bathroom and then when we came out he saw
11 Mr. Jackson shoot Mr. Spates. And that then for some
12 reason Mr. Jackson decided to go back to the bathroom and
13 Your Honor may recall this magical bullet theory because
14 he was claiming that he was in this small bathroom with
15 four or five people.

16 Well, the point of this motion is that the
17 testimony that was produced at the trial, the testimony
18 that the jury heard only produced two stories. One was
19 the one that the State wanted the jury to believe which
20 was essentially murder, that there was an argument over a
21 pool match and later on Mr. Jackson decided he was just
22 going to kill this guy over four quarters. The State
23 routinely in opening and closing went up there and put
24 their four quarters on the jury panel. And that I believe
25 was rejected, that theory was rejected by the jury because

1 they found Mr. Jackson not guilty on the murder and
2 attempted murder. And the attempted murder being as to
3 Mr. Oliver who his testimony was the only testimony as to
4 the events related to the gunshots. All of the other
5 witnesses testified that they saw Mr. Jackson pull a gun
6 and then they ran. They saw nothing else after that and
7 they did not see anything that Mr. Spates was doing.
8 There was no testimony as to whether or not Mr. Spates
9 pulled the gun with the exception of my client which was
10 the second theory.

11 The second theory or excuse me -- the second
12 version of events that were produced for the jury to hear
13 was that Mr. Spates pulled a gun and that in response
14 Mr. Jackson pulled his gun and got his shot off first.
15 And that Mr. Oliver my apologies went down to pick up the
16 gun that he had at which point my client shot him. Those
17 were the two stories. So when the jury goes back to the
18 jury room and contemplates the facts that they heard -- in
19 fact they came out and listen to all this testimony a
20 second time or most of the testimony a second time. They
21 clearly rejected the version of events as testified by the
22 only other person that was there which was Mr. Oliver. He
23 testified that was in the bathroom with all these other
24 people and that my client went back there and just shot up
25 the bathroom. So he rejected -- the jury rejected that

1 theory. And so the only other evidence that was produced,
2 the only other theory that was produced for the jury to
3 contemplate would have been the self-defense theme. The
4 testimony that came from my client. And therefore it has
5 to be that the jury compromised their verdict because
6 there was no other theory. There was no other motive of
7 testimony that they heard that relates to the theory of
8 the case or in this case the defense of the case.

9 And so my motion here today, Your Honor, is that
10 the Court entertain my client's request to set aside that
11 verdict because it's clear that the jury had to have
12 compromised. There could be no other theory that you
13 could accept if they rejected the theory of murder and
14 attempted murder, then they could not have possibly
15 reached the voluntary manslaughter charge but by a
16 compromise. And so our argument here today is that this
17 court set aside that verdict and in fact direct the
18 verdict of not guilty because there was no other theory.
19 There couldn't possibly be any other way that the jury
20 said not guilty on murder, not guilty on attempted murder
21 and then guilty on voluntary manslaughter.

22 THE COURT: What if he were acting in the heat
23 of passion and had no time to cool down? He just exploded
24 and in one, two, three seconds boom this thing is over
25 with and two people have been shot. Wouldn't that support

1 a voluntary manslaughter?

2 MR. EDGEWORTH: Yes, Your Honor, it would but

3 ---

4 THE COURT: And then -- not to interrupt you,
5 but another witness, who is a girlfriend, stood in front
6 of him and she watched the change on his face. She
7 watched him getting madder and she watched it build up.
8 And then wham he pulls out a gun and this thing is done
9 and over. That would perfectly fit a voluntary
10 manslaughter charge.

11 MR. EDGEWORTH: Yes, Your Honor. And I would
12 agree that if that was the only set of facts that were
13 involved, but those same witnesses -- they're all the same
14 witnesses that are saying that they did not see what was
15 going on behind them. So the -- this testimony that's
16 kind of supporting the heat of passion component of the
17 voluntary manslaughter, it disregards the fact that the
18 only other evidence in the record is that Mr. Jackson is
19 undisputed essentially that Mr. Jackson saw that
20 Mr. Spates pulled the gun. So in that regard, you know,
21 if you're saying that the jury would have just simply
22 accepted -- that they couldn't have accepted the fact that
23 someone else didn't pull the gun if they found him not
24 guilty on both the attempted murder and the murder excuse
25 me -- the murder and the attempted murder because the only

1 story that they heard was that Mr. Jackson started
2 shooting and following him to the bathroom. So our
3 position is simply that the facts in this particular case,
4 the facts that the jury actually heard does not support
5 the voluntary manslaughter verdict, but for just a
6 compromise because there was no other version of events.

7 THE COURT: But they heard testimony that gang
8 signs were being thrown at him. He was being provoked and
9 then boom that thing happened. So they did hear more
10 testimony than just those two witnesses. And I'm not
11 arguing with you, I'm just talking out loud.

12 MR. EDGEWORTH: Yes, sir. I'm conceding that
13 they heard testimony that relates to that, but the jury
14 could not have considered that testimony outside of the
15 context of what other testimony they heard.

16 THE COURT: And the jury can believe part and
17 they cannot believe part. They can believe what they want
18 to believe and not believe what they want to believe.
19 They can believe one witness against many or many against
20 one.

21 MR. EDGEWORTH: Yes, Your Honor.

22 THE COURT: They don't have to accept all of the
23 testimony and evidence as being true.

24 MR. EDGEWORTH: Yes, Your Honor. And I want to
25 make sure for the record that I am not as part of my

1 motion asserting that any -- there's any evidence from any
2 juror member or anything like that that they in fact
3 compromised. My argument is simply that logically
4 speaking with the facts that were presented to the jury
5 that my client's position is that they could not have
6 reached the verdict but for compromise just speaking
7 reasonably. And we're asking the Court to simply consider
8 our motion and thank you for your time.

9 THE COURT: Sure. All right.

10 Let me hear you elaborate and respond on that.

11 MR. TUCKER: Thank you, Your Honor. May it
12 please the Court. I certainly think that the jury got it
13 right. Certainly they heard the facts. They heard the
14 testimony. They were given the law by his Honor. They
15 went back -- and in fact this jury paid close attention.
16 They actually came out and heard most of the State's
17 testimony from the witnesses that were there again.

18 Again, in terms of rejecting, Mr. Edgeworth
19 mounted a self-defense claim, quite clearly the jury
20 rejected that. Certainly, they couldn't have found him
21 guilty of voluntary manslaughter if they believe he acted
22 in self defense, so clearly they rejected the self-defense
23 argument. Again, it could have went the other way had we
24 not -- voluntary manslaughter rejecting the self-defense,
25 they quite clearly could have convicted him of murder, but

1 I think the facts that came out Mr. Frierson indicated
2 that the girlfriend that was with Mr. Jackson that night
3 indicated that he left, gone outside, came back in
4 after that. There was an initial confrontation. And when
5 he came back in, Mr. Frierson testified that he could see
6 one of the individuals back there doing one of these and
7 flashing signs. And it was at that point after his facial
8 expressions change and he stood up and started shooting.
9 And, of course, quite clearly as his Honor pointed out,
10 that supports voluntary manslaughter. There is sufficient
11 provocation and I think that that's what the jury probably
12 looked at more than anything was that there was some
13 provocation on the part of the victims.

14 With regards to Mr. Oliver, I quite honestly
15 fully understand how the jury acquitted of attempted
16 murder even though -- I think even by Mr. Jackson's own
17 testimony he shot Mr. Oliver. The attempted murder
18 statute requires specific intent. And it's very confusing
19 even to lawyers and judges. So I can quite clearly can
20 see how the jury back there when they're given the law can
21 say, well, if he was two or three feet in front of him and
22 he shot him once what would have prevented him from, you
23 know, shooting five or six times if his intentions were to
24 kill him and he has to have specific intent. So I quite
25 honestly can see how a jury can say, well, yeah, he shot

1 him, but did he intend to kill him. Again, there's
2 reasonable doubt the fact that he's that close to him he
3 could have finished him off if he was so inclined.

4 So again the attempted murder statute I would
5 concede is very confusing. And I think the jury got it
6 right in the sense that, you know, there was not specific
7 intent on the facts that support the conviction. But
8 quite honestly, you know, this jury knowing the facts and
9 that they applied the law as they judge gave it to them.
10 Honestly, you know, again the facts support the voluntary
11 manslaughter conviction and we would submit that as by way
12 of argument.

13 THE COURT: All right. Would you like the final
14 word?

15 MR. EDGEWORTH: Your Honor, I don't think
16 there's anything more to argue in the way of it because it
17 is truly about what I think logically the jury could have
18 concluded based on the facts. And we again just ask the
19 Court to consider my client's motion whether it be set
20 aside and grant new trial or directed verdict of not
21 guilty. Thank you.

22 THE COURT: All right. Thank you. I going to
23 respectfully deny your motion. I think the facts support
24 the voluntary manslaughter charge.

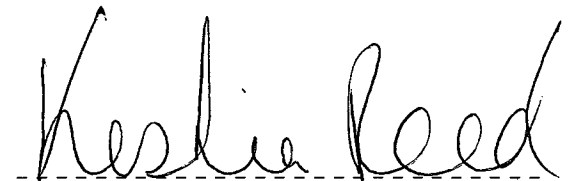
25 MR. EDGEWORTH: Thank you, Your Honor.

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)

I, Keshia Reed, Court Reporter in and for the State of South Carolina At Large, do hereby certify that the above-entitled cause was heard as hereinafter set out; that I was authorized to and did transcribe the said proceedings; and that the foregoing and annexed paged, numbered 1 through 14, inclusive, constitute a true and accurate transcription of my stenographic report of the said cause taken during the said hearing. In the Court of General Sessions for Florence County, South Carolina, on the 23rd day of May, 2019.

I do further certify that I am neither of kin, counsel nor interest to any party hereto. In witness whereof, I have hereunto affixed my signature this 22nd day of July 2019.

A handwritten signature in cursive script that reads "Keshia Reed". The signature is written in dark ink and is positioned above a dashed horizontal line.

Keshia Reed, Court Reporter

STATE OF SOUTH CAROLINA

FILED

IN THE COURT OF COMMON PLEAS

County of Florence

2021 DEC -9 PM 4:03

Diondrae E. Jackson20 21 CP 21 2627

Full name and prison number (if any) of Applicant

JOHN POLICE O'HARA
CCCP 2 GS
FLORENCE COUNTY, SC

v.

APPLICATION FOR

State of South Carolina

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 Lee Correctional
2. Name and location of Court which imposed sentence Florence County
Court of General Sessions
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) _____
 - (b) 2018-GS-21-01599 / Voluntary Manslaughter

(c) _____

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

(a) April 18, 2019

(b) Twenty Eight years confinement

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty _____

(b) after a plea of not guilty ☒ _____

(c) after a plea of nolo contendere _____

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

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

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

i. S.C. Court of Appeals

ii. _____

iii. _____

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

i. _____

ii. Affir

iii. _____

(c) the date of each such result:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

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

(a) _____

(b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective Assistance of Counsel
- (b) Violation of Due Process of law
- (c) Six & Fourteenth Amendments
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) See Attached Memorandum of law
- (b) _____
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? _____
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. N/A
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. N/A
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

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

- i. N/A
- ii. _____
- iii. _____
- iv. _____

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

NO

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

(a) which grounds have been presented:

- i. N/A
- ii. _____
- iii. _____

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

- i. N/A
- ii. _____
- iii. _____

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

(a) N/A
(b) _____
(c) _____

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

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

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

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

i. _____
ii. _____

iii. _____

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

i. At trial and sentencing
ii. _____
iii. _____

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

To have Conviction Reversed.

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

NO

STATE OF SOUTH CAROLINA)

County of Florence)

VERIFICATION

I, Diondrae E. Jackson, 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.

Diondrae Jackson

SWORN to and subscribed before me this 30th
day of November, 2021.

Shirley Jacobs
Notary Public

(L.S.)

My Commission Expires: 4/10/25

FILED
2021 DEC -9 PM 4:03
BONNIE FIELDS O'HARA
CLERK
FLORENCE COUNTY, SC

Revised 3/2003

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

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

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

Diondrae Jackson
Applicant

SWORN or affirmed to and subscribed before me this

30th day of November, 2021.

Sianna Jacob
Notary Public

My Commission Expires:

4/13/25

FILED

2021 DEC -9 PM 4:03

CLERK OF COURT
COURT HOUSE
MONTGOMERY COUNTY, MS

Revised 3/2003

(A).

1) Counsel failure to investigate

Counsel failed to investigate case presented by the state when its evidence was tampered with by state. The state admitted the video was altered to combine audio/video together.

2) Counsel failed to investigate all the evidence presented by state used, which could exonerate applicant in proving that victim did have a gun.

3) Counsel had alibi witness in courtroom but failed to call this witness to testify and instead told witness to leave

4) Counsel failed to make objections

1) Counsel failed to object to state closing arguments when prosecutor made inflammatory comments

2) Counsel failed to object after prosecutor made a request for court to charge manslaughter

5) Counsel failed to object during sentencing was improper information given by state

6) Counsel failed to object to the erroneously including certain language on verdict form ambiguous and confusing to the charge of not guilty and guilty plea

7) Counsel failed to object to charge of self-defense and mutual combat

8) Counsel argument during post trial motion constituted as ineffective assistance of counsel

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

FILED

) IN THE COURT OF COMMON PLEAS
) TWELFTH JUDICIAL CIRCUIT
)

Diondrae E. Jackson, #241391

) CASE NO. 2021-CP-21-2627
)

2022 MAR 21 PM 3 03

Applicant

DORIS POLLOS O'HARA

v.

2022 MAR 21 PM 3 03

STATE OF SOUTH CAROLINA

) **RETURN AND MOTION FOR A MORE
) DEFINITE STATEMENT**
)

State of South Carolina,

(Counsel Appointed)

Respondent.

In response to Applicant Diondrae E. Jackson's application for post-conviction relief (PCR) commenced December 9, 2021, Respondent, the State of South Carolina, makes the following return:

I. PROCEDURAL HISTORY

Applicant is presently confined with the South Carolina Department of Corrections (SCDC) pursuant to the Florence County Clerk of Court orders of commitment. During the August 2018 term, the Florence County Grand Jury indicted Applicant for murder and attempted murder (2018-GS-21-01599). Applicant proceeded to a jury trial on April 15-18, 2019, before the Honorable William H. Seals, Jr. William "Josh" Edgeworth, Esquire represented Applicant, and Todd Tucker of the Twelfth Circuit Solicitor's Office prosecuted the case. On April 18, 2019, the jury convicted Applicant of voluntary manslaughter and found him not guilty of murder and attempted murder. Judge Seals sentenced Applicant to twenty-eight years' imprisonment.

Counsel Edgeworth subsequently filed a motion to set aside the verdict, and Judge Seals denied that motion on May 23, 2019. Counsel timely filed a notice of appeal on June 3, 2019. Applicant was represented on appeal by Appellate Defender David Alexander of the South

Carolina Office of Appellate Defense, who filed an Anders¹ brief on his behalf. The appeal was denied and dismissed. State v. Jackson, Unpublished Opinion No. 2021-UP-375 (S.C. Ct. App. November 3, 2021). The Remittitur was issued on November 3, 2021.

A. Summary of Evidence Adduced at Trial

On the day of the shooting, Applicant was driving to a friend's house when he saw another friend, Latesha Newton (Newton). (Trial Tr. p. 424). Applicant and Newton talked for a while, and Newton eventually invited Applicant to come with her and her friends to a club. (Trial Tr. pp. 424 – 426). Newton drove her car, a black Dodge Charger, and they picked up her friends, Everett Frierson (Frierson), Ernestine Mack (Mack), and Lawanda Johnson (Johnson). (Trial Tr. pp. 144 – 145).

Newton had her .9mm firearm in the glove box of her car. (Trial Tr. pp. 146 – 147). Johnson also had a gun in the car, but she had given it to her fiancé, Frierson. (Trial Tr. pp. 187 – 188; pp. 223 – 224). Frierson testified that he asked Johnson if they could take the gun to the club "for self-defense purposes because of everything that has been going on on the news about shootings happening at nightclubs." (Trial Tr. pp. 223 – 224). Frierson claimed to know about other shootings at the Downbeat Club, which the lead investigator for the police corroborated. (Trial Tr. p. 246; p. 399).

Most of the witnesses, including Applicant, agreed that Applicant got into a disagreement at the club over a pool game. Newton was unsure what happened but heard quarters being thrown at Applicant. (Trial Tr. pp. 151 – 152). Johnson saw Applicant get into an argument with a man wearing a red shirt. (Trial Tr. p. 190). Frierson said Applicant played a game of pool with his

¹ See Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967).

cousin. (Trial Tr. pp. 226 – 227). Applicant lost the game and went to the bar to get more quarters. (Trial Tr. pp. 227 – 230). Applicant placed his quarters on the table, left, and returned to find Maurice Hickson (Hickson) playing pool. (Trial Tr. pp. 227 – 230). Applicant objected to Hickson cutting in line, and Frierson described Hickson as "apologetic." (Trial Tr. pp. 227 – 230). Applicant was very angry, and another man in a red shirt came over to calm the situation. (Trial Tr. pp. 227 – 230).

According to testimony, the men continued to offer the quarters to Applicant, but he refused to take them and remained angry. (Trial Tr. pp. 227 – 230). Hickson testified that he then told Applicant "F you" and threw the quarters at Applicant. (Trial Tr. pp. 227 – 230). Newton separated the men and took Applicant outside. (Trial Tr. pp. 227 – 230).

Applicant testified in agreement that he played one game of pool and lost, then went to the bar to get more quarters to play another game. (Trial Tr. pp. 434 – 437). When Applicant returned from the bar, someone else's quarters were on the pool table. (Trial Tr. pp. 434 – 437). Applicant testified that they waited on the owner of the quarters to return, but no one came back, so Applicant began playing. (Trial Tr. pp. 434 – 437). Once they began playing, a man wearing a red hat, red shirt, and red pants showed up, pushed the balls around on the pool table, and accused Applicant of using his "MF'ing quarters." (Trial Tr. pp. 434 – 437).

Applicant later learned the man in all red was Malcolm Spates (Spates). (Trial Tr. pp. 434 – 437). Applicant testified that he offered to get Spates his four quarters, and another person walked up to calm the situation, but Spates was "mooshing" Applicant in his chest. (Trial Tr. pp. 434 – 437). According to Applicant, Spates flicked a quarter into his face. (Trial Tr. pp. 434 – 437). At this point, Newton took Applicant outside. (Trial Tr. pp. 434 – 437).

Before entering the club, Newton encouraged Applicant to take her gun for protection.

(Trial Tr. pp. 429 – 431). When Applicant left the club after the altercation over the pool game, he went back to the car with Newton and smoked a cigarette. (Trial Tr. pp. 436 – 439). Applicant testified he saw a man wearing a black hoodie watching him and tried to convince Newton to leave, but she wanted to stay. (Trial Tr. pp. 436 – 439). Applicant testified he went back into the club because he did not feel safe in the parking lot. (Trial Tr. pp. 456 – 457). Applicant testified he could not leave because he did not know anyone to give him a ride, and he could not just walk because he had no idea where he was. (Trial Tr. pp. 456 – 457).

Once back in the club, Newton said she watched Applicant's facial expressions and could see him becoming upset. (Trial Tr. p. 155). Newton testified she decided to get Applicant to leave and took him by the arm. (Trial Tr. p. 155 – 157). Applicant then pushed Newton out of the way and started shooting. (Trial Tr. pp. 155 – 157). Applicant fired in the direction of the pool table. (Trial Tr. pp. 155 – 157). Newton and the rest of their group testified that they did not see anyone else with a gun. (Trial Tr. p. 158; p. 190; p. 214; p. 233).

Applicant testified that he was in the bar watching "about eight" guys make gang signs at him, and he was scared. (Trial Tr. pp. 440 – 441). Frierson testified he saw the group of men in the back of the club making gang signs at Applicant. (Trial Tr. pp. 232 – 234). Applicant testified that he saw the man in the black hoodie from the parking lot enter the club and hand a pistol to Spates. (Trial Tr. pp. 441 – 443). According to Applicant, Spates then drew a gun, and Applicant pushed Newton out of the way and fired at Spates. (Trial Tr. pp. 441 – 443). Applicant testified Spates dropped the gun and ran for the bathroom, and then Ronald Oliver (Oliver) reached for the gun, and Applicant shot Oliver in the hip. (Trial Tr. pp. 441 – 443). At this point, testimony revealed that everyone, including Applicant, ran to the parking lot. (Trial Tr. pp. 441 – 443).

Further testimony was provided that Applicant and the group got into Newton's car and left

the scene. (Trial Tr. p. 443). A police officer responding to the call turned around after seeing Newton's car, and when he activated his blue lights, Applicant threw the gun out of the window. (Trial Tr. p. 443). According to testimony, the police never recovered the gun. (Trial Tr. pp. 386 – 387). Testimony provided that police denied taking a gun from Spates, but evidence forms indicated the opposite. (Trial Tr. pp. 311 – 313; pp. 373 – 374). The lead investigator testified the forms were in error and the only gun recovered was Lawanda Johnson's gun from the Charger. (Trial Tr. pp. 373 – 374). Spates died due to his gunshot wound, and Oliver survived his gunshot wound.

Applicant was charged and indicted for murder and attempted murder.

II. CURRENT APPLICATION

In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully based on the following:

1. "Ineffective Assistance of Counsel"
2. "Violation of Due Process of law"
3. "Si[x]th & Fourteenth Amendments"

Applicant also included in his Application an "attached memorandum of law" that further outlines his allegations of why he is being held unlawfully based on the following:

1. "Counsel failure to investigate"
 - a. "Counsel failed to investigate case presented by the state when its evidence was tampered with by the state. The state admitted the video was altered to combine audio/video together."
2. "Counsel failed to investigate all the evidence presented by state used, which could exonerate applicant in proving that victim did have a gun."
3. "Counsel had alibi witness in courtroom but failed to call this witness to testify and instead told the witness to leave."
4. "Counsel failed to make objections."
 - a. "Counsel failed to object to state closing arguments when prosecutor made inflammatory comments."
 - b. "Counsel failed to object after prosecutor made a request for court to charge

manslaughter."

5. "Counsel failed to object during sentencing was improper information given by state."
6. "Counsel failed to object to the erroneously including certain language on verdict form ambiguous and confusing to the charge of not guilty and guilty plea."
7. "Counsel failed to object to charge of self-defense and mutual combat."
8. "Counsel argument during post trial motion constituted as ineffective assistance of counsel."

Applicant requests relief in the form of his conviction being reversed.

Attached to this return and incorporated by reference are the Florence County Clerk of Court records regarding the subject's conviction; Applicant's records from the South Carolina Department of Corrections; a full and complete record of Applicant's direct appeal, including the trial and sentencing transcripts; and the records of the current PCR action. The State reserves the right to amend this return upon receiving any relevant materials.

III. MOTION FOR A MORE DEFINITE STATEMENT

The State submits Applicant's allegations of ineffective assistance of counsel are without merit. However, it is impossible for the State to adequately respond to several of these claims because Applicant has failed to set forth facts to "support each ground" or to explain with specificity the facts upon which his claims are based.² See S.C. Code Ann. § 17-27-50 (requiring an applicant to "specifically set forth the grounds upon which the application is based"); see also Welch v. MacDougall, 246 S.C. 258, 260, 143 S.E.2d 455, 456 (1965) (stating it is incumbent upon an applicant to make at least a prima facie showing entitling him to relief before an evidentiary hearing will be scheduled and held); Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (providing an evidentiary hearing shall be held when a PCR application "alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the

² Specifically, Applicant's addendum claims at numbers 2, 3, 4(a), 5, and 8.

record before the lower court"); Rule 8(a)(2), SCRCP (requiring all civil pleadings to include "a short and plain statement of the facts showing that the pleader is entitled to relief"); Rule 71.1(d), SCRCP ("Counsel shall insure that all available grounds for relief are included in the application and shall amend the application if necessary.").

Accordingly, the State requests that Applicant, through counsel, provide specific claims and facts to support these vague allegations pursuant to Rule 12(e), SCRCP, and the Post-Conviction Procedure Act.

IV. RESPONSE TO ALLEGATIONS OF INEFFECTIVE ASSISTANCE OF COUNSEL

A. Ineffective Assistance of Trial Counsel, Generally

Applicant alleges he is entitled to post-conviction relief based on multiple allegations of ineffective assistance of counsel. Specifically, Applicant alleges counsel failed to investigate evidence presented by the State; failed to call an alibi witness; failed to make objections; and counsel's "argument during post trial motion constituted as ineffective assistance of counsel." Respondent submits these claims of ineffective assistance of counsel are without merit.

In Strickland v. Washington,³ the United States Supreme Court established that to challenge a conviction based on ineffective assistance of counsel, a prisoner must prove two elements: (1) his counsel was deficient in his representation, and (2) he was prejudiced as a result. To satisfy the first prong, a prisoner "must show that counsel's representation fell below an objective standard of reasonableness." Id. at 688. To satisfy the second prong, a prisoner must show that "there is a reasonable probability that, but for counsel's unprofessional errors, the result

³ 466 U.S. 668, 687 (1984).

of the proceeding would have been different." Id. at 694. The Supreme Court has cautioned that "[j]udicial scrutiny of counsel's performance must be highly deferential," and "[b]ecause of the difficulties inherent in making the evaluation, a court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." Id. at 689.

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

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985); Rule 71.1(e), SCRPC. The reviewing court applies the two-part test outlined in Strickland to determine whether counsel's conduct "was so [ineffective] as to require reversal" of the applicant's conviction. Strickland, 466 U.S. at 687. Applicants seeking PCR relief must provide claims that satisfy both prongs in Strickland, and failure to satisfy both prongs defeats the ineffectiveness claim. Id. at 700; see also Bell v. Cone, 535 U.S. 685, 695 (2002) (explaining that "[w]ithout proof of both deficient performance and prejudice to the defense, . . . it could not be said that the sentence or conviction resulted from a breakdown in the adversary process that rendered the result of the proceeding unreliable" (citation and internal quotation marks omitted)).

In the first prong of Strickland, constitutional deficiency is "necessarily linked to the practice and expectations of the legal community." Padilla v. Kentucky, 559 U.S. 356, 366 (2010). An applicant claiming ineffective assistance "must identify the acts or omissions of counsel that are alleged *not* to have been the result of reasonable professional judgment." Strickland, 466 U.S. at 690 (emphasis added). The reviewing court must then "determine whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance" demanded of attorneys in criminal cases. Id.

Further, because of the difficulties inherent in making such an evaluation, the reviewing court must indulge in a "strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." Butler, 286 S.C. at 445, 334 S.E.2d at 816. "The burden of rebutting this presumption 'rests squarely on the defendant,' and '[i]t should go without saying that the absence of evidence cannot overcome [it].'" Dunn v. Reeves, 594 U.S. ___, ___, 141 S. Ct. 2405, 2410 (2021) (alteration in original) (quoting Burt v. Titlow, 571 U.S. 12, 22–23 (2013)). In fact, "even if there is reason to think that counsel's conduct 'was far from exemplary,' a court still may not grant relief if '[t]he record does not reveal' that counsel took an approach that *no competent lawyer would have chosen*." Id. (alteration in original) (emphasis added) (quoting Titlow, 571 U.S. at 23–24).

"When counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect." Yarborough v. Gentry, 540 U.S. 1, 8 (2003) (citing Strickland, 466 U.S. at 690). In determining the deficiency, the court must affirmatively entertain the range of possible reasons counsel may have had for proceeding as they did. Cullen v. Pinholster, 563 U.S. 170, 196 (2011); Harrington v. Richter, 562 U.S. 86, 109–10 (2011). "[E]ven if an omission is inadvertent, relief is not

automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight." Yarborough, 540 U.S. at 8; see also Murphy v. Davis, 901 F.3d 578, 592 (5th Cir. 2018) ("[C]ounsel's performance need not be optimal to be reasonable.").

