

Jul 18 2025

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Colleton County

Honorable William H. Seals, Circuit Court Judge

MAURIO D. RIVERS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2025-000508

APPENDIX

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STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSIONS
COUNTY OF COLLETON	)	IND. NO.: 2011-GS-15-00549
		2011-GS-15-00550
		2011-GS-15-00551

STATE OF SOUTH CAROLINA,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
MAURIO DAETREL RIVERS,	)	
	)	
DEFENDANT.	)	
	)	

December 12 - 13, 2012

Walterboro, South Carolina

B E F O R E:

THE HONORABLE DIANE S. GOODSTEIN, JUDGE..

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None.

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COURT'S EXHIBITS

1. Note from Jury

1 **THE COURT:** Ladies and gentlemen, thank you so much
2 for being here this morning.

3 And at this time I'm going to call on the solicitor
4 to please call your next case for trial this week. Yes,
5 sir?

6 **MR. KNIGHT:** May it please the Court, Your Honor?

7 **THE COURT:** Yes, sir, Mr. Knight.

8 **MR. KNIGHT:** The State is ready in Indictment
9 2011-GS-15-549, an indictment for attempted murder;
10 Indictment 2011-GS-15-550, it's an indictment for
11 attempted murder; Indictment 2011-GS-15-551, possession of
12 a weapon during the commission of a violent offense.

13 These are the original indictments. They have been
14 true billed, and here is a list of proposed witnesses.

15 **THE COURT:** Thank you very much. All right, very
16 well.

17 Ladies and gentlemen, just as we did the other day,
18 in a moment I'm going to be reading to you some of the
19 allegations in the indictments, and as I understand there
20 are three of them. And again, I hasten to tell you that
21 to each one of these indictments that the defendant, who
22 you'll meet in just a moment, has pled not guilty. That
23 plea, of course, places upon the State the burden of
24 proving each and every allegation of each of these
25 indictments beyond a reasonable doubt.

1 Now, ladies and gentlemen, once I have read to you
2 some of the allegations of the indictment, then I'm going
3 to have the opportunity to introduce you to some folks and
4 then ask you some questions, and we will then select our
5 jury for this case.

6 Now, Mr. Bryan, have you had an opportunity to read
7 these indictments?

8 **MR. BRYAN:** Yes, Your Honor.

9 **THE COURT:** Very well, because I just wanted to make
10 sure you had reviewed them. Very well.

11 Ladies and gentlemen, I'm going to be reading to you
12 these indictments. The reason that I'm going to be doing
13 that is to find out whether or not any of you know or
14 think you may know, or have you heard or think you may
15 have heard, anything about these allegations.

16 And I'm going to begin with Indictment
17 2011-GS-15-00550. That reads in part and alleges that in
18 Colleton County, South Carolina, on or about July the
19 12th, 2011, that the defendant, Maurio Daetrel Rivers,
20 with malice aforethought, accompanied by a present ability
21 to complete the act and the intent to kill, either express
22 or implied, did attempt to kill the victim, Deputy J.
23 Eaches, with the Dorchester County Sheriff's Department
24 while on Augusta Highway by shooting at the victim, in
25 violation -- and there's a code section, it's South

1 Carolina Code of Laws, Section 16-3-29 of the South
2 Carolina Code of Laws, 1976, as amended.

3 Ladies and gentlemen, do any of you know or think you
4 may know, or have you heard or think you may have heard,
5 anything about this matter? If so, please stand at this
6 time.

7 **JUROR:** May I approach, please?

8 **THE COURT:** Sure. Absolutely. And if you'll tell me
9 your juror number as you come forward?

10 **JUROR:** Number Fifty-two.

11 **THE COURT:** Thank you. Come on forward.

12 (WHEREUPON, THE FOLLOWING PROCEEDINGS WERE HELD ON
13 THE RECORD OUT OF THE HEARING OF THE REMAINING JURY
14 PANEL:)

15 **THE COURT:** And I just need enough volume so our
16 court reporter can hear you.

17 **JUROR:** My husband is a police officer, and he was
18 just involved in a shooting. I don't think -- it's just
19 very difficult.

20 **THE COURT:** Yes, ma'am. That's okay. I see that you
21 are trembling and your voice is trembling, and I got that
22 you're emotional. You don't have to be involved in this
23 case. Okay?

24 And can you do this for me? If you would be so kind
25 as to not discuss this with your fellow jurors? Okay?

1 Thank you.

2 Pat, she's going to sit this one out, Number
3 Fifty-two.

4 **CLERK:** Oh, okay.

5 **THE COURT:** Fifty-two.

6 (WHEREUPON, THE FOLLOWING PROCEEDINGS WERE HELD ON
7 THE RECORD IN THE PRESENCE AND HEARING OF THE JURY PANEL:)

8 **THE COURT:** Fifty-two; right? Did I make that up?
9 Fifty-two is your number?

10 **JUROR:** Yes, ma'am.

11 **THE COURT:** Thank you so much.

12 Okay. All right. Now, ladies and gentlemen,
13 Indictment 2011-GS-15-551 alleges that in Colleton County,
14 South Carolina, on or about July the 12th, 2011, that the
15 defendant, Mr. Maurio Daetrel Rivers, did possess a
16 handgun or visibly displayed what appeared to be a handgun
17 during the commission or attempted commission of attempted
18 murder, a violent crime, in violation -- and there's a
19 section that's alleged, Section 16-23-490 of the South
20 Carolina Code of Laws, 1976, as amended.

21 Ladies and gentlemen, do any of you know or think you
22 may know, or have you heard or think you may heard,
23 anything about these allegations? If so, please stand at
24 this time.

25 (NO RESPONSE.)

1 **THE COURT:** And I find no one standing.

2 Now, ladies and gentlemen, Indictment 2011-GS-15-549
3 alleges in part that in Colleton County, South Carolina,
4 on or about July the 12th, 2011, that the defendant, Mr.
5 Mauricio Daetrel Rivers, with malice aforethought,
6 accompanied by a present ability to complete the act and
7 the intent to kill either express or implied, did attempt
8 to kill the victim, Deputy J. Burnette -- or Burnette,
9 with the Dorchester County Sheriff's Department while on
10 Augusta Highway by shooting at the victim, in violation of
11 the South Carolina Code of Laws 16-3-29, of the South
12 Carolina Code of Laws, 1976, as amended.

13 Ladies and gentlemen, do any of you know or think you
14 may know, or have you heard or think you may have heard,
15 to include today anything about these allegations? If so,
16 please stand at this time.

17 (NO RESPONSE.)

18 **THE COURT:** And I find no one standing.

19 And again, let me repeat, ladies and gentlemen, Mr.
20 Rivers denies each and every one of these allegations
21 contained in each one of these indictments. That places
22 upon the State the burden to prove each and every
23 allegation beyond a reasonable doubt. And of course,
24 we'll have an opportunity to talk about that much more,
25 those of you who serve on this jury.

1 Now, ladies and gentlemen, please allow me to
2 introduce you to some folks, and I'm going to begin with
3 Mr. Steve Knight, the assistant solicitor here.

4 And if you'll stand and face our jury panel, please,
5 sir?

6 And this is Mr. Knight.

7 Now, will you be assisted by anyone in this case?

8 **MR. KNIGHT:** No, ma'am.

9 **THE COURT:** Very well.

10 Ladies and gentlemen, of course you had the
11 opportunity yesterday to hear the names of the lawyers in
12 the office here in the solicitor's office. I'm going to
13 ask Mr. Knight just to repeat those names, because I don't
14 know that either of these folks were here when that
15 occurred, so I'm going to ask him to do that. Of course,
16 we'll begin with the solicitor, Mr. Duffie Stone, and then
17 the folks in his office, please.

18 **MR. KNIGHT:** Reid Evans and Ashley Hudson are in this
19 office here.

20 **THE COURT:** All right. Thank you.

21 Ladies and gentlemen -- oops, I've got to get
22 energized here.

23 (WHEREUPON, THE COURT'S MICROPHONE WAS TURNED ON.)

24 **THE COURT:** Are you related -- did I do it? Yes.

25 Are you related by blood or marriage or acquainted

1 with Solicitor Stone, Mr. Knight, Mr. Reid, or Ms. Hudson?
2 If so, please stand at this time.

3 (NO RESPONSE.)

4 **THE COURT:** And I find no one standing. Very well.

5 Now, ladies and gentlemen, please allow me to
6 introduce you to Mr. Maurio Daetrel Rivers.

7 Mr. Rivers, if you could stand and face our jury
8 panel, please? Thank you so much, sir. Thank you, and
9 you may be seated. Thank you.

10 And how did I do on your middle name? Did I mess it
11 up?

12 **DEFENDANT, MR. RIVERS:** No, ma'am. Daetrel.

13 **THE COURT:** I did okay? Oh, thank you. All right.

14 Ladies and gentlemen, you just met Mr. Maurio Daetrel
15 Rivers, and I ask are you related by blood or marriage or
16 acquainted with Mr. Rivers? If so, please stand at this
17 time.

18 (NO RESPONSE.)

19 **THE COURT:** And I find no one standing.

20 Mr. Rivers is represented by Mr. Bryan, Mr. J. D.
21 Bryan.

22 Thank you so much, Mr. Bryan.

23 And, ladies and gentlemen, Mr. Bryan is a sole
24 practitioner, and I ask are you related by blood or
25 marriage or acquainted with, or have you or any member of

1 your immediate family, to your knowledge, ever been
2 represented by Mr. Bryan? If so, please stand at this
3 time.

4 (NO RESPONSE.)

5 **THE COURT:** And I find no one standing.

6 Now, ladies and gentlemen, I'm about to go over with
7 you a list of potential witnesses. And my question as to
8 each of these witnesses is are you related by blood or
9 marriage or acquainted with any of these individuals?

10 And I'm going to ask if you happen to be in the
11 courtroom currently, please stand, because it is so much
12 easier to put a face with a name than it is just a name
13 alone. So if you happen to be in the courtroom, I'll ask
14 these folks to please stand.

15 I'm going to go through the list now. Justin Eaches,
16 Joe Burnette, Tim Knight, James Ethridge, Michelle
17 Eichenmiller, Robert Gregory, Steven Bellew, Jackie
18 Lawson, Fayth Grooms.

19 Oh, was that Mr. Lawson?

20 **MR. LAWSON:** Yes, ma'am.

21 **THE COURT:** Thank you, Mr. Lawson. Thank you.

22 Did everyone get a chance to see Mr. Lawson? You can
23 -- he can stand twice.

24 Thank you so much.

25 And that's Fayth Grooms, Earl Asbell, Andy Marchant,

1 Richard Carson, Lori Henry, Selena Kinard, Amy Stephens.

2 Are you related by blood or marriage or acquainted
3 with any of those individuals? If so, please stand at
4 this time.

5 (NO RESPONSE.)

6 **THE COURT:** And I find no one standing.

7 Now, ladies and gentlemen, my next question for you
8 -- I'm going to ask Mr. Bryan and Mr. Knight, do you have
9 any additional voir dire that you would like me to
10 address?

11 **MR. KNIGHT:** I don't, but I think Mr. Bryan does.

12 **THE COURT:** Oh, wonderful. Very well.

13 Any objection to any of that, Mr. Knight?

14 **MR. KNIGHT:** No, ma'am.

15 **THE COURT:** Very well.

16 Ladies and gentlemen, have you ever been employed by
17 the State of South Carolina or any other government
18 agency? If so, please stand at this time, if you've ever
19 been employed by the government.

20 And your name and number?

21 **JUROR:** I'm Charlotte Heaton, and my number is
22 eighty-five. South Carolina Department of Revenue.

23 **THE COURT:** Thank you. And you retired from that
24 position.

25 **JUROR:** Yes, ma'am.

1 **THE COURT:** Hard to imagine. Very well. Thank you.
2 All right. Now, anyone else?

3 (NO RESPONSE.)

4 **THE COURT:** Very well. I find no one else standing.
5 Do any of you have a -- have a relative -- now, let
6 me just tell you, I don't want to go into, you know,
7 because it might be your fourth cousin. We're talking
8 your immediate family. Do you have an immediate family
9 member who is, or has ever been, to your knowledge, ever
10 been employed by the State of South Carolina or any other
11 government entity? That's kind of hard to think about.
12 You know?

13 We're going to start here. We're just going to ask
14 you for your name and number.

15 **JUROR:** Yes, it's William Usery. I'm 180, and my
16 sister is a Sergeant for the Isle of Palms Police
17 Department.

18 **THE COURT:** Thank you.

19 **JUROR:** I'm Tony Shider. My number is 156. My wife
20 is not employed now, but she used to be a dispatcher for
21 the Highway Patrol here in Walterboro.

22 **THE COURT:** Thank you.

23 **JUROR:** Barry High, Number 87. My father-in-law is a
24 Family Court Judge in the State of South Carolina.

25 **THE COURT:** Thank you so much.

1 Oh, yes. We have more people. That's okay. We have
2 relatives. Yes, ma'am?

3 **JUROR:** I have a daughter who is employed by Colleton
4 County.

5 **THE COURT:** The county itself?

6 **JUROR:** Yes, ma'am.

7 **THE COURT:** In what capacity?

8 **JUROR:** Probate Judge.

9 **THE COURT:** Thank you kindly. See, now -- thank you,
10 Mrs. Heaton. And your number was?

11 **JUROR:** 85.

12 **THE COURT:** 85. Thank you.

13 Now, I know that some of you just told me about
14 family members who were employed by a law enforcement
15 agency, you don't need to stand again, because we've got
16 that, but are any of you related to anyone who is or was
17 employed in law enforcement, and I'm talking about your
18 immediate family members? Law enforcement includes any
19 city police department, any sheriff's department,
20 S.L.E.D., which is the State Law Enforcement Division, the
21 Highway Patrol, the South Carolina Department of Natural
22 Resources, or any federal agency such as the F.B.I., ATF,
23 Secret Service, or any department of corrections? Is or
24 was employed in law enforcement, immediate family members.
25 If so, please stand at this time.

1 And I find someone standing. And your name and
2 number, to begin with?

3 **JUROR:** Curtis Petit.

4 **THE COURT:** Yes.

5 **JUROR:** 139. My brother-in-law is with the county
6 police department in Spartanburg, South Carolina.

7 **THE COURT:** Thank you.

8 Do any of you donate money to organizations such as
9 the State Trooper's Association, the Sheriff's
10 Association, or any other law enforcement organization?
11 Donate money?

12 And I don't want to trick anybody because I know lots
13 of different organizations sell things like jam and donuts
14 and stuff like that. If you do that, I don't want you to
15 worry about that, but I would say if you specifically
16 donate monies to those organizations directly, because you
17 may have bought, you know, people are selling things for
18 fundraisers all of the time. But if you -- I guess if you
19 are aware that you bought donuts from an organization such
20 as the Sheriff's Association, you should stand now, but I
21 don't want you to be concerned about that.

22 If like you're seated on the jury, and all of a
23 sudden you remember, "Oh, my gosh, you know, I might have
24 bought jam in like 1983 from the Sheriff's Association,"
25 or something like that. So, but if you're aware of making

1 any donations, please stand at this time.

2 Yes, Mrs. Heaton, Juror Number -- I forgot your
3 number.

4 **JUROR:** Juror Number 85.

5 **THE COURT:** 85, of course.

6 **JUROR:** I have made donations to the Sheriff's
7 Association.

8 **THE COURT:** Thank you so much.

9 Now, have you made any contributions, meaning money,
10 to organizations such as CAVE, which stands for Citizens
11 Against Violent Crime; or Mothers Against Drunk Drivers,
12 that's MADD; or SADD, Students Against Drunk Driving? If
13 so, please stand.

14 Yes, Mrs. Heaton?

15 **JUROR:** Yes, I have made donations to Mothers Against
16 Drunk Drivers.

17 **THE COURT:** Thank you.

18 **JUROR:** 85.

19 **THE COURT:** Yes, ma'am. I should have said that,
20 Juror Number 85. Thank you.

21 Now, I'm going to ask three questions together, and
22 if you need to respond on this next occasion, I'm going to
23 ask you to please come forward, but don't respond to any
24 of these questions until I have asked all three. Question
25 number one -- well, I'm going to ask them together. Have

1 you or any members of your immediate family ever been the
2 victim of a crime, ever been the victim of a crime?

3 That's one question.

4 The second question: Have you of any member of your
5 immediate family ever been accused of committing a crime?

6 So, have you or any member of your immediate family
7 every been the victim of a crime? Have you or any member
8 of your immediate family every been accused of committing
9 a crime? I am not talking about, you know, driving
10 offenses. That's not what I'm talking about, but I am
11 talking about any other crime. Now, that -- that's
12 question number one and question number two.

13 Question number three is this: Do you know any
14 reason why you ought not, should not, could not be a juror
15 in this case, being ready, willing and able to listen to
16 the evidence and to make up your mind based solely on what
17 you hear in court while court is in session, being
18 completely unaffected by matters extraneous, meaning
19 matters outside the courtroom?

20 For example, you know, we haven't seen each other in
21 like two days. Something may have happened. You know?
22 Somebody may have shown up last night with one of those
23 checks and balloons and flowers, and you're like
24 distracted this morning. It could be that as embarrassed
25 as you are, you went home and you opened the drawer next

1 to the refrigerator and low and behold, our tickets to
2 Tahiti were in the drawer next to the refrigerator and you
3 forgot you're supposed to go to Tahiti tomorrow. It
4 really could be anything. It could be that you're in
5 labor right now or your spouse is in labor right now. It
6 really could be anything.

7 If you need to respond to any of those questions that
8 I just asked, the first, the second, or the third, I'm
9 going to ask you to please come forward at this time.
10 Great, and I'm going to ask you to come forward one at the
11 time. As you come through the swinging gate, I'm going to
12 ask that you just give me your name or your number, which
13 ever one.

14 **JUROR:** One-o-eight.

15 **THE COURT:** Eight? Come on forward. Yes, ma'am?
16 Counsel, if y'all want to come forward, that's fine.

17 (WHEREUPON, THE FOLLOWING PROCEEDINGS WERE HELD ON
18 THE RECORD OUT OF THE HEARING OF THE REMAINING JURY
19 PANEL:)

20 **THE COURT:** One-o-eight. I can't hear this morning.
21 Hi.

22 **JUROR:** I was mugged and ---

23 (WHEREUPON, SIRENS WERE HEARD OUTSIDE.)

24 **COURT REPORTER:** I'm sorry, Your Honor. I can't
25 hear.

1 **THE COURT:** She was mugged.

2 **JUROR:** I was mugged, and did not know whether you
3 meant -- my mother was a security officer certified by
4 S.L.E.D.

5 **THE COURT:** Okay. Your momma was a security officer.
6 You know, that's sort of a gray area, isn't it? I think
7 you did well, though, to let us know that. How long ago
8 did that occur?

9 **JUROR:** Oh, whenever I was a young girl. I was
10 seventeen years old, and other things have happened in my
11 life that I never reported.

12 **THE COURT:** I understand. As a result of that
13 experience and other experiences that you are alluding to,
14 might they, could they in any respect interfere with your
15 ability to be completely fair and impartial both to the
16 State and to Mr. Rivers?

17 **JUROR:** No, I think I can do that.

18 **THE COURT:** You can do that, meaning be fair and
19 impartial?

20 **JUROR:** (NODDED.)

21 **THE COURT:** Yes?

22 **JUROR:** Yes.

23 **THE COURT:** And can you set those experiences aside
24 and make up your mind based solely on what you hear in
25 court while court is in session?

1 **JUROR:** Yes.

2 **THE COURT:** Thank you. Please stay with us.

3 She's staying. She's staying.

4 Come on up here, sweetie.

5 **MR. KNIGHT:** She was mugged?

6 **THE COURT:** She was mugged and other things have
7 happened in her life that she has not reported.

8 **JUROR:** One-thirty-four.

9 **THE COURT:** Oh, wonderful. Thank you.

10 Come on forward, and I just -- we need enough volume
11 for our court reporter to hear you. Yes, sir?

12 **JUROR:** Yes, I was in an armed robbery, me and my
13 wife. She worked at the gas station across from Dairy
14 Land. I think it was in 2004 or 2005, an armed robbery.

15 **THE COURT:** All right. Yes.

16 **JUROR:** And the third one, my wife gets shots in her
17 hips for her cancer.

18 **THE COURT:** Yes.

19 **JUROR:** And it paralyzes her, and there's no one at
20 the house to take care of her. My days off is Wednesdays,
21 and I usually schedule it so I can be home to take care of
22 her at the same time ---

23 **THE COURT:** Yeah.

24 **JUROR:** --- because she's -- she's, I mean, for a day
25 and a half, she's paralyzed. I have to do everything to

1 help her out.

2 **THE COURT:** I understand. I understand. So what
3 you're telling me is today is Tuesday, if this case goes
4 into tomorrow, that's going to be a real ---

5 **JUROR:** Today is Wednesday.

6 **THE COURT:** Today is Wednesday. That's right. Of
7 course.

8 And so you really need to be home with her today.

9 **JUROR:** Yes, ma'am.

10 **THE COURT:** Uh-huh.

11 **JUROR:** Because today is the worse day, and tomorrow
12 is ---

13 **THE COURT:** Awh. It's tough. It's a tough day, too.

14 **JUROR:** Yes, ma'am.

15 **THE COURT:** Here's what we'll do. I'll transfer your
16 service.

17 **JUROR:** Okay.