Review of counsel's actions is hallmarked by deference, as "it is all too tempting for a defendant to second-guess counsel's assistance after conviction or adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable." Strickland, 466 U.S. at 689. No particular set of detailed rules for counsel's conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant. Strickland, 466 U.S. at 688–89; see id. at 693 ("Representation is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another."). "Defense lawyers have 'limited' time and resources, and so must choose from among 'countless' strategic options." Dunn, 594 U.S. ___, 141 S. Ct. at 2410 (quoting Harrington, 562 U.S. at 106–107). "Such decisions are particularly difficult because certain tactics carry the risk of 'harm[ing] the defense' by undermining credibility with the jury or distracting from more important issues." Id. (quoting Harrington, 562 U.S. at 108).

Thus, a fair assessment of attorney performance requires every effort to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time. Strickland, 466 U.S. at 689. The ultimate question is not whether counsel's actions were reasonable but whether there is any reasonable argument counsel satisfied the Strickland deferential standard.

The second, or "prejudice" prong of Strickland is rooted in the very purpose of the Sixth Amendment guarantee of counsel that ensures a defendant has the assistance necessary to justify

reliance on the outcome of the proceeding. Id. at 691–92. An applicant seeking to prove prejudice must demonstrate counsel's deficient performance prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117–18, 386 S.E.2d at 625. A reasonable probability is one that is "sufficient to undermine confidence in the outcome." Strickland, 466 U.S. at 694; see id. at 695 (explaining that, where a defendant challenges his conviction, he must show that there exists "a reasonable probability that, absent the errors, the factfinder would have had a reasonable doubt respecting guilt").

To determine prejudice, the reviewing court must consider the totality of the evidence before the jury. Id. at 695. It is not sufficient "to show [counsel's] errors had some conceivable effect" on the outcome of the proceeding—counsel's errors must be "so serious as to *deprive the defendant of a fair trial*." Id. at 693 (emphasis added). "An error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment." Id. at 691. Moreover, the South Carolina Supreme Court has repeatedly held that a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony according to the rules of evidence at the PCR hearing to establish prejudice. Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998).

The Strickland standard must be applied with scrupulous care, lest "intrusive post-trial inquiry" threaten the integrity of the very adversary process the right to counsel is meant to serve. Strickland, 466 U.S. at 689–90. Courts must be wary of second-guessing counsel's trial tactics, and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992). The applicant's burden of proving both Strickland components is heavy considering the strong

presumption that counsel's conduct fell within the range of reasonable professional legal assistance. Strickland, 466 U.S. at 690.

Representation is constitutionally ineffective only if counsel's conduct "so undermined the proper functioning of the adversarial process" that the defendant was denied a fair proceeding. Id. at 686; see Nix v. Whiteside, 475 U.S. 157, 175 (1986) (noting that under Strickland, the "benchmark" of the right to counsel is the "fairness of the adversary proceeding"); cf. United States v. Morrow, 977 F.2d 222, 229 (6th Cir. 1992) ("[T]he threshold issue is not whether [the applicant's] attorney was inadequate; rather, it is whether he was so *manifestly* ineffective that defeat was snatched from the hands of probable victory.").

Applicant can satisfy neither requirement of the Strickland test. However, the allegations of ineffective assistance of counsel probably raise questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to resolve this issue fully. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983) (providing an evidentiary hearing shall be held when a PCR application "alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court").

i. Failure to Investigate

Applicant asserts two allegations that counsel was ineffective for failing to investigate evidence: (1) counsel failed to investigate audio/video evidence the State provided where the State altered the audio/video,⁴ and (2) counsel failed to investigate all the evidence presented by the

⁴ Applicant's allegation number 1 in Applicant's argument addendum.

State.⁵ Regarding Applicant's second allegation, the State asserts that it is impossible for Respondent to respond specifically to these vague allegations without more definite facts and circumstances to support Applicant's claims. Instead, Respondent responds generally and moves for Applicant, through counsel, to file an amended application with specific allegations.

a. Counsel Failed to Investigate Audio/Video Evidence

In Applicant's first allegation, he avers that the video and audio used at trial from the jailhouse were separate entities and combined to produce the video with audio entered into evidence. At trial, counsel argued that the video was not "in its original production setting" and it was produced by the State by "extrapolat[ing] [the audio] and overlay[ing] it over the video" (Trial Tr. p. 88). Counsel further argued that the video/audio "appears to be prejudicial in the sense that you're just overlaying two pieces of information." (Trial Tr. p. 88). The court then goes through a colloquy with the State and counsel to determine that an audio track and a video track are played simultaneously to produce the audio/video sync. (Trial Tr. pp. 87 – 89). Ultimately, the court found no problem with how the State had produced the evidence and allowed it. (Trial Tr. p. 89).

"A criminal defense attorney has the duty to conduct a reasonable investigation to discover all reasonably available mitigation evidence and all reasonably available evidence tending to rebut any aggravating evidence introduced by the State." McKnight v. State, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008). "[W]hile the scope of a reasonable investigation depends on a number of issues, at a minimum, counsel has the duty to interview potential witnesses and to make an independent investigation of the facts and circumstances of the case." Ard v. Catoc, 372 S.C. 318, 331–32, 642

⁵ Applicant's allegation number 2 in Applicant's argument addendum.

S.E.2d 590, 597 (2007) (internal quotation marks omitted) (emphasis omitted). However, counsel need only interview potential witnesses "when it is reasonable to do so." Edwards v. State, 392 S.C. 449, 457, 710 S.E.2d 60, 65 (2011). "In other words, counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." Strickland, 466 U.S. at 691.

In order to prevail upon a claim that counsel did not adequately prepare or investigate a case, an applicant must present evidence of what counsel could have discovered or what other defenses applicant could have requested counsel develop and present had counsel been more prepared. Harris v. State, 377 S.C. 66, 75–76, 659 S.E.2d 140, 145–46 (2008) (citing Jackson v. State, 329 S.C. 345, 353–54, 495 S.E.2d 768, 772 (1998)), abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018). The applicant must further present evidence demonstrating how the discoverable matters or defenses would have resulted in a different outcome. Id. Mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. Id. at 75, 659 S.E.2d at 145 (citing Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)).

Our Supreme Court has cautioned reviewing courts not to lose sight of the reasonableness standard regarding counsel's duty to investigate. Ard, 372 S.C. at 331, 642 S.E.2d at 597 ("this duty is limited to a reasonable investigation"). The United States Supreme Court also instructed reviewing courts to "keep in mind that counsel's function, as elaborated in prevailing professional norms, is to make the adversarial testing process work in the particular case." Strickland, 466 U.S. Thus, in applying the Strickland standard to a claim of failure to investigate, counsel's decision not to undertake a particular investigation must be evaluated with heavy deference to counsel's judgment. Bagwell v. State, 410 S.C. 259, 265, 763 S.E.2d 630, 633 (Ct. App. 2014).

For the above reasons, Applicant cannot satisfy either requirement of Strickland, nor show Trial Counsel was ineffective. However, the record likely does not refute or disprove Applicant's allegations of ineffective assistance of trial counsel; therefore, the State requests an evidentiary hearing to resolve the issues fully. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (providing an evidentiary hearing shall be held when a PCR application "alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court").

b. Counsel Failed to Investigate All Evidence

It is impossible for Respondent to reply specifically to Applicant's claims without more specific facts and details. Therefore, Respondent responds to Applicant's general and vague claims below and moves for Applicant, through counsel, to file an amended return.

Applicant contends trial counsel was ineffective for failing to investigate all evidence used by the State. Applicant further maintains "all the evidence presented by [the] State . . . could exonerate Applicant in proving [the] victim had a gun." As discussed above, Respondent is presently without sufficient information to fully respond to this claim because Applicant does not indicate with any specificity what trial counsel should have objected to or how Applicant was prejudiced.

In order to prevail upon a claim that counsel did not adequately prepare or investigate a case, an applicant must present evidence of what counsel could have discovered or what other defenses applicant could have requested counsel develop and present had counsel been more prepared. Harris, 377 S.C. at 75-76, 659 S.E.2d at 145-46 (citing Jackson v. State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998)). Furthermore, an applicant must also present evidence to

show how the discoverable matters or defenses would have resulted in a different outcome. Id. at 75, 659 S.E.2d at 145-146. Mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. Id. at 75, 659 S.E.2d at 145 (citing Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)).

The State submits Applicant can satisfy neither requirement of the Strickland standard. However, as discussed above, it is impossible for the State to adequately respond to Applicant's allegations because Applicant has failed to provide any specific facts to support these claims. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (providing an evidentiary hearing shall be held when a PCR application "alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the [PCR] court"). Thus, the State moves to require Applicant, through counsel, to provide a more definite statement of his allegations pursuant to Rule 12(e), SCRCP.

ii. Failure to Call Witness

Applicant asserts counsel was ineffective for failing to call an alibi witness.⁶ Without more definite facts and circumstances to support Applicant's claims, it is impossible for Respondent to respond specifically to these vague allegations. Instead, Respondent responds generally and moves for Applicant, through counsel, to file an amended application with specific allegations.

Counsel must, at a minimum, make some effort to interview potential witnesses identified by the defendant and make an independent investigation of the facts and circumstances of the case. Edwards v. State, 392 S.C. 449, 456, 710 S.E.2d 60, 64 (2011); Walker v. State, 407 S.C. 400, 405, 756 S.E.2d 144, 147 (2014). To support a claim that trial counsel was ineffective for failing

⁶ Applicant's allegation number 3 in Applicant's argument addendum.

to interview or call potential witnesses, a PCR applicant must produce the witnesses at the PCR hearing or otherwise introduce the witnesses' testimony in a manner consistent with the rules of evidence. Glover v. State, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995). The applicant's mere speculation about what the witnesses' testimony would have been cannot, by itself, satisfy the applicant's burden of showing prejudice. Id.

The State submits that Applicant can satisfy neither requirement of the Strickland standard from the allegation that counsel did not call an alibi witness. However, as discussed above, it is impossible for the State to adequately respond to Applicant's allegations of ineffective assistance of counsel because Applicant has failed to provide any specific facts to support these claims. Thus, the State moves to require Applicant, through counsel, to provide a more definite statement of his allegations pursuant to Rule 12(e), SCRCP.

iii. Failure to Object

Applicant asserts five allegations of ineffective assistance of counsel for (1) failure to object to prosecutor's inflammatory comments in closing arguments, (2) failure to object to prosecutor's request for the court to charge the jury on manslaughter, (3) failure to object to improper information given by the State during sentencing, (4) failure to object to language on the verdict form that was ambiguous and confusing to the charge of not guilty and guilty plea, and (5) failure to object to jury charge of self-defense and mutual combat.⁷ The State submits a return to argument numbers two and five. Regarding arguments one, three, and four, the State submits that it is impossible for Respondent to respond specifically to these vague allegations without more definite facts and circumstances to support Applicant's claims. Instead, Respondent responds

⁷ Applicant's allegation numbers 4(a), 4(b), 5, 6, and 7 in Applicant's argument addendum.

generally and moves for Applicant, through counsel, to file an amended application with specific allegations.

a. Failure to Object to Jury Charge of Voluntary Manslaughter

Applicant contends counsel was ineffective for failing to object to the jury charge of voluntary manslaughter. However, Applicant fails to state precisely how Applicant was prejudiced. Also, in Applicant's direct appeal, he argued that the trial court erred in charging voluntary manslaughter at the State's urging and over the appellant's objection. The State submits Applicant's allegation is without merit.

At trial, and after consulting with Applicant, counsel maintained that the charge of voluntary manslaughter should not be given to the jury because "the elements of voluntary manslaughter have not been shown through the evidence and that the [Applicant] does not wish to have that included in the charges to the jury." (Trial Tr. p. 483). To which the court replied that "it is applicable" because "there is testimony . . . [of] overt signs of provocation made to [Applicant]." (Trial Tr. p. 483). Further, the court opined that there was testimony from a witness who noticed Applicant's "face change," and he grew increasingly "agitated." (Trial Tr. p. 483). Lastly, the court concluded "it's a fact question" and "there is a possibility of voluntary manslaughter." (Trial Tr. p. 483).

The law to be charged is determined by the evidence presented at trial. State v. Holland, 385 S.C. 159, 165, 682 S.E.2d 898, 901 (Ct. App. 2009). "Ordinarily, the trial court has the duty to give requested instructions which correctly state the law applicable to the issues and which are supported by the evidence." State v. Peer, 320 S.C. 546, 553, 466 S.E.2d 375, 380 (Ct. App. 1996). "A trial judge is required to charge the jury on a lesser-included offense if there is evidence from

which it could be inferred the lesser, rather than the greater, offense was committed." State v. Green, 397 S.C. 268, 289, 724 S.E.2d 664, 674 (2012). "The mere contention that the jury might accept the State's evidence in part and reject it in part is insufficient to satisfy the requirement that some evidence tends to show the defendant was guilty only of the lesser offense." State v. Geiger, 370 S.C. 600, 608, 635 S.E.2d 669, 674 (Ct. App. 2006). In reviewing a trial judge's jury instructions, the court must view the jury charge as a whole and in light of the evidence and issues from trial. State v. Simmons, 384 S.C. 145, 178, 682 S.E.2d 19, 36 (Ct. App. 2009). In Applicant's case, there was sufficient evidence to allow a jury instruction on the charge of voluntary manslaughter.

Applicant's claim is likely without merit. However, the record likely does not refute or disprove Applicant's allegations of ineffective assistance of trial counsels due to failure to request cautionary instruction; therefore, the State requests an evidentiary hearing to resolve the issues fully. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (providing an evidentiary hearing shall be held when a PCR application "alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court").

b. Failure to Object to Prosecutor's Closing Arguments

Applicant contends trial counsel was ineffective for failing to object to the inflammatory comments in the prosecutor's closing argument. Respondent is presently without sufficient information to fully respond to this claim because Applicant does not indicate with any specificity what trial counsel should have objected to or how Applicant was prejudiced.

A solicitor's closing argument "must be carefully tailored so as not to appeal to the personal bias of the juror nor calculated to arouse his passion or prejudice." State v. Linder, 276 S.C. 304,

278 S.E.2d 335, 339 (1981). "The solicitor may not rely on statements not in evidence during closing argument." State v. Huggins, 325 S.C. 103, 107, 481 S.E.2d 114, 116 (1997). However, "[t]he solicitor has the right to give his version of the testimony and to comment on the weight to be given to the testimony of the defense witnesses." State v. Raffaldt, 318 S.C. 110, 115, 456 S.E.2d 390, 393 (1995). "[C]onsiderable latitude is generally allowed in matters of drawing and arguing inferences and deductions from evidence." Johnson v. Life Ins. Co. of Ga., 227 S.C. 351, 369, 88 S.E.2d 260, 269 (1955).

To prevail on a claim that trial counsel was ineffective for failing to object to a solicitor's purportedly improper comment during closing argument, the PCR applicant "bears the burden of demonstrating the improper comment deprived him of a fair trial." Johnson v. State, 325 S.C. 182, 187, 480 S.E.2d 733, 735 (1997). "Improper comments do not require reversal if they are not prejudicial . . . , and the [applicant] has the burden of proving he did not receive a fair trial because of the alleged improper argument." Randall v. State, 356 S.C. 639, 642, 591 S.E.2d 608, 610 (2004). "A new trial will not be granted unless the prosecutor's comments so infected the trial with unfairness as to make the resulting conviction a denial of due process." Huggins, 325 S.C. at 107, 481 S.E.2d at 116.

The State submits Applicant can satisfy neither requirement of the Strickland standard. However, as discussed above, it is impossible for the State to adequately respond to Applicant's allegations because Applicant has failed to provide any specific facts to support these claims. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (providing an evidentiary hearing shall be held when a PCR application "alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the [PCR] court"). Thus, the State moves to require Applicant, through counsel, to provide a more definite statement of his

allegations pursuant to Rule 12(c), SCRCP.

c. Failure to Object During Sentencing

Applicant contends trial counsel was ineffective for failing to object during sentencing because of improper information given by the State. Respondent is presently without sufficient information to fully respond to this claim because Applicant does not indicate with any specificity what trial counsel should have objected to or how Applicant was prejudiced.

The State submits Applicant can satisfy neither requirement of the Strickland standard. However, as discussed above, it is impossible for the State to adequately respond to Applicant's allegations because Applicant has failed to provide any specific facts to support these claims. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (providing an evidentiary hearing shall be held when a PCR application "alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the [PCR] court"). Thus, the State moves to require Applicant, through counsel, to provide a more definite statement of his allegations pursuant to Rule 12(e), SCRCP.

d. Failure to Object to Verdict Form

Applicant contends trial counsel was ineffective for failing to object to the verdict form that erroneously included ambiguous language that was confusing. Specifically, Applicant refers to the scrivener's error on the verdict form where guilty plea should just read guilty.⁸

While there is an error on the verdict form, the court explained to the jury as follows:

Now, Mr. Foreman, I have handed you the verdict form.

⁸ The verdict form reads as follows: (1) Murder – Not Guilty – Guilty; (2) Voluntary Manslaughter – Not Guilty – Guilty Plea; (3) Attempted Murder – Not Guilty – Guilty Plea.

When you arrive at a verdict in this case, you will write your verdict on the form. For the charges, if the State has failed to prove the guilt of the defendant beyond a reasonable doubt, your verdict would be two words: not guilty. However, should the State have proved their case against the defendant beyond a reasonable doubt, then your verdict would be one word: guilty. Foreperson, once the decision has been made, just check whichever is your verdict on the verdict form and sign it for each charge.

(Trial Tr. pp. 535 – 536).

Therefore, Applicant's claim is likely without merit. However, the record likely does not refute or disprove Applicant's allegations of ineffective assistance of trial counsel due to failure to object to the verdict form; therefore, the State requests an evidentiary hearing to resolve the issues fully. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (providing an evidentiary hearing shall be held when a PCR application "alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court").

c. Failure to Object to Jury Charge of Self-Defense and Mutual Combat

Applicant contends trial counsel was ineffective for failing to object to the jury charge of self-defense and mutual combat.

When administering a jury instruction, the instruction must be supported by facts. State v. Crosby, 355 S.C. 47, 584 S.E.2d 110 (2003). Concerning deficiency, Counsel must articulate a valid reason for employing a particular strategy, which is measured under an objective standard of reasonableness. Roseboro v. State, 317 S.C. 292, 294, 454 S.E.2d 312, 313 (1992). In Applicant's case, there was sufficient evidence to allow a jury instruction on the charge of self-defense and mutual combat. Furthermore, Applicant's defense at trial was self-defense.

Therefore, Applicant's claim is likely without merit. However, the record likely does not

refute or disprove Applicant's allegations of ineffective assistance of trial counsel due to failure to object to the jury charge of self-defense and mutual combat; therefore, the State requests an evidentiary hearing to resolve the issues fully. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (providing an evidentiary hearing shall be held when a PCR application "alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court").

iv. Counsel's Post-Trial Motion Argument

Applicant contends trial counsel's post-trial motion argument constituted ineffective assistance of counsel. Respondent is presently without sufficient information to fully respond to this claim because Applicant does not indicate with any specificity why trial counsel's motion argument amounted to ineffective assistance of counsel or how Counsel's argument prejudiced Applicant.

The State submits Applicant can satisfy neither requirement of the Strickland standard. However, as discussed above, it is impossible for the State to adequately respond to Applicant's allegations because Applicant has failed to provide any specific facts to support these claims. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (providing an evidentiary hearing shall be held when a PCR application "alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the [PCR] court"). Thus, the State moves to require Applicant, through counsel, to provide a more definite statement of his allegations pursuant to Rule 12(e), SCRCP.

B. Conclusion and Action Requested

The State submits Applicant can satisfy neither requirement of Strickland. However, the record likely does not refute or disprove Applicant's allegations of ineffective assistance of trial counsel; therefore, the State requests an evidentiary hearing to resolve the issues fully. See Sharper, 279 S.C. at 265, 305 S.E.2d at 248 (providing an evidentiary hearing shall be held when a PCR application "alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court").

V. ANY FUTURE AMENDMENTS AND INVOCATION OF DISCOVERY PROCESS

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

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

of undue prejudice to the State. See Rule 15(a), SCRCP.

Pursuant to S.C. Code Ann. § 17-27-150, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, the State requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to the State well in advance of the evidentiary hearing. The State reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to the State.

VI. GENERAL DENIAL

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

VII. CONCLUSION

WHEREFORE, the State respectfully requests this Court grant its motion for a more definite statement as set forth in Section III, and thereafter convene an evidentiary hearing on the allegations of ineffective assistance of counsel.

Respectfully submitted,

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Attorney General
W. JEFFREY YOUNG
Chief Deputy Attorney General
MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

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Assistant Attorney General

By:



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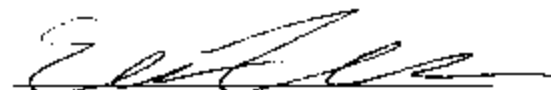
March 18, 2022

STATE OF SOUTH CAROLINA **FILED**
) IN THE COURT OF COMMON
) PLEAS
 COUNTY OF FLORENCE **2022 MAR 21 PM 3 03**
 Diondrae E. Jackson, #241391 **DORIS POWELL O'HARA**
CLERK OF COURT **2021-CP-21-2627**
CLERK OF COURT
 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 Motion for a More Definite Statement in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Steven W. Fowler
730 Main Street Unit # 237
North Myrtle Beach, SC 29582

DATED this the 18th day of March, 2022.


 Erik Marcusson, Legal Assistant
 for Respondent

1 STATE OF SOUTH CAROLINA * COURT OF COMMON PLEAS
2 COUNTY OF FLORENCE * TRANSCRIPT OF RECORD
3 -----X
4 DIONDRAE E. JACKSON, *
5 Applicant, *
6 vs. * Case No. 2021-CP-21-02627
7 STATE OF SOUTH CAROLINA, *
8 Respondent. *
9 -----X

June 2, 2023

POST-CONVICTION RELIEF HEARING

B E F O R E:

The Honorable Walton J. McLeod, IV, Presiding Judge

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

Steven W. Fowler, Esq.
Attorney for the Applicant

D. Russell Barlow, II, Esq.
Assistant Attorney General for the State

Recorded by: Court Monitor/DCRP

Transcribed by: Bobbi Fisher, RPR
SC Official Court Reporter III

I N D E XWITNESS/DESCRIPTIONPAGE

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Direct Examination By Mr. Fowler

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Cross-Examination By Mr. Barlow

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Redirect Examination By Mr. Fowler

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Charles Drayton

Direct Examination By Mr. Fowler

55

Cross-Examination By Mr. Barlow

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Redirect Examination By Mr. Fowler

70

Marcus Harrison

Direct Examination By Mr. Fowler

71

Cross-Examination By Mr. Barlow

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William "Josh" Edgeworth

Direct Examination By Mr. Barlow

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Cross-Examination By Mr. Fowler

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E X H I B I T S

(Exhibits on file in Clerk of Court's Office.)

Court's Exhibits

No.	Description	ID.
1	Drayton Investigations Report	58 58

COURT REPORTER LEGEND

Dash (--) Indicates an interruption in speech

Ellipses (...) Indicates trailing off in speech

(ph) Indicates phonetic word

[Verbatim] Indicates the word is said as written

(Indiscernible)[Transcription] Indicates word(s) is
not known due to audio recording
quality

P R O C E E D I N G S

(The following proceedings started at 10:39 a.m.):

THE COURT: We're here in the matter of Diondrae Jackson versus the State of South Carolina.

Applicant ready to proceed?

MR. FOWLER: Yes, Your Honor.

THE COURT: The State ready to proceed?

MR. BARLOW: Yes, Your Honor.

THE COURT: Can the State give me a little bit of background information, please?

MR. BARLOW: Yes, Your Honor. May it please the Court?

THE COURT: Yes, sir.

MR. BARLOW: Russ Barlow on behalf of the State of South Carolina. This is a post-conviction relief matter of Diondrae E. Jackson versus the State, Case No. 2021-CP-21-2627 out of Florence County. Appearing on the August 2018 term, the Florence County Grand Jury indicted Applicant for murder and attempted murder. 2018-GS-21-01599.

Applicant proceeded to a jury trial on April 15th through the 18th, 2019, before the Honorable William H. Seals, Jr. William Josh Edgeworth, Esquire, represented Applicant, and Todd Tucker of the 12th Circuit Solicitor's Office prosecuted the case.

On April 18th, 2019, the jury convicted Applicant of voluntary manslaughter and found him not guilty of murder and

1 attempted murder. Judge Seals sentenced the Applicant to 28
2 years imprisonment.

3 Counsel Edgeworth subsequently filed a motion to set
4 aside the verdict, and Judge Seals denied that motion on
5 May 23rd, 2019. Counsel timely filed a notice of appeal on
6 June 3rd, 2019. Applicant was represented on appeal by public
7 defender David Alexander in the South Carolina Office of
8 Appellate Defense. We filed an Anders brief on his behalf.
9 The appeal was denied and dismissed in an unpublished opinion,
10 State v. Jackson, 2021-UP-375, filed November 3rd, 2021, and
11 the remittitur was returned on November 3rd, 2021.

12 Applicant timely commenced this PCR action on
13 August 21st, 2019, asserting various allegations of
14 ineffective assistance of counsel. Applicant requests relief
15 in the form of his conviction being reversed.

16 And before this Court are the Florence County Clerk of
17 Court records; Applicant's records from the South Carolina
18 Department of Corrections; Applicant's appellate records,
19 which include the entire trial transcript; and the records of
20 this PCR action. And, at this time, we'll turn it over to
21 Mr. Fowler.

22 THE COURT: Okay. Mr. Fowler?

23 Mr. Fowler; right?

24 MR. FOWLER: Yes, sir.

25 THE COURT: Okay. I heard a different name; I was a

1 little confused.

2 MR. FOWLER: That's okay.

3 THE COURT: Are you ready to proceed?

4 MR. FOWLER: Yes, sir, we are.

5 THE COURT: You may call your first witness.

6 MR. FOWLER: Thank you.

7 Your Honor, I would like to call at this time

8 Mr. Diondrae Jackson.

9 THE CLERK: Mr. Jackson, if you'll stop there and place
10 your left hand on the Bible and raise your right hand as best
11 as you can.

12 DIONDRAE JACKSON,
13 after having been duly sworn, was examined and
14 testified to as follows:

15 MR. FOWLER: May I proceed, Your Honor?

16 THE COURT: Proceed.

17 MR. FOWLER: Yes, sir.

18 DIRECT EXAMINATION

19 BY MR. FOWLER:

20 Q Mr. Jackson, if you would, please spell -- say and spell
21 your full name for the Court, please.

22 A Diondrae Emanuel Jackson. First name is D-i-o-n-d-r-a-e.
23 Emanuel, M-a-n-u-a-e-l [sic], Jackson, J-a-c-k-s-o-n.

24 MR. FOWLER: And, Your Honor, I may approach the witness
25 somewhat, so I'd ask the Court to give me some liberal ability

1 to do that.

2 THE COURT: Move around as you see fit.

3 MR. FOWLER: Thank you, Your Honor.

4 BY MR. FOWLER:

5 Q Mr. Jackson, you filed an application for post-conviction
6 relief in this matter; is that correct?

7 A That's correct.

8 Q Okay. And you filed it -- it was filed in the Florence
9 County Clerk of Court on December 9th, 2021; is that correct?

10 A That's correct.

11 Q Okay. And you filed an attachment with it that spelled
12 out some issues that you felt was pertinent; correct?

13 A Correct.

14 Q Okay. And you signed it in front of a notary; is that
15 correct?

16 A That's correct.

17 Q So this is your application; right?

18 A That's correct.

19 Q Okay.

20 MR. FOWLER: Your Honor, just -- I'd like to take
21 judicial notice of his application, please.

22 THE COURT: Okay.

23 MR. FOWLER: Thank you, Your Honor.

24 BY MR. FOWLER:

25 Q Mr. Jackson, in this application, you spell out very --

1 various issues that you have with your counsel at that
2 hearing -- at your -- in this matter; correct?

3 A Correct.

4 Q Okay. And you mention things in No. 10 such as
5 ineffective assistance of counsel in violation of the due
6 process of law under the Sixth and Fourteenth Amendments; is
7 that correct?

8 A That's correct.

9 Q And then, at No. 11, it says, "See attached memorandum of
10 law"; is that correct?

11 A That's correct.

12 Q And then, at the very last page, there's eight or so
13 issues that you bring up; correct?

14 A Correct.

15 Q Fantastic.

16 In terms of No. 10(a), ineffective assistance of counsel,
17 that's a fairly broad statement, wouldn't you think?

18 A Yes, sir.

19 Q But there are specifics that you wish to address today in
20 terms of how you feel your counsel was ineffective; is that
21 correct?

22 A That's correct.

23 Q Okay. What do you feel like are some of those issues,
24 Mr. Jackson?

25 A I would like to place on the record, Your Honor,

1 Strickland v. Washington. It's varied issues as far as -- one
2 in particular, my jury verdict form. You know that I went to
3 a trial for three days. On my jury verdict form, it didn't
4 have a choice for the jury to provide a self-defense claim
5 that I had in my trial. So beside two of my charges, it had
6 guilty plea besides my attempted murder charge and my
7 voluntary manslaughter charge.

8 So, back then, that my attorney didn't object to it, I
9 felt like that prejudiced me in a way to make the jury
10 confused and felt like I pled guilty to the charge, which I
11 took a jury trial for.

12 Q Okay.

13 A I mean, I even have an exhibit of the jury verdict form
14 right here, Your Honor, if you want to see it.

15 THE COURT: Is that part of the record?

16 MR. BARLOW: Your Honor, it is.

17 THE COURT: Okay.

18 A And I felt like that was extremely prejudicial towards me
19 in my case, Your Honor.

20 THE COURT: Not to cut you off, but do you know where in
21 the record it is? Because I probably have one. I just
22 thought --

23 MR. FOWLER: Is this the verdict form?

24 THE WITNESS: That's the verdict form, yes.

25 MR. FOWLER: That's what you're referring to; right?

1 THE WITNESS: Right. The exhibit.

2 MR. FOWLER: Your Honor, he's referring to the verdict
3 form from the 2018 case.

4 BY MR. FOWLER:

5 Q And, Mr. Jackson, if you could -- let's hold on just a
6 moment until we're all caught up.

7 THE COURT: Okay. Go ahead. Sentencing sheets,
8 indictments, verdict -- oh, 546.

9 MR. FOWLER: Your Honor, may I have a moment?

10 THE COURT: Okay. Now I have got it. Thank you.

11 BY MR. FOWLER:

12 Q So you're referring to the verdict form that is dated
13 April 18th, 2019; is that correct?

14 A That's correct.

15 Q Now, on the original document, did it have 5:35 p.m. or
16 is that your writing?

17 A No, that's the original document. It's stamped
18 "certified" at the bottom.

19 Q And who signed -- and the foreperson signed it; is that
20 correct?

21 A That's correct.

22 Q Now, this one you have some writing of your own on that;
23 correct?

24 A Yes. I wrote a note on it as to why they had "guilty
25 plea" beside the charge of voluntary manslaughter and why they

1 had "guilty plea" beside the charge of attempted murder.

2 Q So just to be clear, even though this has some your notes
3 on it, you're asking the Court to review -- to look at, No. 1,
4 where it says "not guilty," No. 2, it says, "guilty plea" ---

5 A Correct.

6 Q --- and No. 3 says, "not guilty"; right?

7 A And also "guilty plea" on No. 3 as well.

8 Q Okay. And what's your point about "guilty plea" on
9 No. 3?

10 A I just felt like it confused the jury altogether. I
11 mean, that's not a special verdict form. A special verdict
12 form only contains that if someone has a matter of -- I can't
13 explain it right now, but I know that's not a special jury
14 verdict form. It shouldn't have "guilty plea" on it, period.

15 Q Okay.

16 A I just felt that prejudiced me by putting that on there.
17 It confused the jury. And, of course, they didn't even put
18 "self-defense" on the jury verdict form to give them the
19 option to even choose self-defense.

20 Q So you're saying that you feel like there was some --
21 this is not the jury form -- not the form that should have
22 been presented to the jury; is that correct?

23 A Correct. Had my prior counsel would object to that,
24 under South Carolina law, it also states that it could have
25 been a mistrial.

1 Q So you're indicating that this verdict form is not
2 correct; is that right?

3 A I mean, correct. I mean...

4 Q Is No. 3 specifically that you have a complaint about or
5 is it all three of this?

6 A Altogether. I mean, like I said before, they charged me
7 with voluntary manslaughter. The jury picked guilty plea.
8 They don't have -- it don't have guilty. It has guilty plea
9 on it. I have never seen a jury verdict form like that in my
10 life, Your Honor.

11 Q And your counsel did not object to it, did he?

12 A No, sir.

13 Q Okay.

14 MR. FOWLER: Your Honor, I think what we're referring to
15 is the verdict form in its original form, signed on
16 April 18th, 2019, I think was the date, at 5:35 p.m., signed
17 by the foreperson. I'd just ask the Court to take judicial
18 notice of that, Your Honor.

19 THE COURT: Understood.

20 THE WITNESS: Can I say one more thing, Your Honor?

21 BY MR. FOWLER:

22 Q Well, let me ask you a question.

23 A Okay.

24 Q Is it about the form?

25 A Yes, sir.

1 Q Okay. In terms of this form, what is your issue? You
2 say you might have another issue with it. What is that?

3 A Well, I want to point out, in my trial transcript, page
4 414, 23 through 24, where they agreed to the jury verdict
5 form. So they can't say they didn't know about it. Everybody
6 agreed to the jury verdict form.

7 Q And what was that page number again, Mr. Jackson?

8 A Page 414, lines 23 through 24.

9 Q Okay. Do you have a copy of that transcript?

10 A Yeah.

11 Q Okay. Could you read that to the Court, please?

12 A Oh, you took it off the page I had on it. Let me see.

13 Q I think you said 414.

14 A Okay. Line 23, it says --

15 Q Okay. And you're starting at line 23 on page 414?

16 A Right.

17 Q Yes, sir. Okay. Please read those indicated lines to
18 the Court, please.

19 A Well, I'm going to start at line 20.

20 Q Yes, sir.

21 A It says, all right.

22 "COURT: So far in the record, the defense doesn't have
23 any objection so far.

24 MR. EDGEWORTH: No objection, Your Honor.

25 And the Court: The verdict form so far looks good,

1 everybody.

2 Mr. Tucker says: Yes, it does."

3 If you go to page 415, Mr. Tucker -- Mr. Edgeworth, on
4 line 1, also says, "Yes, sir," he agreed to that jury verdict
5 form.

6 Q So now what is your contention with that?

7 A My contention is that everyone saw this jury verdict
8 form. They had time to go back and change it or whatever they
9 had to do, but instead, they still presented this to the jury.
10 And I felt like that was extremely prejudicial towards me.

11 Q And are they referring to the verdict form that we had
12 just previously discussed?

13 A Correct. Correct.

14 Q Okay. So why should your attorney have objected to that?

15 A He should have -- he should have objected because, like I
16 said, under South Carolina law, had he would have objected to
17 that, that could have resulted in a mistrial, and it could
18 have been placed on the record for these proceedings.

19 Q Okay. All right. So basically, we have gone over the
20 verdict form, we have gone over pages 414 going over to 415.
21 What -- in summation, why is that -- that's the first thing
22 you have mentioned today, okay, when I have asked you about
23 ineffective assistance of counsel. Why is that so important
24 to this case?

25 A It's so important because, being that a trial attorney,

1 once you bring forth Strickland v. Washington, you have to
2 prove the two prongs of performance and deficiency and also
3 prejudicial towards me. And he fell out a wide range of
4 professional conduct by not objecting to that jury verdict
5 form. So, therefore, by reason of probability, by his
6 unprofessional efforts, had he would have objected, my outcome
7 would have been different.

8 Q Did you discuss that with him? Or let me rephrase that.
9 Did he discuss that with you in terms of the jury verdict
10 form?

11 A No.

12 Q Okay.

13 A I never saw this until -- he never even gave me my motion
14 of discovery. I never seen none of this paperwork until I was
15 sent to prison. That's the only time I have ever seen this.
16 I have never seen it while I was in the county. None of that.
17 First time I ever saw this paperwork.

18 Q All right. Let's kind of take this one at a time. So
19 the first thing you have mentioned as being ineffective
20 assistance of counsel is the jury form; correct?

21 A Right.

22 Q And is there any -- and you mentioned about the
23 transcript pages. Is there anything else about the jury form
24 that you feel like is pertinent to this matter today that
25 you'd like to tell the Court?

1 A No, that's it. Like I said, the only -- the only other
2 way that jury form have anything different on it, if it was a
3 special verdict. And that's dealing with -- I can't say the
4 word right now, but that's the only way it could have
5 something different on it besides guilty or not guilty on it.
6 As far as that, this jury verdict form should only had guilt
7 and not guilty, not guilty plea like I pleaded guilty, so...

8 Q Anything else about that jury form issue that you wish to
9 bring to the Court's attention?

10 A That's it.

11 Q That's it?

12 A Yeah.

13 Q Okay. You mentioned about discovery. What's your
14 understanding of what discovery means?

15 A Discovery means that my lawyer is supposed to provide me
16 with everything that's in the case. All the evidence that he
17 have, he's supposed to provide it to me so I can go over it --
18 me and him sit down and go over it together. That was never
19 done. He explained to me that he was a private lawyer; he
20 didn't have to give me that. But I know a little something.
21 Like I'm sure that you're supposed to go over this type of
22 stuff with me, but he never did that.

23 Q Okay. Let's kind of break that down into little bite
24 sizes. You're saying that you never received the discovery?

25 A Never.

1 Q Do you know if he asked the solicitor's office for the
2 discovery?

3 A He -- I have a copy of a Brady motion that he did file.
4 He filed a Brady motion.

5 Q Okay. Do you have a copy of that with you?

6 A It might be in my --

7 Q Well, that -- strike that.

8 So you're saying he did file a Brady motion?

9 A Right.

10 Q But he never provided you your discovery?

11 A Right, until after I was sentenced and came to prison.
12 That's when he provided me the motion of discovery.

13 Q Did he ever indicate to you why he did not go over your
14 discovery with you before trial?

15 A He told me that he had a private law firm and he didn't
16 have to give me -- he didn't have to provide me discovery.

17 Q Well, what does that mean, a private law firm? I mean,
18 does that put him in a special category or what?

19 A I have no idea. That's what he told me.

20 Q Okay. Do you think that was harmful to you, not being
21 able to go over discovery?

22 A Oh, yeah. Very.

23 Q How long did he represent you?

24 A This happened in 2018, May. I want to say around about
25 July, if I'm not mistaken. I got a -- he signed the thing

1 saying he represented me.

2 Q Well, I mean, I guess my question, to be more specific,
3 how many years or months did he represent you?

4 A Oh, probably about -- I went through the whole process.
5 Like 11 months.

6 Q So there was plenty of time for him to go over discovery
7 with you; correct?

8 A Right.

9 Q Did he ever visit you while you were incarcerated?

10 A Maybe three times at the most.

11 Q Well, what did you go over if you didn't go over
12 discovery?

13 A The only thing he kept asking me was the same questions
14 over and over. And I gave him the same answer every time,
15 what happened, how it happened. And I explained to him -- the
16 only thing he ever brought was a yellow pad and wrote down
17 every time I told him what happened. The same story over and
18 over basically.

19 Q Okay. So, basically, he didn't go -- he only asked you
20 just a few questions; right?

21 A That's it.

22 Q Did he stay long at each visit?

23 A No.

24 Q What was the longest you think he ever visited with you?

25 A Maybe ten minutes. He always said -- and my mom can

1 attest to this -- he always saying he out of time, he doing
2 another case. So I asked him, "What -- what kind of case you
3 got? I'm sitting here in jail on murder and attempted murder
4 charges. What other kind of case could you have that you
5 can't come see me and talk to me about my case?"

6 But every week, he's out of town. He's on another case.
7 Even before I went to trial, he went out of town again. I
8 didn't see him until my trial date.

9 Q Now, you mentioned Strickland v. Washington; correct?

10 A Correct.

11 Q Do you think that that lack of going over discovery with
12 you, in your mind, created an ineffective assistance of
13 counsel?

14 A Most definitely.

15 Q Okay. And what about the jury form? Do you feel like
16 that was an ineffective assistance of counsel?

17 A Most definitely.

18 Q In terms of the discovery, anything else about the
19 discovery that you feel needs to be brought to the Court's
20 attention?

21 A Okay. He mentioned to me, like, three days before I went
22 to trial that the State brought in some new evidence. And to
23 this day, I don't know what this new evidence is.

24 Q Well, was that --

25 A He mentioned --

1 Q Go ahead. I'm sorry.

2 A Yeah, he mentioned to me, like, three days before the
3 trial that the State brought in some new evidence. And like I
4 said, to this day, I don't know what the new evidence is. I
5 never seen it or nothing.

6 Q Okay. Well, let's just kind of break that down. In
7 terms of new evidence, did he tell you that on a visit to the
8 facility or what?

9 A Yes. This was, like, three days before I went to trial.

10 Q But did he ever go into it before?

11 A No.

12 Q Did you ever find out what the new evidence was?

13 A Not to this -- never.

14 Q Did he ever -- did he give you any kind of inkling about
15 how -- what that new evidence was?

16 A I'm still lost to this day.

17 Q Do you think that that was prejudicial against you?

18 A Oh, yes.

19 Q Okay. Did you ever ask him why he brought it up?

20 A Yes.

21 Q What did he say?

22 A He never gave me an answer.

23 Q All right. Do you know if the new evidence was for you
24 or against you?

25 A I think it was for me. And that's the reason I believe

1 he didn't bring it up.

2 Q Why do you believe that?

3 A I mean, throughout this whole -- throughout this whole
4 case and this trial, Mr. Edgeworth, I felt, didn't do anything
5 correctly. I mean, I'm on trial for murder and attempted
6 murder. He didn't even have a co-counsel. Like, what lawyer
7 goes to trial with murder and attempted murder and you don't
8 even a co-counsel to help you with your case? I felt that was
9 extremely prejudicial.

10 He didn't go over nothing with me. He didn't explain
11 nothing to me, period. Like I said, the only thing he kept
12 doing was asking me the same question every time he came.

13 He also gave me some information about a guy that spoke
14 about my case, that he has some information about my case.
15 When I asked him who the guy was, he said it wasn't important.
16 Some guy that was in the county jail with me.

17 And I felt like whatever he had to say would help my
18 case, but none of these things were never brought forth.

19 Q So he brought -- he brought to your attention that there
20 was something in the jail or in the facility that you were
21 housed that might have been helpful to you?

22 A Right.

23 Q Did he ever give you that person's name?

24 A He never did. He said the guy wrote a statement, but I
25 never seen the statement either.

1 Q Was it in your discovery?

2 A Never seen it.

3 Q And you brought up the issue of co-counsel. Did he ever
4 indicate why he did not have any co-counsel?

5 A I assume because he got a private firm. That's what he
6 kept telling me.

7 Q But he never told you that; right?

8 A Right.

9 Q All right. In terms of No. 10(a), ineffective assistance
10 of counsel, we have gone over the jury form, we have gone over
11 the apparent lack of discovery, him indicating to you that
12 there was new evidence, and then no co-counsel.

13 We're going to go over No. 11 and then come back to (b)
14 and (c) on No. 10, but is there anything that comes to mind in
15 terms of his ineffective assistance of counsel that you wish
16 to bring to the Court's attention at this time?

17 A Like I said, as far as -- as far as him being -- I mean,
18 I'm sure every officer of the Court has an oath they have to
19 follow. I mean, I was in his care, and I felt like, as a
20 lawyer, he should have been -- had more respect for his client
21 to walk me through every situation, to let me know the terms
22 and things that's going on. But he left me blind through the
23 whole thing.

24 I just felt like that was extremely prejudicial against
25 me. You took the little bit of money that I had. I only had

1 a couple of dollars to pay you with. If you didn't want to do
2 my case, I would rather you have said, "I can't do it" instead
3 of take me to trial and know you -- I guess you wasn't ready
4 for it.

5 Q Let's go -- anything else on 10(a) that you want to bring
6 to the Court's attention?

7 A No, sir.

8 Q Okay. Let's go to No. 11. And I think you said, in
9 No. 11, "See attached memorandum of law." You're referring to
10 the last page of that application; is that correct, sir? When
11 you talk about No. 11, "See attached memorandum of law,"
12 you're referring to this page; correct?

13 A Right.

14 Q And I'm referring to the very last page in the
15 application; is that correct?

16 A Mm-hmm.

17 Q Okay. There are several items here that you brought to
18 the Court's attention in your initial application, and I'd
19 like to go over it with you now as thoroughly as possible,
20 but, you know, as briefly as we need to be.

21 It says, "No. 1: Counsel failure to investigate." And
22 then underneath that, it says, "Counsel failed to investigate
23 case presented by the State whom its evidence was tampered
24 with by the State. The State admitted that the video was
25 altered to combine audio and video together."

1 So let's talk about that a little bit. In terms of
2 investigation, are you referring to the paragraph under
3 paragraph No. 1?

4 A Yes, sir.

5 Q Okay. In this paragraph, you're alleging -- you're
6 surmising that evidence was tampered with by the State.

7 A Yes, sir.

8 Q Tell me about that and then we'll get into some more
9 specifics as you continue. What evidence are you saying was
10 tampered with by the State?

11 A The video camera that you use from the county jail.

12 Q Okay.

13 A They used that in my case. They said I said something
14 about my case. And they used that at my trial.

15 Q Okay. So, now, what video are you -- you said it was
16 something at the jail ---

17 A Right.

18 Q --- or SCDC?

19 A At the county jail.

20 Q Okay. So tell me a little bit about that in terms of --
21 are you saying that there was a video that the State tampered
22 with?

23 A Right. They provided this video, and the prosecutor,
24 Mr. Todd Tucker, the one who was explaining this accusation,
25 as he was -- well, he was actually acting as a witness. Like

1 he put this tape together. They was saying they took --

2 Q Okay. Let's just kind of break this down now. You're
3 saying there's a video allegedly of you at the county jail.

4 A Correct.

5 Q And Todd Tucker who is?

6 A He's the solicitor explaining how they did this video.

7 Q Okay. And was he the one prosecuting your case?

8 A Right.

9 Q Okay. Are you -- and you're saying that -- and I
10 interrupted so I apologize. But this video, did the State
11 admit that they tampered with it or are you saying that they
12 tampered with it?

13 A I'm saying they tampered with it.

14 Q Okay. And what was -- what happened?

15 A Well, he said they took this video and they sort of blend
16 this video together, they blend this video together, they
17 overlapped another video to make a sound -- to bring forth a
18 sound in this video. And I felt like that wasn't right
19 because, by you taking stuff, blending it together and
20 overlapping stuff and putting stuff together, I feel like they
21 tampered with it.

22 Q Now, is that in the -- is the video referred to in the
23 transcript?

24 A Yes, it is.

25 Q What page does it start on anyway?

1 A You can look at page 86.

2 Q Okay. And you're saying that, from page 86, the
3 reference to the video is potentially tampered with; correct?

4 A Yeah. If you read lines 5 through 15, it speaks about
5 the video.

6 Q Okay. All right. And how do you feel like your
7 attorney's performance was prejudicial in this matter?

8 A I felt like, as an attorney, you should have argued this
9 motion -- he should investigate this tape. He should have
10 checked the authentication of that tape. And, first and
11 foremost, he should have checked the timestamp of that tape
12 because we don't know whether that tape was played a year ago,
13 two years ago, or a month ago. But being that he failed to do
14 so, I felt like that was extremely prejudicial towards me,
15 because he even said that, when the State presented the tape
16 to him, he couldn't even make out or understand what was on
17 the tape. But when they played the tape in the courtroom, you
18 can hear it as loud as possible.

19 Q Did your attorney ever -- you said he never did anything.
20 Did he do anything in terms of objecting to that video?

21 A No, sir.

22 Q And you're saying he didn't file any motions to suppress
23 it.

24 A No, sir.

25 Q Now, you're saying that, in the last paragraph, last

1 sentence of No. 1 on the last page, it says, "The State
2 admitted the video was altered to combine audio and video
3 together." Tell me about that.

4 A Just like I said, when I said the first time about them
5 saying how they overlapped this tape and blend it together and
6 put it together and did it this way and that way to make a
7 sound, I felt like that's how the tape was tampered with. I
8 felt like, if you have a tape, you should have played the tape
9 as is.

10 Q But you're saying the State did some kind of admitting to
11 that -- that there was an issue?

12 A I mean, even the transcript, that's what they said.

13 Q What line is that and page?

14 A 5 through 15 on page 86.

15 Q Can you go to that page and lines, please. And read that
16 to the Court. 5 through 15 only, please.

17 A Okay. Well, actually, I think this is my lawyer
18 speaking, but it says, "Secondly, though the video that has
19 been provided to me, I don't even know how it's made out at
20 all that this is a statement that's being said. It's not
21 clear. You can't hear. I think the fact that this would be,
22 you know, potentially presented to the jury would be
23 prejudicial in nature. The tape has already been modified,
24 and I still can't hear it. There are four or five different
25 video camera angles that were provided to me in discovery and

1 in none of them can I make out the particular statement that's
2 being allegedly made."

3 Q But there was no objection by your attorney on that, was
4 there?

5 A No, sir.

6 Q Okay. Is there anything else on that -- in regards to
7 the video and the alleged tampering that you'd like to bring
8 to the Court's attention?

9 A I just felt like my lawyer could have -- he could have
10 did better by at least investigating the tape, going over the
11 tape, checking authentication of the tape. He just took it as
12 face value.

13 Q And no objection?

14 A No objection made.

15 Q Okay. In terms of No. 2 on that, it says, "Counsel
16 failed to investigate all the evidence presented by the State
17 used, which could exonerate Applicant in proving that the
18 victim did have a gun." Tell me about that.

19 A There was, I think, forensic guy that do the gunpowder --
20 gunpowder residue. They had a guy come up. He did gunpowder
21 residue on my hands. He did gunpowder residue on my victim's
22 hands. He said it's only three ways that you can get
23 gunpowder residue on your hands. And he said, one, by firing
24 a weapon. He said, two, by being in the vicinity of a weapon,
25 but I wish he would have made that clear -- a better of

1 vicinity, because a vicinity could be a wide range of things.
2 Third, he said you can get gunpowder residue on your hands
3 from touching something.

4 Q Okay. Now, who is this you're referring to?

5 A This is the -- his name is Tyler Sturkie, if I'm not
6 mistaken. He did the gunpowder residue kit for the State.

7 Q And he testified at trial; correct?

8 A Right.

9 Q So in terms of his statements, what do you feel like he
10 said that could have exonerated you?

11 A I think he proved that my victim had a gun, just like I
12 stated from the start.

13 Q Okay.

14 A By him having a gunpowder residue on his hand, that
15 proved that he fired a weapon.

16 Q Okay.

17 A Because the first thing the State said, that's how I got
18 gunpowder residue on my hand, from firing a weapon. And I
19 felt like why would they even test his hands, period, if they
20 felt like he didn't fire a weapon? Because they could have
21 left the whole situation alone and didn't test his hands and
22 all, and I wouldn't even have an issue about it. But being
23 that they tested his hands and showing proof that he had
24 gunpowder residue on his hand, that showed and proved that he
25 fired a weapon, just like I told him.

1 Q And that was not brought up by your attorney?

2 A No. He -- the guy -- my attorney never investigated, I
3 mean, because the guy -- when he -- when the expert talked
4 about it, he said he took the gunpowder residue from the left
5 hand and the right hand. He never said what hand he took the
6 gunpowder residue from.

7 Q Referring to you or referring to the --

8 A For me and my victim.

9 Q Okay.

10 A He never said what hand he extracted it from. So that's
11 why the jury came back with a question asking was my victim
12 left-handed or right-handed. Because me personally, I felt
13 like they was leaning towards self-defense if they asked that
14 question.

15 Q Anything else on that in terms of your counsel failing to
16 investigate all the evidence presented by the State that you'd
17 like to bring to the Court's attention?

18 A As far as that, that's it.

19 Q Okay. No. 3, counsel had an alibi witness in the
20 courtroom but failed to call this witness to testify and,
21 instead, told witness to leave.

22 Who -- what alibi witness are you referring to?

23 A Mr. Marcus Harrison.

24 Q And he's in the courtroom today; right?

25 A Yes, sir.

1 Q Okay. Why did he -- why did your attorney not call this
2 witness to testify?

3 A Me personally, I felt like -- and I'm just going to be
4 honest, Your Honor. I felt like he threw me under the bus. I
5 really believe in my heart that he helped the State put me in
6 prison.

7 Q And you're referring to your attorney?

8 A My attorney, Mr. Edgeworth.

9 Q And why do you feel that way?

10 A If you have a witness in my defense, your defense, you
11 subpoena to the courtroom that could have testified on my
12 behalf to get me exonerated and you didn't allow him to get on
13 the stand, I felt like you did that on purpose.

14 Q Did -- and it says here, "He instead told the witness to
15 leave." Do you know why your attorney told the witness to
16 leave?

17 A When I asked him why did he tell him to leave, he told me
18 he didn't need him. He think he might get up there and change
19 his story. That's what he told me.

20 Q Did you feel like he would change his story?

21 A I mean, I wouldn't -- me personally, I wanted to hear any
22 story he had to tell. He wouldn't know whether he was going
23 to change the story. The only way he would have known that,
24 if he got on the stand.

25 Q Do you know if your attorney talked with Mr. Harrison

1 beforehand?

2 A I have no idea. If he did, he didn't tell me about it.

3 Q Well, that was my question. He didn't tell you about any
4 interviews.

5 A Right.

6 Q So you don't know what Mr. Harrison at that time was
7 going to testify or not, did you?

8 A No, sir.

9 Q Okay. Anything else about that that you wish to bring to
10 the Court's attention?

11 A Oh, yes. I wanted to go to page 32 in the transcript, 15
12 through 25. And then page 33, lines 1 through 3.

13 Q Okay. So page 32 --

14 A -- 15 through 25.

15 Q Could you read that to the Court, starting with line 15?

16 A Okay. "The Court -- The Court: All right. Let me ask
17 the bailiff. The individual that just came in" -- they never
18 called his name but it was Mr. Harrison.

19 "The Bailiff: Yes, sir."

20 Whereupon they call a bench conference.

21 Okay. "The Court: Is who?"

22 "The Bailiff: That's a witness for the defense."

23 "The Court: Okay. Have him come over here and sit with
24 the defense."

25 Okay. They called another bench conference.

1 You go to page 33, line 1 through 2, "The Court: We had
2 an individual come in that's a witness for the defense. I'm
3 going to pull him forward and let him sit with you. He just
4 walked in the door."

5 Q So did the jury hear that?

6 A I'm not sure.

7 Q Okay. But how did that -- how do you feel like that was
8 prejudicial to you in terms of your lawyer's representation of
9 you?

10 A That just show and prove that the guy came and testified.
11 I mean, whether he was going to change his story, whatever he
12 was going to say, he wouldn't know, but he came to testify.

13 I don't know Mr. Harrison. I never met Mr. Harrison a
14 day in my life. He had no ax to grind in this case. But I
15 felt like he can't correct this wrong. And if this guy would
16 have got on the stand, it would have had a different outcome
17 of my case. I mean, I felt like I would have went home if he
18 would have testified to what I know now. I felt like I would
19 have got a second chance, but...

20 Q Was there a way that your attorney should have handled it
21 better if he wasn't going to ask Mr. Harrison to testify? I
22 mean, he -- well, let me strike -- let me rephrase that.

23 He actually brought him to court; correct?

24 A From my understanding, he subpoenaed Mr. Harrison.

25 Q Okay. So he subpoenaed him. And yet, at court that day

1 or during the trial, he never called him?