18 **THE COURT:** And you can -- on that basis. So you
19 just get with Mrs. Pat right now and we'll transfer you.

20 **JUROR:** Okay.

21 **THE COURT:** Thank you.

22 **JUROR:** All right. Thank you, ma'am.

23 **THE COURT:** Thank you for letting me know that.

24 **JUROR:** Yes, ma'am.

25 **THE COURT:** Yes? Next person, please.

1 **JUROR:** Number Forty-eight.

2 **THE COURT:** Hi. Yes, sir.

3 **JUROR:** I've been previously accused of domestic
4 violence, and I ain't too fond of the law enforcement.

5 **THE COURT:** I understand. Was that -- was that here
6 in Colleton County?

7 **JUROR:** No, ma'am.

8 **THE COURT:** Somewhere else?

9 **JUROR:** It was in Orangeburg.

10 **THE COURT:** In Orangeburg?

11 **JUROR:** Yes.

12 **THE COURT:** Let me ask you this question. As a
13 result of that experience, ---

14 **JUROR:** Uh-huh.

15 **THE COURT:** --- do you believe that that might or
16 could interfere with your ability to be fair and
17 impartial?

18 **JUROR:** Uh-huh.

19 **THE COURT:** Yes?

20 **JUROR:** Yes, I do.

21 **THE COURT:** Particularly since there is -- there is
22 somebody from law enforcement from Orangeburg.

23 **JUROR:** Uh-huh.

24 **THE COURT:** So you're concerned that that might cause
25 a problem?

1 **JUROR:** No, just law enforcement in general.

2 **THE COURT:** It goes beyond Orangeburg. Very well.
3 Well, here's what I'm going to ask you to do, because I
4 don't want to lose you.

5 **JUROR:** Okay.

6 **THE COURT:** I'm going to ask you to transfer to a
7 civil term.

8 **JUROR:** Cool.

9 **THE COURT:** Oh, you're so wonderful. Oh, that's so
10 nice, but here's what I'm going to do. Since I'm going to
11 transfer you, ---

12 **JUROR:** Uh-huh.

13 **THE COURT:** --- I'm going to ask you to pick the
14 week. You get a week good for you. You can take a minute
15 and think about it.

16 **JUROR:** Can I look at the calendar?

17 **THE COURT:** You bet you can. Talk to Mrs. Pat, and
18 she'll tell you when the terms are, and if you need to
19 call back this afternoon, that's cool. I don't care.
20 That's fine.

21 All right. Transferred.

22 **JUROR:** Twenty-one.

23 **JUROR NUMBER 134:** So you transferred me for a whole
24 other week?

25 **THE COURT:** Yeah, a whole other week. So you pick

1 the week, now.

2 JUROR NUMBER 134: Okay.

3 THE COURT: Put it off in the future.

4 JUROR NUMBER 134: Well, it's every Wednesday.

5 THE COURT: It's every Wednesday; isn't it. No,
6 there's an exemption for you. I can exempt you. You're
7 exactly right.

8 JUROR NUMBER 134: Thank you.

9 THE COURT: I'm going to excuse you on that basis.

10 JUROR NUMBER 48: So I can go?

11 THE COURT: You can go. Goodbye. Wave goodbye.

12 CLERK: What was your number, sir? I'm sorry.

13 JUROR NUMBER 48: Forty-eight.

14 THE COURT: Yes, ma'am? Hi.

15 JUROR: I have a medical appointment on Friday.

16 THE COURT: That's right.

17 Is this case expected to go until Friday? Do you
18 know?

19 MR. KNIGHT: No, ma'am. We should finish today and
20 go to the jury tomorrow.

21 THE COURT: There you go. We've got you. Thank you.
22 You're protected for Friday. If it goes into Friday for
23 whatever reason, we will sit the alternate. Okay? All
24 right?

25 So she's with us. She's staying.

1 **JUROR:** Fifty-one.

2 **THE COURT:** Hi. Yes?

3 **JUROR:** I have a brother who is serving time right
4 now for drinking and driving and drugs.

5 **THE COURT:** Okay.

6 **JUROR:** He got three years.

7 **THE COURT:** He got three years?

8 **JUROR:** Uh-huh.

9 **THE COURT:** Here from Colleton County?

10 **JUROR:** Um, he's in Summerville.

11 **THE COURT:** He's from Summerville? That's Dorchester
12 County.

13 **JUROR:** He's in Columbia now.

14 **THE COURT:** He's in Columbia now? Okay. All right.
15 As a result of that experience, do you believe that that
16 might or could interfere with your ability to be
17 completely fair and impartial to both the State as well as
18 to the defense?

19 **JUROR:** No, ma'am. I can do that.

20 **THE COURT:** You can do that. Can you set that,
21 obviously a very sad experience, aside and make up your
22 mind based on what you hear in court while court is in
23 session?

24 **JUROR:** Yes, ma'am.

25 **THE COURT:** Thank you. Please stay with us.

1 **JUROR:** Juror One-thirty-nine.

2 **THE COURT:** Yes, sir? Yes, sir? Good morning.

3 **JUROR:** Both of my younger brothers have been
4 incarcerated by the State of South Carolina on numerous
5 occasions for drugs and alcohol, resisting arrest,
6 insurance fraud, parole violations. Nephew, favorite
7 nephew, involuntary manslaughter, vehicular.

8 **THE COURT:** Okay. And so that's been ongoing in your
9 life, it sounds like.

10 **JUROR:** Pretty much.

11 **THE COURT:** Yes. And as a result of their
12 experiences and the way that they impact you, do you
13 believe that that dynamic in your life might or could
14 interfere with your ability to be completely fair and
15 impartial both to the State, as well as to the defense?

16 **JUROR:** No, ma'am.

17 **THE COURT:** You don't think it would?

18 **JUROR:** No, ma'am.

19 **THE COURT:** In other words -- in other words, what
20 you would be required to do as a juror is just set that
21 aside and make up your mind based upon what you hear in
22 court while court is in session.

23 **JUROR:** Yes, ma'am.

24 **THE COURT:** You think you can do that?

25 **JUROR:** Yes, ma'am.

1 **THE COURT:** I think you can too. Thank you, sir.

2 **JUROR:** Number Eighty-two.

3 **THE COURT:** Good morning.

4 **JUROR:** Good morning.

5 **THE COURT:** Yes, sir?

6 **JUROR:** My youngest son had got caught with marijuana
7 when he was, I don't know, probably about eighteen,
8 probably about ten years ago. He had to do like a
9 pretrial intervention.

10 **THE COURT:** Yes, yes. And as a result of that
11 experience, do you believe that that might or could
12 interfere with your ability to be completely fair and
13 impartial to the State, as well as to Mr. Rivers?

14 **JUROR:** No.

15 **THE COURT:** Can you set your son's experience aside
16 and make up your mind based on what you hear in court
17 while court is in session?

18 **JUROR:** Ma'am?

19 **THE COURT:** Can you make up your mind based upon what
20 you hear in court, ---

21 **JUROR:** Yes.

22 **THE COURT:** --- while court is in session?

23 **JUROR:** Yes.

24 **THE COURT:** And I would just ask this. The mother in
25 me is coming out. At the conclusion of his PTI, did he

1 get his record expunged?

2 JUROR: I believe so.

3 THE COURT: You doublecheck and make sure he did
4 that.

5 JUROR: I'm pretty sure he did.

6 THE COURT: Because that's the beauty of going
7 through it, because they -- it's pretty -- I mean, it's
8 pretty aggressive. In other words, they work your butt.
9 I mean, it's good lessons learned. So just be sure they
10 got it, when you think of it, be sure it's been expunged.

11 JUROR: Yes, ma'am.

12 THE COURT: Wonderful. Thank you.

13 JUROR: Number Eighteen.

14 THE COURT: Yes, ma'am. Yes, ma'am?

15 JUROR: My son was convicted of failing to stop for a
16 blue light, maybe a year or two ago.

17 THE COURT: You knew I was going to ask you. It was
18 several years ago?

19 JUROR: Yes, ma'am.

20 THE COURT: And as a result of that experience, do
21 you believe that that might or could interfere with your
22 ability to be completely fair and impartial both to the
23 State, as well as to Mr. Rivers?

24 JUROR: Um, no, ma'am. I could be fair.

25 THE COURT: And can you set your son's experience

1 aside and make up your mind based on what you hear in
2 court while court is in session?

3 **JUROR:** Yes, ma'am, because he was guilty. He didn't
4 stop.

5 **THE COURT:** I understand. Thank you so much.

6 (WHEREUPON, THE FOLLOWING PROCEEDINGS WERE HELD ON
7 THE RECORD IN THE PRESENCE AND HEARING OF THE ENTIRE JURY
8 PANEL:)

9 **THE COURT:** All right. Very well.
10 Anything further from the State?

11 **MR. KNIGHT:** No, Your Honor.

12 **THE COURT:** From the defense?

13 **MR. BRYAN:** No, Your Honor.

14 **THE COURT:** Thank you.

15 All right. I find that our panel is now qualified.
16 You know -- and you know who we transferred and who is
17 sitting out, so y'all have got that.

18 Ladies and gentlemen, and you know the drill, because
19 we've been through it. So you know if your name is
20 called, you'll come through and you'll stand here with
21 Mrs. Pat and turn around and face the backdoor. And
22 you'll first hear from the State, and you'll either hear:
23 Present the juror or excuse the juror.

24 You will then hear from the defense, either: Seat
25 the juror or excuse the juror.

1 Please be mindful, please be mindful that in the
2 event that you are excused, I promise you these lawyers
3 mean you no embarrassment. We just, again, this is an
4 ancient process in our state, and we've been doing this
5 for, goodness, two hundred years. So please understand
6 these lawyers mean you no embarrassment whatsoever.

7 I think there are like two million things they think
8 about and that goes through their minds, obviously very
9 quickly, as they make their jury selections. And I assure
10 you these folks mean you absolutely no embarrassment if
11 you are excused or if you are seated.

12 All right. Now, Counsel, the charges will be five
13 and -- I mean the strikes will be five and five.

14 **MR. KNIGHT:** Yes, ma'am.

15 **THE COURT:** And with regards to our alternate, it
16 will be two -- one for the State and two for the defense.

17 **MR. KNIGHT:** Yes, ma'am.

18 **MR. BRYAN:** Don't we get ten strikes?

19 **THE COURT:** Well, come here and let me see.

20 **MR. KNIGHT:** May I approach, Your Honor?

21 **THE COURT:** Sure. Please approach, because I'm
22 looking at the statute.

23 **MR. KNIGHT:** It's five and five.

24 **THE COURT:** I think it's five and five. It's murder
25 and manslaughter.

1 **MR. KNIGHT:** Right.

2 **THE COURT:** It's murder and manslaughter, and the
3 statute has not been changed.

4 **MR. KNIGHT:** It's five and five.

5 **THE COURT:** Attempted murder. It's attempted murder,
6 so I do believe it's five and five, but I want you to
7 preserve your objection. Okay?

8 **MR. BRYAN:** Okay.

9 **THE COURT:** All right. There is a concern interposed
10 by defense that it should be five and ten, but the
11 statute, which is 14-7-1110, does not include attempted
12 murder as one of the offenses for which ten strikes for
13 the defense would be allowed. They are on the crime of
14 murder and manslaughter, but not attempted murder.

15 On that basis, I would determine that the strikes are
16 five and five. I do note, though, the defense's
17 exception. Thank you so much.

18 Counsel, let me see you just quickly, just real
19 quickly.

20 (WHEREUPON, A BENCH CONFERENCE WAS HELD ON THE RECORD
21 OUT OF THE HEARING OF THE JURY PANEL:)

22 **THE COURT:** I just -- I don't see an amendment. When
23 y'all tried the codefendant, you did five and five?

24 **MR. KNIGHT:** Right.

25 **THE COURT:** Okay. Great. We just checked the

1 amendments, and there isn't one.

2 (WHEREUPON, THE FOLLOWING PROCEEDINGS WERE HELD ON
3 THE RECORD IN THE PRESENCE AND HEARING OF THE JURY PANEL:)

4 **THE COURT:** Okay.

5 **CLERK:** Ready?

6 **THE COURT:** I'm ready.

7 **CLERK:** As I call your name, please come up and turn
8 around and face the counsel.

9 Twenty-one, Hazel Breland.

10 **THE COURT:** I want you to smile as you come up.

11 **CLERK:** What say ye for the State?

12 **MR. KNIGHT:** Present the juror.

13 **CLERK:** What say ye for the defendant?

14 **MR. BRYAN:** Please swear the juror.

15 **CLERK:** Please have a seat in the jury box.

16 **THE COURT:** I think you know where to sit. Keep on
17 coming.

18 **CLERK:** One-eighteen, Michael J. Mears.

19 **THE COURT:** Thank you so much, Ms. Breland.

20 **CLERK:** What say ye for the State?

21 **THE COURT:** Is it Dr. Breland or Ms. Breland? Is it
22 Dr. Breland?

23 **JUROR:** Yes.

24 **THE COURT:** I thought so.

25 **MR. KNIGHT:** Excuse the juror from the trial of this

1 case, please.

2 **CLERK:** Have a seat back with the panel.

3 Twenty-two, Michael I. Bright.

4 What say ye for the State?

5 **MR. KNIGHT:** Excuse the juror from the trial of this
6 case, please.

7 **CLERK:** Please have a seat back with the panel.

8 Ninety-four, Amy D. Iriel.

9 What say ye for the State?

10 **MR. KNIGHT:** Present the juror.

11 **CLERK:** What say ye for the defendant?

12 **MR. BRYAN:** Please swear the juror.

13 **CLERK:** Please have a seat in the jury box.

14 Eighty-five, Charlotte R. Heaton.

15 What say ye for the State?

16 **MR. KNIGHT:** Present the juror.

17 **CLERK:** What say ye for the defendant?

18 **MR. BRYAN:** Please excuse the juror from the trial of
19 this case.

20 **CLERK:** Please have a seat back with the panel.

21 One-fifty-six, Tony Shider.

22 What say ye for the State?

23 **MR. KNIGHT:** Present the juror.

24 **CLERK:** What say ye for the defendant?

25 **MR. BRYAN:** Please seat the juror.

1 **CLERK:** Please have a seat in the jury box.
2 One-eleven, Antwaun D. Manigo.
3 What say ye for the State?
4 **MR. KNIGHT:** Present the juror.
5 **CLERK:** What say ye for the defendant?
6 **MR. BRYAN:** Please swear the juror.
7 **CLERK:** Please have a seat in the jury box.
8 Fourteen, Ada L. Bentley.
9 What say ye for the State?
10 **MR. KNIGHT:** Present the juror.
11 **CLERK:** What say ye for the defendant?
12 **MR. BRYAN:** Please swear the juror.
13 **CLERK:** Please have a seat in the jury box.
14 Fifty-seven, Robert L. Edwards.
15 What say ye for the State?
16 **MR. KNIGHT:** Present the juror.
17 **CLERK:** What say ye for the defendant?
18 **MR. BRYAN:** Please swear the juror.
19 **CLERK:** Please have a seat in the jury box.
20 One-thirty-one, Donna K. Myers.
21 What say ye for the State?
22 **MR. KNIGHT:** Present the juror.
23 **CLERK:** What say ye for the defendant?
24 **MR. BRYAN:** Please swear the juror.
25 **CLERK:** Please have a seat in the jury box.

1 Sixty-three, Anita L. Ford.

2 What say ye for the State?

3 **MR. KNIGHT:** Present the juror.

4 **CLERK:** What say ye for the defendant?

5 **MR. BRYAN:** Please swear the juror.

6 **CLERK:** Please have a seat in the jury box.

7 One-seventy-seven, John A. Taylor.

8 What say ye for the State?

9 **MR. KNIGHT:** Present the juror.

10 **CLERK:** What say ye for the defendant?

11 **MR. BRYAN:** Please excuse the juror from the trial of
12 this case.

13 **CLERK:** Please have a seat back with the panel.

14 Number Six, Jessie M. Bagwell.

15 What say ye for the State?

16 **MR. KNIGHT:** Present the juror.

17 **CLERK:** What say ye for the defendant?

18 **MR. BRYAN:** Please excuse the juror from the trial of
19 this case.

20 **CLERK:** Please have a seat back with the panel.

21 One-twenty-five, Johnathan D. Mixson.

22 What say ye for the State?

23 **MR. KNIGHT:** Present the juror.

24 **CLERK:** What say ye for the defendant?

25 **MR. BRYAN:** Please excuse the juror from the trial of

1 this case.

2 **CLERK:** Please have a seat back with the panel.

3 One hundred, Raheem T. Jones.

4 What say ye for the State?

5 **MR. KNIGHT:** Present the juror.

6 **CLERK:** What say ye for the defendant?

7 **MR. BRYAN:** Please swear the juror.

8 **CLERK:** Please have a seat in the jury box.

9 Eighty-two, Daniel I. Hawkins -- Hawk. I'm sorry.

10 What say ye for the State?

11 **MR. KNIGHT:** Present the juror.

12 **CLERK:** What say ye for the defendant?

13 **MR. BRYAN:** Please swear the juror.

14 **CLERK:** Please have a seat in the jury box.

15 Fifty-one, Ruby C. Dandridge.

16 What say ye for the State?

17 **MR. KNIGHT:** Present the juror.

18 **CLERK:** What say ye for the defendant?

19 **MR. BRYAN:** Please swear the juror.

20 **CLERK:** Please have a seat in the jury box.

21 Thirty-five, Teresa W. Childers.

22 What say ye for the State?

23 **MR. KNIGHT:** Present the juror.

24 **CLERK:** What say ye for the defendant?

25 **MR. BRYAN:** Please swear the juror.

1 **CLERK:** Please have a seat in the jury box.

2 Okay. Alternates?

3 **THE COURT:** Uh-huh. On the to alternate. Yes.

4 **CLERK:** One-eighty-nine, Candice M. Whitman.

5 What say ye for the State?

6 **MR. KNIGHT:** Present the juror.

7 **CLERK:** What say ye for the defendant?

8 **MR. BRYAN:** Please swear the juror.

9 **CLERK:** Please have a seat in the jury box.

10 The jury is drawn.

11 **THE COURT:** Thank you.

12 Are there any matters regarding the qualification or
13 the selection of the jury; from the State?

14 **MR. KNIGHT:** None from the State, Your Honor.

15 **THE COURT:** From the defense?

16 **MR. BRYAN:** None, Your Honor.

17 **THE COURT:** Very well.

18 Ladies and gentlemen, you are known as our remaining
19 jurors. What I'm going to ask you to do for us, please,
20 is to call the juror information line after 6:00 o'clock
21 this evening, after 6:00 o'clock. And you know, don't
22 call before 6:00. Call after 6:00. Give us until 6:00
23 o'clock to know what our schedule is and to place a
24 recording on the machine for you.

25 Now, if anybody has lost their card or you're worried

1 that you lost your card with the juror information number
2 on it, please don't be shy, because we have a lot more of
3 them. I don't want you to be concerned about that. Take
4 a couple more.

5 Look a there. You're always ready. He's like Radar
6 on MASH.

7 So if you need any more, you just let Mr. Padgett
8 know, and he will give you a couple of them so that we'll
9 know that you had the juror information line. Please call
10 it after 6:00 o'clock this evening.

11 Whatever the recording asks you to do, please do
12 that. I don't know if it will be to return to the
13 courthouse tomorrow for the selection of our next jury or
14 call back. I simply don't know at this point.

15 Ladies and gentlemen, those of you that need
16 something for your employer, because I know some of you
17 are now going to your employment, if your employer needs
18 some verification of where you have been and what you have
19 been up to this morning, please know we'll be happy to get
20 that for you downstairs in the clerk's office where it
21 says: General Sessions.

22 I can be taught, Mrs. Pat.

23 **CLERK:** Yes.

24 **THE COURT:** And when you go down the steps, it's on
25 your left. They'll be delighted to get that for you.

1 Ladies and gentlemen, for every tick of the clock
2 that you have been with us, I am so grateful. I can't
3 wait to see you soon. Thank you so much.

4 (WHEREUPON, REMAINING JURY PANEL WAS RELEASED.
5 THEREAFTER, THE FOLLOWING PROCEEDINGS WERE HELD ON THE
6 RECORD IN THE PRESENCE AND HEARING OF THE JURY.)

7 **THE COURT:** All right, ladies and gentlemen -- oh,
8 it's so nice to see familiar faces and some new faces.
9 Ladies and gentlemen, in just a moment I'm going to send
10 you to your jury room just for a break so you can take a
11 comfort break. When you return from the comfort break,
12 then we're going to get right into the trial of this case.
13 So I wanted you to have an opportunity.

14 Do we have coffee back there, Mrs. Pat?

15 **CLERK:** Yes, I'm sure they've got tea, coffee, hot
16 chocolate.

17 **THE COURT:** Hot chocolate?

18 **CLERK:** I believe so.

19 **THE COURT:** Whoa! I might go with them. Wonderful.

20 You know, anybody that needs to take a comfort break,
21 now is the time to do that. Again, when you return from
22 your comfort break, we're going to take maybe about
23 fifteen minutes, and then again we're going to get right
24 into the trial of the case.

25 When you return from your break, you're going to be

1 sworn in as the jury in this case. I am then going to
2 make some preliminary remarks to you, and we're actually
3 going to get right into the trial.

4 So, ladies and gentlemen, before you step to the
5 back, I need to give you this instruction: Please do not
6 discuss this matter or allow anyone to discuss it with
7 you.