2 A Right.

3 Q Okay. Do you feel like that had a prejudicial effect on
4 you?

5 A Oh, yeah, most definitely.

6 Q Okay. In terms of No. 4 on this, "Counsel failed to make
7 objections," and then you go down to, "Counsel failed to
8 object to the State closing arguments when prosecutor made
9 inflammatory comments." What specifically are you referring
10 to there?

11 A Well, through the prosecution's whole case, he kept
12 saying that I killed a guy over four quarters. In his opening
13 statements, he said I killed a guy over four quarters.

14 Q Over four quarters?

15 A Over four quarters.

16 Q Okay.

17 A And he said, "Ladies and gentlemen, not just" -- first he
18 said over a dollar. And then he said, "Ladies and gentlemen,
19 not just a dollar but four quarters." He goes in his pocket,
20 take out four quarters and laid it in front of the jury.

21 There's no evidence in this case that says I killed some
22 over a dollar, four quarters. There's no evidence nowhere in
23 this case that said I killed somebody over a dollar. It
24 doesn't even make sense. Period.

25 Q So you're saying the solicitor made statements that were

1 outside of the scope that what was heard at trial?

2 A Correct.

3 Q And what do you feel like your attorney should have done?

4 A I felt like he should object to that.

5 Q Okay.

6 A I felt like he just -- he just went overboard. I just
7 felt like he should object to that.

8 Q Anything else about inflammatory comments that you wish
9 to bring to the Court's attention?

10 A Well, yeah, I have one more -- one more issue with that.
11 At my sentencing phase...

12 Q Yes, sir.

13 A Before I got sentenced, the prosecutor told the judge
14 that I had a pending drug charge, and I felt like, by him
15 telling the judge that I had a pending drug charge, that's
16 probably why my sentence was so steep, which he lied.

17 I have an exhibit here where this drug charge was
18 dismissed. And he was the same prosecutor over this drug
19 charge.

20 Q Okay. So you're saying that the solicitor referenced to
21 a drug charge that was dismissed; is that correct?

22 A Right.

23 Q Okay.

24 A But before I got sentenced, he told the judge that I have
25 a pending crack charge, and I felt like that was extremely

1 prejudicial towards me. And being that my lawyer didn't
2 object to that, which he should have objected to.

3 Q Okay. All right. Anything else about the inflammatory
4 comments?

5 A No, that's it.

6 Q Okay. And No. 4, too, it says, "Counsel failed to object
7 after prosecutor made a request for the Court to charge
8 manslaughter." Tell me about that.

9 A First and foremost, I'm sure that any time a prosecutor
10 bring up a lesser included offense, he's supposed to let the
11 defense attorney know prior to trial, which he didn't do. I
12 think he waited until the middle of my trial to ask for a
13 voluntarily manslaughter charge. And my attorney asked me
14 about it. He said, "What you think about this?"

15 I said, "I don't want that in the charge." I said, "I'd
16 rather go with murder and attempted murder, what they're
17 charging me."

18 And so we talked about that, and he said he going to let
19 the judge know that he don't want that in the case.

20 But on page 482, lines 22 through 25 --

21 Q And once again, page 482, lines 20 through -- 22 through
22 25; is that correct?

23 A That's correct.

24 Q Please read that to the Court.

25 A Line 22, "The Court: All right. Yesterday, the State

1 had requested a charge of voluntary manslaughter. How do you
2 feel about that, Mr. Edgeworth?"

3 "Mr. Edgeworth: Your Honor, may I briefly consult with
4 my client?"

5 So when he talked with me, I told him that I didn't want
6 that charge included.

7 Okay. On page -- excuse me. On page 4- -- excuse me --
8 -83, line 6 through 25 --

9 Q Okay. Can you summarize that to the Court, please, page
10 482 -- no, excuse me, 483, lines 6 through 25?

11 A Correct.

12 Q Without reading it, could you summarize what that is to
13 the Court, please?

14 A Well, my lawyer explained to the judge that he didn't
15 want to include the voluntary manslaughter, but he didn't say
16 "voluntary." For some reason, he said, "Involuntary
17 manslaughter." But he was explaining to the judge that I
18 didn't want this charge included in the charge.

19 Q And that was your attorney?

20 A Right.

21 Q Okay. So how was that prejudicial to you in terms of his
22 representation of you?

23 A First of all, he said, "Involuntary," and the charge was
24 voluntary manslaughter. I mean, I don't know why would he say
25 that, but he said "involuntary manslaughter."

1 And after he said that, that's when the judge spoke. And
2 the judge was like he's going to throw the charge in anyway,
3 and he explained why he was going to throw it in there and why
4 he was going to charge the voluntary manslaughter.

5 Q Is there anything else about that that you wish to bring
6 to the Court's attention?

7 A When they brought the voluntary manslaughter charge up
8 again, the judge asked the solicitor in what regards do you
9 want to bring up this voluntary manslaughter charge? Well,
10 the solicitor told the judge, he said, "Well, by me reflecting
11 on then going outside and getting a gun and come back and
12 shooting people."

13 I told my lawyer, I said, "That sounds like premeditated
14 murder to me. That don't sound like a voluntary manslaughter
15 charge." Because, in order to get a voluntary manslaughter
16 charge, you have to have provocation and you also have to have
17 the heat of passion.

18 And from that point, I had time to cool off. You have a
19 cooling period during that time. So from the incident time --
20 from the time I went outside and smoke a cigarette and sat in
21 the car, that's a cooling period. So that's no longer a
22 voluntary manslaughter charge.

23 But my lawyer failed to object when he asked for the
24 charge again.

25 Q Well, let's go to No. 5 on that last page. It says,

1 "Counsel failed to object during sentencing, was improper
2 information given by the State." What information are you
3 alleging was improper?

4 A What I just told you about the drug charge he said I had.

5 Q Okay. So that refers to the drug charges and the -- how
6 it was presented to the Court; is that correct?

7 A (No audible response.)

8 Q Anything else on that?

9 A No, that's it.

10 Q Okay. On No. 6, it says, "Counsel failed to object to
11 the erroneous, [sic] including certain language on the
12 verdict" -- well, I think we may have gone over this but just
13 briefly, if you could address it. Counsel -- No. 6, it says,
14 "Counsel failed to object to the erroneously [sic] including
15 certain language on the verdict form that was ambiguous and
16 confusing to the charge of not guilty and guilty plea."

17 So just surmising what you said earlier, unless there's
18 something --

19 MR. BARLOW: Your Honor, asked and answered.

20 THE COURT: Well, he's -- I was going to say something,
21 but he can finish his question.

22 Go ahead. If you want to rephrase it. Anything in
23 addition to the verdict form issue that we didn't go over
24 before?

25 THE WITNESS: No, no.

1 THE COURT: Okay. I think -- I think No. 6 in the --
2 well, actually I'm looking at the State's return, but
3 paragraph 6 has been adequately addressed earlier.

4 THE WITNESS: Right.

5 THE COURT: Thank you.

6 THE WITNESS: Thank you, Your Honor.

7 BY MR. FOWLER:

8 Q All right. Well, then let's move to No. 7. It says,
9 "Counsel failed to object to the charge of self-defense and
10 mutual combat."

11 A Right.

12 Q How does that relate to this matter?

13 A He charged -- the judge charged -- the way he did it, it
14 took me a minute to catch onto it, but when he charged the
15 jury on self-defense, he said the first element of
16 self-defense, he starts explaining the first element of
17 self-defense. But during the same element of self-defense, he
18 charged mutual combat. And mutual combat negates
19 self-defense. You can't charge mutual combat and
20 self-defense.

21 Q Now, are you talking about your lawyer or are you talking
22 about the solicitor?

23 A The judge, when he charged this to the jury. He charged
24 the charge of mutual combat and self-defense together. And
25 mutual combat is not a part of -- a charge of self-defense.

1 Like I said, mutual combat negates self-defense. If you
2 charge that to the jury, you're saying that me and this guy
3 had a mutual intent, we was on the lookout for each other. We
4 had prior problem. Everybody testified that me and this guy
5 didn't know each other. Everybody testified this guy didn't
6 have a gun.

7 So I feel like this charge wasn't even supposed to have
8 been sent to the jury anyway because you had no evidence to
9 support mutual combat. My lawyer didn't object to that
10 either, which he should have.

11 They have a state -- a case called State vs. Bowers.

12 Q State versus what?

13 A State vs. Bowers.

14 Q B-o-w-e-r-s?

15 A Right. Dealing with this same case.

16 Q Okay.

17 A I felt like that was extremely prejudicial by him because
18 you're confusing the jury. You're telling the jury I got a
19 self-defense claim. Then you're telling the jury I don't and
20 adding mutual combat. Now you're telling the jury I have got
21 a voluntary manslaughter charge. I just felt like all this
22 stuff was confusing to the jury. And being that my lawyer
23 didn't object to none of this, he just failed -- his
24 performance just -- he had no -- nothing strategic about what
25 he did. I'll just put it like that.

1 Q Are you contending that, even if he didn't object, he
2 could have asked the Court to clarify that; correct?

3 A Correct.

4 Q Okay. Anything else about that?

5 A No, sir.

6 Q Okay. No. 8, "Counsel argument during post-trial motion
7 constituted as ineffective assistance of counsel." What is --
8 what are you referring to there?

9 A You said what again now?

10 Q Yeah, let me -- on the last page. I think the way it
11 reads here is, "Counsel argument during post-trial motion
12 constituted ineffective assistance of counsel." What do you
13 mean by that?

14 A No, I really was putting -- I really meant to put that
15 counsel didn't put no kind of pretrial motions in during this
16 trial whatsoever, being that I had a murder trial and
17 attempted murder trial. He had no kind of pretrial motions.

18 Q So instead of post, you mean pretrial motions?

19 A Right.

20 Q Okay. What -- do you have an idea what kind of pretrial
21 motions you think he should have provided to the Court or
22 opposing counsel?

23 A I felt like, being that I had a self-defense claim, I
24 felt like he should have put in a motion for a persons and
25 property act where you have a pretrial motion to determine

1 whether I fit the elements of self-defense.

2 I felt like, he had would have done that and I had a
3 pretrial motion, I could have got immunity and wouldn't have
4 even went to trial because I could have proved self-defense.
5 But being that he didn't do that either -- so I felt like that
6 was extremely prejudicial towards me.

7 And through this whole case, he never mentioned one time
8 I acted in self-defense. Not one time did he say, "My client
9 acted in self-defense."

10 Q So your attorney never brought up self-defense?

11 A Not one time through this whole trial.

12 Q Did he -- and you never discussed that?

13 A Never.

14 Q Did he ever bring it to your attention?

15 A Never.

16 Q Okay. Anything else about that -- and I believe what
17 you're saying is he should have filed pretrial motions;
18 correct?

19 A Right.

20 Q Is there anything else about that No. 8 that you wish to
21 bring to the Court's attention?

22 A No, sir.

23 Q Going back to No. 10 briefly and No. (b) and (c), you
24 mentioned violation of due process of law. What do you wish
25 to bring to the Court's attention on that? What do you mean

1 by that?

2 A I mean, he just -- he just didn't do nothing that he's
3 supposed to -- nothing that he's supposed to did. I mean, his
4 deficiency in performance, it felt like a wide range of
5 professional competence [sic]. I mean, he just -- he just
6 failed to do any and everything he was supposed to do. I just
7 felt like he just left me high and dry.

8 Q And your application kind of summarizes that; is that
9 correct?

10 A Correct.

11 Q Okay. And then it says the sixth -- read No. 10(c). I
12 want to make sure I have that correct. No. 10(c), what is
13 that?

14 A Fourth Amendment -- Fourteenth Amendment.

15 Q What do you wish to bring to the Court's attention on
16 that?

17 A I felt like I was deprived of a fair trial. Throughout
18 this whole thing, I just feel I didn't have a fair trial.
19 Period.

20 Q And everything we have discussed goes to that effect;
21 correct?

22 A (No audible response.)

23 Q Okay. Anything else about your application that you wish
24 to bring to the Court's attention, Mr. Jackson?

25 A No, sir.

1 Q Okay. You and I have spoken before in telephone calls;
2 is that correct?

3 A That's correct.

4 Q And we recent -- two subpoenas were recently filed in
5 this case; correct?

6 A Correct.

7 Q Okay. And one was to Mr. -- to Drayton Investigations
8 and one was to Marcus Harrison; is that correct?

9 A Correct.

10 Q And you and I discussed that before we sent them out;
11 correct?

12 A Yes, sir.

13 Q Okay. And Mr. Drayton, what is his involvement in this
14 matter?

15 A He's a private investigator that I hired. I think --
16 well, I want to say, like, three years ago.

17 Q Okay. Was that before or after the trial?

18 A This was after. After the trial.

19 Q So in terms of why were you -- why did you hire him after
20 the trial?

21 A I hired him because I felt like my lawyer didn't
22 investigate nothing. I gave my lawyer -- well, my family paid
23 my trial lawyer \$1500 to get a private investigator, which
24 never showed up to my trial. To this day, I never met the
25 man. I don't -- I don't know if he even came up with

1 evidence. I don't know what -- but they mention in his name
2 in my transcript, Mr. Phil Grimsley.

3 Q What's that name again?

4 A Mr. Phil Grimsley.

5 Q Okay.

6 A I tried to contact him. I talked to him on the phone.
7 He said he going to return my phone call. I never heard
8 nothing else from him. I got my mom to call him.

9 MR. BARLOW: Your Honor, objection to hearsay.

10 THE COURT: Please don't testify to what other people
11 told you.

12 But move on. Next question.

13 BY MR. FOWLER:

14 Q So in terms of Mr. Drayton, you feel like he could be
15 helpful in terms of presenting his findings to the Court;
16 correct?

17 A Right.

18 Q Okay.

19 A I felt like I had to get an independent investigator to
20 go over this case because I just felt like the prosecution of
21 my case didn't prosecute my case like he should. I just felt
22 like he -- he put something together and tried to use an
23 open-and-shut case. He didn't follow procedures and went by
24 the law like he should.

25 Q Okay.

1 A I mean, they have a saying that they'd rather let ten men
2 go that commit a crime before they lock up one innocent man.
3 And I'm that innocent man.

4 Q Okay. And you feel Mr. Drayton, he should testify today;
5 correct?

6 A Correct.

7 Q Okay. And our office also conferred with you about a
8 subpoena to Mr. Marcus Harrison; is that correct?

9 A Correct.

10 Q And he's in the courtroom today; right?

11 A That's correct.

12 Q Okay. And you were in agreement with us subpoenaing him;
13 correct?

14 A Correct.

15 Q Okay. In terms of your application or anything that
16 you'd like to bring to the Court's attention, is there
17 anything else that you'd like to propose to the Court today or
18 what have you about this application?

19 A No. The only thing I'd like to say is I'm glad he gave
20 me time to present my case, Your Honor, and I appreciate that.
21 I just hope you give me a fair and good verdict from this case
22 because, from my trial, I didn't have a fair trial, and I feel
23 like I deserve it.

24 THE COURT: Okay.

25 MR. FOWLER: No further questions.

1 THE COURT: Cross-examination?

2 MR. BARLOW: Thank you, Your Honor.

3 CROSS-EXAMINATION

4 BY MR. BARLOW:

5 Q Good afternoon, Mr. Jackson. How are you doing today?

6 A Good afternoon.

7 Q There was a lot in your direct testimony regarding
8 discovery. I'm curious: Why didn't you raise this in your
9 application?

10 A When I -- when I got this discovery and I didn't raise it
11 in my application because I didn't want to just put so many
12 things in there trying to throw something out to make
13 something stick. So I just put in the things that I felt like
14 was mainly things that I needed to put in there.

15 Q All right. Well, let's get to some of the stuff you put
16 in there.

17 Regarding the video that was entered into evidence, do
18 you recall trial counsel arguing over the admissibility of
19 that video evidence at trial?

20 A Yes, he did.

21 Q Okay. And do you recall him specifically arguing over
22 the production process?

23 A Yes, he did.

24 Q Okay. One of your allegations is failure to investigate
25 all the evidence presented by the State which could exonerate

1 you. Could you tell me again what evidence it is that would
2 exonerate you?

3 A For example, the tape he just mentioned. My lawyer
4 didn't investigate that. Like I said, he didn't check the
5 authentication of the tape. He didn't check the timestamp to
6 make sure that he had a correct timestamp.

7 Q My specific question, though, is to the allegation
8 regarding the evidence that he failed to investigate that
9 would exonerate you, proving the victim had a gun. Could you
10 explain that to me again?

11 A Oh, someone said the guy had a gun. I mean, he had a
12 witness said the guy had a gun. He had gunpowder residue on
13 his hand to prove that he fired a gun.

14 Q Which witness was that that said he had a gun?

15 A From my understanding, Mr. Marcus Harrison said this guy
16 had a gun.

17 Q Mr. Marcus Harrison. Is he the bouncer of that bar?

18 A Yes, sir.

19 Q Okay. Do you recall that all the witnesses that did
20 testify at trial said that you were the only one with a gun?

21 A I recall that.

22 Q Did you, in fact, have a gun on you the first time you
23 entered that bar?

24 A I sure did.

25 Q And the second time that you entered the bar after you

1 left?

2 A Yes.

3 Q You had the gun on you at that time too?

4 A Right.

5 Q Okay. And you have got an allegation about an alibi
6 witness, and I'm assuming that's Mr. Harrison?

7 A Yes, sir.

8 Q Okay. What's the alibi?

9 A As far as that he knew what happened. I mean, I felt
10 like had he would have came to my trial and they made him
11 testify, I don't think I'd be going through this procedure I'm
12 going through right now.

13 Q So you're speculating that your one witness would have
14 testified in your behalf and the other witnesses that were
15 present, they would not have believed them?

16 A Right.

17 Q Okay.

18 A Correct.

19 Q And you have an allegation of counsel failed to object to
20 the charge of manslaughter. Do you recall trial counsel
21 arguing with the Court on this charge at your request?

22 A What you mean, "argue?"

23 Q Arguing to the Court that -- on your request -- I believe
24 you pointed us to the page numbers.

25 A I think the only thing he said was he don't see this

1 charge at the time is -- he don't see allegations of the
2 charge at the time. I assume that's what he said. I'm trying
3 to remember that's what he said. But as far as him objecting
4 to that charge, he had two or three times he could have object
5 to it when the State asked for it, and he never did. He
6 agreed with the State.

7 Q All right. And to your allegation regarding the verdict
8 form, is it your contention that the voluntary charge that
9 they found you guilty of because it says "plea" beside it,
10 that that is what prejudiced you?

11 A I felt like that confused the jury. I feel like they
12 might have thought I pleaded guilty to something.

13 Q But they found you not guilty of attempted murder, which
14 has the exact same thing next to it; correct?

15 A Correct.

16 Q Were they wrong on that one?

17 A Like he said, they can believe some testimony and they
18 don't have to believe some testimony. That's what the judge
19 tell the jury. You can believe some but you don't have to
20 believe some.

21 Q And another allegation regarding the failure to object to
22 the charge of self-defense, is it not -- is it not -- excuse
23 me. Wasn't your defense self-defense?

24 A I think I might have worded that wrong. What I was
25 saying is that failure to object to the charge of mutual

1 combat. But the way he put mutual combat in the self-defense
2 charge, he -- he -- like I explained before, he started
3 explaining the first element of self-defense. Before he got
4 to the second element of self-defense, he started explaining
5 mutual combat. Then, after he charged mutual combat, he
6 explained the second element of self-defense. That's what I
7 was trying to say. It's some kind of way he tied this into
8 that. Mutual combat is a whole separate charge.

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

10 Nothing further from the State, Your Honor.

11 THE COURT: Redirect?

12 MR. FOWLER: Yes, Your Honor.

13 REDIRECT EXAMINATION

14 BY MR. FOWLER:

15 Q On cross-examination, the Attorney General mentioned
16 several things. In terms of you not raising discovery on your
17 application, you're not an attorney, are you?

18 A No, sir.

19 Q Okay. And you did mention that there was an -- you kind
20 of -- in 10(a), you mentioned an ineffective assistance of
21 counsel; correct?

22 A Yes, sir.

23 Q And that discovery could somewhat fit into that; correct?

24 A Right.

25 Q So in terms of the video, counsel mentioned that there

1 was some argument about the production process. But your
2 legal counsel at the time never filed any kind of suppression
3 motion, did they?

4 A No, sir.

5 Q Okay. Do you feel like they should have?

6 A Yes, sir.

7 Q Okay. In terms of evidence that would exonerate you, you
8 mentioned there was no timestamp on the video.

9 A Correct.

10 Q Okay. And there was an investigator? And this was on
11 direct but let's mention it here. Your attorney hired an
12 investigator; correct?

13 A Correct.

14 Q And his duty was to find information; correct?

15 A Correct.

16 Q And you never received any of that information, if there
17 was any; right?

18 A Correct.

19 Q Okay. And, also, Marcus Harrison showed up at court
20 during the trial; correct?

21 A Correct.

22 Q And he was let go; correct?

23 A Correct.

24 Q And there was -- and your contention is that your
25 attorney said he may change his story?

1 A That's what he told me.

2 Q Did your attorney speak with Marcus Harrison before
3 trial?

4 A You would have to ask him that. You would have to ask
5 him.

6 Q And in terms of I think you said the mutual combat and
7 self-defense, is it your indication that that was kind of a
8 confusing issue that your attorney should have clarified in
9 some fashion for the jury?

10 A Correct. Because it confused me when I read it.

11 MR. FOWLER: Nothing further, Your Honor.

12 MR. BARLOW: Nothing from the State.

13 THE COURT: All right. The witness may step down. Thank
14 you.

15 THE WITNESS: Thank you, Your Honor.

16 THE COURT: Is your next witness here, Mr. Fowler?

17 MR. FOWLER: May I have a moment to speak with my...

18 THE COURT: Let's take five minutes -- a short
19 five-minute recess.

20 MR. FOWLER: Yes, sir.

21 THE COURT: All right.

22 (A recess was taken from 11:40 a.m. to 11:45 a.m.)

23 THE COURT: All right. Ready to call your next witness?
24 Oh, we lost -- okay.

25 MR. FOWLER: I spoke with him back there, Your Honor,

1 briefly. He's on his way.

2 THE COURT: Okay. Who's on his way?

3 MR. FOWLER: My client.

4 THE COURT: Okay. Okay.

5 (Pause in the proceedings.)

6 THE COURT: All right. Next witness?

7 MR. FOWLER: Your Honor, I'd like to call Mr. Charles
8 Drayton, please.

9 THE COURT: Come on up, sir.

10 THE CLERK: Sir, if you'll walk up to the Bible and place
11 your left hand on the Bible and raise your right hand as best
12 as you can.

13 CHARLES DRAYTON,
14 after having been duly sworn, was examined and
15 testified to as follows:

16 THE WITNESS: Excuse my cough, Your Honor. I'm not sick;
17 I just can't get rid of it after two months.

18 THE COURT: Very well. Tell us your name for the record.

19 THE WITNESS: Charles E. Drayton.

20 DIRECT EXAMINATION

21 BY MR. FOWLER:

22 Q And, Mr. Drayton, you are the owner of Drayton
23 Investigations, LLC; is that correct?

24 A Yes, sir, for about 20 years now.

25 Q And you were contacted in June of 2020 by the family; is

1 that correct?

2 A That's correct.

3 Q Okay. And is one of those family members here today?

4 A Yes, sir.

5 Q And who is that?

6 A That would be Mrs. Jackson. Ms. Audrey Jackson.

7 Q And why did you begin work on this matter?

8 A They came in to see me and asked me -- they told me their
9 story about their son, and of course, you know, after
10 listening to the story, that's when I made a decision that I
11 would attempt to help them with this case. And I also told
12 them that, regardless of where the facts lie, that, you know,
13 that's the way it would be. You know, they would fall on
14 their own merits. And they were fine with that. And then we
15 proceeded.

16 Q Okay.

17 A They signed a contract and, you know, retained me.

18 Q All right. Now, you got your private -- you have a
19 private investigative firm; right?

20 A That's correct.

21 Q And you're certified by the State of South Carolina; is
22 that correct?

23 A I am, yes, sir.

24 Q And you were there just to investigate what they had
25 mentioned to you; correct?

1 A I was there to find out if some of the things they told
2 me were factual, try to contact the different witnesses or
3 whatever, and just see what they had to say.

4 Q How long after the trial were you hired, roughly?

5 A Oh, gosh. The trial was when? 2018?

6 Q I think so.

7 A I guess it would be a couple of years. I had no
8 knowledge of it until the moment they called me and came to
9 see me.

10 Q Did you indicate that, you know -- so the trial was long
11 over; correct?

12 A Right.

13 Q Regardless of when it was heard.

14 A That's correct.

15 Q Did you indicate to them how your services might be
16 helpful in terms of something that's already been tried?

17 A I just told them basically that -- I try to do a charge
18 in everything I do so, that way, I'll know what direction
19 we're going. And I just -- I felt like we were just doing a
20 post-conviction relief, not knowing any more than I did at
21 that moment in time and that -- that I would need names and
22 places to do some searching, and, you know, go about my
23 business.

24 Q Very good. And you prepared a report; is that correct?

25 A I did.

1 MR. FOWLER: May I approach, Your Honor?

2 BY MR. FOWLER:

3 Q What I have here is something that's on the letterhead of
4 Drayton Investigations with your number and case number. And
5 it appears to be your signature, notarized; is that correct?

6 A It is.

7 Q And it's a five-page report; is that correct?

8 A Correct.

9 Q And what is this document?

10 A It's a final report that I give on all cases. Pretty
11 much a summary with as many facts as I can put in there at the
12 given time.

13 MR. FOWLER: Your Honor, at this time, I'd like to
14 move -- put in this as a Court exhibit.

15 THE COURT: All right.

16 MR. FOWLER: I have an original and a copy. I have
17 already provided copies to the attorneys. May I present it?

18 THE COURT: Sure. It will be Court Exhibit 1.

19 (Court's Exhibit No. 1, Drayton Investigations Report,
20 was marked for identification and received into evidence.)

21 BY MR. FOWLER:

22 Q Mr. Drayton, do you have a copy of that?

23 A I do. You gave it to me just a short bit ago.

24 Q So in terms of this No. 1, what is the -- what did you
25 find out -- what was your process?

1 A Well, at first, I had a difficult time locating some of
2 the witnesses, I guess, on -- I guess you could qualify as on
3 the other side of the issue. A lot of names -- a lot of
4 fictitious names, names that people go and, I guess, you know,
5 surnames, names that you don't see on the record, names that
6 you don't know about. And so then I kind of retreated from
7 that and then I decided to go after the names that I was given
8 in the beginning, like the bouncer of the place.

9 And, at first, it was difficult finding him, and then,
10 when I finally did catch up with him, it was at one of his
11 previous addresses. And we had a nice interview at his
12 apartment. And then of course later on in the investigation,
13 I followed up with a second interview. And when I do these
14 types of interviews with witnesses -- eyewitnesses, I try to go
15 over the same question and answers multiple times because, you
16 know, I like to make sure that, when I talk to somebody, the
17 story doesn't change or it hasn't been made up. I like to
18 convince myself that the answers I'm getting is true and
19 accurate.

20 Q Did you speak with Mr. Jackson's attorney of record in
21 the case?

22 A I went to his office on the other side of Florence, and
23 he wasn't there.

24 Q Okay.

25 A So I talked to a fellow out in the front office, and

1 didn't really get a -- what I would consider a quantitative
2 discussion on what happened because he didn't really know a
3 lot about what happened either.

4 Q Okay. So now are you -- did you speak with --

5 A I didn't speak with Mr. Edgeworth, no.

6 Q You didn't speak with the attorney himself, but you did
7 speak with someone in the office?

8 A Someone sitting in his office, yeah, answering the phone,
9 I think.

10 Q All right. So did you pursue it any further in speaking
11 with him?

12 A No, I didn't go after that. I went ahead and started
13 trying to find some more witnesses. And then, of course,
14 eventually, came up with Mr. Harrison.

15 Q And Mr. Harrison is here in the courtroom today; correct?

16 A That's correct.

17 Q Okay. What in terms of -- okay. So you were going to
18 speak with people who may have had some knowledge about this?

19 A May have been there, yes.

20 Q May have actually been there?

21 A That's correct.

22 Q Okay. And who was your checklist on this? Mr. Harrison?
23 Who else?

24 A Mr. Harrison. There was an Edgeworth or -- I can't -- I
25 didn't put his name in the report, because I never saw him.

1 But I contacted him on the phone. I contacted the Latisha
2 girl; I couldn't get ahold of her. And then when I tried to
3 get ahold of her, then I got a call back from actually the guy
4 that was there with -- not her but another girl that was --
5 they're friends.

6 And he called me back and had a long discussion and kind
7 of made me -- kind of discouraged me a little bit on the case.
8 Kind of made me feel like, you know, this is a -- this event,
9 this crime scene was kind of a picnic, a walk in the park, and
10 it's a family get-together that happens there all the time,
11 and this whole thing has messed up the -- closed the place
12 down and the children and the families, they can't enjoy the
13 place anymore. And I just kind of -- it really kind of
14 discouraged me, you know, because I'm looking for hard
15 evidence, and all I'm getting is a gloss-over.

16 You know, so I just kind of -- I knew I had on record,
17 and I said, "Well, I'll just hang on to that in case I need it
18 later on, in case this thing does go to a new trial." And I
19 saved it. And that's where it's at now.

20 Q Okay. All right. But, basically, you were looking --
21 like, in your words, you were looking for hard evidence about
22 the crime -- the alleged crime scene or what have you?

23 A Correct. I also talked to his brother in the very
24 beginning and just didn't feel like I -- you know, I felt like
25 that would be more of a hearsay-type thing and really wasn't

1 anything worth reporting because -- being a family member.

2 Q Did you speak with Mr. Jackson about it?

3 A He talked to me on the phone several times over the
4 course of the last two years. He gave me some -- some
5 information on some leads and some different things, and his
6 brother did too on a couple of occasions after I made the
7 initial visit.

8 Q Okay. Now, you're not a lawyer, are you?

9 A No, sir. No, I'm not a lawyer.

10 Q But you did look in terms of evidence that might lead to
11 self-defense; is that correct?

12 A Right. I was looking for evidence that would -- was
13 not -- was not produced in the first trial because I was told,
14 in the initial consultation, that they felt like they didn't
15 get a fair representation. And what I was looking for was
16 anyone who would give testimony in case we were to be granted
17 a second trial that actually could maybe refute or contradict
18 the original trial, not knowing any more than I did at the
19 time.

20 Q Right. In terms of self-defense, what does that mean to
21 you as a non-attorney?

22 A As a non-attorney, you know, if someone -- if someone
23 approaches you in a threatening manner or in a dispute,
24 argument, or what have you and they threaten your life through
25 verbal or physical, defense is -- some of the things I have

1 heard here already -- the ability to defense yourself against
2 physical harm.

3 Q Do you feel like that's a possibility that Mr. Jackson
4 could have had raised at his trial?

5 A I do believe it's a possibility. I'm not here to say
6 that I don't have any facts on the case yet as far as what
7 actually happened in the first trial because I didn't have the
8 transcripts, but I do believe that is something that could
9 come back up in a new trial.

10 Q Okay. This led you to Mr. Harrison; correct?

11 A Correct.

12 Q Okay. What was your contact with Mr. Harrison?

13 A When I met him, I wanted to know everything that happened
14 the night of the incident, and he told me -- he basically
15 convinced me that it was worthy to go forward -- to try to dig
16 more. He convinced me that -- he convinced me at that moment
17 in time that Mr. Harrison -- Mr. Jackson did not have a gun
18 entering the premises that night of the incident. And that --
19 I felt like, okay -- when I started wanting to talk to
20 Ms. Latisha, and I couldn't get ahold of her.

21 Q Right.

22 A And that's kind of where we were at that -- at that first
23 interview.

24 Q Now, who was Mr. Harrison in regards to the events of
25 that night? Was he a bouncer or security?

1 A He was the bouncer serving as security at the front door.

2 Q So he should have had some insight on this; correct?

3 A He had the best knowledge that I could get, yeah.

4 Q Okay. And you indicated that Mr. Harrison told you some
5 certain things in terms of -- generally here.

6 A He did. He did.

7 Q Without going specifically --

8 A Now, I did follow that up on the last visit with him, and
9 we went down to the crime scene after I was -- I felt
10 sufficiently informed about what happened the first time,
11 because I wanted to follow that up with some of the same
12 questions and some new questions.

13 Q So you personally went down to the crime scene?

14 A I did. And actually had the guy that was opening and
15 closing the place -- now he stayed with us during that second
16 visit -- that last visit, and he walked me through the
17 restaurant and bar and showed me where everything was. And
18 then, as we went through, he showed me the bathroom. He
19 showed where the pool tables were. In the second room, he
20 showed me where the bar went down the front part of the crime
21 scene. And then we walked outside, and he verbally described
22 what took place.

23 And then we ran into -- or the gentleman who actually
24 owned the property lived in a double-wide, which is a picture
25 in the report I gave.

1 Q Right.

2 A He came over and we tried not -- we tried to -- we tried
3 to be careful not to alarm him because, obviously, it was his
4 property, but I was able to get some questions in and it led
5 to part of that report, talking about the bullet hole lodged
6 in the front of his house. And that struck me as kind of odd,
7 too, because it -- just things just didn't seem to add up from
8 what I understood at the time.

9 Q Well, specifically, what do you mean by that, that things
10 didn't add up?

11 A Well, this gentleman called me -- and I got to be careful
12 here; I don't want to ---

13 Q I understand.

14 A --- do any hearsay. But from the conversation I had with
15 someone else, I was under the impression that Mr. Jackson was
16 in there, there was a squabble. He had had some quarters down
17 on the pool table. Some other people were upset about it.
18 And there was some kind of verbal altercation.

19 My first impression was, before I got to see the crime
20 scene, was that the bathroom was somewhere near the -- between
21 the bar and the pool tables. Well, on the second visit, I
22 realized the bathroom is way back in the corner on the left in
23 the second big room. The rooms are like the same size and
24 width going back, and there's a wall divider. And in the back
25 corner of the second room, there's a bathroom. And I was

1 under the impression that the bathroom was -- you know, was a
2 good, you know, regular bathroom. But when I went back and
3 looked at it, it was a very small room. It would be very
4 difficult to imagine two grown men in the bathroom.

5 Q And how does the bathroom relate to this case?

6 A Well, this -- well, again, the impression --

7 Q From your personal impressions.

8 A Yeah, my -- my impression was that the shots were fired
9 into the bathroom, but I don't know that. And when I got to
10 thinking about the -- being two men in the bathroom -- and,
11 again, I can't testify to that, Your Honor, because I don't
12 have the -- I didn't have the transcripts. But my impression
13 was there were two men in the bathroom and shots were fired in
14 the bathroom, and one of them got hit and he died.

15 Then when I went to the crime scene and I was able to
16 walk through with the guy who opened and closed the bar, who
17 didn't stay during the altercation -- and I was with the
18 bouncer -- my impression of what happened was totally
19 different. It was like there must have been an argument
20 there, from I heard. And as the altercation became more
21 threatening and more violent, they came -- they basically were
22 chasing Mr. Jackson out of the restaurant and bar, out of the
23 double doors that we had gone in past the vacant part where
24 there must have been chairs around the thing or however it
25 must have been.

1 And I got the impression there was a hail of bullets.
2 Not until after I talked to the gentleman who owned the
3 property who came upon us from the double-wide trailer -- so
4 he came over and we talked a little bit, and he said, "Well,"
5 he says, "You know, I got a bullet lodged in front of my
6 house" --

7 MR. BARLOW: Your Honor, objection to hearsay.

8 THE WITNESS: Okay. You're right. I'm sorry. I knew I
9 was going to get caught.

10 THE COURT: Sustained.

11 THE WITNESS: I'm trying to be careful, Your Honor.

12 BY MR. FOWLER:

13 Q Was there anything that led you to believe, in your
14 opinion as a private investigator, that there may have been an
15 issue with self-defense on this by Mr. Jackson?

16 A Yes.

17 Q How so?

18 A Well, the location of the bathroom where the pool tables
19 were between that and the bar, where Mr. Harrison told me they
20 were sitting at the bar, and then the movement from the bar
21 through the double doors to the outside, and then with the
22 intervention of the gentleman who owned the place, I just -- I
23 just had a very strong suspicion that it was not quite what
24 must have happened in the trial. Not the way it was presented
25 at trial. And that caused me to be a little more concerned

1 about my investigation.

2 And I'm glad I went there that last time to visit the
3 crime scene, because it did alter my impressions. It made me
4 feel like that, in the event that Mr. Jackson is given an
5 opportunity at a second trial, that it might be a totally
6 different outcome.

7 Q Is there anything else about your report that you feel
8 like needs to be brought to the attention of the Court? Or
9 your investigation?

10 A Well, talking to Ms. Jackson --

11 Q And you're referring to who?

12 A Mr. Jackson's mother, Audrey.

13 Q Okay. And she's here in the courtroom?

14 A She's in the courtroom.

15 I felt, because of everything she had told me and knowing
16 that she would show up today, I wanted her to repeat what she
17 had told me in the initial consultation. And I'm satisfied
18 that it's accurate. That's for you to decide, of course. But
19 I felt like I needed to put this in my report because it helps
20 tell the story -- the basis for the impressions that I have
21 given you here today.

22 Q Do you feel satisfied with your report?

23 A I am. I am. I wish I could have talked to more
24 witnesses, and you know, if we go forward -- if we do go
25 forward with another trial, that will certainly be an

1 opportunity.

2 Q So you would be willing to assist the family in any
3 future endeavors related to this matter; correct?

4 A Should they request it, I feel strongly about that, yes.

5 Q And you have no qualms about doing that, do you?

6 A Not a bit. Not a bit.

7 Q Okay.

8 MR. FOWLER: No further questions.

9 THE COURT: Cross-examination?

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

11 Real quickly, Your Honor.

12 CROSS-EXAMINATION

13 BY MR. BARLOW:

14 Q Mr. Drayton, how long after the shooting were you hired?

15 A It's been a couple of years.

16 Q Okay.

17 A Well, if you go back to the trial to when it actually
18 happened, I'm not sure of that date either now.

19 Q Okay. But several years?

20 A Yeah. Up until the time of my being hired at 2020.

21 Q And you went out to this bar and you walked through it;
22 correct?

23 A Right, in December of last year.

24 Q Is there anything to indicate that any renovations had
25 been done?

1 A Any what?

2 Q Renovations had been done.

3 A No. From what my understanding is, that it was closed
4 down right after that or not long after -- whatever that
5 timeline is, and that there's been no business in there since.

6 Q Okay.

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

8 Nothing further, Your Honor.

9 THE COURT: Redirect?

10 MR. FOWLER: I may have just a moment.

11 REDIRECT EXAMINATION

12 BY MR. FOWLER:

13 Q You spoke with Mr. Harrison about this; correct?

14 A That's correct.

15 Q Did he ever indicate that he saw somebody pull a gun on
16 Mr. Jackson or Mr. Harrison? Was there any indication --

17 A No. What Mr. Harrison told me --

18 MR. BARLOW: Objection to hearsay.

19 THE COURT: Sustained.

20 MR. FOWLER: No further questions.

21 THE COURT: All right. Any recross?

22 MR. BARLOW: No, Your Honor.

23 THE COURT: All right. The witness may step down.

24 Thank you, sir.

25 THE WITNESS: Thank you, Your Honor.

1 THE COURT: Next witness?

2 MR. FOWLER: If I may have a moment.

3 Your Honor, at this point, we'd like to call Mr. Marcus
4 Harrison, please.

5 THE COURT: Very well.

6 THE CLERK: Sir, if you'll go to the Bible and place your
7 left hand about Bible and raise your right hand.

8 MARCUS HARRISON,
9 after having been duly sworn, was examined and
10 testified to as follows:

11 THE CLERK: Thank you. Have a seat.

12 DIRECT EXAMINATION

13 BY MR. FOWLER:

14 Q Please state and spell your name for the Court, please.

15 A Marcus Harrison. M-a-r-c-u-s H-a-r-i-s-o-n [verbatim].

16 Q And you're familiar with this matter; correct?

17 A I sure is.

18 Q Okay. And are you familiar with Mr. Jackson's attorney
19 at the time of the trial?

20 A (No audible response.)

21 Q At the time of this trial, did his attorney ever approach
22 you?

23 A Nah. I was called to come up here, then they sent me
24 back home.

25 Q Okay. Well, who -- let's talk about that a little bit.

1 Who called you up here? Was it a subpoena?

2 A Yeah, I got -- got a letter in the mail saying I had to
3 be up here. So when I did come, they told me -- I saw him
4 because I was sitting actually right behind Mr. Jackson.

5 Then, the next thing I know, they told me to go home. And I
6 was like, this was a waste of my time to come up here.

7 Q Okay. Who told you that?

8 A I think it was his lawyer. I don't -- I don't know who
9 is who, but I know they just told me I ain't need to be here.
10 They told me -- I was sitting here. They told me to go back
11 home.

12 Q Did they give you a reason why you needed to go back
13 home?

14 A They ain't tell me nothing.

15 Q Okay. All right. But you did appear in the
16 courtroom ---

17 A Yes.

18 Q --- that day; correct?

19 A Yes.

20 Q All right. And I think you were in the courtroom when
21 Mr. Jackson was testifying; correct?

22 A When I was in here, I ain't even get to see him come up
23 here. Like, it was like, as soon as I sat down, like, five
24 minutes, I was right back out.

25 Q Okay. At the trial; right?

1 A Yeah.

2 Q Okay. All right.

3 Now, you were in -- you were the security that night?

4 A Yes.

5 Q Or what was your --

6 A I was the security.

7 Q Okay. Did the attorney -- I think Mr. Edgeworth -- did
8 he ever go over anything with you about that -- the incident
9 that night?

10 A Talking about the lawyer?

11 Q Yeah.

12 A I ain't talk --

13 Q Now, Mr. Jackson -- let me rephrase. Mr. Jackson's
14 previous lawyer in the trial, did he ever go over anything
15 with you about the incident in question?

16 A I ain't talked to the man a day in my life.

17 Q Okay. Did he ever call you?

18 A He ain't never called me.

19 Q Never sat down with you, did he?

20 A No.

21 Q Do you think that you may have been a helpful witness to
22 Mr. Jackson?

23 A To be honest, yes.

24 Q Okay. Why do you say that?

25 A Because I was there. Nobody else knows what was going on

1 out there. Nobody was there but me.

2 Q Okay. Do you think that Mr. Jackson, in your opinion,
3 could have been -- could have used self-defense as a defense
4 in this matter?

5 A Yes.

6 Q Why do you say that?

7 A The reason why? Because the whole time, as Mr. Jackson
8 was out there -- you know, I never seen his face. Never did.
9 Never seen him a day in my life. I always make sure, like,
10 when we got somebody new, I make sure everybody know don't
11 come in with no weapons or none of that.

12 But the whole time, I said -- I was sitting there
13 watching. You know, I felt something shaky. I asked him was
14 he all right. He said yes. So I know by anything that could
15 have happened, I know I would have did the same thing too,
16 because if somebody pulled a weapon on me, in front of me, I'm
17 going to retaliate too.

18 Q In terms of your role that night, you -- what was your --
19 how did you inspect the people coming in? Did you inspect the
20 people coming in with a pat -down or something?

21 A I search each person that came in there. It's be so much
22 we can search on a female, so -- because, at the same time,
23 you know, they can sue you.

24 Q Okay.

25 A So I did not get to search the female like I searched the

1 males.

2 Q All right. So -- is that just club policy?

3 A That's what all clubs policy is.

4 Q Okay.

5 A You have got to have a female if you want to physically
6 search a female.

7 Q Now, are you referring to a particular female
8 particularly, like Latisha Lawson?

9 A That's with any female. Like, any club you go to, you
10 got to have a female security to actually search females the
11 way they're supposed to be searched.

12 Q Okay.

13 A A male security cannot do it.

14 Q Okay. Do you remember if -- how does Latisha Lawson
15 relate to this in your opinion? Is she somebody -- what's
16 her -- what's her relation to this matter?

17 A I don't know. All I know is she came out with them.
18 That's all I know.

19 Q Okay. All right. Do you remember if you did a pat-down
20 on Mr. Jackson?

21 A Yes. I pat Mr. Jackson down thoroughly, all between the
22 crotch and everything.

23 Q Okay. And do you remember what you -- what your results
24 were?

25 A He didn't have anything.

1 Q Okay. According to the report that's entered into as a
2 Court Exhibit No. 1, it said that there perhaps may have been
3 local gangs there such as Bloods or Crips. Are you familiar
4 with that?

5 A Yes.

6 Q Okay. Do you think some of them may have been there that
7 night?

8 MR. BARLOW: Your Honor, objection. Speculation.

9 MR. FOWLER: Well, he's the bouncer, Your Honor.

10 THE COURT: Why don't you rephrase your question.

11 BY MR. FOWLER:

12 Q Do you think that there would be concern for Mr. Jackson
13 being there of the night in question?

14 MR. BARLOW: Objection. Speculation.

15 THE COURT: I think you -- trying to ask if there were
16 certain groups that were there. I think you can just
17 specifically ask the question based on his personal knowledge.

18 BY MR. FOWLER:

19 Q Do you know if certain groups were there?

20 A Yeah, there's a lot of groups -- there was a lot of
21 groups there.

22 Q Did they have any names you could share?

23 A Bloods, Crips, folks (ph), whatever you want to call
24 them.

25 Q And because of that environment, do you think that

1 Mr. Jackson may have feared for his safety?

2 MR. BARLOW: Objection. Speculation?

3 A At the same time --

4 THE COURT: Sustained.

5 BY MR. FOWLER:

6 Q Okay. The point is, you never spoke with his attorney?

7 A Right.

8 Q The attorney never reached out to you?

9 A Never did reach out to me.

10 Q Okay. Do you feel like it would have been helpful --

11 A I was there, yes, it would have been a whole lot --

12 Q Let me -- let me finish the question.

13 Do you think it would have been helpful for Mr. Jackson's
14 defense for his attorney at the time to reach out to you?

15 A Yes.

16 Q Because you could have helped as a witness ---

17 A Yes.

18 Q --- for Mr. Jackson?

19 A Yes.

20 MR. FOWLER: May I have just a moment, Your Honor?

21 THE COURT: Certainly.

22 BY MR. FOWLER:

23 Q Do you know if there was anybody who pulled a gun on
24 Mr. Jackson?

25 A Say that again.

1 Q Did you perceive or did you see anybody pull a gun on
2 Mr. Jackson?

3 A Yes.

4 Q Okay. And who was that?

5 A It was the dude that actually started the whole -- the
6 whole thing.

7 Q Do you remember his name?

8 A I do not remember his name.

9 Q Okay.

10 MR. FOWLER: Just a moment, Your Honor. I apologize.

11 Your Honor, after consulting with my client, no further
12 questions.

13 THE COURT: Cross?

14 MR. BARLOW: Thank you, Your Honor.

15 CROSS-EXAMINATION

16 BY MR. BARLOW:

17 Q Hi, Mr. Harrison. How are you?

18 A I'm doing all right.

19 Q I'll try to be brief with this.

20 You -- on direct, you said you searched each and every
21 person that came into that bar that night; correct?

22 A Yes.

23 Q Okay. And you searched Mr. Jackson?

24 A Yes.

25 Q And you did not find a gun on him?

1 A I didn't.

2 Q Okay. Were you here when he testified earlier?

3 A When he testified earlier?

4 Q Mm-hmm.

5 A Today?

6 Q Yes.

7 A Yes.

8 Q Okay. Did you hear him testify that he had the gun on
9 him both times he entered the facility?

10 A He really didn't say it like that. He didn't say it like
11 that.

12 Q Okay.

13 A He didn't have the gun until after the fact the girl done
14 came in. The girl had the gun, so if he had the gun, he had
15 to get the gun from the girl. It's but so far we can touch on
16 a female.

17 Q And your testimony is that another guy that was in the
18 facility at the time had a gun on him?

19 A Yes.

20 Q So he got through security with a gun?

21 A That's -- see, I didn't got there until late. So if you
22 come early before the security even get to a club, anything
23 can get in the club.

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

25 Nothing further, Your Honor.

1 THE COURT: Any redirect?

2 MR. FOWLER: Your Honor, after consulting with my client,
3 no further questions.

4 THE COURT: All right. The witness may step down. Thank
5 you.

6 MR. FOWLER: Your Honor, may I have just a moment,
7 please?

8 Your Honor, after consulting with my client, no further
9 witnesses.

10 THE COURT: All right. The State ready to proceed or put
11 up their case?

12 MR. BARLOW: We are ready, Your Honor. Let me step out.
13 Mr. Edgeworth may be in the hallway.

14 THE COURT: All right.

15 MR. BARLOW: He was here.

16 THE COURT: All right.

17 (Pause in the proceedings.)

18 MR. BARLOW: Your Honor, the State calls Mr. William
19 Edgeworth.

20 THE COURT: All right. Very well.

21 THE CLERK: Mr. Edgeworth, if you will stop at the Bible.

22 MR. EDGEWORTH: Yes, ma'am.

23 THE CLERK: Place your left hand on the Bible and raise
24 your right hand.

25 WILLIAM "JOSH" EDGEWORTH,

1 after having been duly sworn, was examined and
2 testified to as follows:

3 THE CLERK: Thank you.

4 DIRECT EXAMINATION

5 BY MR. BARLOW:

6 Q Mr. Edgeworth, will you state your name and spell your
7 last name for the record.

8 A Sure. My formal legal name is William Foster Edgeworth
9 III, spelled E-d-g-e-w-o-r-t-h, but I go by Josh.

10 Q All right. Thank you.

11 How long have you been practicing law?

12 A I was admitted in January of 2006.

13 Q And how much of that has been in criminal law?

14 A I have been practicing criminal law since -- let's see
15 here. Well, late 2009/early 2010.

16 Q And you were retained in this case?

17 A I was.

18 Q And roughly how long before the trial were you retained?

19 A I believe I was retained in July of -- trying to think of
20 the actual date. But the trial -- trial occurred
21 approximately a year after I was retained.

22 Q And during that time, did you receive discovery?

23 A I did.

24 Q And did you review discovery with the Applicant?

25 A Yes, I did.

1 Q Do you recall how many times you met with him?

2 A I believe -- we had several meetings at the detention
3 center. It would have been at least three times to go over
4 discovery and any requests, you know, that were made as far
5 as, like, case strategy or things like that.

6 Q Do you recall if Mr. Jackson requested a copy of his
7 discovery while in the jail?

8 A I don't recall specifically, but I assume that he did
9 because most of my clients do.

10 Q Is it your standard practice to provide them a copy of
11 their discovery in jail?

12 A It's normally on a case-by-case basis. You know, in this
13 particular case, there was, you know, gang-related
14 connections, and so, in that example, I would have gone over
15 with him, you know, the pros and cons of having possession of
16 that, of those documents in his possession at the detention
17 center.

18 Q Can you give us a brief overview of your understanding of
19 the State's evidence in this case?

20 A Sure. Well, the State's theory was, of course, that this
21 matter was a bar fight gone awry over a game of pool. They
22 believed that Mr. Jackson, you know, went there -- I don't
23 know that they necessarily thought he went there looking for
24 trouble but found trouble. And after having the altercation
25 with the decedent, Mr. Spates -- Malcolm Spates was killed

1 during the argument.

2 Q And based on the evidence, you were able to craft -- were
3 you able to craft a defense strategy?

4 A Yes. I mean, Mr. Jackson's position on the thing the
5 whole time was self-defense. He alleged that the decedent was
6 going to pull a gun on him, and he just happened to be the
7 quicker draw.

8 Q One of the allegations is that you failed to investigate
9 the video that was altered by the State. Do you recall that?

10 A The allegation?

11 Q Do you recall the video that was entered into evidence
12 that was altered?

13 A Yes. I mean, there was conversation during the trial
14 about it. I don't know that it was altered but it was two --
15 two parts -- it was a video and an audio component of the same
16 evidence.

17 Q Do you recall arguing the prejudice nature of that video?

18 A Yes. We objected to it and that objection essentially
19 was overruled. And I think the resolution from Judge Seals
20 was that, ultimately, what was satisfactory was that the
21 best -- the best that the State was able to make the audio and
22 the video consistent.

23 Q And let me jump back real quick. Did you move for a
24 continuance in this case?

25 A Yes.

1 Q And what was the result of that?

2 A Judge Russo denied that motion.

3 Q Okay. Next one was failure to investigate all the
4 evidence presented by the State, proving that the victim did
5 have a gun.

6 A Well, there was no -- there was no proof that the victim
7 had a gun other than my client's testimony. There was no
8 evidence from law enforcement of, you know -- you know,
9 cross-fire, which was essentially consistent with my client's
10 statement that he was the quicker draw. We -- there was -- we
11 did hire or I did hire a private investigator to, you know, go
12 to the scene to speak to the owner, to speak to witnesses, and
13 we did attempt to impeach the fact that the defendant --
14 excuse me, the decedent, Mr. Spates, had firearms because
15 there was evidence in the State's file that purported to show
16 that, in his vehicle or vehicle that he had possession of,
17 there was firearms. The State's testimony was that those
18 records were inaccurate.

19 Q There was some testimony here today regarding the -- one
20 of the victims in this case had GSR on his hand. Do you
21 recall that?

22 A That the decedent had GSR on their hands?

23 Q One of the victims -- it was in direct of Mr. Jackson.
24 Do you recall one of them having GSR on their hands?

25 A Not to my -- not to my knowledge.

1 Q Okay.

2 A I know that there was an issue made at trial about the
3 lack of GSR evidence that we used as impeachment evidence
4 during the trial.

5 Q Okay. And you stated you hired a private investigator.
6 Who did you hire?

7 A Mr. Phil Grimsley.

8 Q Okay. And did Mr. Grimsley provide you with a report?

9 A He provided me -- yes, he provided a whole notebook of
10 photos and, you know, time sheet showing who he spoke to and
11 when. There was copies of the subpoenas to the various
12 witnesses that he served. So, yes, there was a report.

13 Q Did you ever share that with Mr. Jackson?

14 A I discussed it with him. Due to -- due to the timing of
15 the trial itself, the investigator was engaged, you know,
16 towards the end in preparation for trial primarily to discuss
17 and get access to what could have been or what my client
18 believed to be favorable witnesses.

19 The State had already identified the fact that most of
20 the individuals that were in the vehicle with Mr. Jackson were
21 witnesses, and we knew what they were going to say but we had
22 not heard specifically from -- and basically kind of -- based
23 on the lack of investigation from law enforcement as to, you
24 know, say, like the owner or some of the other individuals
25 that were going to be party to -- or part of the trial.

1 Q Another allegation was that you failed to have -- well,
2 Mr. Harrison; you failed to call him as a witness. Do you
3 recall that?

4 A I recall the allegation, yes.

5 Q Okay. And is there a reason that you did not call
6 Mr. Harrison at trial?

7 A Absolutely, yes. So Mr. -- my client testified and he
8 testified in somewhat of a consistent manner with what his
9 story was to me throughout my representation, which was
10 that -- that he had taken a firearm into the bar or the club
11 from the outset of the evening based on the recommendation
12 from the lady that he went to the bar with, being that it was
13 a place of known violence, that violence -- you know, things
14 happened there.

15 When we spoke to -- or when I spoke to -- Mr. Grimsley
16 identified the fact that I should speak to Mr. Spates. I
17 recall that. And when I spoke to him -- and that was here in
18 the courthouse -- he indicated that, you know, there would
19 have been no way -- I just felt like he was protecting himself
20 in a way. He was saying there's no way anybody would have
21 gotten past me with my guns, like, "I do my job," which I
22 wasn't going to dispute, but I didn't feel like that that was
23 going to be favorable testimony when my client had already
24 said that he walked right past him with a gun.

25 So it was just my -- since we had the evidence that we

1 needed already in the record that supported my client's theory
2 of the case, then I just chose not to call him as a witness.