8 And you're going to want to say to me: What are you
9 talking about? We haven't started the trial yet. You
10 just said we're not going to start until we get back from
11 our break.

12 But, I have read to you some of the allegations in
13 the indictments. I've introduced you to some folks.
14 You've got a little bit of information. Because of that,
15 I give you the instruction do not discuss this matter or
16 allow anyone to discuss it with you.

17 Let me tell you why I give you that instruction.
18 Ladies and gentlemen, it is essential, it is critical,
19 that jurors are able to listen open-mindedly to all of the
20 evidence. That will be your duty in just a few minutes,
21 to listen open-mindedly to of the evidence that is
22 presented to you.

23 Now, what we know from two hundred years from trying
24 cases in America is that apparently the way that we are
25 put together, if we begin to talk about something, we

1 begin to form opinions about it. So the reason that I
2 give you that instruction, and I will give you that
3 instruction every time we leave one another, is so that
4 you can do that. It is to support your ability to listen
5 open-mindedly to all of the evidence that is presented to
6 you. So that's the reason for the instruction.

7 Now, any of you that have your cell phone with you or
8 other communication device, I'm going to ask you to please
9 if you need -- if you have it with you, we'll get you an
10 escort if you want to take it to your car. If your car
11 isn't here, then I'm going to ask you to please relinquish
12 it. You cannot have a -- it used to be beepers, but you
13 can't have a cell phone, a beeper, or any communication
14 device with you while you're serving on the jury. Do not
15 keep it in your pocketbook and think you can turn it off,
16 because I promise you, it will turn itself back on and it
17 will ring. So please be mindful of that. If your, you
18 know, your car isn't here or you don't want to take it to
19 your car right now, if you will relinquish it, Mrs. Pat
20 will keep good care of it until our lunch break.

21 You don't know anybody in Europe right now, right?
22 So you're all right?

23 **CLERK:** Excuse me?

24 **THE COURT:** You don't know anybody in Europe, so if
25 you have their cell phones, they're okay, aren't they?

1 You're not -- see, I can't even pick on her.

2 **CLERK:** They make sure they don't have them when they
3 come in security.

4 **THE COURT:** Fantastic.

5 **CLERK:** So they shouldn't have them.

6 **THE COURT:** See how good you are. You're so good.

7 **CLERK:** Security is great.

8 **THE COURT:** Absolutely.

9 So nobody's got their cell phone. I was going to
10 tell you Mrs. Pat wasn't going to make two or three calls
11 to Europe, but see, she's very good as a straight person.
12 I'm not very good as a comedian. So there, you have it.

13 Ladies and gentlemen, fifteen minute break. Please
14 step to your jury room. Do not discuss this matter or
15 allow anyone to discuss it with you. We'll take about
16 fifteen minutes.

17 If we've got any smokers, let them smoke. Now is the
18 time to go smoke a smoke.

19 Ms. Breland, you know to keep that seat when you come
20 back; right? Thank you. Or I should say Dr. Breland.
21 Excuse me.

22 (DECEMBER 12, 2012, 10:44 A.M., WHEREUPON, THE JURY
23 RETIRES FROM THE COURTROOM, AND THE FOLLOWING
24 PROCEEDINGS WERE HELD OUT OF THEIR PRESENCE.)

25 **THE COURT:** Okay. We'll take -- let me ask you,

1 Counsel.

2 Hold on for me just right there a second, Mr. Rivers.

3 We don't have -- there are no motions that have
4 arisen this morning; is that right, from the State or from
5 the defense?

6 **MR. KNIGHT:** That's correct from the State.

7 **MR. BRYAN:** That's correct, Your Honor.

8 **THE COURT:** Okay. Enjoy your break.

9 (WHEREUPON, A BREAK WAS TAKEN. THEREAFTER, AT 11:11
10 A.M., THE FOLLOWING PROCEEDINGS WERE HELD ON THE RECORD
11 OUT OF THE PRESENCE OF THE JURY:)

12 **THE COURT:** All right. Anything from the State
13 before we bring our jury out?

14 **MR. KNIGHT:** Nothing from the State, Your Honor.

15 **THE COURT:** From the defense?

16 **MR. BRYAN:** Nothing, Your Honor.

17 **THE COURT:** All right. Bring us our jury, please.

18 (DECEMBER 12, 2012, 11:12 A.M., WHEREUPON, THE JURY
19 ENTERS THE COURTROOM, AND THE FOLLOWING PROCEEDINGS
20 WERE HELD IN THEIR PRESENCE.)

21 **THE COURT:** All right, ladies and gentlemen, at this
22 time I am going to call on our esteemed Clerk of Court to
23 please swear you in as the jury in this case. If you
24 would please stand and raise your right hands.

25 **CLERK:** Please raise your right hand.

1 (WHEREUPON, THE JURY WAS DULY SWORN.)

2 **CLERK:** Thank you. You may be seated.

3 **THE COURT:** Okay. Was there anyone who failed to
4 take the oath? If so, please stand.

5 Okay. I find no one standing.

6 Now, ladies and gentlemen, I have a few preliminary
7 matters that I want to go over with you, and the reason
8 that I'm going to be doing this is that I think an
9 explanation at each juncture just makes it easier for you
10 to follow what is actually happening and what is to
11 happen. So that's the reason that I'm doing this.

12 I do want to mention though that -- Dr. Breland;
13 right?

14 **FOREPERSON:** Yes, ma'am.

15 **THE COURT:** Dr. Breland, you are our presiding juror,
16 and you know all about that. You didn't get to be the
17 presiding juror, because the matter was resolved; however,
18 you know what the presiding juror's duties are. Thank you
19 again for serving as our presiding juror.

20 Now, Ms. Whitman, you are our alternate. I'm going
21 to ask you to keep this seat or one of those other two
22 seats. You have three seats on this jury, but I'm going
23 to ask you to keep one of those three so I can keep up
24 with you as our alternate. And I promise it's not so we
25 know where to put the whoopy cushion. It's really so that

1 I can keep up with you as our alternate.

2 And that's the assignment of the seating. That's the
3 end of that.

4 Now, the rest of you, if you find a seat that you
5 like, keep it. If not, get here early. Get another seat.

6 There isn't any other assigned seating, but I do need
7 to keep up with our alternate and our presiding juror.

8 Now, ladies and gentlemen, before we begin this
9 trial, I'm going to tell you that this trial probably will
10 be different from what you may expect. Many people do not
11 have the chance to attend actual court sessions, as you're
12 now doing. And many, from watching television or movies
13 or reading books, think that trials are always full of
14 high drama, intense action, and riveting circumstances.

15 While all of these things may be true at times, this
16 trial is not for entertainment. It is a fundamental part,
17 maybe the fundamental part, of our democracy, a search for
18 the truth in an effort to be sure that justice is done
19 between the parties before the Court.

20 Searching for the truth and making sure that justice
21 is done is often slow, deliberate, and repetitive, the
22 opposite of what you may have seen on television or in the
23 movies or read in books. This courtroom, alas, this
24 courthouse, is a place of honor, dedicated to the
25 protection and the preservation of citizens's rights,

1 through what many have called the greatest system of
2 justice that people have ever created.

3 Ladies and gentlemen, the attorneys who are appearing
4 before you, they are advocates for the parties they
5 represent, but first and foremost, they are officers of
6 the Court. You should expect them to be ethical and
7 professional and competent. They are sworn as officers of
8 the Court to uphold the integrity and the fairness of our
9 judicial system and to help you in the search for the
10 truth.

11 Ladies and gentlemen, you have now taken an oath, and
12 you are the jury in this case. And you have taken this
13 oath to try this case and to reach a fair and just
14 verdict. And you are also expected to be professional,
15 reasonable, and ethical.

16 I want to thank you for accepting the important
17 responsibility of jury service and for your contribution,
18 your essential, your critical, contribution today to our
19 justice system.

20 Now, ladies and gentlemen, -- excuse me. The case
21 that we are about to try is the case of the State versus
22 Mr. Maurio Daetrel Rivers.

23 What I am about to say to you is intended to serve as
24 an introduction to the trial of this case. These remarks
25 are not a charge on the law in this case. I will instruct

1 you on the law applicable to this case at the end of the
2 trial before you retire to consider your verdict. This is
3 merely an explanation of the procedure that we will follow
4 in the trial of this case, so that you may better
5 understand what is happening.

6 Ladies and gentlemen, Mr. Rivers has been accused of
7 three charges, and he has pled not guilty to each and
8 every one of these charges. The State, therefore, has the
9 burden of proving each of the elements of each of these
10 charges beyond a reasonable doubt. And it will be your
11 duty, ladies and gentlemen, to decide whether the State
12 has met that burden.

13 Your purpose as jurors is to find and to determine
14 the facts. You are the sole, the only, judges of the
15 facts. If at any time I make any comment regarding the
16 facts, I ask you in advance, please disregard that,
17 because I have no opinion regarding the facts. The law
18 doesn't allow me to have an opinion regarding the facts.

19 You are to determine the facts from the sworn
20 testimony that you hear and from other evidence which is
21 introduced into court. It is up to you to determine the
22 inferences which you feel may competently be drawn from
23 the evidence. It is especially important that you perform
24 your duty of determining the facts diligently and
25 conscientiously, because ordinarily there is no way to

1 correct an erroneous determination of the facts by a trial
2 jury.

3 On the other hand, and with equal emphasis, the same
4 law that makes you the judges of the facts makes me the
5 judge of the law. The law as given to you by the Court is
6 the only law that you may consider. You must accept and
7 follow it, even though you may disagree with it.

8 I cannot tell you what the facts are, and you cannot
9 disagree with me about what the law is or what it should
10 be. Maybe that would be a great discussion between you
11 and your legislature at some point in the future, but for
12 our system to work correctly, you must accept and apply
13 the law as I give it to you.

14 Ladies and gentlemen, your job is to find the facts
15 as you find them to be, based on the evidence in this case
16 and you will then take the law and apply it to those
17 facts, and that is how you will reach your verdict, which
18 will then be a true and just verdict under the solemn oath
19 that you just took as jurors.

20 Now, until I advise you to begin your deliberations,
21 you must not discuss this case with anyone, including your
22 fellow jurors, friends, family members, and anyone
23 involved in the case. After the case is submitted to you,
24 you must discuss it only in your jury room with your
25 fellow jurors.

1 The attorneys and the parties in this case have been
2 advised and they know that they are not to talk to you at
3 all. So, if you happen to see anyone involved in this
4 case and they don't even say hello, please know that they
5 are not being rude. They are simply following my
6 instructions.

7 It is important, ladies and gentlemen, that you keep
8 an open mind and that you not decide any issue in this
9 case until all of the evidence has been presented, the
10 parties have made their closing arguments, and I have
11 instructed you regarding the law applicable to this case.

12 It is your solemn responsibility to determine whether
13 the defendant, whether Mr. Rivers, is guilty or not
14 guilty, and your verdict must be based solely on the
15 evidence as it is presented to you in this trial and on
16 the law as I instruct you during and at the close of the
17 trial.

18 Now in just a moment the State will make what is
19 called an opening statement to you. And in that opening
20 statement, Mr. Knight will discuss with you what he
21 maintains the issues are in this case.

22 And, ladies and gentlemen, after he has had an
23 opportunity to make his opening statement, then Mr. Bryan
24 will have his opportunity to make an opening statement to
25 you and talk to you about what he believes the issues are

1 in this case.

2 Now, ladies and gentlemen, once you have heard the
3 opening statements, you will then hear the evidence in
4 this case, with the State going first.

5 Now, ladies and gentlemen, the evidence may be many
6 different things. It will be, no doubt, sworn testimony,
7 and it may be photographs and the like. You should pay
8 close attention to all of the evidence that is presented
9 in this case.

10 Now, ladies and gentlemen, in determining what the
11 true facts are in this case, you must decide whether or
12 not the testimony of the witnesses is believable. You
13 will make that determination, obviously, with regards to
14 each witness. That is determining the credibility, which
15 simply means the believability of each witness.

16 It will be my responsibility to rule as a matter of
17 law as to whether certain testimony is admissible at all
18 or not. But once testimony is admitted, whether or not
19 you believe it, that is a matter solely for you to
20 determine.

21 In deciding whether to believe a witness, you have
22 the right consider the interest of any witness, the bias
23 of any witness, the prejudice of any witness, the
24 opportunity for the witness to have seen the matters and
25 the things about which the witness may testify, and of

1 course, the way the witness acts on the witness stand.

2 You have a right to consider anything that is in the
3 record that will help you evaluate the testimony of the
4 witnesses. That means it is your duty to pay close
5 attention to these witnesses, observe them, listen to
6 them, and pay close attention to the attorneys and to the
7 Court. Please do not let your thoughts wonder, but give
8 the strictest attention to the testimony in this case, so
9 that at the end of all of the testimony and the arguments
10 of counsel and the charge on the law by the Court, you
11 will then be in a position to determine what the true
12 facts are and to apply the law to both sides and thus
13 render your true and just verdict.

14 Now, ladies and gentlemen, once all of the evidence
15 is presented to you, the attorneys will have an
16 opportunity to make their closing arguments to you. Those
17 are true arguments, and that means that these lawyers, no
18 doubt, will emphasize certain portions and try to get you
19 to agree with their versions of the facts.

20 Ladies and gentlemen, finally, I want to talk to you
21 about the rules of evidence. You are learning that a
22 trial is a structured activity, and in sports, business,
23 or any other structured activity, there are certain rules
24 that both sides must obey when presenting evidence. They
25 are called, believe it or not, the Rules of Evidence, and

1 they have a definite purpose.

2 Their purpose is to ensure that the information that
3 you receive is the most trustworthy and reliable
4 information that is available. Ladies and gentlemen, you
5 will hear, no doubt, these attorneys from time to time
6 say: Objection.

7 And that is the means that they are given through our
8 rules to bring a possible violation of the rules of
9 evidence to my attention to judge this trial. Ladies and
10 gentlemen, because that is their only process, their only
11 means of doing that, you must not hold an attorney's
12 objection against his client, nor should you conclude from
13 my ruling on any objection that I favor one side or the
14 other, because I can assure you, I do not. It is simply
15 our procedure through which, and by which, an attorney can
16 raise a possible violation of the rules of evidence to my
17 attention.

18 Now, let me tell you how I will handle those
19 objections. Ladies and gentlemen, oftentimes the lawyers
20 will simply stand, and they will say: Objection.

21 And they may say a word or two: There's an objection
22 for hearsay, for example.

23 What they mean by that -- and I'll be able to rule on
24 it. You may hear me say that the objection is sustained,
25 which means that the objection was made and that there is

1 a violation of the rules of evidence, and that piece of
2 evidence cannot be received or received in that form and
3 that the objection was a proper objection.

4 You may hear me say: Overruled.

5 If I overrule an objection, that means that I have
6 made a determination that there is not a violation of the
7 Rules of Evidence and that piece of evidence may be
8 received.

9 Now, ladies and gentlemen, you may also from time to
10 time have seen me have the attorneys approach, and there
11 may be times where I will need to ask you to step to your
12 jury room while I hear a matter outside your presence. If
13 I ask for the attorneys to approach, or if I ask you to
14 step to your jury room, what is happening is that I need
15 to have a discussion with the attorneys to allow me to
16 make the ruling, and I wouldn't want anything that I might
17 say in ruling on the admissibility of evidence to be
18 considered by you as a comment on the facts. So that's
19 the reason that I'll either ask them to approach or ask
20 you to step to your jury room, is so that I might have a
21 word outside your presence and not be considered by you as
22 making a comment on the facts.

23 Now, ladies and gentlemen, in order to preserve
24 everyone's rights, I want to give the parties an
25 opportunity to object to anything that I have told you to

1 this point.

2 Any objection on behalf of the State?

3 **MR. KNIGHT:** Not from the State, Your Honor.

4 **THE COURT:** From the defense?

5 **MR. BRYAN:** No, Your Honor.

6 **THE COURT:** Very well.

7 Now, oftentimes jurors want to know about the taking
8 of notes, the taking of notes. Ladies and gentlemen,
9 there is an ongoing debate about taking notes, and it goes
10 like this. There can be a worry that as a juror takes a
11 note that they can miss something as it is coming from the
12 witness stand. The other concern about the taking of
13 notes is that if one juror has a note and another juror
14 doesn't have a note, it can be an undue amount of
15 influence placed upon the note.

16 Well, ladies and gentlemen, as a policy matter, let
17 me talk to you about my feeling about notes and what has
18 become my policy regarding notes. When cases are expected
19 to be of relatively short duration, then I ask jurors to
20 pay the closest of attention and not take notes. When
21 trials are expected to be of long duration, then I provide
22 for jurors the ability to take notes.

23 Now, this trial is expected to be of relatively short
24 duration. For that reason, I'm going to ask you to please
25 pay the closest of attention and not take notes.

1 Now, I've commented on the anticipated duration of
2 this trial, but I want you to know that I in no way demean
3 the importance of it. This trial is of the utmost
4 importance to the State, to Mr. Rivers, and to our system.
5 I just made the comment regarding the duration, because I
6 didn't want you to be worried about my decision not to
7 allow you to take notes.

8 Now, ladies and gentlemen, at this time I ask that
9 you please draw close as we listen to the opening
10 statements.

11 Mr. Knight?

12 **MR. KNIGHT:** May it please the Court, Your Honor?

13 **THE COURT:** Yes, sir.

14 **MR. KNIGHT:** Madam Forelady, ladies and gentlemen of
15 the jury, the issues in this case surround what the judge
16 at the end of the trial will charge you, is a person with
17 intent to kill attempts to kill another person with malice
18 aforethought, either implied or expressed commits that
19 offense or attempts to, attempted murder.

20 Now, the testimony you're going to hear basically is
21 this. On July the 12th of 2011 at around 7:00 o'clock in
22 the evening, Justin Eaches with the Dorchester County
23 Sheriff's Department was working on I-95. He observed a
24 black automobile violating a traffic statute.

25 He then proceeded to go after that black automobile.

1 I think it was an Acura. And he thought the vehicle was
2 going to stop, and then the vehicle took off going down 95
3 at speeds up to one hundred miles an hour, I think the
4 testimony is going to be. That's in Dorchester County.

5 It got off at I think Exit 68. It went down Augusta
6 Highway, I call it Highway 61, at speeds of ninety to a
7 hundred miles an hour, going all over the road.

8 Finally, another deputy, Joe Burnette, had to take
9 over the chase because Mr. Eaches had a vehicle problem.
10 And Lieutenant Burnette, Joe Burnette, saw some movement
11 by a passenger in said vehicle. The next thing he knows,
12 a person comes out of the sunroof and shoots at him and
13 hits the vehicle.

14 He has to force the vehicle off the road. It spins
15 and flips over. Before it flips over, there's some
16 additional shots fired. So that's the long and short of
17 what you're going to hear.

18 You'll see some videos, some audios. And that's the
19 case.

20 And, you know, Her Honor referred to it as it may be
21 a short trial. The length or the shortness of a trial
22 makes no difference. It is important to the State of
23 South Carolina and to the defendant that you listen to
24 each witness, observe the evidence that is submitted into
25 evidence, because you took an oath from Mrs. Grant that

1 you would truly try the case between the State of South
2 Carolina and the defendant.

3 Part of that oath is this. You will look, you will
4 listen, and you will remember, because at the end of this
5 trial, I'm going to ask you to return a guilty verdict on
6 two counts of attempted murder and one count of possession
7 of a weapon during the commission of a violent offense.
8 Thank you.

9 **THE COURT:** Thank you.

10 Mr. Bryan?

11 **MR. BRYAN:** Thank you, Your Honor.

12 I represent Mr. Rivers. He's charged with a very
13 serious crime, and I would just like you to keep in mind
14 that the State does have to prove this case beyond a
15 reasonable doubt.

16 A reasonable doubt is the kind of doubt to cause a
17 reasonable person to hesitate to act. It's not like a
18 civil trial, which is a lawsuit between two people where
19 it's whoever you believe the most.

20 It's an important distinction. It's a distinction
21 that's existed in our law for hundreds of years. It's a
22 protection we all have.

23 I'm going to ask you to do something which might
24 sound strange, but I'm going to ask you to pay close
25 attention to what the witnesses say in this trial and very

1 close attention to the videos and all the evidence in this
2 trial. And you'll see that they are just jumping to
3 conclusions and that Mr. Rivers didn't try to kill
4 anybody. Thank you for your time.

5 **THE COURT:** Thank you.

6 All right, Mr. Knight, please call your first
7 witness.

8 **MR. KNIGHT:** Justin Eaches.

9 **CLERK:** Please come forward and be sworn. Place your
10 left hand on the Bible and raise your right.

11 JUSTIN M. EACHES, after being duly sworn,
12 testified as follows:

13 **CLERK:** Please have a seat on the witness stand and
14 state your name after you're seated. I'm sure you need to
15 adjust the mic.

16 **WITNESS:** Yes, ma'am.

17 **THE COURT:** Please state your full name and spell
18 your name for our court reporter.

19 **WITNESS:** Justin Michael, and the last name is
20 Eaches, E-A-C-H-E-S.

21 DIRECT EXAMINATION

22 BY MR. KNIGHT:

23 **Q** May I call you Justin?

24 **A** Yes, sir.

25 **Q** Justin, who are you employed with?

1 **A** Dorchester County Sheriff's Office.

2 **Q** How long have you been employed with the Dorchester
3 County Sheriff's Office?

4 **A** Since 2001.