3 Q Okay. Do you recall during the jury charge that --
4 objecting to the -- well, rather arguing with the Court on the
5 charge of manslaughter for your client?

6 A Yes, absolutely.

7 Q Okay. Do you think it was objectionable?

8 A Was my objection a valid objection?

9 Q Well, I don't know that it was an objection necessarily.
10 It was -- the Court asked you about the voluntary charge and
11 what your position was -- what your position was on the
12 counter of that, but you had a -- do you feel that it was an
13 objectionable charge?

14 A I guess I'm trying to be clear on what you're actually
15 asking me. I mean...

16 Q Let me rephrase this.

17 A Yeah.

18 I mean, I can tell you how it came to be.

19 Q Yes. Tell us how the charge for voluntary manslaughter
20 came to be.

21 A Okay. So there was an off-the-record chambers
22 conversation where Judge Seals indicated that he was going to
23 charge -- make that jury charge, which I objected to, and
24 initially, the State actually objected to it.

25 And so, at the conclusion of the conference, Judge Seals

1 essentially gave the State the night or whatever -- some
2 opportunity to determine what their position was going to be.

3 On the record, I think their position was that they were
4 requesting the charge -- the voluntary manslaughter charge.
5 And my thought at the time was they thought that they had the
6 case in the bag, you know, so they didn't want the voluntary
7 manslaughter charge.

8 And I discussed this with Mr. Jackson, the pros and cons
9 of us requesting it, to include the fact that, you know, we
10 thought -- or I thought that it was a little tenuous, the
11 position that Judge Seals took on whether or not it was an
12 appropriate charge legally, sufficient provocation charge,
13 when, on the record, the State, you know, requested the
14 charge, I re-raised what essentially was my objection to it
15 because we didn't want it, and I felt like that we had a good
16 opportunity to get -- if we were going to get a not guilty
17 verdict, it was going to come from the murder and the
18 attempted murder, but, you know, subsequently, when he was
19 convicted of the voluntary manslaughter, which gave rise to
20 the post-trial motion, so...

21 Q And do you recall improper information being given by the
22 State regarding a pending drug charge?

23 A I think Mr. Jackson -- if I recall correctly, advised
24 that there was something in his NCIC that was inaccurate, and
25 I believe that that was -- I mean, he told me that there was

1 something wrong in the NCIC, but I do not specifically recall
2 raising that issue as it relates to the, you know, his record
3 for sentencing. I mean, that's when it would have been
4 brought up.

5 Q Okay. And have you had an opportunity to look at the
6 verdict form?

7 A Yes.

8 Q On that verdict form on the voluntary manslaughter and
9 the attempted murder, it has "guilty plea" and then -- or "not
10 guilty" on the left and "guilty plea" on the right. No one
11 objected to that being on that verdict form at that time to
12 include you, the judge, and the solicitor; correct?

13 A That is correct.

14 Q In your professional opinion, do you think that the jury
15 was -- or -- yeah, do you think that the jury was confused
16 by --

17 MR. FOWLER: Objection, Your Honor. Speculation. He's
18 asking what the jury --

19 MR. BARLOW: In his professional opinion.

20 THE COURT: He can raise the question of what he thinks
21 of it, not what the jury thought of it.

22 BY MR. BARLOW:

23 Q What do you think of that? Do you think that it
24 prejudiced your client?

25 A I do not think it prejudiced my client, I mean,

1 especially based on the totality of the verdict itself. I did
2 not recognize it at the time, but I don't know that -- I guess
3 no one did, noticed that it said "plea" beside it.

4 Q And the next one is, did you fail to object to the charge
5 of self-defense and mutual combat? Do you recall that charge?

6 A The jury charge?

7 Q Yeah.

8 A Yeah, I recall the charge.

9 Q It's Applicant's contention that because mutual combat
10 was charged along with self-defense that the -- that it
11 prejudiced him, that it confused the jury.

12 A I don't think it confused the jury.

13 Q In your opinion, do you think that that charge was
14 correct as given?

15 A Well, I think it was consistent with what the testimony
16 was.

17 Q And our last one here is that you failed to raise
18 pre-trial motions. Are there any pre-trial motions such as a
19 suppression of evidence that you should have done?

20 A No. We had a Jackson v. Denno because that was
21 appropriate. I don't think there's any -- there was no
22 evidence that was presented during the trial that there was a
23 suppression issue on, physical or otherwise.

24 MR. BARLOW: Nothing further, Your Honor.

25 THE COURT: Cross-examination?

1 CROSS-EXAMINATION

2 BY MR. FOWLER:

3 Q You said you spoke with Mr. Spates. What was your
4 discussion like with him?5 A Well, Mr. Spates was the decedent. I didn't speak to
6 him.7 Q Okay. But didn't, on direct examination, you said you
8 spoke with a Mr. Spates?9 A I don't recall saying that. I spoke with Mr. Harrison,
10 who was -- I personally spoke with him in the hallway.11 Q Okay. So you're saying you didn't speak with Mr. Spates;
12 right?

13 A No, I did not. He was dead.

14 Q Okay. In terms of gun residue, did you ask for any kind
15 of gun residue tests or did you seek any kind of gun residue
16 test on the victim in this case?

17 A Did I seek it? No.

18 Q So you didn't pursue any kind of gun residue case; right?

19 A No. Most of the time, those things are -- by the time
20 you get to that, that ship's done sailed. I mean, there was
21 an autopsy, so they either performed the GSR test or they
22 didn't.23 Q Okay. And it is your contention they did not do a GSR
24 test; right?

25 A Contention? That's my recollection.

1 Q So you don't -- okay. So did they do a gun residue test
2 on the victim or not?

3 A As I sit here at this moment, I do not recall.

4 Q Okay. Let me draw your attention to page 328 in the
5 transcript. And I have it here if you want to take a look at
6 it.

7 A Okay.

8 Q It says, starting on line 19, "Now directing your
9 attention to Item No. 61, gunshot residue kit from Malcolm D.
10 Spates, the victim in this case, were you able to perform an
11 examination or analysis of that gunshot residue kit?"

12 "Yes, sir."

13 Line 23: "And what conclusions did you come to with
14 regards to that kit?"

15 "The resulting [sic] were particular characteristics of
16 gunshot primer residue were found."

17 So how did you use that in your defense of Mr. Jackson?

18 A Well, I think that was -- that sounded more like a direct
19 question from the State; is that correct?

20 Q Well, you tell me. You were the attorney. I mean, I
21 wasn't there.

22 A Well, I'm trying -- I didn't know where you were reading
23 from, so...

24 Q You're welcome to take a look at it.

25 A Well, that's why I tried to pull it up.

1 Q Sure. Page 328 towards the bottom.

2 A Okay. Well, there it is right there. Yeah, it's the
3 direct by the State. That's what I was saying. That's their
4 question, yeah.

5 Q But it says that there was one; correct?

6 A Mm-hmm. Yeah. And I think, if I can recall correctly, I
7 think there was -- there was the issue that was made about
8 whether or not these close quarters --

9 Q Well, let me just -- answer my question, please.

10 A Okay.

11 Q How did you use the gun residue results from this study
12 in the defense of Mr. Jackson?

13 A Without going through the transcript, I don't
14 specifically recall what I asked at this time.

15 Q Okay. So, bottom line, according to the transcript,
16 there was a gunshot residue kit performed; is that correct?

17 A Yes.

18 Q And the conclusions were that -- line 25, page 328 -- the
19 results were particles characteristic of gunshot primer
20 residue were found; correct?

21 A That's what it says.

22 Q Okay. And you didn't use that in the defense of
23 Mr. Jackson, did you?

24 A Like I said, I don't recall. I mean, I can -- I don't
25 recall specifically what I said about that.

1 Q So by not recalling, you don't remember doing that, do
2 you?

3 A Yes, I do not recall what the strategy was about that or
4 not.

5 Q And the gun residue on the victim's hands could have
6 possibly led to some kind of self-defense; is that correct?

7 A Yes, that was the theory of the case.

8 Q Well, whose? Your theory or -- whose theory was it?

9 A Our defense was self-defense. So that was the defense's
10 theory.

11 Q Okay. So I guess what I'm saying is this: The theory of
12 the case was self-defense; correct?

13 A Correct.

14 Q There was a gun residue primer result residue found on
15 the victim's hands; correct?

16 A Yes.

17 Q And you did not use that in your case of self-defense
18 defending Mr. Jackson; correct?

19 A Well, not -- not directly. I mean, you're trying to say,
20 like, did I bring it up over and over again. I don't think we
21 did because, in this particular case, the State's argument was
22 that, if I recall -- I mean, I guess we can sit here and read
23 it, but that the quarters -- this bar is maybe like the size
24 of this area here --

25 Q Wait -- I'm not asking you about the bar.

1 A Okay.

2 Q I'm asking you about you using the gun residue found on
3 the victim's hands in the defense of Mr. Jackson. Yes or no:
4 You did not use it? Correct?

5 A I used it in the negative, which is what I was trying to
6 explain, but okay.

7 Q Well, you started talking about the bar, so I just
8 didn't -- you know, I just wanted to know about that, so...

9 A Well, do you want me to explain it or do you not want me
10 to explain it?

11 Q Explain.

12 A Okay. So, yeah, again, their theory was that this was
13 close quarters bar. It's literally the size of this area
14 right here that we're -- you know, that I'm sitting in, and
15 that it could have been residue from Mr. Jackson's gun that
16 they found. So since Mr. Jackson's testimony was that he was
17 the quicker shot and there was no physical evidence of a
18 gunfire back behind him, which was where Mr. Spates would have
19 been shooting, then I didn't go with the theory of fighting
20 the GSR. It made more sense to put up the self-defense case
21 that he was going to be shot, which is what his testimony was,
22 and he just happened to be the quicker shot. That's what his
23 testimony was.

24 MR. FOWLER: May I have just a moment, Your Honor?

25

1 BY MR. FOWLER:

2 Q You said you hired Mr. Phil Grimsley; is that correct?

3 A That is correct.

4 Q Okay. What did he do for this -- for your client in this
5 matter?

6 A He went to the bar. He took numerous photographs of the
7 bar. He gave a layout of the proximity and just as I was just
8 describing, the size and nature of the bar. My recollection
9 was that it was kind of like one of those -- like a concrete
10 building outhouse essentially. It's not a very big place that
11 just served as a bar for some locals.

12 He spoke to the owner of the bar. He spoke to
13 Mr. Harrison. He spoke to a lady that was the bartender and
14 reported back to me with the photos and the contents of his
15 conversation with those individuals.

16 He mentioned that -- he specifically mentioned that I
17 should probably speak to Mr. Harrison just based on his
18 conversation with him, which I subsequently did, and -- I'm
19 trying to think.

20 And he also served Mr. Harrison and the bartender lady
21 with subpoenas for the trial.

22 Q So Harrison and the bartender?

23 A Yes.

24 Q Do you remember her name?

25 A I don't remember, but I have a copy of it somewhere.

1 Her name was Samantha Gibson.

2 Q Okay. So you subpoenaed her to the trial; correct?

3 A That is correct.

4 Q Did she show up?

5 A I'm not -- not certain.

6 Q Well, now, you issued a subpoena and you don't know if
7 she showed up for trial or not?

8 A Well, as I mentioned before -- okay, to answer that
9 question, I do not recall. But, also, the -- I specifically
10 recall the conversation with Mr. Grimsley telling me that she
11 didn't really have anything to offer. She did not provide
12 anything that he thought was beneficial to my case, but
13 because those are the individuals he spoke to, he served them
14 with subpoenas for trial.

15 He did tell me that I should speak to Mr. Harrison, which
16 is what I did.

17 Q All right. Well, let's talk about the bartender. So you
18 subpoenaed a witness to trial even though you're saying that
19 your investigator said that she would not be helpful?

20 A Because -- because of -- our game plan going into the
21 investigation was, whoever you speak to, go ahead and put them
22 under subpoena in case I need them for trial because the trial
23 was within a month or a week or two of this investigation.

24 Q How did you share the results of Mr. Grimsley's
25 investigation with Mr. Jackson?

1 A As I mentioned, there was a very large notebook of photos
2 that was provided. We went -- we looked at the photos. I
3 mean, it was consistent with the layout, but, obviously, they
4 weren't photos related to the crime scene because it was done,
5 you know, somewhat -- almost a year after the incident and
6 discussed what he talked about. I mean, it was literally just
7 a folder of photos and a timeline of his contact.

8 Q So did Mr. Grimsley provide any information that could
9 have been helpful at trial?

10 A Well, he -- there wouldn't have been any information that
11 he could have testified to that would have been beneficial.
12 He had conversations with other individuals.

13 Q But he issued a report; correct?

14 A Well, like I said, it wasn't -- it wasn't a report. It
15 was a photo array and a timeline of conversations that he
16 had -- at least this is my recollection. I'm sure it's
17 been -- if I can -- if I need to, you know, this particular
18 file, I had an office flood because the roof collapsed and I
19 lost the physical file. So -- but I do specifically recall
20 the photo notebook that Mr. Grimsley provided as part of
21 his -- his investigation.

22 Q Did you provide a copy to Mr. Jackson?

23 A I had one.

24 Q Did you provide a copy to Mr. Jackson?

25 A I did not provide a copy. I showed him what was in it.

1 Q What about the other discovery? How did you provide that
2 to -- I assume you asked the solicitor's office for discovery
3 in this matter; correct?

4 A That is correct.

5 Q Did you share a copy of that with Mr. Jackson?

6 A Yes.

7 Q In terms of the video, you said that Judge Seals made a
8 ruling on that; is that correct?

9 A Yes.

10 Q The video that -- there was some video -- I'm referring
11 to it as "the video" -- the video/audio compilation.

12 And what did Judge Seals render on that?

13 A Well, my recollection was is there was concern about the
14 fact that it was an audio and a video, and it was -- it could
15 have been confusing. It was also used during the Jackson v.
16 Denno because there was a statement that they wanted to bring
17 in from -- that was overheard by law enforcement.

18 But, in any event, the issue was is that it was kind
19 of -- it was broken into two parts, and my concern was, kind
20 of like a best evidence or, you know, a situation where it
21 wouldn't be consistent with what actually happened.

22 So the State, for lack of a better word, just combined
23 the two pieces of evidence into one, and that's what they used
24 for trial.

25 Q Did you make any kind of motion to suppress that at any

1 point before or during the trial?

2 A To suppress --

3 Q Some audio/video.

4 A No.

5 Q In terms of Mr. Harrison, he's here today in the
6 courtroom; correct?

7 A I believe that's him in the back in the blue shirt, yes.

8 Q Okay. How did you speak to -- or did you speak to him
9 before trial?

10 A I spoke to him during the trial in the hallway.

11 Q Okay. But Mr. Grimsley, according to your testimony,
12 said that Mr. Harrison could be a favorable witness; correct?

13 A He said I need to speak to Mr. Harrison and thought
14 that -- but, like I already testified to, when I spoke to
15 Mr. Harrison in the hallway, I took his demeanor to mean that
16 he was being protective of his job or position because he
17 didn't really concede the fact that someone could get past him
18 as the bouncer with -- with guns, which we already knew to be
19 the case from the testimony, so I wasn't going to allow him to
20 do that.

21 Q Well, let me just be clear on this. Mr. Harrison was
22 your only witness in the self-defense of -- in the case for
23 Mr. Jackson; correct?

24 A No, he didn't witness anything.

25 Q No, no, no. You subpoenaed him to court; correct?

1 A Yep.

2 Q Okay. And the only time -- and he could have had
3 information that could have been favorable to Mr. Jackson;
4 correct?

5 A No. That's why I didn't call him to testify, because
6 what he had to say was not favorable to my client.

7 Q But your discussions with him was only just for a few
8 moments before court; is that correct? You didn't ask him to
9 come to your office, did you?

10 A No.

11 Q And you didn't have any kind of in-depth conversation
12 with him about this, did you?

13 A No.

14 Q Okay.

15 MR. FOWLER: If I might have just a moment, Your Honor.

16 Just a moment, please, Your Honor.

17 BY MR. FOWLER:

18 Q All right. I guess my question is, how many times did
19 you state that Mr. Jackson acted in self-defense during the
20 trial? Do you recall that?

21 A How many times I used that --

22 Q You said that was a theory of the case; correct? In your
23 defense; right?

24 A That's what Mr. Jackson --

25 Q Did you either address the Court or the jury about him

1 acting in self-defense specifically?

2 A I'm sure I did. I do not recall how many times I used
3 the phrase.

4 Q Now, your practice, are you -- just closing up here --
5 are you primarily a criminal lawyer or do you do other type of
6 work?

7 A 90 percent of what I do is criminal defense. I serve as
8 juvenile public defender in Georgetown County. I serve as a
9 608 contract attorney in multiple counties. I serve as the
10 magistrate public defender in Georgetown County. 90 percent
11 of what I do is criminal defense.

12 Q Okay.

13 MR. FOWLER: After consulting with my client, Your Honor,
14 no further questions.

15 THE COURT: Redirect?

16 MR. BARLOW: Nothing from the State, Your Honor.

17 THE COURT: All right. The witness may step down. Thank
18 you.

19 THE WITNESS: Thank you, Judge.

20 THE COURT: Any other witnesses for the State?

21 MR. BARLOW: Your Honor, no further witnesses.

22 THE COURT: Counsel approach real quick.

23 MR. BARLOW: May we release him?

24 THE COURT: Certainly. Without objection or he is on --

25 MR. FOWLER: Hold on. After consulting with my client,

1 Your Honor, we can release him.

2 THE COURT: All right. Y'all approach real quick.

3 BENCH CONFERENCE

4 (A bench conference was held off the record and outside
5 of the hearing of others.)

6 THE COURT: Okay. Mr. Jackson, what I just told the
7 lawyers is I'm going to take the matter under advisement.
8 Ordinarily, we could have oral arguments as well, but we have
9 been here for a while; there's a lot to summarize. So what I
10 have told them is they can email me, you know, their summary
11 of their proposed arguments. And then I'll review all that
12 and I'll come up with a decision in the coming days and weeks.
13 But I wanted them to have the benefit of sitting down and
14 articulating their thoughts in writing for me on the -- on
15 what the proposed outcome should be and why. Okay?

16 Anything else for the record in this case?

17 MR. BARLOW: Nothing from the State, Your Honor.

18 MR. FOWLER: Your Honor, I -- is there any particular
19 time frame for this or not?

20 THE COURT: How about ten days?

21 MR. FOWLER: Ten days. Yes, sir.

22 THE COURT: While it's fresh in your head.

23 MR. FOWLER: Yes, sir.

24 THE COURT: Okay.

25 MR. FOWLER: Nothing else.

1 THE COURT: Under advisement. Thank you.
2 (The above matter concluded at 12:54 p.m.)
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1 CERTIFICATE OF TRANSCRIBER

2 CASE NAME/NUMBER: Diondrae Jackson v. State

3 2021-CP-21-02627

4 DATE OF HEARING: June 2, 2023

5 COURT REPORTER/MONITOR: DCRP

6 *****

7 I, Bobbi Fisher, do hereby certify that the foregoing
8 transcript is a true and correct record of the recorded
9 proceedings; that said proceedings were transcribed to the
10 best of my ability from the audio recording and supporting
11 information, and that I am neither counsel for, related to,
12 nor employed by any of the parties to this case, and I have no
13 interest, financial or otherwise, in its outcome.

14
15 16
17 /s/ Bobbi Fisher_____

18 Bobbi Fisher, RPR and Certified Transcriber

19 Date Submitted: 10/14/24

20 NOTE: PURSUANT TO RULE 607(h)(1)(B), SCACR, "A COURT
21 REPORTER SHALL RECEIVE THE FEE OF \$1.00 PER PAGE FOR
22 FURNISHING A COPY OF A PREVIOUSLY PREPARED TRANSCRIPT."
23 ALL REQUESTS FOR COPIES OF THE ATTACHED TRANSCRIPT (FORM
24 800) FROM OPPOSING PARTY OR NON-PARTIES MUST BE SENT TO
25 THIS REPORTER AT BFISHER@SCCOURTS.ORG.

Drayton Investigations LLC**Sumter, SC 29150****803-464-2710****Appeal for New Trial****# ²⁰²¹2022-CP-21-2627**

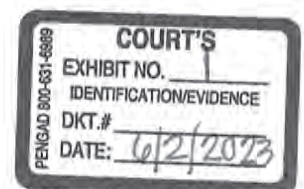
Drayton Investigations LLC was contacted on June 8th, 2020 by Mrs. Audry Jackson concerning Post Conviction relief for her son Deandre Jackson who had been convicted of voluntary manslaughter by a Guilty Plea in Florence County Municipal Court on (Indictment no. 2018-CS-21-01599). Mrs. Jackson alleges that her son's trial had many discrepancies and wanted an independent Investigation conducted as to the witnesses involved in the case.

Drayton Investigations is a private Investigative firm operating under the authority of South Carolina Law Enforcement Division Certificate number 2828 and is a dis-interested third party to this action.

A limited copy of the trial was provided by the client for the purpose of this investigation. A key witness in the trial was available for interview.

Marcus Harrison

If the death of a victim resulted from the defendant acting in self-defense the defendant's behavior may be excused under both voluntary and involuntary manslaughter. In the case of The State of South Carolina vs Diondrae' Emanuel Jackson **Docket # 2022-CP-21-2627**. It is believed that Mr. Jackson's defense evolved around the allegation of self-defense from a fear for his safety and the criminal prosecution was primarily concerned with evidence that Mr. Jackson came into the Bar with a weapon (Gun) during the incident in question on the night of the shooting. **Mr. Jackson alleges that he feared for his life resulting from a quarrel over a pool game.** He states that a gang called Bloods was playing pool on the night in question.



Mr. Harrison was in the courtroom during the trial and it is unclear as to why Mr. Harrison was not called by the defense attorney Mr. Edgeworth. The allegation by Mr. Jackson is that his testimony would or could have made a difference in the eyes of the jury.

Mr. Marcus Harrison was the Bouncer in charge of security at the establishment on the night in question and was sought out and interviewed as to his actions in his capacity as security.

Mr. Marcus Harrison was questioned on April 7th of 2021 (see picture) at his apartment about the procedures used for patrons entering the establishment. Mr. Harrison stated that he inspected and patted down anyone who was suspected of carrying a gun or knife on the night in question. **Mr. Harrison also stated that Mr. Jackson was a new customer to his best recollection and new to this Bar. Mr. Harrison restated that he was in court the day of trial awaiting his opportunity to tell of the events leading up to the tragedy on the night in question. He volunteered his testimony without subpoena but was not called.** He also recalled with clarity that he remembered Mr. Diandrae Jackson entering the bar as a visitor with a Ms. Latisha Lawson and because Mr. Jackson was not a frequent customer he was patted down to make sure he was not carrying any weapons of any kind. Mr. Harrison stated that Mr. Jackson had no such weapons and was cleared to enter the establishment. **Mr. Harrison was asked if the bar was frequented by members of any of the local gangs such as the Bloods or Crypts.** Mr. Harrison stated that members of the gang called bloods did regularly hang out at the establishment and to his memory there were members of the Bloods in the bar that night. **This would be important as to whether Mr. Jackson was in fear of his safety.** As to whether this was brought up in court proceedings it is not clear to this Investigator at this time as no transcripts were provided.



Mr. Marcus Harrison.

Mr. Harrison's last known address is where the interview took place on April 7th, 2021 at 720 S. Dargan St. Florence, SC.

A statement was taken from Ms. Audrey Jackson, the mother of Diandre Jackson and is as follows:

Statement: Ms. Audrey Jackson

My name is **Audrey Jackson. I am the mother of Diondrae' Jackson.** In May 2018 **We hired William Josh Edgeworth** to represent Diondrae' in court. At that time we had no idea that Diondrae' would not be given proper representation that was required to handle this case. **Within 5 to 7 months** the case was rushed into court. Mr. Edgeworth had only visited Diondrae' twice and his excuse was that he was in court on other cases or that he was out of town. **Names that were given to him to call as witnesses were not contacted.** The bouncer at the door (was a key witness who was not allowed to testify even after he came to court prepared to testify. **Less than a week before the court date Mr Edgeworth contacted me saying he needed to hire an investigator he was given \$1,500 the same day. A few days later he said the case was going to court the next week and he was going to ask for a motion of**

continuance which was never filed. The clerk of court has record of any motion of continuance. There was not enough work or time put into this case by Mr. Edgeworth that would even allow this case to go to court at that time. After I found out that Attorney Edgeworth was only a **worker's compensation lawyer (confirmed through Mr Edgeworth's advertising)** I then tried to reach the investigator that Mr. Edgeworth hired. The phone number Mr. Edgeworth gave me was **an alcohol and beverage consultant.** The case itself was not properly represented by Mr. Edgeworth nor the investigator that he hired if there was an investigator. This case most definitely should and need to be heard again. Thank you so much for allowing me to submit this statement. God bless!

Ms. Audrey Jackson

107 Apt C. Maple Street

Florence, SC 29506

843-409-4275

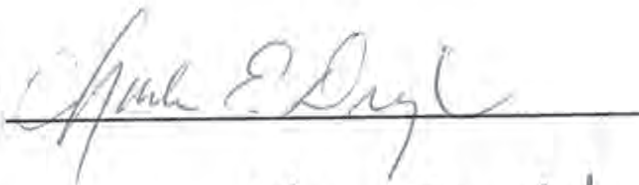
Drayton Investigations continued the investigation with a follow-up to the crime scene on December 15th 2022 and interviewed the owner of the building (Mr. June Robinson) where the crime was committed.



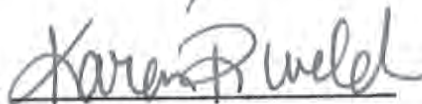
Mr. Robinson on the above date interviewed with Drayton Investigations and showed where a bullet hole was lodged in the front of his double wide home. Mr. Robinson stated that the Sheriff's dept never came out and interviewed him about the shooting and the bullet hole in his house of the night in question

These are the facts from interviews taken by Drayton Investigations on the dates above and sworn to by its agent Charles E Drayton.

Drayton Investigations LLC

A handwritten signature in cursive script, appearing to read "Charles E. Drayton", written over a horizontal line.

Sworn to me this 24th day of May 2023.

A handwritten signature in cursive script, appearing to read "Karen B. Weibel", written over a horizontal line.

My commission expires: Feb 9 2028

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

Diondrae E. Jackson, #241391,

Applicant,

v.

State of South Carolina,

Respondent.

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

) CASE NO. 2021-CP-21-2627

**ORDER OF DISMISSAL
WITH PREJUDICE**

This matter comes before the Court by way of Diondrae E. Jackson's (Applicant) application for post-conviction relief (PCR) filed on December 9, 2021. Respondent, the State of South Carolina, filed its Return on March 21, 2022, requesting an evidentiary hearing to resolve the claims set forth in the application. On June 2, 2023, an evidentiary hearing was held at the Florence County Courthouse before the Honorable Walton J. McLeod, IV. Applicant was present and represented by Steven W. Fowler, Esquire. Assistant Attorney General D. Russell Barlow, II, represented Respondent. Applicant proceeded forward on the claims set forth in his original application. In support of these claims, Applicant testified on his behalf, as did Charles Drayton and Marcus Harrison. Respondent presented testimony from William F. Edgeworth, III, Esquire (Trial Counsel).

Following a thorough review of the record in its entirety, along with the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant has failed to establish any constitutional violations or deprivations entitling him to relief and, accordingly, DENIES and dismisses this action with prejudice.

CERTIFIED: A TRUE COPY

Paula Ottana
1
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

2024 MAY 28 PM 2:47
FLORENCE COUNTY, S.C.

FILED

PROCEDURAL HISTORY

The records before this Court establish Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Florence County Clerk of Court. Applicant was indicted during the August 2018 term of the Florence County Grand Jury for Murder and Attempted Murder (2018-GS-21-01599). Applicant was represented by Trial Counsel. Twelfth Circuit Assistant Solicitor Todd S. Tucker, Esquire, prosecuted the case.

Applicant's case proceeded to a jury trial on April 15–18, 2019, before the Honorable William H. Seals, Jr. The jury convicted Applicant of the lesser included offense of Voluntary Manslaughter only. Judge Seals sentenced Applicant to twenty-eight (28) years imprisonment. Applicant filed a timely notice to set aside the verdict, which Judge Seals denied on May 23, 2019.

Applicant filed a timely Notice of Appeal. Appellate Defender David Alexander perfected Applicant's appeal by filing an *Anders*¹ brief to the Court of Appeals presenting the following issue:

- I. Whether the trial court erred in charging voluntary manslaughter at the State's urging and over the objection of appellant where the reason given by the trial judge could not serve as sufficient legal provocation?

The Court of Appeals affirmed Applicant's conviction and sentence. *State v. Jackson*, Unpub. Op. No. 2021-UP-375 (Ct. App. filed November 3, 2021). The Remittitur was returned to the lower court on November 3, 2021.

FACTUAL SUMMARY

On the day of the shooting, Applicant was driving to a friend's house when he saw another

¹*Anders v. California*, 386 U.S. 738 (1967).

friend, Latesha Newton (Newton). Applicant and Newton talked for a while, and Newton eventually invited Applicant to a club with her and her friends. Newton drove her car, a black Dodge Charger, and they picked up her friends, Everett Frierson ("Frierson"), Ernestine Mack ("Mack"), and Lawanda Johnson ("Johnson").

Newton had her .9mm firearm in the glove box of her car. Johnson also had a gun in the car, but she had given it to her fiancé, Frierson. Frierson testified that he asked Johnson if they could take the gun to the club "for self-defense purposes because of everything that has been going on in the news about shootings happening at nightclubs." (Trial Tr. pp. 223 – 224). Frierson claimed to know about other shootings at the Downbeat Club, which the lead investigator for the police corroborated.

Most of the witnesses, including Applicant, agreed that Applicant got into an altercation at the club over a pool game. Newton was unsure what happened but heard quarters being thrown at Applicant. Johnson saw Applicant argue with a man wearing a red shirt. Frierson said Applicant played a game of pool with his cousin. Applicant lost the game and went to the bar to get more quarters. Applicant placed his quarters on the table, left, and returned to find Maurice Hickson (Hickson) playing pool. Applicant objected to Hickson cutting in line, and Frierson described Hickson as "apologetic." Applicant was very angry, and another man in a red shirt came over to calm the situation.

According to testimony, the men continued to offer the quarters to Applicant, but he refused to take them and remained angry. Hickson testified that he told Applicant "F you" and threw the quarters at Applicant. (Trial Tr. pp. 227 – 230). Newton separated the men and took Applicant outside.

Applicant testified in agreement that he played one game of pool and lost, then went to the

bar to get more quarters to play another game. When Applicant returned from the bar, someone else's quarters were on the pool table. Applicant testified that they waited on the owner of the quarters to return, but no one came back, so Applicant began playing. Once they started playing, a man wearing a red hat, red shirt, and red pants showed up, pushed the balls around on the pool table, and accused Applicant of using his "MF'ing quarters."

Applicant later learned the man in all red was Malcolm Spates ("Spates"). Applicant testified that he offered to get Spates his four quarters, and another person walked up to calm the situation, but Spates was "mooshing" Applicant in his chest. (Trial Tr. pp. 434 – 437). According to Applicant, Spates flicked a quarter into his face. At this point, Newton took Applicant outside.

Before entering the club, Newton encouraged Applicant to take her gun for protection. When Applicant left the club after the altercation over the pool game, he returned to the car with Newton and smoked a cigarette. Applicant testified he saw a man wearing a black hoodie watching him and tried to convince Newton to leave, but she wanted to stay. Applicant testified he went back into the club because he did not feel safe in the parking lot. Applicant testified he could not leave because he did not know anyone to give him a ride, and he could not just walk because he had no idea where he was.

Once back in the club, Newton said she watched Applicant's facial expressions and could see he was upset. Newton testified she decided to get Applicant to leave and took him by the arm. Applicant then pushed Newton out of the way and started shooting. Applicant fired in the direction of the pool table. Newton and the rest of their group testified that they did not see anyone else with a gun.

Applicant testified that he was in the bar watching "about eight" guys make gang signs at him, and he was scared. Frierson testified he saw the group of men in the back of the club making

gang signs at Applicant. Applicant testified that he saw the man in the black hoodie from the parking lot enter the club and hand a pistol to Spates. According to Applicant, Spates then drew a gun, and Applicant pushed Newton out of the way and fired at Spates. Applicant testified Spates dropped the gun and ran for the bathroom, and then Ronald Oliver (Oliver) reached for the gun, and Applicant shot Oliver in the hip. At this point, testimony revealed that everyone, including Applicant, ran to the parking lot.

Further testimony was provided that Applicant and the group got into Newton's car and left the scene. A police officer responding to the call turned around after seeing Newton's car, and when he activated his blue lights, Applicant threw the gun out of the window. According to testimony, the police never recovered the gun. Testimony provided that police denied taking a gun from Spates, but evidence forms indicated the opposite. The lead investigator testified the forms were in error and the only gun recovered was Lawanda Johnson's gun from the Charger. Spates died due to his gunshot wound, and Oliver survived his gunshot wound. Applicant was charged and indicted for murder and attempted murder.

CURRENT ACTION BEFORE THIS COURT

In his original application for post-conviction relief, filed December 9, 2021, Applicant alleges he is being held in custody unlawfully based on:

1. "Ineffective Assistance of Counsel"
2. "Violation of Due Process of law"
3. "Si[x]th & Fourteenth Amendments"

Applicant also included in his Application an "attached memorandum of law" that further outlines his allegations of why he is being held unlawfully based on the following:

1. Ineffective Assistance of Counsel
 - a. "Counsel failed to investigate case presented by the state when its evidence was tampered with by the state. The state admitted the video was altered to combine audio/video

together."

- b. "Counsel failed to investigate all the evidence presented by state used, which could exonerate applicant in proving that victim did have a gun."
- c. "Counsel had alibi witness in courtroom but failed to call this witness to testify and instead told the witness to leave."
- d. "Counsel failed to object to state closing arguments when prosecutor made inflammatory comments."
- e. "Counsel failed to object after prosecutor made a request for court to charge manslaughter."
- f. "Counsel failed to object during sentencing was improper information given by state."
- g. "Counsel failed to object to the erroneously including certain language on verdict form ambiguous and confusing to the charge of not guilty and guilty plea."
- h. "Counsel failed to object to charge of self-defense and mutual combat."
- i. "Counsel argument during post-trial motion constituted as ineffective assistance of counsel."

Applicant requests relief in the form of his conviction being reversed.

Before this Court is the Florence County Clerk of Court records, Applicant's records from the South Carolina Department of Corrections, Applicant's appellate records, the trial transcript, and the records of this PCR action.

STANDARD OF REVIEW

The Uniform Post-Conviction Procedure Act² ("the Act") provides that any person who has been convicted of a crime may seek post-conviction relief based upon the following types of allegations:

- 1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
- 2. That the court was without jurisdiction to impose sentence;
- 3. That the sentence exceeds the maximum authorized by law;
- 4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;

² S.C. Code Ann. § 17-27-10 to -160.

5. That his sentence has expired, his probation, parole or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy[.]

S.C. Code Ann. § 17-27-20(A).

The Sixth and Fourteenth Amendments to the United States Constitution guarantee Applicant, like all other defendants, the right to effective assistance of counsel. *Strickland v. Washington*, 466 U.S. 668 (1984); *Taylor v. State*, 404 S.C. 350, 359, 745 S.E.2d 97, 101 (2013). Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive *effective* assistance of counsel guaranteed by the Sixth Amendment. The allegation of denial of such representation sets forth a *prima facie* violation of this constitutional right and raises a question of fact that can only be determined by an evidentiary hearing. *Rogers v. State*, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence—a mere allegation of ineffective assistance is not sufficient to warrant granting relief. Rule 71.1(e), SCRCP; *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The reviewing court applies the two-part test outlined in *Strickland v. Washington* to determine whether counsel's conduct "was so [ineffective] as to require reversal" of the applicant's conviction. 466 U.S. at 687. To obtain relief, a PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel's deficient performance. *Id.* at 687–88; *accord. Cherry v. State*, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim.

Strickland, 466 U.S. at 700; *see also Bell v. Cone*, 535 U.S. 685, 695 (2002) (explaining that "[w]ithout proof of both deficient performance and prejudice to the defense, . . . it could not be said that the sentence or conviction resulted from a breakdown in the adversary process that rendered the result of the proceeding unreliable." (citation and internal quotation marks omitted)).

Regarding the deficiency prong of the *Strickland* analysis, the proper measure of performance is whether counsel provided representation within the reasonable range of competence required in criminal cases. *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. When analyzing counsel's performance, the reviewing court will strongly presume counsel provided adequate assistance, and the applicant is responsible for rebutting that presumption "by proving that his attorney's representation was unreasonable under prevailing professional norms and that the challenged action was not sound strategy." *Kimmelman v. Morrison*, 477 U.S. 365, 384 (1986); *cf. Cullen v. Pinholster*, 563 U.S. 170, 189 (2011) (explaining a defendant must show defense counsel failed to act reasonably considering all the circumstances in order to overcome the presumption of adequate representation).

Furthermore, the reviewing court will scrutinize counsel's performance in a highly deferential manner, make every effort "to eliminate the distorting effects of hindsight," and "evaluate the conduct from counsel's perspective at the time" in light of then-existing circumstances. *Strickland*, 466 U.S. at 689. In order to establish counsel's performance was deficient, the applicant must demonstrate "counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." *Id.* at 687. Accordingly, counsel's performance will be considered deficient only when it was objectively incompetent under prevailing professional norms and *not* when it simply "deviated from best practices or most common custom." *Harrington v. Richter*, 562 U.S. 86, 105 (2011).

Beyond satisfying the burden required by the deficiency prong, an applicant also bears the burden of establishing prejudice in order to be entitled to relief as "[a]n error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment." *Strickland*, 466 U.S. at 691. To meet this burden, counsel's deficient performance must have prejudiced the applicant to such an extent, there is a reasonable probability the result of the proceeding would have been different but for counsel's unprofessional errors. *Cherry*, 300 S.C. at 117–18, 386 S.E.2d at 625; see *Johnson v. State*, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) ("To establish a claim of ineffective assistance of trial counsel, a PCR applicant has the burden of proving counsel's representation fell below an objective standard of reasonableness and, but for counsel's errors, there is a reasonable probability the result at trial would have been different."). Importantly, "[t]he likelihood of a different result must be *substantial*, not just conceivable." *Richter*, 562 U.S. at 112.

Finally, the *Strickland* standard must be applied with scrupulous care, lest "intrusive post-trial inquiry" threaten the integrity of the very adversary process the right to counsel is meant to serve. 466 U.S. at 689–90. Courts must be wary of second-guessing counsel's trial tactics, and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel. *Whitehead v. State*, 308 S.C. 119, 417 S.E.2d 529 (1992). The applicant's burden of proving both *Strickland* components is heavy in light of the strong presumption that counsel's conduct fell within the range of reasonable professional legal assistance. 466 U.S. at 690. Representation is constitutionally ineffective only if counsel's conduct "so undermined the proper functioning of the adversarial process" that the defendant was denied a fair proceeding. *Id.* at 686; see *Nix v. Whiteside*, 475 U.S. 157, 175 (1986) (noting that under *Strickland*, the "benchmark" of the right to counsel is the "fairness of the adversary

proceeding"); *cf. United States v. Morrow*, 977 F.2d 222, 229 (6th Cir. 1992) ("[T]he threshold issue is not whether [the applicant's] attorney was inadequate; rather, it is whether he was so *manifestly* ineffective that defeat was snatched from the hands of probable victory.").

FINDINGS OF FACT & CONCLUSIONS OF LAW

Applicant has alleged and elected to pursue various claims of ineffective assistance of counsel through the post-conviction relief action presently before this Court. In analyzing these claims, this Court has considered the legal arguments by counsel and thoroughly reviewed the record in its entirety. This Court additionally heard the testimony presented at the evidentiary hearing and was able to observe the witnesses, which allowed the Court to evaluate and scrutinize their credibility.

This Court finds that Applicant has failed to establish any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. *See* Rule 71.1(e), SCRPC (stating that in a post-conviction relief action, "[t]he applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence."); *Lucero v. State*, 414 S.C. 238, 244, 777 S.E.2d 409, 412 (Ct. App. 2015) ("In a PCR proceeding, the applicant bears the burden of establishing that he or she is entitled to relief."); *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) ("The burden of proof is on the Applicant in post-conviction proceedings to prove the allegations in his application.").

Accordingly, set forth below are the relevant findings of facts and conclusions of law as required by § 17-27-80 of the South Carolina Code:

I. INITIAL FINDINGS

As a matter of general impression, this Court finds Trial Counsel's testimony at the evidentiary hearing credible and persuasive, where he presented well-recollected testimony of

relevant background, facts, and discussions leading up to and during the trial. This Court finds Applicant's testimony at the evidentiary hearing generally not credible or persuasive. This Court further finds applicable the strong presumption that at all stages of Trial Counsel's representation of Applicant, he rendered adequate assistance and exercised reasonable professional judgment in her representation. *Ard v. Catoe*, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citing *Strickland, supra*). The United States Supreme Court has cautioned that "every effort be made to eliminate the distorting effects of hindsight" and evaluate counsel's decisions at the time they were made. *Strickland*, 466 U.S. at 689, 104 S.Ct. 2052; see *Whitehead v. State*, 308 S.C. 119, 122, 417 S.E.2d 529, 531 (1992).

II. Ineffective Assistance of Trial Counsel Allegations on the Merits

- Allegation 1a: Trial Counsel failed to investigate the altered jail video.
- Allegation 1b: Trial Counsel failed to investigate all evidence presented by State which could have exonerated Applicant in proving Applicant did have a gun.

Applicant alleges Trial Counsel was constitutionally deficient for failing to investigate the altered video and audio the State admitted at his trial. Additionally, Applicant alleged Trial Counsel failed to investigate the evidence presented by the State, which would have exonerated Applicant and shown the victim had a gun. The Court finds these allegations are without merit.

In order to prevail upon a claim that counsel did not adequately prepare or investigate a case, an applicant must present evidence of what counsel could have discovered or what other defenses applicant could have requested counsel develop and present had counsel been more prepared. *Harris v. State*, 377 S.C. 66, 75–76, 659 S.E.2d 140, 145–46 (2008) (citing *Jackson v. State*, 329 S.C. 345, 353–54, 495 S.E.2d 768, 772 (1998)), abrogated on other grounds by *Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836 (2018). The applicant must further present evidence

demonstrating how the discoverable matters or defenses would have resulted in a different outcome. *Id.* Mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. *Id.* at 75, 659 S.E.2d at 145 (citing *Glover v. State*, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)).

Our Supreme Court has cautioned reviewing courts not to lose sight of the reasonableness standard regarding counsel's duty to investigate. *Ard*, 372 S.C. at 331, 642 S.E.2d at 597 ("this duty is limited to [a] reasonable investigation"). The United States Supreme Court also instructed reviewing courts to "keep in mind that counsel's function, as elaborated in prevailing professional norms, is to make the adversarial testing process work in the particular case." *Strickland*, 466 U.S. Thus, in applying the *Strickland* standard to a claim of failure to investigate, counsel's decision not to undertake a particular investigation must be evaluated with heavy deference to counsel's judgment. *Bagwell v. State*, 410 S.C. 259, 265, 763 S.E.2d 630, 633 (Ct. App. 2014).

a. Altered Video

At the evidentiary hearing on direct examination, Applicant testified that the State had admitted a video taken at the county jail allegedly showing Applicant had said something about the case. Applicant testified that when the State admitted the video, they informed the trial court that the footage was blended from multiple videos. Applicant contended this blending showed the State had tampered with the video to make it look like he said something he had not. Applicant testified Trial Counsel should have moved to suppress the video, investigated the tape, or checked authentication, like checking the video's timestamp. Applicant testified Trial Counsel failed to take action against the admittance of the video.

On cross-examination, Applicant testified he recalled Trial Counsel making an argument as to the admissibility of the video based on the production process. On direct examination, Trial

Counsel testified the video admitted by the State was not altered but was two parts—the video and audio—but that it was the same evidence. Trial Counsel testified that he argued the prejudicial nature of the video, but his objection was overruled. Trial Counsel testified that the trial judge ruled the resolution of the video was satisfactory. Trial Counsel testified that the State did its best to make the audio and video consistent.

Trial Counsel further testified he was concerned about the audio and video, and moved to suppress the video in the *Jackson v. Denno*³ hearing based on best evidence or video not consistent with audio. At the *Jackson v. Denno* hearing, Trial Counsel argued that the video would be prejudicial if presented to the jury as it was modified, and the audio was unclear. Trial Counsel further argued that the video was not in its original production setting and that the State had overlayed two pieces of information. The State confirmed to the trial court that they had overlayed the audio and video to play simultaneously, and the trial court ruled that it was admissible.

This Court finds Applicant failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." *Ard v. Catoe, supra*. This Court finds Applicant has failed to show Trial Counsel was deficient and resulting prejudice from Trial Counsel's performance. The record refutes Applicant's claim that Trial Counsel failed object to the admissibility of the video. Trial Counsel credibly testified the video was not altered but separate audio and video that was put together. Additionally, Applicant failed to present any credible evidence or testimony that the State actually altered the video.

³ 378 U.S. 368 (1964).

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel, or any prejudice flowing therefrom. Thus, this allegation must be DENIED and DISMISSED.

b. Evidence Victim Had A Gun

Applicant alleges Trial Counsel was constitutionally ineffective for failing to investigate whether the victim in this case had a gun. This Court finds this allegation is without merit.

At the evidentiary hearing on direct examination, Applicant testified Trial Counsel visited him three times while he was in prison and represented him, and they went over the facts of the case together. Applicant testified there was gun residue on his hands and the victim's hands. Applicant testified that gun residue would get on an individual's hands if they had fired the gun, were in the vicinity of the gun, or were touching someone. Applicant testified he could have been exonerated by testimony that the victim had gunpowder on his hands to contradict the State's assertion that Applicant had gunpowder on his hands because he fired the gun. Applicant testified the expert testified the gunpowder was on both hands but never testified which hand he took it from. Applicant testified Trial Counsel never argued the victim could have fired a gun, and he felt like the jury was leaning toward self-defense.

On cross-examination, Applicant testified Marcus Harrison ("Harrison"), the bouncer, said the victim had a gun on him that night. Investigator Charles Drayton ("Investigator Drayton") later testified he has twenty years' experience as an investigator, and Applicant hired him to contact witnesses and discover the facts that took place the night of the incident. Investigator Drayton testified he was hired a couple of years after the trial. Investigator Drayton testified that Harrison convinced him it was worth it to move forward with the investigations because Harrison told him that the Applicant did not have a weapon on him when he entered the premises the night of the

incident. Investigator Drayton testified that he went to the crime scene to investigate, but it has been closed down since the incident.

On direct examination, Harrison testified that he received a letter from Trial Counsel to appear at trial, but at trial, Trial Counsel told him to go home. Harrison testified Trial Counsel did not give him a reason for dismissing him. Harrison testified that he was in the courtroom for five minutes before he left. Harrison testified he was security at the bar the night of the incident. Harrison testified Trial Counsel never spoke with or called him about the incident, and he would have been a helpful witness to Applicant's case because he was present at the incident. Harrison testified that he believed Applicant could have used self-defense. Harrison testified that he had never seen Applicant before at the bar and always searched new people before they entered the bar. Harrison testified he searched every person that came in, but he was not allowed to search females the same way he searched males. Harrison testified he patted down Applicant thoroughly before he entered the bar. Harrison testified gang members from the bloods and crips were present. Harrison testified that the person who started the altercation pulled a gun on Applicant, but he does not remember his name.

On cross-examination, Harrison testified he was present during Applicant's testimony when he testified he had a gun on him both times he entered the bar. Harrison testified that Applicant could have gotten the gun from the girl who came in with him. Harrison testified he came late to the bar, and had he come earlier he would have found the gun on Applicant and another person who came into the bar with a gun.

On direct examination, Trial Counsel testified that there was no proof the victim had a gun on him other than Applicant's testimony. Trial Counsel testified that law enforcement had no evidence of crossfire, which was consistent with Applicant's testimony that he was a quicker draw.

Trial Counsel testified he hired a private investigator to go to the scene and talk to the owner and witnesses. Trial Counsel testified he attempted to impeach the State's witnesses that the victim had a gun, and there was evidence in the State's file that the victim had firearms in his vehicle, but the State testified those records were inaccurate. Trial Counsel testified that he did not seek a gunshot residue (GSR) test on the victim as the autopsy had already been done. Trial Counsel testified the issue of GSR came up on direct by the State where they argued GSR could have gotten on the victim based on being in the vicinity of a firearm when shot. Trial Counsel testified that he could not recall if the GSR was used in defense theory, but self-defense was the theory of Applicant's case at trial.

At trial, the State's witness, Chase McDaniel (McDaniel), testified that they performed GSR on the victims. Trial Counsel attempted to impeach McDaniel with records showing a gun was seized from the victim, but McDaniel testified that the document did indicate a gun was retrieved from the victim, but that was not correct. Additionally, the State's witness, Tyler Sturkie (Sturkie), testified the victim's GSR results found GSR on the victim and testified that GSR would have gotten on the victim if he had fired the weapon, if he was in the vicinity of the area where the gun was fired, or if he had touched an object that had GSR on it.

This Court finds Applicant failed to establish Trial Counsel was deficient or resulting prejudice from his performance. Trial Counsel credibly testified he hired a private investigator to ascertain the facts and interview relevant witnesses. Trial Counsel credibly testified that his investigations and the State's evidence revealed the victim did not have a gun on him, but Trial Counsel still attempted to impeach the State concerning the possible seizure of a gun from the victim. Applicant produced the testimony of Harrison in support of his argument. However, Harrison did not testify to any new information that Trial Counsel was unaware of, and Harrison's

testimony was internally contradictory and contradictory to Applicant's testimony at trial. Moreover, Applicant's contention that if the jury had heard the victim had GSR on him, he would have been exonerated is not convincing. The State presented testimony that the victim had GSR on him and how the GSR could have gotten on the victim to the jury, and the jury convicted Applicant.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel, or any prejudice flowing therefrom. Thus, this allegation must be DENIED and DISMISSED.

c. Allegation 1c: Allegation of Failure to Call Alibi Witness

Applicant alleges Trial Counsel was constitutionally ineffective for failing to call an alibi witness. Specifically, Applicant asserts Trial Counsel failed to call an employee of the establishment where the crime occurred who served as security on the night in question, Harrison, who would have allegedly testified in Applicant's favor. This Court finds this allegation is without merit.

Counsel's performance is not deficient if he decided not to present a witness as a tactical and strategic move, nor if the witness was unlikely to appear or present testimony that could have made a difference at trial. *See e.g. Smith v. State*, 404 S.C. 493, 502, 745 S.E.2d 378, 383 (2012) (finding that counsel was not deemed ineffective when petitioner failed to introduce any evidence that established prejudice to the petitioner); *Edwards v. State*, 392 S.C. 449, 457-58, 710 S.E.2d 60, 65 (2011) (stating that counsel was not ineffective because the witness could not withstand cross-examination due to his prior vacillation and the cumulative nature of his testimony and he knew the petitioner's statement to the police would be entirely consistent with the supposed witness's statement at trial); *Glover*, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995) (finding that

counsel was in deficient by failing to call all alibi witnesses when two witnesses who testified did not establish the alibi).

Further, prejudice will generally be found if the testimony was significant and favorable enough to the Applicant so that the trial proceedings results may have been different because of the testimony. *See e.g., Lounds v. State*, 380 S.C. 454, 670 S.E.2d 646 (2008) (finding that counsel was deficient by failing to call witnesses, for no other reason than lack of preparation, that may corroborated with the defendant or bolstered his credibility so that the findings at trial could have been favorable to the defendant); *Thomas v. State*, 308 S.C. 123, 417 S.E.2d 531 (1992) (finding that uncalled witness' testimony would have cast doubt on the sole witness' identification of the petitioner and, thus, would have made a difference at trial).

Through an alibi, an accused attempts "to show that because he was not at the scene of the crime at the time of its commission, having been at another place at the time, he could not have committed the crime." *State v. Robbins*, 275 S.C. 373, 375, 271 S.E.2d 319, 320 (1980) (quoting 21 Am. Jur. 2d Criminal Law § 136). To do so, the accused must show "he was at a place so distant that his participation in the crime was impossible." *Id.* Furthermore, the alibi must account for the entire time during which these crimes were committed. *Id.* "[S]ince an alibi derives its potency as a defense from the fact that it involves the physical impossibility of the accused's guilt, a purported alibi which leaves it possible for the accused to be the guilty person is no alibi at all." *State v. Glover*, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (citing *Robbins*, 275 S.C. 373, 271 S.E.2d 319).

At the evidentiary hearing on direct examination, Applicant testified that Trial Counsel told him he did not call Harrison to testify because he did not need him and he could change his story on the stand. Applicant testified he did not know what Harrison's testimony was going to be at his

trial. Applicant testified he was prejudiced by Trial Counsel not calling Harrison because his testimony could have changed the outcome of his case. Applicant testified that Trial Counsel subpoenaed Harrison but never called him to testify.

On direct examination, Harrison testified that Trial Counsel called him to testify at trial, but at trial, Trial Counsel dismissed him within five minutes of him being there. Harrison testified Trial Counsel never discussed the incident with him and he would have provided helpful testimony if he had testified at trial. Harrison testified that he had never seen Applicant before the night of the incident and made sure to search Applicant thoroughly before he entered. Harrison testified Applicant did not have gun on him when he entered. Harrison testified females are searched differently.

Trial Counsel testified he did not call Harrison because Applicant's testimony was consistent that he had entered the premises with a gun based on the suggestion of the lady with him that the bar was known for violence. Trial Counsel testified that the private investigator informed him Harrison was protecting himself and said no one would have gotten past him with a gun. Trial Counsel testified he felt like Harrison's testimony would have hurt Applicant's case because Applicant testified he had the gun on him when he entered the premises. On cross-examination, Trial Counsel testified he spoke with Harrison in the hallway at trial, and Harrison seemed protective of his job position. Trial Counsel testified Harrison did not witness the incident and he did not call him because he did not believe Harrison would provide helpful testimony.

This Court finds Applicant failed to establish Trial Counsel was deficient or resulting prejudice from Trial Counsel's performance. First, Harrison is not an alibi witness, as his testimony would not have established it was impossible for Applicant to commit the crime. Harrison merely provided self-serving testimony that he searched every person who came in and

no one got past him with a gun, even though the testimony of Applicant and other witnesses established Applicant had a gun on his person when he entered the bar. Additionally, Harrison's testimony on cross-examination contradicted his testimony on direct. Trial Counsel credibly testified that based on his investigations, he did not believe Harrison's testimony would have been favorable to Applicant's case.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel, or any prejudice flowing therefrom. Thus, this allegation must be DENIED and DISMISSED.

- d. Allegation 1d: Trial Counsel failed to object to the States inflammatory comments in closing argument.

Applicant alleged Trial Counsel was constitutionally ineffective for failing to object to the State's closing argument. Specifically, Applicant avers that Trial Counsel did not object to the following:

Life. It's cheap in Diondrae Jackson's world. In fact, it's worth one dollar. . . Four quarters, to be exact. This is a case . . . about a man who lost his life for one dollar. Four quarters, to be exact.

Closing arguments allow each side to remind the jurors about key evidence to persuade them to decide the case in their favor. Solicitors are permitted to use hypothetical analogies to make their point, in this case, the motive for Applicant to shoot the victim. Providing however that a solicitor's closing argument "must be carefully tailored so as not to appeal to the personal bias of the juror nor calculated to arouse his passion or prejudice." *State v. Linder*, 276 S.C. 304, 278 S.E.2d 335, 339 (1981). "A solicitor may not rely on statements not in evidence during closing argument." *State v. Huggins*, 325 S.C. 103, 107, 481 S.E.2d 114, 116 (1997). However, "[t]he solicitor has the right to give his version of the testimony and to comment on the weight to be given to the testimony of the defense witnesses." *State v. Raffaldt*, 318 S.C. 110, 115, 456 S.E.2d

390, 393 (1995). "[C]onsiderable latitude is generally allowed in the matter of drawing and arguing inferences and deductions from evidence." *Johnson v. Life Ins. Co. of Ga.*, 227 S.C. 351, 369, 88 S.E.2d 260, 269 (1955).