5 **Q** What's your training and experience with law
6 enforcement?

7 **A** Currently right now I'm assigned to the Interstate
8 Criminal Enforcement Unit, and also the K-9 Unit, and
9 Patrol Division.

10 **Q** Were you on duty on or about July the 12th of 2011?

11 **A** Yes, I was.

12 **Q** What area of Dorchester County were you working?

13 **A** I was at Interstate 95 Southbound at the 74 Mile
14 Marker.

15 **Q** Were you in a stationary position, or were you going
16 up and down the road?

17 **A** I was in a stationary position in the median.

18 **Q** In the median. At about 7:00 o'clock, what, if
19 anything, did you observe?

20 **A** I observed a black vehicle traveling southbound on
21 Interstate 95. As the vehicle was approaching, it entered
22 into -- partially into the emergency lane from the number
23 two lane, and then all the way over into the number one
24 lane, failing to use a turn signal.

25 **Q** And as a result of that, what did you do?

1 **A** I exited the median where I was stationary. I
2 attempted to stop the vehicle.

3 First what I attempt to do, due to traffic conditions
4 if they're clear, pull along side the vehicle, make sure
5 the occupants are wearing their seatbelt, try to identify
6 if -- how many occupants are in the vehicle and a
7 description and to make sure no children are in the
8 vehicle.

9 **Q** Did you do that on this occasion?

10 **A** Yes.

11 **Q** Describe to the jury how you identified who the
12 driver was.

13 **A** I pulled along side the vehicle, checked to see how
14 many occupants were inside the vehicle, again to see if
15 they had seatbelts on and to see if children were present
16 in the vehicle. What I was able to determine was there
17 was two males in the vehicle, both black males. One had
18 short twists in his hair, which was the passenger. The
19 driver had his hair pulled into a -- some type of pony
20 tail.

21 **Q** Were you able to identify who the driver was?

22 **A** Yes.

23 **Q** And who was the driver?

24 **A** The defendant.

25 **Q** Mr. Maurio Rivers?

1 **A** Yes.

2 **Q** Okay.

3 (WHEREUPON, State's Exhibit No. 10 was marked for
4 identification only.)

5 **Q** I show you what's been marked for identification as
6 State's Exhibit Number Ten. Do you recognize that, sir?

7 **A** Yes.

8 **Q** Okay, sir. Describe to the jury what that is,
9 State's Exhibit Number Ten is.

10 **A** That is a picture of Mr. Rivers.

11 **Q** And it was taken on July the 12th, 2011?

12 **A** Yes.

13 **MR. KNIGHT:** At this time, Your Honor, the State
14 would move State's Exhibit Number Ten into evidence.

15 **THE COURT:** Any objection?

16 **MR. BRYAN:** No, Your Honor.

17 **THE COURT:** Very well. State's Exhibit One(sic.) in
18 evidence without objection. It is a photograph.

19 (WHEREUPON, State's Exhibit No. 10 was admitted into
20 evidence.)

21 **Q** Did you pursue after this vehicle?

22 **A** Yes, I did.

23 **Q** And what type of vehicle was it?

24 **A** It was a black Acura. At the time, it looked like a
25 new model Lincoln.

1 **Q** Okay.

2 (WHEREUPON, State's Exhibit No. 1 was marked for
3 identification only.)

4 **Q** I ask you if you can identify what's been previously
5 marked as State's Exhibit Number One?

6 **A** That would be the black Acura.

7 **MR. BRYAN:** No objection.

8 **MR. KNIGHT:** The State would move State's Exhibit
9 Number One into evidence.

10 **THE COURT:** I thought we did -- I -- what was the
11 other one?

12 **COURT REPORTER:** Number Ten, Your Honor.

13 **MR. KNIGHT:** Number Ten.

14 **THE COURT:** That was Number Ten.

15 Number One is in evidence, without objection.

16 (WHEREUPON, State's Exhibit No. 1 was admitted into
17 evidence.)

18 **Q** State's Exhibit Number One, that's the black car you
19 followed?

20 **A** Yes.

21 **MR. KNIGHT:** May I publish to the jury, Your Honor?

22 **THE COURT:** You may.

23 (WHEREUPON, STATE'S EXHIBIT NUMBER ONE WAS PUBLISHED
24 TO THE JURY.)

25 **Q** Did you activate your blue light and siren?

1 **A** Yes, I did.

2 **Q** And how far did you follow the vehicle?

3 **A** First, I activated my lights and I was behind the
4 vehicle. The vehicle ended up moving into the emergency
5 lane using his turn signal at that point. It continued in
6 the emergency lane at a constant speed, and then it ended
7 up changing lanes in an erratic manner, and then I
8 activated my siren.

9 **Q** And at what speed was that black Acura, which is
10 shown in State's Exhibit Number One, I believe? What was
11 the speed of that vehicle?

12 **A** At what point?

13 **Q** On I-95 in Dorchester County?

14 **A** After it moved out of the emergency lane back into
15 the lane of traffic, we got up to speeds of over a hundred
16 miles an hour.

17 **Q** Okay. And what exit did you come into Colleton
18 County on?

19 **A** At Colleton County, there is a bridge right before
20 the exit that says: Welcome to Colleton County.

21 And it was at that point there where we entered
22 Colleton County.

23 **Q** Okay. Did you seek assistance of any other deputy in
24 the chase of this black Acura?

25 **A** Yes. Before we entered into Colleton County, I had a

1 -- it was at the time a spare vehicle, which was from
2 another deputy who got a new vehicle, because mine was in
3 the shop. It was a Crown Vic, an older model Crown Vic.
4 So at that speeds, the car wasn't in great condition, so I
5 advised my lieutenant to go around me and take over the
6 pursuit.

7 Q And your lieutenant was who, sir?

8 A Lieutenant Burnette.

9 Q That's Lieutenant Joe Burnette?

10 A Yes, sir.

11 Q And he took over the pursuit?

12 A Yes, sir.

13 Q Would he be described as Car Number One in the
14 pursuit?

15 A At that point when he took over, yes, sir.

16 Q And what would you describe your car in the pursuit?

17 A Car Number Two.

18 Q Car Number Two.

19 (WHEREUPON, State's Exhibit No. 11 was marked for
20 identification only.)

21 Q I show you what's previously been marked as State's
22 Exhibit Number Eleven and ask you if you can identify
23 this, sir?

24 A That's going to be the in-camera video and audio, a
25 CD.

1 Q How do you know -- how do you know it's yours?

2 A It has my initials and name.

3 MR. BRYAN: No objection.

4 THE COURT: Very well.

5 MR. KNIGHT: The State would move State's Exhibit
6 Number Eleven into evidence.

7 THE COURT: Without objection.

8 (WHEREUPON, State's Exhibit No. 11 was admitted into
9 evidence.)

10 MR. KNIGHT: I'd like to publish it to the jury, Your
11 Honor.

12 THE COURT: Very well.

13 MR. KNIGHT: I would also ask the Court to allow Mrs.
14 Stallings, my investigator, to assist me because I can't
15 operate this computer.

16 THE COURT: Okay.

17 (WHEREUPON, STATE'S EXHIBIT NUMBER 11 WAS PUBLISHED
18 TO THE JURY.)

19 MR. KNIGHT: We'll stop it at this point, Your Honor.

20 THE COURT: Okay. Why don't you go ahead and blank
21 the screen?

22 MR. KNIGHT: Ma'am?

23 THE COURT: Go ahead and blank the screen.

24 MR. KNIGHT: Oh, I'm sorry.

25 THE COURT: Just because it's a distraction.

1 Thank you. Perfect. Thank you. All right.

2 Q You got out of your vehicle when the black car turned
3 over?

4 A Yes, sir.

5 Q What did you do?

6 A I attempted to pursue the subject with Lieutenant
7 Burnette, as Corporal Knight was right with me. As I
8 looked back, making sure that the vehicle that was upside
9 down, there was no occupants in it, there was about
10 fifteen people coming out of houses and everything towards
11 our vehicles, so I went back and secured our vehicles, due
12 to us having weapons and dogs in those vehicles.

13 Q Okay. There were two subjects in the pursuit?

14 A Yes.

15 Q What did the subjects do once the car turned over?

16 A They both ran from the vehicle.

17 Q Both ran from the vehicle?

18 A Yes.

19 Q Did you -- at any time did you chase either one of
20 these subjects?

21 A I attempted to go after the first subject that I saw
22 that had the longer hair go to a forty-five degree angle
23 into the woods. The other subject went straight. One
24 went off to the right, and the other one went straight.

25 **MR. KNIGHT:** If the Court could indulge me one

1 moment?

2 **THE COURT:** All right.

3 **Q** You went back and secured the vehicle, sir?

4 **A** Yes.

5 **Q** Did you observe anything around the vehicle?

6 **A** Yes. When -- when I went to make contact to see if
7 there was anybody else in the vehicle, which there wasn't,
8 there was a firearm just inside the vehicle. The vehicle
9 was upside down. So where the roof and the pillar was,
10 there was a handgun.

11 (WHEREUPON, State's Exhibit No. 7A was marked for
12 identification only.)

13 (WHEREUPON, State's Exhibit No. 7B was marked for
14 identification only.)

15 **Q** I show you what's been previously marked as State's
16 Exhibit Number 7A and 7B and ask you if you can identify
17 this, sir?

18 **A** Yes. That's the handgun I observed.

19 **Q** Do you want to look at 7B, too?

20 **A** That's the same -- same firearm.

21 **Q** Just different angles?

22 **A** Yes, sir.

23 **MR. KNIGHT:** I'd move State's 7A and 7B into
24 evidence, Your Honor.

25 **THE COURT:** Any objection?

1 **MR. BRYAN:** No objection.

2 **THE COURT:** Very well.

3 (WHEREUPON, State's Exhibit No. 7A was admitted into
4 evidence.)

5 (WHEREUPON, State's Exhibit No. 7B was admitted into
6 evidence.)

7 **Q** And State's 7A and 7B are basically the same weapon.
8 Did you secure that weapon? Did you take the weapon?

9 **A** No.

10 **Q** You just identified it?

11 **A** I left it right where it was.

12 **MR. KNIGHT:** May I publish to the jury, Your Honor,
13 7A and 7B?

14 **THE COURT:** You may.

15 (WHEREUPON, STATE'S EXHIBIT NUMBERS 7A AND 7B WERE
16 PUBLISHED TO THE JURY.)

17 **Q** I show you again State's Exhibit Number One, which is
18 the photo of the black Acura.

19 **A** Yes, sir.

20 **Q** Are the windows tinted?

21 **A** No, sir.

22 **Q** Justin, if you would be so kind to answer any
23 questions Mr. Bryan may have?

24 **A** Yes, sir.

25 **THE COURT:** All right. Cross-examination?

1 **MR. BRYAN:** Thank you, Your Honor.

2 CROSS-EXAMINATION

3 BY MR. BRYAN:

4 **Q** Did you assist in the apprehension of Bronson
5 Shelley?

6 **A** I can barely hear you.

7 **Q** Oh, okay.

8 **A** I'm sorry.

9 **Q** I'll come up there. I'm sorry.

10 **A** I'm pretty sure I heard what you asked, but I just
11 want to make sure I heard you correctly.

12 **Q** Did you help in the -- or catch the co -- the other
13 -- the passenger in the car, Shelley Bronson or Bronson
14 Shelley?

15 **A** Yes.

16 **Q** Okay. Did he have a holster in his pocket?

17 **A** Yes.

18 **Q** And you said that when the two got out of the car,
19 one ran straight in the woods and the other cut off in a
20 forty-five degree angle?

21 **A** Correct.

22 **Q** The um -- well, I believe -- I believe that's it.
23 Thank you.

24 **A** Thank you.

25 **THE COURT:** Redirect?

1 **MR. KNIGHT:** No, ma'am. May he be excused?

2 **THE COURT:** Any objection?

3 **MR. BRYAN:** No, Your Honor.

4 **THE COURT:** Very well.

5 Call your next witness, please.

6 **MR. KNIGHT:** Faythe Grooms.

7 **THE COURT:** Please come forward to be sworn.

8 **CLERK:** Please place your left hand on the Bible and
9 raise your right.

10 FAYTHE GROOMS, after being duly sworn, testified
11 as follows:

12 **CLERK:** Please have a seat on the witness stand and
13 state your full name for the record.

14 DIRECT EXAMINATION

15 BY MR. KNIGHT:

16 **Q** State your full name, please, ma'am.

17 **A** Faythe Lynn Grooms, G-R-O-O-M-S.

18 **THE COURT:** Thank you.

19 Your witness.

20 You can pull that microphone up maybe up a little
21 bit. Great.

22 You may proceed.

23 **MR. KNIGHT:** Thank you, Your Honor.

24 **Q** Ms. Grooms, who are you employed with?

25 **A** The Dorchester County Sheriff's Office.

1 Q In what capacity?

2 A As a 911 Dispatcher.

3 Q And how long have you been a dispatcher?

4 A With the sheriff's office for five years.

5 Q Okay. Were you working on or about July the 11th of
6 -- no, July the 12th, excuse me, 2011, at about 7:00
7 o'clock?

8 A Yes, sir.

9 Q And you were taking calls like you normally do?

10 A Yes, sir.

11 (WHEREUPON, State's Exhibit No. 12 was marked for
12 identification only.)

13 Q Okay. I ask you if you can identify what's been
14 previously marked as State's Exhibit Number Twelve?

15 A Yes, sir. It's a radio transmission CD from the
16 communication center.

17 Q How do you know it's yours?

18 A My initials are on it.

19 MR. BRYAN: I may have an issue regarding this.

20 THE COURT: Okay. Well, let me have you approach.

21 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE
22 RECORD OUT OF THE HEARING OF THE JURY PANEL. THEREAFTER,
23 THE FOLLOWING PROCEEDINGS WERE HELD ON THE RECORD IN THE
24 HEARING OF THE JURY PANEL:)

25 THE COURT: Without objection; is that right?

1 **MR. BRYAN:** No objection.

2 **THE COURT:** Very well. With that representation, and
3 this is State's Exhibit ---

4 **MR. KNIGHT:** Number Twelve.

5 **THE COURT:** --- Number Twelve is in evidence, with
6 the representation, ---

7 **MR. KNIGHT:** Yes, ma'am.

8 **THE COURT:** --- it's in without objection.
9 (WHEREUPON, State's Exhibit No. 12 was admitted into
10 evidence.)

11 **MR. KNIGHT:** May we publish?

12 **THE COURT:** You may.

13 **MR. KNIGHT:** Again, with the assistance of Mrs.
14 Stallings?

15 (WHEREUPON, STATE'S EXHIBIT NUMBER TWELVE WAS
16 PUBLISHED TO THE JURY.)

17 **Q** Answer any questions Mr. Bryan may have, please,
18 ma'am.

19 **THE COURT:** Cross-examination?

20 **MR. BRYAN:** No questions, Your Honor.

21 **THE COURT:** Very well.

22 Is this witness free to leave?

23 **MR. KNIGHT:** Please.

24 **MR. BRYAN:** No objection.

25 **THE COURT:** Very well. You are free to go.

1 Call your next witness, please.

2 **MR. KNIGHT:** Joe Burnette.

3 **CLERK:** Please come forward to be sworn. Put your
4 left hand on the Bible and raise your right.

5 JOSEPH BURNETTE, II, after being duly sworn,
6 testified as follows:

7 **CLERK:** Please have a seat on the witness stand and
8 state your name for the record.

9 **WITNESS:** My name is Joseph Dean Burnette, II,
10 B-U-R-N-E-T-T-E.

11 **THE COURT:** Your witness.

12 **MR. KNIGHT:** Thank you, Your Honor.

13 DIRECT EXAMINATION

14 BY MR. KNIGHT:

15 **Q** Mr. Burnette, who are you employed with, sir?

16 **A** Dorchester County Sheriff's Office.

17 **Q** In what capacity, sir?

18 **A** I'm a lieutenant over the K-9 Unit and the ICE Unit.

19 **Q** And how long have you been employed with the
20 Sheriff's Department in Dorchester County?

21 **A** I've been in for a total of seventeen years, and I've
22 been employed with Dorchester for a total of twelve of
23 those seventeen.

24 **Q** Okay. Were you working on or about July the 12th of
25 2011?

1 **A** I was.

2 **Q** And what area of Dorchester County were you working,
3 sir?

4 **A** I-95 southbound.

5 **Q** Southbound. Did you have an occasion to receive a
6 call from Justin Eaches?

7 **A** I did.

8 **Q** Approximately around 7:00 o'clock?

9 **A** Yes, sir.

10 **Q** And what request, if any, did he make of you?

11 **A** At the time, he had a vehicle that he was attempting
12 to stop. He notified me and advised me that the vehicle
13 wasn't stopping and asked for my assistance to help him
14 with that.

15 **Q** And you did so?

16 **A** I did. I was -- I actually had pulled up behind
17 another deputy to help him on a traffic stop he was on,
18 and I got called off of that to this.

19 (WHEREUPON, State's Exhibit No. 13 was marked for
20 identification only.)

21 **Q** I ask you if you can identify what's been previously
22 marked as State's Exhibit Number Thirteen?

23 **A** This is going to be the video from my in-car. I know
24 that because it's got my initials on it.

25 **MR. BRYAN:** No objection, Your Honor.

1 **THE COURT:** Very well.

2 **MR. KNIGHT:** The State would move State's Exhibit
3 Number Thirteen into evidence, Your Honor.

4 **THE COURT:** Without objection, it's in evidence.
5 (WHEREUPON, State's Exhibit No. 13 was admitted into
6 evidence.)

7 **MR. KNIGHT:** I would like to publish it at this time,
8 Your Honor.

9 **THE COURT:** All right.

10 **MR. KNIGHT:** Again, with the assistance of Mrs.
11 Stalling.

12 **THE COURT:** All right.

13 (WHEREUPON, STATE'S EXHIBIT NUMBER THIRTEEN WAS
14 PUBLISHED TO THE JURY.)

15 **MR. KNIGHT:** Your Honor, may Mr. Bryan and I approach
16 before I ask anymore questions?

17 **THE COURT:** Ladies and gentlemen, I need for you to
18 step to your jury room. Do not discuss this matter or
19 allow anyone to discuss it with you. There is a matter
20 that I must take up outside your presence.

21 (DECEMBER 12, 2012, 12:21 P.M., WHEREUPON, THE JURY
22 RETIRES FROM THE COURTROOM, AND THE FOLLOWING
23 PROCEEDINGS WERE HELD OUT OF THEIR PRESENCE.)

24 **THE COURT:** Okay. I think they're out. Is the door
25 closed? I can't see.

1 **BAILIFF:** It's closed, Your Honor.

2 **THE COURT:** Okay. Okay. Now.

3 **MR. KNIGHT:** This is not going to the jury.

4 **THE COURT:** That's not the problem.

5 **MR. KNIGHT:** The problem is that after this there's a
6 discussion about ---

7 **THE COURT:** There's a discussion about a stolen car.

8 **COURT REPORTER:** Your Honor, may I request they speak
9 up?

10 **THE COURT:** Yeah. Exactly.

11 **MR. KNIGHT:** I didn't hear that.

12 **THE COURT:** I did.

13 **MR. KNIGHT:** But I know after that, there is.

14 **THE COURT:** No, I heard it. It was at 6.40. There
15 is a discussion on this tape about this vehicle being
16 stolen. Did you know that?

17 **MR. BRYAN:** At 6.40?

18 **THE COURT:** It's around 6.40. Yes. There is a
19 discussion on this tape about the vehicle being stolen.

20 **MR. BRYAN:** Can we replay that, Your Honor?

21 **THE COURT:** Yeah, and maybe it's: Check and see if
22 it's stolen.

23 **MR. KNIGHT:** I know it's ---

24 **THE COURT:** But there is a discussion about this car
25 being stolen. So let's go back and let's put that on the

1 record so we'll know what we're dealing with.

2 MR. KNIGHT: I warned you, because I knew it was
3 coming up later.

4 THE COURT: No, it's already in. There's -- there
5 was a mention of the car -- I don't -- I don't know
6 specifically ---

7 MR. KNIGHT: Okay.

8 THE COURT: --- whether they're asking to check and
9 see if it's stolen.

10 MR. KNIGHT: Right.

11 THE COURT: But the topic is already discussed. It's
12 around 6.40.

13 MR. KNIGHT: Go to 6.38, I guess.

14 THE COURT: Okay. So let's play it back.

15 MRS. STALLINGS: Do you want me to just forward to
16 that section, or go through all of it?

17 THE COURT: This is going to be awful for you. I
18 apologize in advance.

19 MRS. STALLINGS: It's fine.

20 THE COURT: I sort of try to think, okay, how many
21 seconds ago did I hear it? It's somewhere in that
22 vicinity, maybe about 5.50. Queue it up there, and let's
23 see what we've got.

24 (WHEREUPON, A PORTION OF STATE'S EXHIBIT NUMBER
25 THIRTEEN WAS PUBLISHED OUT OF THE PRESENCE OF THE JURY.

1 THEREAFTER, THE FOLLOWING PROCEEDINGS WERE HELD ON THE
2 RECORD:)

3 **THE COURT:** There it was.

4 **MRS. STALLINGS:** Let me get something back on that
5 tag. Let me know if it's stolen.

6 **THE COURT:** Is that what it is?

7 **MR. KNIGHT:** That was the question.

8 **THE COURT:** Okay. Okay. All I heard was stolen.

9 **MRS. STALLINGS:** And then dispatch does reply.

10 **THE COURT:** Yeah. Go ahead.

11 (WHEREUPON, A PORTION OF STATE'S EXHIBIT NUMBER
12 THIRTEEN WAS PUBLISHED OUT OF THE PRESENCE OF THE JURY.
13 THEREAFTER, THE FOLLOWING PROCEEDINGS WERE HELD ON THE
14 RECORD:)

15 **MRS. STALLINGS:** It's clear out of Charlotte.

16 **MR. KNIGHT:** The word was: Clear out of Charlotte.

17 **THE COURT:** Keep going and let's see if she says
18 anything else.

19 (WHEREUPON, A PORTION OF STATE'S EXHIBIT NUMBER
20 THIRTEEN WAS PUBLISHED OUT OF THE PRESENCE OF THE JURY.
21 THEREAFTER, THE FOLLOWING PROCEEDINGS WERE HELD ON THE
22 RECORD:)

23 **MR. KNIGHT:** That's where we stopped it at.

24 (WHEREUPON, THE DVD WAS STOPPED AT 19:09:19.)

25 **THE COURT:** I think that was the extent of it, where

1 there was a request. Originally what I heard was -- I
2 heard the words: Stolen car.

3 And then there was a representation that it was not.
4 It apparently was a request to please just run it to see
5 if it is stolen, but there's no information given. I
6 guess she says it's clear, but I don't know what that
7 means.

8 **MR. KNIGHT:** The point I want to raise, though, Your
9 Honor, is later on, I can tell you because I've listened
10 to this enough, there is a discussion about a stolen
11 vehicle.

12 I think it's State's Exhibit Number Thirteen; right?

13 **COURT REPORTER:** Yes, sir.

14 **MR. KNIGHT:** That at the time it goes to the jury, my
15 recommendation to the Court, and you have discretion ---

16 **THE COURT:** Is not to ---

17 **MR. KNIGHT:** --- not to let it go. If they want to
18 hear it, bring them back in here.

19 **THE COURT:** If they want to hear it, we'll bring them
20 out.

21 **MR. KNIGHT:** I just wanted to get that clear right
22 now.

23 **THE COURT:** Yes. Yes.

24 My concern is satisfied, because it's clear to me
25 that there's just a request, and if there's a response,

1 the response is it's clear in Charlotte, whatever that
2 means. It sounds like it's not stolen. That it's clear
3 in Charlotte doesn't -- doesn't impart any information, so
4 that clears that up.

5 **MR. BRYAN:** Thank you, Your Honor.

6 **THE COURT:** Yes, absolutely.

7 Okay. Let's have the jury back.

8 **MR. KNIGHT:** I knew it was coming.

9 (DECEMBER 12, 2012, 12:31 P.M., WHEREUPON, THE JURY
10 ENTERS THE COURTROOM, AND THE FOLLOWING PROCEEDINGS
11 WERE HELD IN THEIR PRESENCE.)

12 **THE COURT:** Okay. You may proceed.

13 **Q** Lieutenant, the video shows you hitting the vehicle,
14 the black Acura flipping over.

15 **A** Yes, sir.

16 **Q** Was that you getting out of your vehicle?

17 **A** It was.

18 **Q** With your dog?

19 **A** Yes.

20 **Q** And what did you do with your dog?

21 **A** At the time, in situations where people will run from
22 us, you heard me say that I would deploy the K-9. I do
23 that to let other deputies know the intentions of what's
24 going on here.

25 At this point, we only had a vehicle that was fleeing

1 prior to that, so he would be released on only the driver,
2 if he fled the scene. If he did not, the dog would not be
3 used for an apprehension at that point.

4 In this case, after I had been shot at, and that was
5 clearly done by the -- at the time that I saw, was by the
6 passenger. If they both ran, now which ever one I could
7 apprehend, I would.

8 So as I was -- after I had to force them off the road
9 and I come to a stop, I had another -- you could hear it
10 on the video, there's a loud noise. I later determined
11 that it was another gunshot that had come from the car.

12 So I went ahead and exited my car as fast as I could.
13 I got my dog. I got him out with me. I drew down on that
14 vehicle.

15 At the time I really couldn't see anybody from the
16 way the vehicle was flipped over on its roof. So I
17 started approaching. I tried to close a little bit of
18 distance.

19 At that point, I was probably twenty -- about
20 twenty-five yards away. Then I saw a subject run. Then I
21 saw another subject run. At that point, I gave my dog the
22 command to apprehend the subjects. And both of them ran
23 in the same general direction and then veered into the
24 woods.

25 At the time, I had no idea which one was which or who

1 he was chasing. So at that point, after I released him
2 for the apprehension, I was basically playing catch up
3 with him.

4 He did, in fact, apprehend a subject in the woods. I
5 ended up catching up with them and subsequently took the
6 subject into custody with a K-9 apprehension.

7 Q Which subject did you apprehend?

8 A Mr. Rivers.

9 Q That's the defendant here in the courtroom here
10 today?

11 A Yes, it is.

12 Q Were you carrying your service revolver that day?

13 A I was.

14 Q Did you fire it?

15 A I did not.

16 Q Okay. And you said after the car was rolled over and
17 your car was in front of this vehicle that had rolled
18 over?

19 A Yes. I stopped short of where the car had rested on
20 its roof.

21 Q And you heard additional shots?

22 A As I was -- in the video, you can clearly see it.
23 I'll try to explain it to you. As I was coming to a stop,
24 after I forcefully hit them, we were actually still
25 traveling right around ninety miles an hour, so I was

1 trying myself not to wreck. So I focused on trying to
2 control my car. Right just prior to me putting my car
3 into park, ---

4 **Q** Right.

5 **A** --- when I came to a stop, is when I heard the loud
6 noise. And as I was putting it in park and turned my head
7 to look, in the windshield you could see right above the
8 -- excuse me, right above the VIN plate that's on all the
9 cars, there was a gunshot, or what I believed to be a
10 gunshot.

11 **THE COURT:** Here you go.

12 (WHEREUPON, A CUP OF WATER WAS HANDED TO THE
13 WITNESS.)

14 **WITNESS:** Thank you.

15 **Q** Earlier in the video and audio, going down 61 and you
16 said you heard gunshots; is that correct?

17 **A** Yes. I was -- right.

18 **Q** Then, after the turn over of the vehicle, you heard
19 gunshots again.

20 **A** Yes.

21 **Q** Okay.

22 **A** During -- during the course of the -- during the
23 course of their vehicle going backwards, prior to it
24 flipping over is when I realized that I was being shot at
25 again.

1 **Q** Okay.

2 (WHEREUPON, State's Exhibit NO. 5 was marked for
3 identification only.)

4 **Q** I show you what's been marked as State's Exhibit
5 Number Five for identification. Can you identify that,
6 sir?

7 **A** Yes, sir. That's my car that I was in at the time
8 and this is the suspects' vehicle upside down on its roof.

9 **Q** Okay.

10 **THE COURT:** And what number was that?

11 **MR. KNIGHT:** Five, Your Honor.

12 **THE COURT:** Five.

13 **MR. BRYAN:** No objection.

14 **MR. KNIGHT:** I would move State's Exhibit Number Five
15 into evidence, Your Honor.

16 **THE COURT:** Any objection?

17 **MR. BRYAN:** None, Your Honor.

18 **THE COURT:** All right. State's Exhibit Number Five
19 in evidence without objection.

20 (WHEREUPON, State's Exhibit No. 5 was admitted into
21 evidence.)

22 **MR. KNIGHT:** May I publish?

23 **THE COURT:** Yes, you may.

24 (WHEREUPON, STATE'S EXHIBIT NUMBER FIVE WAS PUBLISHED
25 TO THE JURY.)

1 (WHEREUPON, State's Exhibit No. 6A was marked for
2 identification only.)

3 (WHEREUPON, State's Exhibit No. 6B was marked for
4 identification only.)

5 (WHEREUPON, State's Exhibit No. 6C was marked for
6 identification only.)

7 **Q** I ask you if you can identify State's Exhibit Number
8 6A, 6B, and 6C?

9 **A** 6A is a frontal -- somewhat of a frontal shot of my
10 vehicle.

11 6B would be a more upclose shot of my vehicle from
12 the driver's side where you can see where the round
13 impacted the windshield.

14 And then 6C is an upclose picture of my bumper where
15 during the first initial shooting, the round hit my bumper
16 right under the grill.

17 **MR. KNIGHT:** The State would move 6A, 6B, and 6C into
18 evidence, Your Honor.

19 **THE COURT:** Any objection?

20 **MR. BRYAN:** No, Your Honor.

21 **THE COURT:** Very well. Exhibits -- State's Exhibits
22 6A, B, and C in evidence without objection.

23 (WHEREUPON, State's Exhibit No. 6A was admitted into
24 evidence.)
25

1 (WHEREUPON, State's Exhibit No. 6B was admitted into
2 evidence.)

3 (WHEREUPON, State's Exhibit No. 6C was admitted into
4 evidence.)

5 MR. KNIGHT: With permission of the Court, may he
6 step down?

7 THE COURT: Yes, he may.

8 MR. KNIGHT: I want to publish this to the jury.

9 Q In 6B, Lieutenant Burnette, will you show the jury
10 where the ---

11 THE COURT: You're going to have to ---

12 MR. KNIGHT: You're going to have to stand ---

13 THE COURT: --- what you're going to have to do is
14 you're going to have to do it in three sections.

15 MR. KNIGHT: In parts.

16 WITNESS: Okay.

17 THE COURT: And keep your voice way big.

18 WITNESS: Okay.

19 A Like I said, on 6B, this is on the driver's side from
20 the front of my car where they took an up close picture.
21 This is the round that impacted my windshield, which is
22 near where the VIN plate is, and right directly behind
23 that is where obviously I would be sitting inside the car.
24 This here is our radar unit that's on the inside of the
25 car.

1 **THE COURT:** Now, if you'll show it down on that side?

2 **A** This is a picture of my car from the driver's side up
3 close from the front. This is the windshield. This is
4 where the round impacted the windshield, which is near
5 where the VIN plate is, and then I would sit back in this
6 area. And this is our radar unit right here that we have
7 in the cars.

8 Again, from the front of the car on the driver's
9 side. This is my windshield. This is where the round
10 impacted the windshield of my car where the VIN plate is
11 right in this area, and I sit back in here, and this is
12 our radar unit.

13 **Q** Thank you, sir. Take your seat.

14 Oh, I apologize. Step down again.

15 **THE COURT:** It's like calisthenics.

16 **Q** I show you 6C. Would you explain in sections to the
17 jury what 6C is?

18 **A** This is an even more up close picture of the front of
19 the car. This is the grill. This would be the bumper
20 under the grill, and this would be where during the first
21 shots that were fired the round impacted my bumper, which
22 is actually if this was backed out would be in line from
23 where I was sitting in my car, if that makes sense. This
24 was on the driver's side of the vehicle.

25 This is an up close picture of the front of my car.

1 This is the bumper. This is the grill. I would be
2 sitting back this way, and this is where the round
3 impacted the front of my car the first time I got shot at.

4 Again, this is an up close picture of the bumper of
5 my car. This is the grill. This is the bumper. I would
6 sit back this way. It's on the driver's side, and this is
7 where the round impacted my car from the first volley.

8 Q Thank you, sir. Have a seat, please.

9 Of your own knowledge, do you know whether any deputy
10 sheriffs from the Dorchester County Sheriff's Department
11 used their revolvers or fired them?

12 A Nobody in law enforcement returned fire at that
13 point.

14 Q Thank you, sir. Answer any questions Mr. Bryan may
15 have.

16 THE COURT: Cross-examination.

17 CROSS-EXAMINATION

18 BY MR. BRYAN:

19 Q Burnette, you -- do you remember you testified
20 earlier in the trial of the codefendant in this case, Mr.
21 Bronson Shelley?

22 A Yes, sir.

23 Q Okay. And at that time you said you had done the K-9
24 apprehension of the driver?

25 A Right.

1 Q And you were the primary unit in the chase; right?

2 A At that point, yes, sir, I was.

3 Q And do you remember saying that the passenger shot at
4 you?

5 A He did. Yes.

6 Q Okay. And that the passenger looked at you?

7 A Yes, sir.

8 Q Now do you remember Mr. Rivers having any injuries
9 when he was apprehended by the dog?

10 A At the time, no. I didn't know the extent of
11 injuries until later.

12 Q But you had to call EMS.

13 A I always call EMS on a K-9 apprehension.

14 Q And he had serious scrotum injuries from the dog?

15 A I found out later it was, yes.

16 MR. BRYAN: Could we replay part of that, just the
17 ending of the -- let's see ---

18 THE COURT: Certainly, Mr. Bryan. I don't know how
19 to identify it, but hopefully we can get some assistance
20 to do that. You need to help her know what it is that you
21 want to see.

22 MR. BRYAN: I think 19:08:44.

23 MR. KNIGHT: Your Honor, may I approach?

24 THE COURT: Yes, you may.

25 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE

1 RECORD OUT OF THE HEARING OF THE JURY. THEREAFTER, THE
2 FOLLOWING PROCEEDINGS WERE HELD ON THE RECORD IN THE
3 PRESENCE AND HEARING OF THE JURY:)

4 **THE COURT:** Do you want to do that outside the
5 presence of the jury?

6 **MR. BRYAN:** Yes, Your Honor.

7 **THE COURT:** Okay.

8 Ladies and gentlemen, I'm going to ask you to step to
9 your -- you won't be long. Just step to your jury room.
10 Assuming Mr. Dell cooperates. Do not discuss this matter
11 or allow anyone to discuss it with you. We're not going
12 to be long, though.

13 (DECEMBER 12, 2012, 12:45 P.M., WHEREUPON, THE JURY
14 RETIRES FROM THE COURTROOM, AND THE FOLLOWING
15 PROCEEDINGS WERE HELD OUT OF THEIR PRESENCE.)

16 **MR. KNIGHT:** Your Honor, the only issue is Jackie
17 Lawson, who has been working all night, would testify he
18 went to the scene of all the cars, and he would testify
19 that this occurred in Colleton County.

20 **THE COURT:** Oh, okay. Okay. So lots of people could
21 testify it was in Colleton County, that this occurred in
22 Colleton County. So ---

23 **MR. KNIGHT:** I'll ask him on redirect.

24 **MR. BRYAN:** I think almost any of his witnesses could
25 testify they crossed the Edisto River.

1 **THE COURT:** Right. It's where it is. I mean, these
2 guys know where they are.

3 **MR. KNIGHT:** I just like to be sure.

4 (WHEREUPON, A PORTION OF STATE'S EXHIBIT NUMBER
5 THIRTEEN WAS PUBLISHED OUT OF THE PRESENCE OF THE JURY.
6 THEREAFTER, THE FOLLOWING PROCEEDINGS WERE HELD ON THE
7 RECORD:)

8 **THE COURT:** That's the portion that you would like to
9 replay?

10 **MR. BRYAN:** Yes, Your Honor.

11 **THE COURT:** Got it. The information about the car
12 being stolen is not in there. I did not hear it. Anybody
13 else hear it?

14 (NO RESPONSE.)

15 **THE COURT:** Okay. Now, you can reset it.
16 And we can have the jury back.

17 (DECEMBER 12, 2012, 12:55 P.M., WHEREUPON, THE JURY
18 ENTERS THE COURTROOM, AND THE FOLLOWING PROCEEDINGS
19 WERE HELD IN THEIR PRESENCE.)

20 **THE COURT:** Mr. Bryan, do you want to pose a question
21 before the tape is played, or do you want to play the tape
22 and then pose the question?

23 **MR. BRYAN:** Well, play the tape and then ask the
24 question -- it might be good to ask the question first.

25 **THE COURT:** You want to ask the question first and

1 then play the tape. Okay.

2 **Q** We're going to replay this between when you tapped
3 the car and when it rolled over and everyone jumped out.
4 Just tell us when you heard that gun fire.

5 **A** Okay. You want me to point it out as soon as I hear
6 it?

7 **Q** Yes.

8 **THE COURT:** You want him to say like: Now.

9 **MR. BRYAN:** Uh-huh. Yes. Thank you.

10 **THE COURT:** Okay. Okay.

11 (WHEREUPON, A PORTION [19:08:29 TO 19:09:05] OF
12 STATE'S EXHIBIT NUMBER THIRTEEN WAS PUBLISHED TO THE
13 JURY.)

14 **A** Now.

15 **Q** Okay. You heard it about the time the back of the
16 car hit that bush or whatever it was?

17 **A** I think it was right around that time, yes.

18 **Q** Okay. And at the time, were the windows rolled down
19 in that car or were they up?

20 **A** I don't recall if they were or not.

21 **Q** We can replay that part. That might help.

22 **A** I know the sunroof was open.

23 **Q** Okay. Was there anyone in that video sticking their
24 head out the sunroof or sticking anything out that
25 sunroof?

1 **A** At this point right here?

2 **Q** Yes.

3 **A** No.

4 **Q** Now you remember when you testified earlier at the
5 trial of Bronson Shelley you said there was one shooter?

6 **A** There was one person I saw shoot, yes.

7 **Q** Okay.

8 **A** There was two volleys of shooting, though.

9 **Q** Okay.

10 **A** At separate times.

11 **Q** The pop, pop, pop, and then just before -- and then
12 that loud bang just as the car is ---

13 **A** Correct.

14 **Q** --- about to flip over?

15 **A** Correct.

16 **Q** Okay. And you think that loud bang could have been
17 caused by the car hitting something?

18 **A** Oh, no. That was -- that was a gunshot.

19 **Q** And a car spinning around at ninety miles an hour, do
20 you think it might sling some gravel?

21 **A** They were in grass. I don't know if there was gravel
22 over there or not.

23 **Q** Well, there's gravel on the road -- is there gravel
24 on the road?

25 **A** I'm sure some roads have gravel.

1 Q And some have gravel by the road where it comes
2 loose?

3 A I would imagine so, yeah.

4 Q Okay.

5 A The only thing was, at this point, by the time I
6 heard that loud bang, that car was already into the grass
7 traveling backwards. It had already been traveling for a
8 little distance backwards.

9 Once he spun around and came off the road, it was
10 actually going backwards like this before it made it to
11 the little tree or whatever it was before it rolled over.
12 So at that point, what I'm getting at, there was nothing
13 -- there's no friction.

14 I understand what you're saying as far as it's
15 turning it could kick stuff up, but at that point there
16 where I heard the gunshot or the round hit my windshield,
17 I didn't actually hear the gunshot, the car was actually
18 traveling in a manner where it's going backwards this way
19 on probably -- I would say they were at least twenty feet
20 off the side of the road.

21 Q Okay. Can I look at that photograph really quick?
22 What -- what's your windshield made out of?

23 A Safety glass.

24 Q Just ordinary car windshield?

25 A I would imagine so.

1 Q Okay. Do you see a bullet hole? Point the bullet
2 hole out to this jury, please.

3 A You can see the indentation, but the hole didn't -- it
4 wasn't all the way through. You can see where it hit and
5 pushed it in, but it didn't penetrate through.

6 Q So you're saying the windshield deflected the bullet?
7 Am I correct? Is that what you're saying?

8 A What do you mean deflected it?

9 Q Did the bullet go through the windshield?

10 A It did not go through the windshield, that I can
11 tell.

12 Q Didn't ---

13 A It had also traveled through another windshield prior
14 to getting to my windshield, so it loses a lot of velocity
15 at that point.

16 Q What's the range you're saying?

17 A I don't -- I don't understand what you're asking.
18 The range?

19 Q Well, you were there and you saw the video, and
20 you're saying that someone was shooting at you through the
21 car window, through the windshield at you.

22 A Right.

23 Q How far are we talking? Thirty feet? Forty feet?

24 A I would say, oh goodness, probably at that point
25 maybe they were fifteen yards away.

1 Q Fifteen yards?

2 A It could have been a little more, but I would
3 probably say around fifteen yards.

4 Q Which would be forty-five feet?

5 A Let's see. Fifteen yards. It's not fifteen yards, I
6 don't believe. Hang on, I'll figure it out for you. Give
7 me a minute. Yeah, you might be right. Forty-five --
8 forty-five feet. Yes.

9 MR. BRYAN: No further questions of this witness,
10 Your Honor. Thank you.

11 THE COURT: Very well.

12 Redirect?

13 MR. KNIGHT: Redirect.

14 REDIRECT EXAMINATION

15 BY MR. KNIGHT:

16 Q In response to Mr. Bryan's question, you said there
17 were two sets of volleys, one on the highway and then one
18 after the car spun around; is that correct?

19 A One as the car was traveling backwards.

20 Q Okay. The first volley and the second volley, did
21 that occur in Colleton County?

22 A Everything occurred in Colleton County, yes, sir.

23 Q Thank you. I have no further questions.

24 THE COURT: Very well.

25 All right. Any recross?

1 **MR. BRYAN:** None, Your Honor.

2 **THE COURT:** Very well.

3 Is this witness free to leave?

4 **MR. KNIGHT:** May he be excused?

5 **THE COURT:** Any objection?

6 **MR. BRYAN:** None, Your Honor.

7 **THE COURT:** Very well.

8 You're free to go.

9 All right. It's 1:00 o'clock. It's time for lunch.

10 Ladies and gentlemen, over the course of your lunch,
11 please be mindful, do not discuss this matter or allow
12 anyone to discuss it with you. You know, Walterboro is
13 bigger, actually gigantic compared to St. George, but it's
14 still a small town. Please be mindful if you happen to
15 see any of these folks out and about during lunch, I'm
16 sure they will not engage with you, but please understand
17 that they are not being rude. Of course, should anyone
18 try to approach you and talk to you about this case,
19 please get their name, if not their name a description,
20 and report it to me upon your return.