To prevail on a claim that trial counsel was ineffective for failing to object to a solicitor's purportedly improper comment during closing argument, the PCR applicant "bears the burden of demonstrating the improper comment deprived him of a fair trial." *Johnson v. State*, 325 S.C. 182, 187, 480 S.E.2d 733, 735 (1997). "Improper comments do not require reversal if they are not prejudicial . . . and the [applicant] has the burden of proving he did not receive a fair trial because of the alleged improper argument." *Randall v. State*, 356 S.C. 639, 642, 591 S.E.2d 608, 610 (2004). "A new trial will not be granted unless the prosecutor's comments so infected the trial with unfairness as to make the resulting conviction a denial of due process." *Huggins*, 325 S.C. at 107, 481 S.E.2d at 116.

At the evidentiary hearing on direct examination, Applicant testified that there was no evidence he killed the victim over four quarters. Applicant further testified the solicitor's comments were outside the scope. At trial, Investigator Roger Tilton (Tilton) had testified that Applicant told him that he and another male argued over Applicant using some quarters he found on a pool table at the bar. Tilton testified that Applicant indicated to him this all began over four quarters.

This Court finds Applicant failed to establish Trial Counsel was deficient or resulting prejudice from his performance. Tilton testified at trial that Applicant stated the altercation arose from an argument over four quarters. The solicitor's comments in closing were permitted and not outside the scope of the evidence presented at trial. This Court finds any objection on this issue would not have been meritorious, and Trial Counsel cannot be deficient for failing to make a non-

meritorious objection, nor can Applicant be prejudiced by this failure. *See U.S. ex rel. Link v. Lane*, 811 F.2d 1166, 1170 (7th Cir. 1987) (finding there is no prejudice from the failure to object unless there is a legally supportable argument for the objection).

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel, or any prejudice flowing therefrom. Thus, this allegation must be DENIED and DISMISSED.

e. Allegations 1e: Trial Counsel failed to object after the solicitor requested the trial court charge manslaughter.

Applicant alleged Trial Counsel was constitutionally ineffective for failing to object to the solicitor's request to include voluntary manslaughter in the charges to the jury. This Court finds this allegation is without merit.

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

At the evidentiary hearing on direct examination, Applicant testified that he told Trial

Counsel he did not want a charge of voluntary manslaughter. Applicant testified Trial Counsel objected to involuntary manslaughter. Applicant testified it was prejudicial because Trial Counsel said involuntary instead of voluntary, and the trial judge ended up charging voluntary manslaughter. Applicant testified that the State said they wanted the charge based on Applicant reflecting on the crime, and Applicant testified that sounded like murder to him. Applicant testified Trial Counsel forgot to object.

On cross-examination, Applicant testified that Trial Counsel told him he would see about the voluntary manslaughter charge, but he did not object to the charge. Trial Counsel testified that there was an off-the-record conversation with the trial judge where the trial judge stated he intended to charge voluntary manslaughter, and Trial Counsel objected to the charge. Trial Counsel testified the State initially objected to the charge, but the trial judge gave the State time to determine their position. Trial Counsel testified he believed the State had a good case, and he discussed the pros and cons of requesting the charge with Applicant. Trial Counsel testified the State requested the charge, and he raised his objection again.

At trial, Trial Counsel objected to the trial court charging voluntary manslaughter⁴. The trial court overruled Trial Counsel's objection, and gave the following reasoning:

I tend to think that it is applicable. You know, we have some testimony that there were -- there were gang signs being made in the background and that there were a bunch of people, maybe eight people, and a lot of them were wearing red. We have testimony that the Bloods were there, which are gangs. Those could be threatening signs made to -- overt signs of provocation made to the defendant. And then we have a witness who said she was facing the defendant and she started seeing his face change and mold and he was getting agitated. And then I guess there's a possibility that he just exploded and threw her out of the way and then shot him. So I think there is

⁴ Trial Counsel mistakenly objected to the charge of "involuntary manslaughter", but the record reflects the trial court understood Trial Counsel was objecting to the charge of voluntary manslaughter based on the question of the trial court and the trial court's response.

a possibility of voluntary manslaughter. I think it's a fact question. Clearly, I've thought about it a lot and I listened to his testimony carefully and I listened to the witness' testimony carefully and then I reviewed the voluntary manslaughter while they were testifying and I think it's possible.

(ROA pp. 483 – 84).

In Applicant's case, there was sufficient evidence to allow a jury instruction on the charge of voluntary manslaughter. "To warrant the court in eliminating the offense of manslaughter, it should very clearly appear that there is no evidence whatsoever tending to reduce the crime from murder to manslaughter." *State v. Pittman*, 373 S.C. at 572, 647 S.E.2d at 168 (citation omitted).

This Court finds Trial Counsel credibly testified the trial court indicated to the parties off the record he intended to charge voluntary manslaughter, and Trial Counsel objected. Trial Counsel credibly testified he renewed his objection on the record. The record reflects Trial Counsel objected to voluntary manslaughter being charged, and the trial court overruled his objection. Any further objections by Trial Counsel would not have been meritorious. Additionally, from the record, this Court finds the facts of Applicant's case supported a charge of voluntary manslaughter.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel, or any prejudice flowing therefrom. Thus, this allegation must be DENIED and DISMISSED.

f. Allegation 1f: Trial Counsel failed to object to improper information given by the State during sentencing.

Applicant alleged Trial Counsel was constitutionally ineffective for failing to object to improper information given by the State. Specifically, Applicant contends that he told Trial Counsel during his sentencing that his NCIC report was not correct. Applicant asserts Trial Counsel did not object to the following:

He also has a pending drug charge that will more than likely be dismissed by virtue of the trial and the verdict here.

(ROA p. 549). This Court finds this allegation is without merit.

At the evidentiary hearing on direct examination, Applicant testified that at sentencing the solicitor told the trial judge Applicant had a pending drug charge, which caused the trial judge to give a steep sentence. Applicant testified the charge was dismissed against him and it was extremely prejudicial.

This Court finds it is the ordinary practice during sentencing to inform the trial court of existing and pending charges when determining sentencing. Additionally, Applicant contends the charge should not have been considered because it was dismissed. This ignores the fact the charge was pending against him during sentencing and was dismissed as a result of his trial.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel, or any prejudice flowing therefrom. Thus, this allegation must be DENIED and DISMISSED.

g. Allegations 1g: Trial Counsel failed to object to the erroneous language included on the verdict form that was ambiguous and confusing.

Applicant alleges Trial Counsel was constitutionally ineffective for failing to object to the verdict form that read "guilty plea" rather than "guilty."⁵ Applicant averred this language was ambiguous and confused the jury into believing Applicant had already pled guilty to the charges of Voluntary Manslaughter and Attempted Murder. This Court finds this allegation is without merit.

At the evidentiary hearing on direct examination, Applicant testified the error on the verdict

⁵ The verdict form reads as follows: (1) Murder – Not Guilty – Guilty; (2) Voluntary Manslaughter – Not Guilty – Guilty Plea; (3) Attempted Murder – Not Guilty – Guilty Plea.

form confused the jury. Applicant testified Trial Counsel failed to object to the verdict form. Applicant testified that everyone saw the jury form and they had time to change it, but presented it to the jury and it was extremely prejudicial. Applicant testified that had Trial Counsel objected he would have been entitled to a mistrial.

At trial, the trial judge instructed the jurors that the "defendant has entered a plea of not guilty." The trial court additionally charged the jury, as follows:

Furthermore, it is your exclusive duty to decide all the issues of fact in this case and to determine the effect, value, and weight of the evidence presented. Both the State and the defendant have the right to expect that you will carefully consider and evaluate the evidence and apply the law of the case to it so that, in the end, both the State of South Carolina and this defendant will have received a fair and impartial trial. I want you to understand that when I use the word defendant, I am referring to Diondrae Jackson. The State in this case alleges several offenses against the defendant. The charges are Count I, murder, and Count II, attempted murder. Each charge is a separate and distinct offense. You must decide each charge separately on the evidence and the law applicable to it, uninfluenced by your decision as to any other charge. The defendant may be convicted or acquitted on any or all of the offenses charged. You will be asked to write a separate verdict of guilty or not guilty for each charge. To these charges, the defendant has entered a plea of not guilty. This plea of not guilty places the burden of proof on the State to prove the guilt -- the defendant guilty beyond a reasonable doubt on each charge... If you find that the State has failed to prove beyond a reasonable doubt that the defendant committed murder, you may consider whether the State has proved beyond a reasonable doubt that the defendant committed voluntary manslaughter.

(ROA pp. 523; 528) (emphasis added).

This Court finds the inclusion of "guilty plea" on the verdict form amounted to a scrivener's error. Applicant failed to present credible evidence that this error affected the outcome of his trial, and offered pure conjecture in support of his contention that the jury was confused and believed he had pled guilty to the charges. *See Clark v. State*, 315 S.C. 385, 388, 434 S.E.2d 266, 267

(1993) (concluding pure conjecture fails to establish prejudice). Moreover, the trial court clearly instructed the jury on their duty and the charges they could convict Applicant of. Applicant's contention this error would have resulted in a mistrial is misguided. *State v. Wasson*, 299 S.C. 508, 386 S.E.2d 255 (1989) (A mistrial should only be granted upon exercise of the greatest of caution and for plain and obvious reasons in cases of manifest necessity).

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel, or any prejudice flowing therefrom. Thus, this allegation must be DENIED and DISMISSED.

h. Allegations 1h: Trial Counsel failed to object to the charge of self-defense and mutual combat.

Applicant alleged Trial Counsel was constitutionally ineffective for failing to object to the charge of self-defense and mutual combat. Specifically, Applicant maintained that the jury instructions confused the jury members. This Court finds this allegation is without merit.

When administering a jury instruction, the instruction must be supported by facts. *State v. Crosby*, 355 S.C. 47, 584 S.E.2d 110 (2003). The law to be charged is determined by the evidence presented at trial. *State v. Holland*, 385 S.C. 159, 165, 682 S.E.2d 898, 901 (Ct. App. 2009). "Ordinarily, the trial court has the duty to give requested instructions which correctly state the law applicable to the issues and which are supported by the evidence." *State v. Peer*, 320 S.C. 546, 553, 466 S.E.2d 375, 380 (Ct. App. 1996). In reviewing a trial judge's jury instructions, the court must view the jury charge as a whole and in light of the evidence and issues from trial. *State v. Simmons*, 384 S.C. 145, 178, 682 S.E.2d 19, 36 (Ct. App. 2009).

To constitute mutual combat, there must be "mutual intent and willingness to fight." *State v. Graham*, 260 S.C. 449, 450, 196 S.E.2d 495, 495 (1973). The intent to fight is "manifested by the acts and conduct of the parties and the circumstances attending and leading up to the combat."

Id. In *Campbell v. State*, the Court of Appeals found that "when evidence warrants a mutual combat charge, it may be charged to a jury even when read alongside a self-defense charge." 441 S.C. 361, 893 S.E.2d 492, 498 (2023); *State v. Bowers*, 436 S.C. 640, 647, 875 S.E.2d 608, 612 (2022) ("Mutual combat relates primarily to the law of self-defense.").

At the evidentiary hearing on direct examination, Applicant testified that the trial judge charged the jury on self-defense and mutual combat and mutual combat negates self-defense. Applicant testified that the witnesses at trial all testified he and the victim did not know each other. Applicant testified that this charge should not have been sent to the jury. Applicant testified Trial Counsel failed to object to the charge.

On cross-examination, Applicant testified Trial Counsel failed to object to the instruction as it tied self-defense and mutual combat together. Trial Counsel testified the defenses were not confused, and the charge of self-defense and mutual combat was consistent with the testimony presented at trial.

At trial, evidence was presented that Applicant and the victim had an altercation over four quarters prior to the shooting. The trial court charged the jury as follows on self-defense and mutual combat:

The following elements are required to establish self-defense. First, a 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 to a person who uses language which is so contemptuous that a reasonable person would expect it to bring on a physical encounter and which did actually contribute to the physical encounter. If the defendant voluntarily participated in mutual conduct for purposes other than protection, the killing of the victim would not be self-defense. This is true even if during the combat the defendant feared death or serious bodily injury. However, if before the killing is committed the defendant withdraws and tried in good faith to avoid

further conflict and either by word or act makes the fact known to the victim, he would be without fault in bringing on the difficulty. For mutual combat, there must be a mutual intent and willingness to fight. This intent may be shown by acts and conduct of the parties and the circumstances surrounding the combat. In addition, it must be shown that both parties were armed with a deadly weapon. The second element of self-defense is that the defendant was actually in imminent danger of death or serious bodily injury or that the defendant actually believed he was in imminent danger of death or serious bodily injury. If the defendant was actually in imminent danger, it must be shown that the circumstances would have warranted a person of ordinary firmness and courage to strike the final blow to prevent death or serious bodily injury. If the defendant believed he was in imminent danger of death or serious bodily injury, it must be shown that a reasonably prudent person of ordinary firmness and courage would have had the same belief. In deciding whether the defendant actually was or believed he was in imminent danger of death or serious bodily injury, you should consider all the facts and circumstances surrounding the crime, including the physical condition and characteristics of the defendant and the victim. The defendant does not have to show that he was actually in danger. It is enough if the defendant believed he was in imminent danger and a reasonably prudent person of ordinary firmness and courage would have had the same belief. The defendant has the right to act on appearances, even though the defendant's beliefs may have been mistaken. It is for you to decide whether the defendant's fear of immediate danger of death or serious bodily injury was reasonable and would have been felt by an ordinary person in the same situation.

(ROA pp. 530 – 32).

This Court finds the trial court properly charged the jury with self-defense and mutual combat. Evidence was presented at Applicant's trial establishing an altercation ensued between him and the victim prior to the shooting over a couple of quarters. Additionally, the Supreme Court has held mutual combat and self-defense may be charged alongside each other if the evidence presented at trial supports the charges. Trial Counsel cannot be deficient for failing to object to a proper jury charge.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel, or any prejudice flowing therefrom. Thus, this allegation must be DENIED and DISMISSED.

i. Allegations 1i: Allegation of Failure to Bring Pre-Trial Motions⁶

Applicant alleged Trial Counsel was constitutionally ineffective for failing to bring pre-trial motions. Specifically, Applicant asserts Trial Counsel should have moved for a self-defense pre-trial motion, alleging that had Trial Counsel done so the action would have nullified the need for a trial. It is the interpretation of this Court that Applicant avers that had Trial Counsel requested a stand-your-ground hearing, he would have been entitled to a directed verdict of acquittal based on self-defense. This Court finds this allegation is without merit.

A defendant may seek immunity from prosecution under Section 16-11-420(E), S.C. Code Ann., by "demonstrating the elements of self-defense to the satisfaction of the trial court by the preponderance of the evidence." *State v. Glenn*, 429 S.C. 108, 838 S.E.2d 491 (2019) (quoting *State v. Curry*, 406 S.C. 364, 752 S.E.2d 263 (2013)); *See* S.C. Code Ann. § 16-11-450. Under this theory, "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." *Curry*, 406 at 371, 752 S.E.2d at 266. To prove self-defense, a defendant must establish, (1) he was without fault; (2) he actually believed he was in imminent danger of losing his life or sustaining serious bodily injury, or actually was in such imminent danger; (3) a reasonable prudent man of ordinary firmness and courage would have entertained same belief; and (4) there were no other probable mean of avoiding danger of losing his own life or sustaining serious bodily injury

⁶ During the evidentiary hearing, Applicant testified he intended to assert Trial Counsel had failed to make pre-trial motions concerning Murder and Attempted Murder.

than to act as he in this instance. *State v. Dickey*, 394 S.C. 491, 499, 716 S.E.2d 97, 101 (2011).

At the evidentiary hearing on direct examination, Applicant testified Trial Counsel should have made a pre-trial motion to see if he would get immunity and not have to go to trial. Applicant testified Trial Counsel never discussed the possibility with him. Trial Counsel testified he had a *Jackson v. Denno* hearing to suppress Applicant's statements. The testimony at trial established that Applicant got into an altercation with the victim. After the altercation, Applicant went to his car and retrieved a gun, went back into the club, and started shooting.

This Court finds from the record that the facts of this case do not support an affirmative defense of self-defense. Applicant was ushered out of the club by others to diffuse tensions—then returned still armed with a gun. Applicant had the opportunity to leave and chose not to and instead re-enter the bar, still armed. Therefore, any affirmative defense claim of self-defense would have been precluded. Nevertheless, Applicant was not precluded from raising self-defense at trial and did so.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel, or any prejudice flowing therefrom. Thus, this allegation must be DENIED and DISMISSED

III. ALLEGATIONS RAISED DURING THE EVIDENTIARY HEARING

a. Allegation: Allegation of Failure to Provide or Review Discovery

Applicant alleged Trial Counsel failed to review discovery with him. This Court finds this allegation is without merit.

At the evidentiary hearing on direct examination, Applicant testified Trial Counsel told him he was a private attorney and did not need to give Applicant discovery. Applicant testified Trial Counsel never gave him discovery. Applicant testified Trial Counsel filed a Brady motion,

but he never provided or went over discovery with Applicant. Applicant testified he was harmed by Trial Counsel not providing discovery. Applicant testified Trial Counsel met with him about three times, and each time Trial Counsel went over the facts of his case.

Trial Counsel testified he received discovery and reviewed discovery with Applicant, and he met with Applicant several times. Trial Counsel testified he met with Applicant three times to go over discovery and case strategy. Trial Counsel testified that he assumed Applicant requested discovery from him, but he provides discovery on a case-by-case basis. Trial Counsel testified Applicant's case involved gang affiliation and he would have discussed the pros and cons of possessing the discovery with Applicant. Trial Counsel testified he shared other discovery from the solicitor with Applicant.

The Court finds Trial Counsel's testimony credible. The Court finds Trial Counsel adequately provided and explained the discovery materials to Applicant prior to trial; therefore, Trial Counsel's performance was not deficient. In addition, to prove prejudice from failure to review discovery, a PCR applicant must present some new evidence or defenses that could have been discovered by counsel's further review of the discovery. *Harris v. State*, 377 S.C. 66, 75–76, 659 S.E.2d 140, 145–46 (2008) (citing *Jackson v. State*, 329 S.C. 345, 353–54, 495 S.E.2d 768, 772 (1998)), abrogated on other grounds by *Smalls*, 422 S.C. 174, 810 S.E.2d 836. Furthermore, an applicant must also show how the new evidence or defenses would have resulted in a different outcome. *Id.* (citing *David v. State*, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997); *Skeen v. State*, 325 S.C. 210, 214, 481 S.E.2d 129, 132 (1997)). Mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. *Id.*, 377 S.C. at 75, 659 S.E.2d at 145 (citing *Glover v. State*, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)).

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial

Counsel, or any prejudice flowing therefrom. Thus, this allegation must be DENIED and DISMISSED.

b. Allegation: Allegation of Newly Discovered Evidence.

Applicant alleges he is entitled to a new trial based on newly discovered evidence. This Court finds this allegation is without merit.

A person may institute a PCR action if "there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice[.]" S.C. Code Ann. § 17-27-20(A)(4). If the applicant contends there is evidence of a material fact not previously presented, under the discovery rule, the PCR application must be filed within one year after the date of actual discovery of the facts by the applicant or after the date when the facts could have been ascertained by the exercise of reasonable diligence. S.C. Code Ann. § 17-27-45(C).

To prevail, Applicant must show the newly-discovered evidence:

1. is such as would probably change the result if a new trial was had;
2. has been discovered since the trial;
3. could not by the exercise of due diligence have been discovered before the trial;
4. is material to the issue of guilt or innocence; and
5. is not merely cumulative or impeaching.

Hayden v. State, 278 S.C. 610, 611, 299 S.E.2d 854, 855 (1983) (citing *State v. Caskey*, 273 S.C. 325, 256 S.E.2d 737 (1979)).

The determination of whether new evidence is credible for the purposes of a new trial rests with the trial court. *State v. Porter*, 269 S.C. 618, 621, 239 S.E.2d 641, 643 (1977). In particular, "our jurisprudence recognizes the gatekeeping role of the trial court in making a credibility assessment." *State v. Mercer*, 381 S.C. 149, 166, 672 S.E.2d 556, 565 (2009) (citing *Porter*, 269

S.C. at 621, 239 S.E.2d at 643). "When testimony is in direct conflict and depends largely on the credibility of the new evidence, the trial judge is charged with the duty of assessing the evidence." *State v. Deese*, 266 S.C. 534, 538 225 S.E.2d 175, 176 (1976) (citing *State v. Fowler*, 264 S.C. 149, 155, 213 S.E.2d 447, 450 (1975)). The granting of a new trial based on after-discovered evidence is disfavored. *State v. Harris*, 391 S.C. 539, 545, 706 S.E.2d 526, 529 (Ct. App. 2011).

At the evidentiary hearing on direct examination, Applicant testified Trial Counsel informed him of new evidence three days before trial, but he did not go over the new evidence and Applicant has no idea what the new evidence is. Applicant testified this prejudiced him. Applicant testified he asked Trial Counsel why he brought up the new evidence, but Trial Counsel never answered him. Applicant testified that Trial Counsel told him there was a person who knew about his case. Applicant testified that he asked Trial Counsel who this person was, and Trial Counsel told him it was not important. Applicant testified he felt like this person could have helped him. Applicant testified the person's name is not in discovery.

This Court finds Applicant's testimony on this issue not credible. Further, this Court finds Applicant has failed to establish the existence of newly discovered evidence that would affect the outcome of a new trial if granted relief. Applicant merely provides speculation as to an alleged helpful witness that Trial Counsel mentioned a few days prior to trial. Applicant does not know the witness's name or what he would have testified to that would have been helpful. This Court cannot grant relief based on newly discovered evidence where an applicant fails to present the alleged evidence.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel, or any prejudice flowing therefrom. Thus, this allegation must be DENIED and DISMISSED.

CONCLUSION

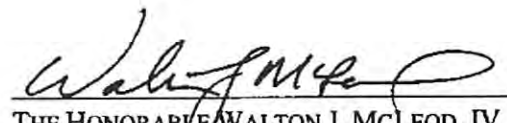
Based on the evidence presented at the PCR hearing and a thorough review of the record before this Court, this Court finds Applicant has not proven any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. Therefore, this application is denied and dismissed with prejudice.

This Court notifies Applicant that he must file and serve a notice of appeal within thirty days of receipt by counsel of the judgment entry's written notice to secure appropriate appellate review. See Rule 203 SCACR. Pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), an Applicant has the right to appellate counsel's assistance in seeking review of the denial of PCR. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate appellate procedures.

IT IS THEREFORE ORDERED:

1. The application for post-conviction relief be denied and dismissed with prejudice; and
2. Applicant shall remain in the custody of the State within the South Carolina Department of Corrections.

IT IS SO ORDERED.


THE HONORABLE WALTON J. MCLEOD, IV
Presiding Circuit Court Judge
Twelfth Judicial Circuit

This 20 day of MAY, 2024.
Lexington, South Carolina

CERTIFIED: A TRUE COPY

35

CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

2024 MAY 28 PM 2:47
CLERK OF COURT
FLORENCE COUNTY, S.C.

FILED

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE
IN THE COURT OF COMMON PLEAS

FILED

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2021CP2102627

Diondrae E Jackson

2024 MAY 28 PM 2:40

South Carolina State Of

CORIS FLORENCE CHAIR

PLAINTIFF(S)

FLORENCE COUNTY, SC

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order: _____

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.

Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

5/28/2024

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on **May 28, 2024**, and a copy mailed first class or placed in the appropriate attorney's box on **May 29, 2024**, to attorneys of record or to parties (when appearing pro se) as follows:

CPFORM4Cm

SCCA SCRPC Form 4C (Revised 2/17)

CERTIFIED A TRUE COPY

CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

Steven Willard Fowler 730 Main Street Unit # 237 North
Myrtle Beach, SC 29582

D Russell Barlow II PO Box 11549 Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Doris P O'Hara

Court Reporter

Doris Poulos O'Hara - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Fileers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

INDICTMENT FOR
MURDER,
ATTEMPTED MURDER

At a Court of General Sessions, convened on AUGUST 23, 2018 the Grand Jurors of FLORENCE County present upon their oath:

COUNT ONE- MURDER

That DIONDRAE EMANUEL JACKSON did in Florence County, on or about May 6, 2018, willfully, feloniously, and intentionally kill the victim, MALCOLM D. SPATES, with malice aforethought, either express or implied, by means of shooting him with a handgun, and the victim did die as a proximate result thereof on or about May 6, 2018 in Florence County, in violation of Section 16-03-0010, S. C. Code of Laws, 1976, as amended.

COUNT TWO- ATTEMPTED MURDER

That DIONDRAE EMANUEL JACKSON did in Florence County on or about May 6, 2018 with intent to kill RONALD OLIVER, attempt to kill the victim with malice aforethought, either expressed or implied by shooting him with a handgun in violation of Section 16-3-29, S. C. Code of Laws, 1976, as amended.

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



E.L. Clements, III
TWELFTH CIRCUIT SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Florence
 STATE VS.
Diondrae Emanuel Jackson

AKA:
 Race: Black Sex: M Age: 41
 DOB: SS#:

Address:
 City, State, Zip:

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
 TO: Manslaughter / Voluntary manslaughter

INDICTMENT/CASE#: 2018-GS-21-01599

A/W#: 2018A2110200378

Date of Offense: 5/6/2018

S.C. Code § : 16-03-0010; 16-03-0020

CDR Code #: 0116

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-03-0050 of the S.C. Code of Laws, bearing CDR Code # 0217
☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45
 (CSC w/minor 1st or CSC w/minor 3rd)

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:

Solicitor 13601 Defendant Attorney for Defendant 73788
SC Bar# SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 28 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 SCDOC.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic
 Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

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

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS. _____

Recipient: _____

*Fine: \$ _____

§ 14-1-206 (Assessments 107.5 %) \$ _____

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

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

§ 56-5-2995 (DUI Assessment) \$12 \$ _____

§ 56-1-286 (DUI Breath Test) \$25 \$ _____

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

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

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

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

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

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

TOTAL \$ 128.75

Clerk of Court/ Deputy Clerk E. Ragn

Court Reporter: K. Smith

SCCA/217 (04/2018)

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: _____

JUN 04 2019

SC Court of Appeals

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

Presiding Judge 2018

Judge Code: 2157

Sentence Date: April 18, 2019

STATE OF SOUTH CAROLINA)

COUNTY OF FLORENCE)

THE STATE OF SOUTH CAROLINA,)

vs.)

DIONDRAE EMANUEL JACKSON,)

Defendant.)

IN THE COURT OF GENERAL SESSIONS

TWELFTH JUDICIAL CIRCUIT

INDICTMENT NO. 2018-GS-21-01599

VERDICT

1. As to the charge of **Murder**, we the Jury unanimously find the Defendant Diondrae Emanuel Jackson:

☒ Not Guilty ☐ Guilty

If your answer to Question Number 1 is "Not Guilty", please proceed to Question Number 2. If your answer to Question Number 1 is "Guilty", please proceed to Question Number 3.

2. As to the charge of **Voluntary Manslaughter**, we the Jury unanimously find the Defendant Diondrae Emanuel Jackson:

☐ Not Guilty ☒ Guilty Plea

Please proceed to Question Number 3.

3. As to the charge of **Attempted Murder**, we the Jury unanimously find the Defendant Diondrae Emanuel Jackson:

☒ Not Guilty ☐ Guilty Plea

Please stop and inform the Bailiff you have reached a decision.


Foreperson

April 18, 2019 5:35 PM
Florence, South Carolina