21 Remember, no social media and no investigation
22 regarding this matter. You must receive all of the
23 information from which you will make up your mind here in
24 court while court is in session. Do not discuss this
25 matter or allow anyone to discuss it with you.

1 Ladies and gentlemen, do you think you can get your
2 lunch and get back by 2:15? That's gives you a little
3 over an hour. You think?

4 Yeah? Yes. Good.

5 Then, we will reconvene at 2:15. You may be excused
6 at this time.

7 (DECEMBER 12, 2012, 1:01 P.M., WHEREUPON, THE JURY
8 RETIRES FROM THE COURTROOM, AND THE FOLLOWING
9 PROCEEDINGS WERE HELD OUT OF THEIR PRESENCE.)

10 **THE COURT:** All right. Anything before we take our
11 lunch; from the State?

12 **MR. KNIGHT:** No, ma'am.

13 **THE COURT:** From the defense?

14 **MR. BRYAN:** No, Your Honor.

15 **THE COURT:** I'll see y'all probably about, oh, I
16 don't know, a couple of minutes before 2:15 just to make
17 sure there aren't any motions before the jury returns.
18 Thank you. Have a good lunch.

19 (WHEREUPON, A BREAK WAS TAKEN. THEREAFTER, AT 2:27
20 P.M., THE FOLLOWING PROCEEDINGS WERE HELD ON THE RECORD
21 OUT OF THE PRESENCE OF THE JURY:)

22 **THE COURT:** Anything before we bring the jury out;
23 from the State?

24 **MR. KNIGHT:** No, ma'am.

25 **MR. BRYAN:** No, Your Honor.

DIRECT EXAMINATION OF JAMES ETHRIDGE BY MR. KNIGHT

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1 (DECEMBER 12, 2012, 2:27 P.M., WHEREUPON, THE JURY
2 ENTERS THE COURTROOM, AND THE FOLLOWING PROCEEDINGS
3 WERE HELD IN THEIR PRESENCE.)

4 **THE COURT:** All right. I hope everyone had a good
5 lunch. At this time, we will continue with the State's
6 case. If you would please call your next witness?

7 **MR. KNIGHT:** May it please the Court, Your Honor?
8 James Ethridge.

9 **THE COURT:** Okay.

10 **CLERK:** Please come forward. Place your left hand on
11 the Bible and raise your right.

12 JAMES W. ETHRIDGE, after being duly sworn,
13 testified as follows:

14 **CLERK:** Please have a seat on the witness stand and
15 state your full name for the record.

16 **WITNESS:** James William Ethridge, E-T-H-R-I-D-G-E.

17 **THE COURT:** Thank you.

18 Your witness.

19 **MR. KNIGHT:** Thank you, Your Honor.

20 DIRECT EXAMINATION

21 BY MR. KNIGHT:

22 **Q** Mr. Ethridge, who are you employed with?

23 **A** At the current time, with the Orangeburg County
24 Sheriff's Office.

25 **Q** On or about July the 12th of 2011, who were you

1 employed with?

2 A Dorchester County Sheriff's Office.

3 Q In what capacity, sir?

4 A I was attached to the Crime Scene Unit.

5 Q And how long have you been involved in law
6 enforcement?

7 A Over -- over ten years.

8 Q Okay. Did you have an occasion to respond to a call
9 to 5519 Augusta Highway, also known as Highway 61?

10 A Yes, sir.

11 Q And what was the purpose for you going to that
12 incident scene?

13 A The incident -- an incident had taken place where
14 some of the patrol guys had gotten into a car chase, and
15 shots had been fired from the defendants in that case, and
16 I was asked to come out and process the scene.

17 Q Okay. When you say process the scene, what does that
18 mean?

19 A Collect evidence. Anything is a crime scene if
20 there's evidence that can be collected.

21 Q Okay.

22 A So at that point in time, I had a crime scene, which
23 was a roadside.

24 Q Okay. Did you also take photographs?

25 A I did. Yes, sir.

1 Q At the crime scene?

2 A Yes, sir. I did.

3 MR. KNIGHT: Judge, just to let you know, these have
4 been locked down. All the weapons have.

5 THE COURT: Thank you.

6 (WHEREUPON, State's Exhibit No. 15 was marked for
7 identification only.)

8 Q I show you what's been marked for identification as
9 State's Exhibit Number Fifteen. I'm going to ask you if
10 you can identify that, sir?

11 A May I look at my notes to get the serial number?

12 Q Yes, sir.

13 A Okay.

14 Q Do you recognize it?

15 A Yes, sir.

16 (WHEREUPON, State's Exhibit No. 16 was marked for
17 identification only.)

18 Q I also ask you if you can identify what's been marked
19 as State's Exhibit Number Sixteen?

20 A Yes, sir.

21 MR. KNIGHT: Your Honor, at this point I would move
22 State's Exhibit Number Fifteen, which is a weapon, and
23 State's Exhibit Number Sixteen, which are some casings,
24 into evidence.

25 THE COURT: Any objection?

1 **MR. BRYAN:** None, Your Honor.

2 **THE COURT:** Very well.

3 (WHEREUPON, State's Exhibit No. 15 was admitted into
4 evidence.)

5 (WHEREUPON, State's Exhibit No. 16 was admitted into
6 evidence.)

7 **Q** When you get through, would you put it back in there?

8 **A** Okay.

9 **Q** For safety sake. You've identified Number Fifteen as
10 a weapon that you secured?

11 **A** Yes, sir.

12 **Q** And where did you secure State's Exhibit Number
13 Fifteen from?

14 **A** All right. This was -- this is a Taurus .38 Special.

15 **Q** Yes, sir.

16 **A** This -- this was the weapon that was actually -- when
17 we rolled the car back over, this was the weapon that was
18 found on the ground.

19 **Q** Okay.

20 (WHEREUPON, State's Exhibit No. 3 was marked for
21 identification only.)

22 **Q** I show you what's been marked as State's Exhibit
23 Number Three for identification. Can you identify State's
24 Exhibit Number Three?

25 **A** Yes, sir. That's the actual -- that's going to be a

1 picture of the weapon lying on the ground in that grass.

2 Q Did you take that photograph?

3 A I took this photograph, yes, sir.

4 Q That's when you rolled the car back over?

5 A Yes, sir.

6 MR. KNIGHT: The State would move State's Exhibit
7 Number Three into evidence.

8 THE COURT: Any objection?

9 MR. BRYAN: Oh, no, Your Honor.

10 THE COURT: State's Exhibit Three in evidence without
11 objection.

12 (WHEREUPON, State's Exhibit No. 3 was admitted into
13 evidence.)

14 MR. KNIGHT: May we publish?

15 THE COURT: Yes.

16 (WHEREUPON, STATE'S EXHIBIT NUMBER THREE WAS
17 PUBLISHED TO THE JURY.)

18 Q And sixteen?

19 A And these were actual -- these are the actual casings
20 that was collected from the weapon when I cleared it. It
21 was -- I cleared it. And that's casings. That's ---

22 Q I'm not an experienced weapons person. So the
23 casings were inside the revolver?

24 A Those were in the revolver. So all casings were
25 inside the weapon when I opened the cylinder up.

1 Q Okay.

2 A No bullets. They were all fired casings.

3 Q How many casings were in there?

4 A This is one, two, three, four, five.

5 MR. KNIGHT: Your Honor, instead of passing and
6 publishing to the jury, I'm just going to put them up
7 here, with permission of the Court.

8 THE COURT: Yes.

9 (WHEREUPON, State's Exhibit No. 14 was marked for
10 identification only.)

11 Q This is State's Exhibit Number Fourteen. Can you
12 identify it, please?

13 A Yes.

14 Q You can identify it?

15 A Yes, sir.

16 Q Okay.

17 MR. KNIGHT: The State would move State's Exhibit
18 Number Fourteen into evidence.

19 THE COURT: Any objection?

20 MR. BRYAN: No, Your Honor.

21 THE COURT: Very well. State's Exhibit Fourteen in
22 evidence without objection.

23 (WHEREUPON, State's Exhibit No. 14 was admitted into
24 evidence.)

25 Q Where did you find State's Exhibit Number Fourteen?

1 **A** Right. This weapon was actually in plain view. With
2 the car being upside downwards, you could visibly see in
3 the car and see this weapon lying right there, and
4 actually, it appeared just like this with the slide back.

5 **Q** What does the slide back mean?

6 **A** In other words, it was -- it was empty. All -- all
7 the bullets had been fired from this weapon. There was no
8 weapon -- there was no bullets in this weapon.

9 **Q** With that type weapon, how many bullets would the
10 weapon hold?

11 **A** I'd have to check the magazine.

12 **Q** Just take a look at it, please.

13 **A** They usually mark on it. I'm pretty sure this one
14 will hold eight. That's an eight round clip.

15 **Q** Eight round clip?

16 **A** I'm pretty sure it's an eight round clip.

17 **Q** At least five?

18 **A** Oh, yes, yes. It actually has holes for five where
19 you can see, but it should hold more down here in the
20 bottom. Yes, it's an eight round clip.

21 **Q** Okay. Thank you, sir.

22 I show you what's been marked as 7A and 7B. Can you
23 identify and tell me if that's the same weapon that is in
24 State's Exhibit Number Fourteen?

25 **A** Correct. These are the pictures that I took of the

1 weapon in the car.

2 Q 7A and 7B?

3 A Correct. They are both -- there's just two -- it's
4 just two angled shots. One is at a distance and one is
5 close up of that same weapon that you just showed me.

6 Q Which is State's Exhibit Number Fourteen.

7 A Correct. Yes, sir.

8 Q Okay.

9 (WHEREUPON, State's Exhibit No. 17 was marked for
10 identification only.)

11 (WHEREUPON, State's Exhibit No. 18 was marked for
12 identification only.)

13 (WHEREUPON, State's Exhibit No. 19 was marked for
14 identification only.)

15 Q I'm going to show you what's been marked for
16 identification as State's Exhibit Number Seventeen,
17 State's Exhibit Number Eighteen, and State's Exhibit
18 Number Nineteen and see if you can identify those, please.

19 A Yes.

20 Q You can identify them?

21 A Yes, sir.

22 MR. KNIGHT: The State would move into evidence
23 State's Exhibit Number Seventeen, State's Exhibit Number
24 Eighteen, State's Exhibit Number Nineteen.

25 THE COURT: Any objection?

1 **MR. BRYAN:** None, Your Honor.

2 **THE COURT:** Very well. In evidence.

3 (WHEREUPON, State's Exhibit No. 17 was admitted into
4 evidence.)

5 (WHEREUPON, State's Exhibit No. 18 was admitted into
6 evidence.)

7 (WHEREUPON, State's Exhibit No. 19 was admitted into
8 evidence.)

9 **Q** Describe to the jury what State's Exhibit Number
10 Seventeen is.

11 **A** Okay. This is a .45 auto caliber pistol. It's a
12 Colt -- a Colt.

13 **Q** And that's State's Exhibit Number?

14 **A** This is Number Seventeen.

15 **Q** Okay. Thank you, sir.

16 **A** Number Eighteen is the actual magazine clip that
17 actually belongs into the weapon.

18 Nineteen is actually -- these are the bullets that
19 was found in the magazine of the weapon. They were all
20 .45 caliber each. They are different brand bullets, but
21 these were all found in this weapon.

22 And this weapon, now, was actually located in the
23 glove box of the black in color Acura. We actually towed
24 the vehicle from the scene that evening.

25 The next day, we executed a search warrant on the

1 vehicle to do a thorough search of the car. This weapon
2 was in that vehicle, which this vehicle was secured
3 overnight in our locked impound lot.

4 Q Okay.

5 (WHEREUPON, State's Exhibit No. 2 was marked for
6 identification only.)

7 Q I show you what's been marked for identification as
8 State's Exhibit Number Two.

9 A Yes, sir.

10 Q Can you identify that, sir?

11 A Yes, sir. That's the actual -- that weapon that you
12 just showed me, that was the one that was actually -- this
13 is where it was found, in the glove box of that black
14 Acura.

15 Q And you took that photograph?

16 A I took this photograph. Yes, sir.

17 Q And you seized the weapon?

18 A Yes, sir.

19 MR. KNIGHT: I would move State's Exhibit Number Two
20 into evidence, Your Honor.

21 MR. BRYAN: No objection.

22 THE COURT: Very well.

23 (WHEREUPON, State's Exhibit No. 2 was admitted into
24 evidence.)

25 MR. KNIGHT: May I publish to the jury, Your Honor?

1 **THE COURT:** You may.

2 (WHEREUPON, STATE'S EXHIBIT NUMBER TWO WAS PUBLISHED
3 TO THE JURY.)

4 (WHEREUPON, State's Exhibit No. 22 was marked for
5 identification only.)

6 **Q** I show you what's been marked as State's Exhibit
7 Number Twenty-two. Can you identify that, sir?

8 **A** Yes, sir.

9 **Q** You can?

10 **A** Yes, sir.

11 **Q** You take this photograph?

12 **A** Yes, sir, I did.

13 **MR. KNIGHT:** I would move State's Exhibit Number
14 Twenty-two into evidence, Your Honor.

15 **THE COURT:** Any objections?

16 **MR. BRYAN:** No objection, Your Honor.

17 **THE COURT:** Very well. It's in evidence without
18 objection.

19 (WHEREUPON, State's Exhibit No. 22 was admitted into
20 evidence.)

21 **Q** State's Exhibit Number Twenty-two, which is in
22 evidence, tell -- tell the jury what that is.

23 **A** That's the same Colt, the weapon, the .45 that was
24 found in the glove box. The only difference, this picture
25 is going to show where the magazine has been pulled from

1 the weapon. The weapon has been made safe.

2 In other words, I -- it had been -- it was cocked.
3 It was back, and it shows the actual bullets still in the
4 magazine as we found it. The only difference is, I made
5 the weapon safe and pulled the magazine out of it.

6 Q Thank you, sir.

7 MR. KNIGHT: May I publish to the jury, Your Honor?

8 THE COURT: You may.

9 (WHEREUPON, State's Exhibit No. 9A was marked for
10 identification only.)

11 (WHEREUPON, State's Exhibit No. 9B was marked for
12 identification only.)

13 (WHEREUPON, State's Exhibit No. 9C was marked for
14 identification only.)

15 (WHEREUPON, State's Exhibit No. 9D was marked for
16 identification only.)

17 (WHEREUPON, State's Exhibit No. 9E was marked for
18 identification only.)

19 (WHEREUPON, State's Exhibit No. 9F was marked for
20 identification only.)

21 (WHEREUPON, State's Exhibit No. 9G was marked for
22 identification only.)

23 (WHEREUPON, State's Exhibit No. 9H was marked for
24 identification only.)
25

1 (WHEREUPON, State's Exhibit No. 9I was marked for
2 identification only.)

3 Q I show you what's been marked for identification as
4 State's Exhibit 9A, 9B, 9C, 9D, 9E, 9F, 9G, 9H, and 9I. I
5 ask you if you can identify these, please?

6 A Yes, sir.

7 Q Did you also take these photographs, 9A thru I?

8 A Yes, sir.

9 MR. BRYAN: No objection.

10 THE COURT: Very well.

11 MR. KNIGHT: Your Honor, the State would move 9A thru
12 I into evidence.

13 THE COURT: Very well. It's in evidence without
14 objection.

15 (WHEREUPON, State's Exhibit No. 9A was admitted into
16 evidence.)

17 (WHEREUPON, State's Exhibit No. 9B was admitted into
18 evidence.)

19 (WHEREUPON, State's Exhibit No. 9C was admitted into
20 evidence.)

21 (WHEREUPON, State's Exhibit No. 9D was admitted into
22 evidence.)

23 (WHEREUPON, State's Exhibit No. 9E was admitted into
24 evidence.)

25

1 (WHEREUPON, State's Exhibit No 9F was admitted into
2 evidence.)

3 (WHEREUPON, State's Exhibit No. 9G was admitted into
4 evidence.)

5 (WHEREUPON, State's Exhibit No. 9H was admitted into
6 evidence.)

7 (WHEREUPON, State's Exhibit No. 9I was admitted into
8 evidence.)

9 Q Mr. Ethridge, looking at 9A thru 9I, what do those
10 photographs depict?

11 A These are actual shell casings that was located on
12 the highway, Highway 61. They are each marked as they
13 were collected where they were collected at, and they were
14 each marked with a different placard, I mean as in a
15 numbered placard where I marked them on the highway where
16 they were located at. They were -- you've got one, two,
17 three, four, five -- five -- five of these were the shell
18 casings.

19 Placard Six is -- Placard Six and Placard Seven are
20 going to be of actual fragments of bullets, not casings,
21 now. These are going to be actual fragments of bullets
22 that was located around the car that was turned upside
23 downwards.

24 These shell casings was located in various locations
25 away from the scene down the roadway. Where they first

1 started firing the shots through the sunroof, it was with
2 an automatic weapon, so the shell casings shot out of the
3 side of the weapon. So they were actually located on the
4 side of the road. They go up to where the crash occurred.

5 Q Then five and six, I think you indicated ---

6 A Five and six are actual bullet fragments that were
7 located around right in that same vicinity of where the
8 car -- the wreck was, where the car was turned back up on
9 its right side. In that area, that's where those two
10 fragments were located. That's what you're going to see
11 in six and seven.

12 MR. KNIGHT: May I publish to the jury, Your Honor?

13 (NO RESPONSE.)

14 MR. KNIGHT: May I publish to the jury, Your Honor?

15 THE COURT: You may.

16 (WHEREUPON, STATE'S EXHIBITS 9A - 9I WERE PUBLISHED
17 TO THE JURY.)

18 (WHEREUPON, State's Exhibit No. 20 was marked for
19 identification only.)

20 (WHEREUPON, State's Exhibit No. 21 was marked for
21 identification only.)

22 Q I show you what's been marked as State's Exhibit
23 Number Twenty and ask you if you can identify that, sir?

24 A Yes, sir.

25 Q You can?

1 **A** Yes, sir.

2 **Q** I also show you what's been marked as State's Exhibit
3 Number Twenty-one for identification. Can you identify
4 that, sir?

5 **A** Yes, sir.

6 **Q** How can you identify it?

7 **A** Well, those -- those boxes that they were in, when I
8 collected those shell casings and those fragment pieces,
9 on there it will have the location, it has my name, it has
10 the case number. It has all of my information on there,
11 date and times.

12 I put those casings in there, and they were sealed
13 with that red evidence tape. That was the tape that I put
14 on there, I initialed and dated, and those pieces were
15 sealed by me.

16 **Q** Thank you, sir.

17 **MR. KNIGHT:** The State would move State's Exhibit
18 Number Twenty into evidence, Your Honor.

19 **THE COURT:** All right. Any objection?

20 **MR. BRYAN:** None, Your Honor.

21 **THE COURT:** All right.

22 (WHEREUPON, State's Exhibit No. 20 was admitted into
23 evidence.)

24 **MR. KNIGHT:** The State would also move State's
25 Exhibit Number Twenty-one into evidence.

1 **THE COURT:** Any objection?

2 **MR. BRYAN:** No, Your Honor.

3 **THE COURT:** Very well. In evidence.

4 (WHEREUPON, State's Exhibit No. 21 was admitted into
5 evidence.)

6 **Q** State's Exhibit Number Twenty, I show you this, and
7 of course you've identified that you put them in the box.

8 **A** Correct. These -- these are the actual -- the actual
9 shell casings that was found that you see in the pictures,
10 these are the actual shell casings that was located on the
11 roadway. It's five of them.

12 **Q** And those ---

13 **A** Those would be your pictures. It should be pictures
14 one through five that you'll see. Each one is going to be
15 marked with a placard.

16 **Q** Right.

17 **A** I say placard. It's going to be a numbered marker, a
18 yellow marker. And also on this box it'll have a number
19 on it also.

20 **Q** Okay.

21 **A** To show the actual one that was found at that
22 location.

23 **Q** Okay. And I show you State's Exhibit Number
24 Twenty-one, which is in evidence.

25 **A** Okay. This is going to be the same. You see

1 pictures six and seven, these are the two fragments that I
2 spoke of. They're separated here.

3 One was placed in -- they were each in a separate
4 box, and they have a number on the side, seven and then
5 six, and the placards are marked with seven and six. So
6 you see those pictures, you can see that's exactly where
7 they was put in here, the exact item that you see in the
8 pictures.

9 Q You collected State's Exhibit Number Twenty,
10 Twenty-one, Fourteen, Fifteen, -- I'm just going through
11 all of them, and Fifteen, Fourteen, Seventeen, Eighteen,
12 and Nineteen. What did you do with those items?

13 A Well, they were all taken back to -- I secured them
14 personally, myself. They were all taken back to the
15 sheriff's office. And I did swab each one of them, and
16 then they were secured in individual boxes. They were
17 secured by me.

18 Q How do you mean secured?

19 A They were placed in a box. I usually put them down
20 with wire ties and secure them in the bottom of the box.

21 Q Right.

22 A And they are sealed with the evidence tape -- with
23 the tape.

24 Q So you sealed those boxes?

25 A I sealed those boxes myself, personally.

1 **Q** And you turned them in to the evidence vault?

2 **A** They were turned in to the evidence vault. Those
3 were to be sent to S.L.E.D. for further analysis, and they
4 were put in a bin, in a sealed bin for S.L.E.D., to be
5 sent to them.

6 (WHEREUPON, State's Exhibit No. 23 was marked for
7 identification only.)

8 **Q** I show you what's been marked as State's Exhibit
9 Number Twenty-three and ask you if you can identify that,
10 please, sir?

11 **A** Yes, sir.

12 **Q** Did you also take this photograph?

13 **A** Yes, sir.

14 **MR. KNIGHT:** I would move State's Exhibit Number
15 Twenty-three into evidence, Your Honor.

16 **THE COURT:** Any objection?

17 **MR. BRYAN:** None, Your Honor.

18 **THE COURT:** Very well.

19 (WHEREUPON, State's Exhibit No. 23 was admitted into
20 evidence.)

21 **Q** Tell the jury what State's Exhibit Number
22 Twenty-three is and where you found it.

23 **A** This is a box of Federal -- it's going to be
24 ammunition, Federal ammunition. It's actually the box of
25 it.

1 This was found in the black in color Acura. At this
2 point in time, it's a picture of it. It's sitting on the
3 car where I photographed the picture.

4 **Q** Okay, sir.

5 **MR. KNIGHT:** May I publish to the jury, Your Honor?

6 **THE COURT:** You may.

7 (WHEREUPON, STATE'S EXHIBIT NUMBER TWENTY-THREE WAS
8 PUBLISHED TO THE JURY.)

9 (WHEREUPON, State's Exhibit No. 8A was marked for
10 identification only.)

11 (WHEREUPON, State's Exhibit No. 8B was marked for
12 identification only.)

13 (WHEREUPON, State's Exhibit No. 8C was marked for
14 identification only.)

15 (WHEREUPON, State's Exhibit No. 8D was marked for
16 identification only.)

17 (WHEREUPON, State's Exhibit No. 8E was marked for
18 identification only.)

19 (WHEREUPON, State's Exhibit No. 8F was marked for
20 identification only.)

21 **Q** I show you what's been marked as State's Exhibit
22 Number 8A for identification, 8B, C, D, E, and F, and ask
23 you if you can identify this, please, sir?

24 **A** Yes, sir.

25 **Q** Did you take those photographs?

1 **A** Yes, sir. I took every one of them.

2 **MR. KNIGHT:** The State would move 8A thru 8F into
3 evidence, Your Honor.

4 **MR. BRYAN:** No objection.

5 **THE COURT:** Very well. 8A thru F, State's exhibits,
6 are in evidence without objection.

7 (WHEREUPON, State's Exhibit No. 8A was admitted into
8 evidence.)

9 (WHEREUPON, State's Exhibit No. 8B was admitted into
10 evidence.)

11 (WHEREUPON, State's Exhibit No. 8C was admitted into
12 evidence.)

13 (WHEREUPON, State's Exhibit No. 8D was admitted into
14 evidence.)

15 (WHEREUPON, State's Exhibit No. 8E was admitted into
16 evidence.)

17 (WHEREUPON, State's Exhibit No. 8F was admitted into
18 evidence.)

19 **Q** Please explain to the jury each one, what they
20 depict.

21 **A** Okay.

22 **Q** And you took these on what date?

23 **A** These pictures were actually taken the next day
24 during the search warrant.

25 **Q** But you took them.

1 **A** Yes, sir. I took these pictures. In other words,
2 like I said, the car was taken back to the sheriff's
3 office, secured, and then the next day we did a -- because
4 this is daylight, we did a search warrant on the car to
5 see if there was any other evidence in the car.

6 These are actual pictures of the front windshield of
7 the black in color Acura. The first picture you'll see is
8 -- you'll see four -- you'll see four spots on this front
9 windshield.

10 **MR. KNIGHT:** Your Honor, may he step down and show it
11 to the jury?

12 **THE COURT:** Sure. Of course.

13 I don't think we'll have to worry about your voice.

14 **WITNESS:** No.

15 **THE COURT:** But what I need you to do is, you're
16 going to have to do it in sections.

17 **MR. KNIGHT:** Half here and half there.

18 **WITNESS:** Right. We can do that.

19 **THE COURT:** There you go.

20 **A** We'll start. This is going to be your first picture,
21 8A. You'll see here this is the front windshield of the
22 Acura, and you'll see each one of these are marked with an
23 evidence tape, is what it is. And on each one, you can
24 see them closer. They're actually marked with a number.

25 See each one. You've got four spots here on the

1 front windshield of the Acura. I'm sorry if I don't say
2 it the same. You can see all four of them. They're
3 represented -- they're marked with the evidence tape.

4 This is the front windshield, the very front
5 windshield. This is looking outward. This is looking
6 from the outside into the vehicle. Okay?

7 And then what you're going to see is 8B would be
8 where I told you each one of them was numbered. This will
9 be where it's marked Number One.

10 I put: Outside.

11 That means this is the outside of the windshield.
12 This is just a closeup shot of what you see on that, on
13 that windshield.

14 This still again is the front of the windshield of
15 the car marked showing as Number One, outward coming in.
16 It's the actual front windshield.

17 And then 8C, you see here it's marked as Number Two?
18 So this would be a second. It's the front windshield
19 again, marked -- clearly marked front windshield.

20 I put: Out.

21 This is an outward view looking into the -- looking
22 into the -- looking into the windshield, looking into the
23 car from the outer car. It's marked as Number Two.

24 Same thing. This is from the Acura. This is the
25 front windshield.

1 8D is going to be Number Three. It's the same
2 windshield. It's just a different spot. This is going to
3 be Number Three. This will be your third section.

4 Out. Same picture, outward going inward. Number
5 Three. Same windshield of the Acura, the black in color
6 Acura. It's going to be showing that same picture. This
7 is from outward.

8 8E would be Number Four. It's clearly marked Number
9 Four. Outward. Showing the same motion, the outer
10 windshield going in.

11 As I said, each one of them are scaled, so if you see
12 on here it's going to have a number where it's actually
13 scaled in inches. It gives you a picture of what size
14 hole you're looking at.

15 See Number Four? Same thing, outward, inward. This
16 is an outside shot of the front windshield.

17 This, 8F -- as I said the first pictures were taken
18 the day after. 8F is actually a picture that was taken
19 that night at the scene. This was before the evidence
20 tape was put on. This is just a good outer view where you
21 can actually see this is before the evidence tape was put
22 on there.

23 So I'm not depicting or pointing anything out. This
24 was just a general shot of that front windshield of the
25 Acura.

1 This was the actual on-scene picture of what it
2 looked like when we observed it. There's no evidence tape
3 or anything.

4 And that's all.

5 **Q** Okay. I'm going to show you what's been marked, and
6 it's in evidence as 8F. Those bullet projectiles that
7 went through 8F, was it on the passenger's side or the
8 driver's side?

9 **A** They could be more on the driver's side than the
10 passenger's side.

11 **Q** And that's in Number F, I think?

12 **A** 8F. Between there and then the middle section of the
13 windshield.

14 **MR. KNIGHT:** May he step down and show the jury what
15 the passenger's side and the driver's side looks like,
16 Your Honor?

17 **THE COURT:** Yes.

18 **Q** Again, splitting it up, show the passenger's side and
19 the driver's side.

20 **A** All right. This is um -- and this is actually, what
21 this picture is, is actually when we were rolling the car
22 over. So you can actually see in here -- also you see the
23 sunroof of the car at the top. Okay? So see where the
24 sunroof is open?

25 And if you split, it would be in half right here.

1 This would be -- this side would actually be your driver's
2 side. This side here would actually be your passenger's
3 side, and you can see where the markings are.

4 Same thing here. This would be the top of the car.
5 This is the sunroof, actually showing the sunroof open.
6 And this would be your driver's side of the car. This
7 would be your passenger's side of the car.

8 Same thing here. This is your roof, the top of the
9 car. The sunroof is open. And you would split it, your
10 driver's side, and this would be your passenger's side.

11 **MR. KNIGHT:** Thank you, sir. You may be seated.

12 May we publish to the jury, Your Honor?

13 **THE COURT:** You may.

14 (WHEREUPON, STATE'S EXHIBITS 8A THRU 8F WERE
15 PUBLISHED TO THE JURY.)

16 **Q** State's Exhibit Number Twenty and Twenty-one, did you
17 place those items in this box, or did you keep them
18 separate?

19 **A** They were separate.

20 **Q** Okay. And you turned it all in to the evidence
21 locker?

22 **A** Correct.

23 **Q** Okay.

24 **MR. KNIGHT:** Court's indulgence one moment, Your
25 Honor?

1 **THE COURT:** All right.

2 **Q** In State's Exhibit Number -- I think -- it's the last
3 one.

4 **MR. KNIGHT:** Was it Nineteen? Twenty? Twenty-one,
5 Madam Court Reporter?

6 **COURT REPORTER:** Eight.

7 **MR. KNIGHT:** Eight. Excuse me.

8 **Q** Does this picture reflect whether the projectile went
9 from the outside into the car or from the inside of the
10 car to the outside of the car?

11 **A** From the inside of the car to the outside of the car.

12 **Q** Thank you, sir.

13 **MR. BRYAN:** Your Honor, I don't know that he was
14 qualified as an expert on glass patterns, Your Honor.

15 **MR. KNIGHT:** That's all I have of this witness, Your
16 Honor.

17 **THE COURT:** It comes late.

18 **MR. BRYAN:** Oh, okay.

19 **THE COURT:** You can cross-examine. Cross-examine
20 now, as a matter of fact.

21 CROSS-EXAMINATION

22 BY MR. BRYAN:

23 **Q** In the other trial, on Bronson Shelley, you
24 testified. Where did you find the slugs, the projectile
25 pieces?

1 **A** They were in the area of where the car was located.
2 The projectiles?

3 **Q** Yeah.

4 **A** Yeah, they were in the area where the car was
5 located.

6 **Q** And they were like under the car?

7 **A** When we rolled the car over, that's when we found
8 those. Yes, sir.

9 **Q** Okay. So you didn't find them until you rolled the
10 car over.

11 **A** Right. Yes, sir.

12 **Q** So that was pretty much under the car.

13 **A** Correct. Yes, sir.

14 **Q** Okay. Now you -- you took swabs from the triggers of
15 the pistols?

16 **A** Yes, sir.

17 **Q** What would that have been for?

18 **A** Possibly for if DNA was on the weapons.

19 **Q** Okay. And DNA would have established conclusively
20 whether or not Mr. Rivers was shooting a pistol; wouldn't
21 it? If he was shooting a pistol, he would have left DNA
22 on the trigger; wouldn't he?

23 **A** Sometimes, yes, sir.

24 **Q** I mean, if it was his DNA on the trigger, that would
25 pretty much show it; wouldn't it?

1 **A** Right.

2 **Q** And if it was Shelley's DNA on the trigger, that
3 would mean Shelley was shooting the gun; wouldn't it?

4 **A** Correct.

5 **Q** So that would have been useful evidence to have
6 today; wouldn't it?

7 **A** Correct.

8 **Q** And there was one pistol that was in the car that was
9 completely undisturbed; right? It wasn't fired?

10 **A** There was a -- the weapon found in the glove box, is
11 that maybe what you're referring to?

12 **Q** Yeah.

13 **A** There was one weapon in the glove box.

14 **Q** Okay. And it hadn't been ---

15 **A** I can't say if it was -- I mean, ---

16 **Q** It had rounds in it.

17 **A** It had rounds in the magazine, yes, sir.

18 **Q** And it was still in the glove box when you got to it.

19 **A** When I found it, it was in the glove box. Yes, sir.

20 **Q** Okay.

21 **MR. BRYAN:** I've got no further questions of this
22 witness.

23 **THE COURT:** Okay. Is there any redirect?

24 **MR. KNIGHT:** No, ma'am. May he be excused?

25 **THE COURT:** Yes. Any objection?

1 **MR. BRYAN:** None, Your Honor.

2 **THE COURT:** Very well. You are free to go.

3 **WITNESS:** Thank you.

4 **THE COURT:** Call your next witness, please.

5 **MR. KNIGHT:** Earl um ---

6 **THE COURT:** Asbell.

7 **MR. KNIGHT:** --- Asbell.

8 **CLERK:** Please raise your right hand.

9 EARL V. ASBELL, JR., after being duly sworn,
10 testified as follows:

11 **CLERK:** Please have a seat on the witness stand and
12 state your name for the record.

13 **WITNESS:** My name is Earl Vincent Asbell, Jr., that's
14 A-S-B-E-L-L.

15 **THE COURT:** Your witness.

16 DIRECT EXAMINATION

17 BY MR. KNIGHT:

18 **Q** Mr. Asbell, who are you employed with, sir?

19 **A** Dorchester County Sheriff's Office.

20 **Q** How long have you been working there?

21 **A** Thirty-seven years.

22 **Q** In what capacity are you working in the sheriff's
23 office?

24 **A** I'm a lieutenant over the crime scene.

25 (WHEREUPON, A GLASS OF WATER WAS HANDED TO THE

1 WITNESS.)

2 WITNESS: Thank you.

3 THE COURT: You're very welcome.

4 Q Do you take evidence to S.L.E.D. and other labs?

5 A Yes, sir, sometimes.

6 Q In this situation in this case, there's so much of
7 it, I'm going to say State's Exhibit Number Seventeen,
8 Eighteen, and Nineteen is a Colt .45.

9 A That was not transported to S.L.E.D.

10 Q Okay. That's what I wanted to know.

11 State's Exhibit Number Fourteen, which is it looks
12 like a Beretta.

13 A That's the Bursa.

14 Q Yes, sir.

15 A Yes, sir. That's the Bursa Firestone .380, Serial
16 Number 823145.

17 Q And did you transport it to S.L.E.D.?

18 A Yes, sir, I did.

19 Q What was the condition of the weapon or the box you
20 transported it in?

21 A The boxes were sealed, and once I got there, S.L.E.D.
22 placed their yellow evidence tape on there, and then I
23 initialed it after they did that.

24 Q Okay. On State's Exhibit Number Fifteen, which is a
25 .38, ---

1 **A** Yes, sir. That's the Taurus .38 Special, Serial
2 Number HC26905.

3 **Q** Did you transport it to S.L.E.D.?

4 **A** Yes, sir, I did.

5 **Q** And was the box sealed?

6 **A** Yes, sir. It was sealed when I retrieved it.

7 **Q** Now, State's Exhibit Number Sixteen, was it inside
8 the box, which is State's Exhibit Number Fifteen?

9 **A** It says three RP .38 Special spent casings were
10 inside the box and two Winchester .38 Special shell
11 casings were in the box with the Taurus.

12 **Q** State's Exhibit Number Twenty, I'll ask you -- which
13 is in evidence, did you transport these to S.L.E.D.?

14 **A** Yes, sir. I transported five Federal .380 spent
15 casings, which means they were fired casings. And these
16 all have .380 casings on them.

17 **Q** How were they secured in your transport to S.L.E.D.?

18 **A** They were sealed in an envelope.

19 **Q** I show you what's in evidence as State's Exhibit
20 Number Twenty-one.

21 **A** Yes, sir. This is S.L.E.D. Item Number Eight and
22 Number Nine, a fired projectile and a piece of a
23 projectile. These also would have been sealed in an
24 envelope.

25 **Q** Okay. What if you had not sealed the boxes and the

1 casings? Would S.L.E.D. have accepted them?

2 A I'm sorry, I didn't hear you.

3 Q Had you not sealed the pistol and the projectiles and
4 the casings, would S.L.E.D. have accepted them if they had
5 not have been sealed?

6 A No, they would have made us seal them right there in
7 front of them, but they were already taped, and they had
8 me place the yellow evidence tape on them.

9 Q And who did you turn these items that I just referred
10 to, Twenty, Twenty-one, Fifteen, and ---

11 A They were turned over to Selena Kinard on July the
12 19th at 10:42 a.m. And I retrieved them all back from
13 S.L.E.D. from Nikki Hughes on September the 9th at 10:09
14 a.m.

15 Q Just to keep the record straight, Deputy Asbell,
16 State's Exhibit Number Fifteen and Sixteen, State's
17 Exhibit Seventeen, Eighteen, and Nineteen and Twenty and
18 Twenty-one, you turned all of those over to Selena Kinard?

19 A Yes, I did.

20 Q Okay. It's Lieutenant, actually, isn't it?

21 A Yes, it is.

22 Q I apologize.

23 A That's all right.

24 Q Answer any questions Mr. Bryan may have.

25 THE COURT: Cross-examination?

CROSS-EXAMINATION

BY MR. BRYAN:

Q Detective Asbell, did you transport any gunshot residue kits?

A Yes, sir, I did. I transported two GSR kits.

Q All right.

A They are listed as John Doe One and John Doe Two.

Q So that would have been Mr. Shelley and Mr. Rivers?

A That's correct.

Q Okay. Did you transport any swabs?

A No, sir.

Q DNA?

A No, sir, I didn't.

Q Who would have made the decision to submit DNA evidence?

A It would have been up to the detectives.

Q Okay. But it was not done.

A No, sir. It was not.

MR. BRYAN: No further questions of this witness.
Thank you.

THE COURT: All right.

Redirect?

MR. KNIGHT: No, ma'am. May he be excused?

THE COURT: Any objection?

MR. BRYAN: No, Your Honor.

1 **WITNESS:** May I take the water?

2 **THE COURT:** May you take what?

3 **WITNESS:** The water.

4 **THE COURT:** Indeed, you may.

5 **WITNESS:** Thank you.

6 **THE COURT:** Yes, sir. Call your next witness.

7 **MR. KNIGHT:** Amy Stephens.

8 AMY STEPHENS, after being duly sworn, testified
9 as follows:

10 **CLERK:** Please have a seat on the witness stand and
11 state your name for the record.

12 **THE COURT:** State your full name for the record, and
13 then spell your last name.

14 **WITNESS:** Amy Stephens, S-T-E-P-H-E-N-S.

15 **THE COURT:** Your witness.

16 DIRECT EXAMINATION

17 BY MR. KNIGHT:

18 **Q** Ms. Stephens, who are you employed with?

19 **A** I'm employed with the South Carolina Law Enforcement
20 Division, also known as S.L.E.D.

21 **Q** And how long have you been employed with S.L.E.D.?

22 **A** Approximately seven years.

23 **Q** In what capacity are you employed with S.L.E.D.?

24 **A** I'm a forensic technician in the Evidence Control
25 Department. Our duties are to log in, package, and

1 transfer evidence for forensic analysis in criminal cases.

2 Q Okay. I show you what's been marked State's Exhibit
3 Number Fifteen and State's Exhibit Number Sixteen and ask
4 you if you received those at S.L.E.D.?

5 A I recognize the label that's located on State's
6 Exhibit Number Fifteen and Sixteen, which corresponds with
7 my chain of custody for Lab Number L11-08183, Container B.

8 Q And was it sealed when you got it?

9 A Yes, it was.

10 Q And what did you do with it?

11 A I received it off of our storage shelf in our
12 firearms intake area, and I transferred the evidence to
13 Michelle Eichenmiller, a forensic scientist in our
14 Firearms Department.

15 Q Okay. I show you what's in evidence as -- no, wrong
16 one.

17 THE COURT: There are too many boxes.

18 MR. KNIGHT: Yes, ma'am.

19 THE COURT: Next time they need to give you like pink
20 boxes and green boxes, blue boxes.

21 MR. KNIGHT: The inference is that I need help, Your
22 Honor; is that what you're saying?

23 THE COURT: Just need different color boxes. Cheer
24 it up a little bit.

25 Q Ms. Stephens, I ask you, did you receive State's

DIRECT EXAMINATION OF AMY STEPHENS BY MR. KNIGHT

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1 Exhibit Number Fourteen at S.L.E.D.?

2 A State's Exhibit Fourteen corresponds with actually
3 our Lab Number L11-08183, Item Number Six.

4 Q And was it secured when you got it, sealed?

5 A Yes, it was.

6 Q And what did you do with State's Exhibit Number
7 Fourteen?

8 A I transferred the evidence to Michelle Eichenmiller
9 of the Firearms Department.

10 Q I show you what's in evidence as State's Exhibit
11 Number Twenty. Did you receive that at S.L.E.D.?

12 A When I received it, it was actually in an envelope.
13 It was not packaged like this. I'm verifying that the lab
14 number written on the box that that corresponds with my
15 chain of custody L11-8183.

16 Q And it does?

17 A Yes.

18 Q And what did you do with it?

19 A The same as the others. I transferred the evidence
20 to Michelle Eichenmiller in the Firearms Department.

21 Q And I show you what's been marked as State's Exhibit
22 Number Twenty-one and ask you if you received that?

23 A Yes. The lab number that is written on the box
24 corresponds to my chain of custody L11-8183. I also
25 transferred these to Michelle Eichenmiller of the Firearms

1 Department.

2 MR. KNIGHT: If the Court would indulge me one
3 moment?

4 THE COURT: Yes, sir.

5 Q Ms. Stephens, if you would be so kind as to answer
6 any questions Mr. Bryan may have?

7 THE COURT: Cross-examination?

8 MR. BRYAN: None, Your Honor.

9 THE COURT: Very well. Is this witness free to
10 leave?

11 MR. KNIGHT: May she be excused, Your Honor?

12 THE COURT: Any objection?

13 MR. BRYAN: No, Your Honor.

14 THE COURT: Thank you.

15 Call your next witness, please.

16 MR. KNIGHT: Michelle Eichenburg -- Eichenburg?
17 Eichenmiller, excuse me.

18 THE COURT: You're going to get there.

19 MR. KNIGHT: Unless I've got another box.

20 THE COURT: You need different colored boxes.

21 MICHELLE EICHENMILLER, after being duly sworn,
22 testified as follows:

23 CLERK: Please have a seat on the witness stand and
24 state your name for the record.

25 THE COURT: And if you would please state your full

1 name for the record and spell your last name?

2 **WITNESS:** My name is Michelle Eichenmiller,
3 E-I-C-H-E-N-M-I-L-L-E-R.

4 **THE COURT:** Your witness.

5 DIRECT EXAMINATION

6 BY MR. KNIGHT:

7 **Q** Ms. Eichenmiller, who are you employed with?

8 **A** I'm employed with the South Carolina Law Enforcement
9 Division in the Forensic Lab. I work in the Firearms
10 Department.

11 **Q** How long have you been employed with S.L.E.D.?

12 **A** Almost seven years.

13 **Q** What is firearms identification?

14 **A** Firearms identification is the branch of forensic
15 science that deals with firearms and anything that could
16 have come from a firearm, such as bullets, cartridge
17 cases. There are also other examinations that we'll do.
18 We'll do serial number restorations. We do tool mark
19 examinations, and we do general rifling characteristics.
20 That's the case of if we don't get a firearm and we just
21 get a bullet.

22 **Q** What makes such identifications possible?

23 **A** Firearms, when they are manufactured, get different
24 small defects from the manufacturing process. And then
25 after they are bought by someone and used and abused, they

1 also get -- and used in the course of everyday, they get
2 different marks on them as well. Those marks are used to
3 identify particular bullets back to the firearm.

4 Q What specialized training have you had in your
5 present work?

6 A In order to become a firearms identification expert,
7 you have to go through an in-house training program.
8 There's no college to go to. I do have a Master's of
9 Science in Forensic Science, but once I got to S.L.E.D., I
10 had to complete the in-house training program. It was
11 three -- it was about four years.

12 I got signed off on in March of 2010, after doing a
13 lot of work with court qualified examiners. I did a lot
14 of microscopic comparisons on my own.

15 I also did -- I read a lot. I took a lot of tests,
16 and then at the end, I took a comprehensive exam that made
17 me become qualified to do cases on my own.

18 Q Have you testified previously in the field of
19 firearms identification?

20 A I have.

21 Q And in what courts have you testified?

22 A This morning in Lee County, and several other
23 counties in the state.

24 Q Have you been -- have you previously been qualified
25 as an expert in arms identification?

1 **A** Yes, sir.

2 **MR. KNIGHT:** Your Honor, I submit Ms. Eichenmiller as
3 a qualified expert in firearms identification.

4 **THE COURT:** Voir dire?

5 **MR. BRYAN:** No objection, Your Honor.

6 **THE COURT:** No objection.

7 Let me explain to the jury ---

8 **MR. KNIGHT:** Sure.

9 **THE COURT:** --- about this.

10 Ladies and gentlemen, normally under our Rules of
11 Evidence, a witness is not allowed to testify regarding
12 their opinions or the reasons for their opinions. There
13 is an exception, and that is when, by virtue of someone's
14 knowledge, training, experience, education, profession,
15 and the like, they have become an expert in some field.
16 Usually it's science or art or the like. Then they are
17 allowed to testify within the area of their expertise.

18 Ladies and gentlemen, expert testimony is given for
19 the purpose, of course, of helping you understand the
20 evidence and not for the purpose of controlling your
21 judgment. I'll give you an instruction further when I
22 give you the concluding instructions. I thought that
23 would be helpful at this point. And she is so qualified
24 as an expert.

25 Yes, sir, you may proceed.

1 **MR. KNIGHT:** May I proceed, Your Honor?

2 **Q** I show you State's Exhibit Number Fourteen, which is
3 in evidence, and I ask you if you have seen that or has it
4 come into your possession?

5 **A** Whenever I receive evidence, I always write the lab
6 number, the item number, and my initials on it. This is
7 the same firearm I examined in Lab Number L11-8183.

8 **Q** Describe in detail the examination you made of that
9 weapon.

10 **A** Whenever we receive a firearm in our department, we
11 do extensive photo documentation to document the condition
12 it came in. We also fill out worksheets to say if the
13 safeties work, the make, model, serial number, etcetera.
14 Then I test fire it to make sure it works, and then I use
15 those test fires to make my comparisons on the microscope.

16 **Q** Number Fifteen, State's Exhibit Number Fifteen, was
17 operational after you test fired it?

18 **A** Yes, it was.

19 **Q** Okay. I show you State's Exhibit Number Twenty,
20 which is in evidence, and ask you if those items in
21 State's Exhibit Number Twenty came into your possession?

22 **A** Yes, they were. These are the fired cartridge cases
23 that I examined in this case.

24 **Q** How can you identify that you examined those
25 cartridge cases?

1 **A** The same way. I put the lab number, the item number,
2 and my initials on each one.

3 **Q** Describe in detail the examination you made and any
4 conclusions you were able to reach.

5 **A** When we receive firearm components, we also photo
6 document them, and then we write them up on a worksheet.
7 Then I use test fires from a weapon, if it's submitted, to
8 compare under my comparison microscope. And then once we
9 do that, then I can render a conclusion if they were fired
10 by that firearm or not.

11 In this case, these fired cartridge cases were fired
12 by State's Exhibit Fourteen, the Bursa .380 pistol.

13 **Q** Thank you, ma'am.

14 Did you have an occasion to come into possession of
15 State's Exhibit Number Fifteen?

16 **A** This was an additional firearm that was submitted in
17 my Number L11-8183.

18 **Q** Did you perform an examination on that weapon?

19 **A** I did the same thing I did with the Bursa. I took
20 pictures, and then I test fired it to make sure it was
21 working. That's all I did with that one.

22 **Q** Okay. I show you State's Exhibit Number Twenty-one,
23 which is in evidence.

24 **A** These are the same items I examined in L11-8183.
25 They are two fired bullet jacket fragments.

1 Q Were you able to determine what weapon fired those?

2 A The larger fragment we determined was fired by
3 State's Exhibit Thirteen, the revolver.

4 Q No, I think it's Fifteen. It's on the revolver
5 itself.

6 A Oh, okay. Yeah, there it is. Okay. It was fired by
7 the revolver.

8 And then the smaller fragment, I'm not sure which
9 State's exhibit it is, but it's the smaller fragment, we
10 couldn't determine -- it was unsuitable for
11 identification. That means it had no marks of value on it
12 for me to do anything with it. I couldn't tell you if it
13 was fired by either gun or a different one.

14 Q Okay. Just to keep the record straight, State's
15 Exhibit Number Fifteen, which is the revolver, ---

16 **THE COURT:** Can you speak up? There was a sneeze.
17 I'm afraid our jurors could not hear you, Mr. Knight. I'm
18 sorry.

19 **MR. KNIGHT:** I'm sorry, Your Honor.

20 Q You referred to State's Exhibit Number Fifteen as a
21 revolver, but for the record, we have to know it's Fifteen
22 fired which one of those projectiles?

23 A State's Exhibit Fifteen fired -- I'm not sure which
24 one of these is the larger fragment.

25 Q Twenty-one.

1 **A** Twenty-one. So, State's Exhibit Fifteen fired
2 State's Exhibit Twenty-one.

3 **Q** Thank you, ma'am. I was just doing that for the
4 record.

5 Ms. Eichenmiller, if a revolver was fired inside of
6 an automobile, would that cause the fragmentation of those
7 bullets you referred to in State's Exhibit Number
8 Twenty-one?

9 **A** It depends on if it hit something.

10 **Q** If it hit a windshield.

11 **A** It could make that happen to the bullet.

12 **Q** Thank you, ma'am. Answer any questions Mr. Bryan may
13 have.

14 **THE COURT:** Cross-examination?

15 **MR. BRYAN:** None, Your Honor.

16 **THE COURT:** Very well. Is this witness free to
17 leave?

18 **MR. KNIGHT:** Yes, ma'am. May she be excused?

19 **THE COURT:** Yes.

20 Any objection?

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

22 **THE COURT:** Very well. You are free to go.

23 Ladies and gentlemen, we will now take our afternoon
24 break. We will take about fifteen minutes. Please step
25 to your jury room. Do not discuss this matter or allow

1 anyone to discuss it with you. For any of those that want
2 to smoke, let them smoke.

3 (DECEMBER 12, 2012, 3:25 P.M., WHEREUPON, THE JURY
4 RETIRES FROM THE COURTROOM, AND THE FOLLOWING
5 PROCEEDINGS WERE HELD OUT OF THEIR PRESENCE.)

6 **THE COURT:** We'll take our break.

7 (WHEREUPON, A BREAK WAS TAKEN. THEREAFTER, THE
8 FOLLOWING PROCEEDINGS WERE HELD ON THE RECORD OUT OF THE
9 PRESENCE AND HEARING OF THE JURY:)

10 **THE COURT:** Okay. Anything before we bring the jury
11 out; from the State?

12 **MR. KNIGHT:** Nothing from the State, Your Honor.

13 **THE COURT:** From the defendant?

14 **MR. BRYAN:** Nothing from the defendant, Your Honor.

15 **THE COURT:** Okay. Great.

16 Let us have the jury. Thank you.

17 (DECEMBER 12, 2012, 3:51 P.M., WHEREUPON, THE JURY
18 ENTERS THE COURTROOM, AND THE FOLLOWING PROCEEDINGS
19 WERE HELD IN THEIR PRESENCE.)

20 **THE COURT:** Ladies and gentlemen, I hope you enjoyed
21 your break. At this time, we will continue with the
22 State's case.

23 Mr. Knight?

24 **THE COURT:** We call Tim Knight.

25 PAUL TIMOTHY KNIGHT, after being duly sworn,

1 testified as follows:

2 CLERK: Please have a seat on the witness stand, and
3 state your name for the record.

4 WITNESS: How are you doing, Your Honor?

5 THE COURT: Good.

6 WITNESS: Paul Timothy Knight, K-N-I-G-H-T.

7 THE COURT: All right. Your witness.

8 MR. KNIGHT: Thank you, Your Honor.

9 DIRECT EXAMINATION

10 BY MR. KNIGHT:

11 Q Mr. Knight, who are you employed with?

12 A The Dorchester County Sheriff's Office.

13 Q In what capacity, sir?

14 A Right now I'm a detective assigned to the Criminal
15 Investigation Division.

16 Q Were you working on or about July the 12th, 2011?

17 A Yes, sir.

18 Q In what capacity, sir?

19 A I was a member of the K-9 Team.

20 Q Did you have an occasion to go to the scene of 5519
21 Augusta Highway here in Colleton County?

22 A Yes, sir.

23 Q Tell the Court how, and the jury how, you got there.

24 A Sure. Just before Corporal Eaches initiated his
25 traffic stop on the defendant's vehicle, I was on I-95

1 Southbound conducting my own traffic stop when I heard by
2 a police radio that the defendant's vehicle was not
3 stopping for Corporal Eaches. I disengaged my traffic
4 stop and joined in the pursuit.

5 Q You were on I-95 South?

6 A Yes, sir.

7 Q Did you exit off of I-95 South?

8 A Yes, sir.

9 Q What road did you exit off on?

10 A We exited onto Highway 61.

11 Q Were you behind Lieutenant Burnette?

12 A At that time I was actually behind Corporal Eaches'
13 patrol car, who was following Lieutenant Burnette.

14 Q So you would have been the third ---

15 A Yes, sir.

16 Q --- car?

17 A Yes, sir.

18 Q When you got to the location, the black Acura had
19 overturned. What, if anything, did you do?

20 A I exited my patrol vehicle, and I observed Lieutenant
21 Burnette giving chase on foot. I joined him in the foot
22 chase with him into the woods after the suspects.

23 Q Did you apprehend a person, with the assistance of
24 Lieutenant Burnette?

25 A Yes, I did.

1 Q Who did you apprehend?

2 A The defendant, Mr. Rivers.

3 Q This guy? The gentleman sitting next to Mr. Bryan?

4 A Yes, sir.

5 Q Okay. How far were you behind Justin Eaches'
6 vehicle?

7 A The closest I got was probably several hundred yards.

8 Q Did your car have audio and video?

9 A Yes, it did.

10 Q Would it have shown anything different than the
11 previous two videos we've seen?

12 A No, sir.

13 Q Did you have a service revolver that day?

14 A Yes, I did.

15 Q Did you fire it?

16 A No, I did not.

17 Q Of your own knowledge, do you know if any other
18 deputy sheriff from Dorchester County fired their weapon?

19 A No, they did not.

20 Q Do you know of your own knowledge how many other
21 Dorchester County Sheriff's Deputies arrived at the scene?

22 A All total, maybe eight.

23 Q Okay. Do you know of your own knowledge what their
24 purpose of being there was?

25 A Their purpose for being there would be taking the

1 role of backup deputies, perimeter deputies. They're
2 trying to maintain the perimeter so that we could better
3 locate and contain the two defendants that fled the
4 vehicle.

5 Q You did not assist in the apprehension of Shelley
6 Bronson -- Bronson Shelley, excuse me.

7 A No, I did not.

8 Q Only on the defendant, Maurio Rivers.

9 A Yes, sir.

10 Q Okay. Thank you, sir. Answer any questions Mr.
11 Bryan may have.

12 THE COURT: Mr. Bryan, cross-examination.

13 MR. BRYAN: None, Your Honor.

14 THE COURT: Very well. Is this witness free to
15 leave?

16 MR. KNIGHT: Yes, Your Honor. May he be excused?

17 THE COURT: Any objection?

18 MR. BRYAN: None, Your Honor.

19 THE COURT: Thank you. You're free to go.

20 WITNESS: Thank you, Your Honor.

21 THE COURT: Call your next witness, please.

22 MR. KNIGHT: The State would rest, Your Honor.

23 THE COURT: Very well.

24 Ladies and gentlemen, you've now heard the witnesses
25 and received the evidence which you will from the State

1 in the State's case in chief. That signifies to me that
2 there are matters that I must take up outside your
3 presence.

4 I'm going to ask you to please step to your jury
5 room. Do not discuss this matter or allow anyone to
6 discuss it with you. We will be with you shortly.

7 (DECEMBER 12, 2012, 3:56 P.M., WHEREUPON, THE JURY
8 RETIRES FROM THE COURTROOM, AND THE FOLLOWING
9 PROCEEDINGS WERE HELD OUT OF THEIR PRESENCE.)

10 **THE COURT:** All right. Are there any motions?

11 **MR. BRYAN:** Your Honor, at this time the defense
12 would move for a directed verdict of acquittal for the
13 reason that the State has failed to present sufficient
14 evidence that the defendant has committed this crime.
15 I'll hand up a couple of Briefs I've done in support of
16 this motion, Your Honor.

17 **THE COURT:** Okay.

18 **MR. BRYAN:** For one thing, and this was more of an
19 issue at the other trial, but the specific intent to kill
20 seems to be pretty much required for an intent crime,
21 including attempted murder.

22 Also, nobody is saying that they say Mr. Rivers
23 shooting at anybody, so that makes this a circumstantial
24 evidence crime. And the level of evidence required on a
25 circumstantial evidence case is a little bit higher, and a

1 little bit more is required from the State. There has to
2 be substantial evidence, and that's addressed in one of
3 these Briefs, too, Your Honor.

4 **THE COURT:** Whoa. The State doesn't prove anything
5 by substantial evidence. The State has got to prove guilt
6 beyond a reasonable doubt. It's a lot more than
7 substantial evidence.

8 **MR. BRYAN:** Well, I meant for a directed verdict
9 motion, Your Honor. It's not a scintilla of evidence.

10 **THE COURT:** Okay. All right. Very well. All right,
11 I'm with you now.

12 **MR. BRYAN:** Your Honor, I think the most -- even if
13 you're looking at it in the light most favorable to the
14 State, was that there were two guns used. One man was
15 seen shooting. That man was not my client. There is no
16 evidence that my client was doing anything other than
17 driving the car. Everyone who saw him, he was driving.
18 He was running.

19 There is no evidence that he knew the passenger or
20 for how long or why the passenger was in the car or who
21 the car belonged to or anything of that nature. All that
22 we know is that Mr. Rivers, looking at it in the light
23 most favorable to the State, was driving a car from which
24 a passenger was firing a pistol.

25 The State might try to make some big deal out of

1 bullet holes in the windshield, but the passenger could
2 have quite as easily grabbed for another pistol. I think
3 it would be pretty clear that the driver of a car that's
4 just been hit is going to be white-knuckling the steering
5 wheel, not letting go and grabbing a gun and shooting,
6 Your Honor.

7 I mean, just looking at this in the light most
8 favorable to the State, the circumstantial evidence is
9 very -- it calls for speculation and guesswork, and
10 there's simply no way that a jury could find from this
11 evidence that he's guilty beyond a reasonable doubt.
12 Thank you.

13 **THE COURT:** Thank you so much, Mr. Bryan. I would
14 respectfully deny your motion. As you know, I am not
15 charged with the responsibility of weighing the evidence
16 but ascertaining whether or not there is evidence on each
17 and every element of the offense, not weighing it.

18 Now, let me say this. I am, of course, dealing at
19 this moment with the attempted murder indictments at this
20 moment, and I find that there is evidence on each and
21 every element of the offense from which the jury could
22 make a determination of guilt, and so I would respectfully
23 deny your motion. But let me hear from you with regards
24 to the third indictment, which is ---

25 **MR. KNIGHT:** Possession of a weapon during the

1 commission of a violent offense.

2 **THE COURT:** Yes, sir.

3 **MR. KNIGHT:** Well, Your Honor, obviously the jury
4 would have to find the defendant guilty of either one or
5 both of the attempted murder, because attempted murder is
6 defined as a violent offense. So absent a guilty verdict,
7 ---

8 **THE COURT:** And it would be your position that
9 possession is either direct or constructive possession of
10 the firearm; right?

11 **MR. KNIGHT:** That's correct, Your Honor.

12 **THE COURT:** I understand. All right.
13 Yes, sir, Mr. Bryan?

14 **MR. BRYAN:** Your Honor, there's no evidence of how
15 long Mr. Rivers was driving the car, whether it was his
16 car or someone else's car, whether he had knowledge of
17 what was in the car, whether he had control of the car,
18 particularly in light of the situation where a passenger
19 whips out a gun and starts shooting at people.

20 I think it's really hard to say you're in control of
21 a car when a passenger has a car and he's shooting at
22 people. That's kind of a situation where you just don't
23 argue with the man. You just try to -- you know.

24 And I think under all of this, even when you construe
25 the evidence in the light most favorable to the State, the

1 State has failed to produce sufficient evidence of this
2 crime.

3 **THE COURT:** Thank you so much, Mr. Bryan. Again, I
4 respectfully deny your motion for probably an involuntary
5 non-suit at this point but with prejudice, and the reason
6 being at this juncture I am charged with the
7 responsibility of taking the evidence and all inferences
8 in favor of the non-moving party and to determine whether
9 or not there is evidence on each and every element.

10 I find that there is evidence on each and every
11 element, because there is evidence from which the jury
12 could find direct or constructive possession of the
13 firearms during the commission of a violent crime. So I
14 would respectfully deny your motion, noting your exception
15 thereto.

16 Will you be calling witnesses?

17 **MR. BRYAN:** No, Your Honor.

18 **THE COURT:** All right. Then I would examine your
19 client at this time. Okay?

20 I'll have you rest before the jury, and then we will
21 argue and charge in the morning. We'll go over the charge
22 together, but we don't need to hold the jury to do that
23 work.

24 But at this point, I certainly would examine your
25 client. So bear with me just a moment.

1 All right. All right, Mr. Rivers, would you do me a
2 favor, please, and just stand and raise your right hand?

3 MAURIO D. RIVERS, after being duly sworn,
4 testified as follows:

5 THE COURT: Thank you, Mr. Rivers. Mr. Rivers, I
6 just have some questions that I'm going to need to ask of
7 you, and there are certain things that I'm going to
8 discuss with you. Okay?

9 DEFENDANT, MR. RIVERS: Yes, ma'am.

10 THE COURT: If you don't understand what I am saying
11 or you don't understand what I mean, don't you be shy.
12 You let me know that. There are many ways to explain any
13 one thing. Okay?

14 DEFENDANT, MR. RIVERS: Yes, ma'am.

15 THE COURT: And don't you hesitate to say: I don't
16 know what you're talking about.

17 You make that clear, because I will do my very best.
18 Okay?

19 DEFENDANT, MR. RIVERS: Yes, ma'am.

20 THE COURT: Because, Mr. Rivers, it is critical that
21 you understand what we're going to talk about. Okay?

22 DEFENDANT, MR. RIVERS: Okay.

23 THE COURT: All right. Mr. Rivers, we've now reached
24 the stage of the trial, just to be clear, the State has
25 rested, made motions, and we've reached the stage of the

1 trial where you may present your defense. You have the
2 right to claim the protections given to you by the Fifth
3 Amendment to the Constitution of the United States. And
4 that -- this amendment says in part that no person shall
5 be compelled in any criminal case to be a witness against
6 himself.

7 And this means, Mr. Rivers, that you cannot be
8 required to testify in this case. You have the right to
9 testify on your own behalf; however, no one can make you
10 testify. This is a personal right, and no one can waive
11 this right, except you.

12 You don't have to prove anything. The burden is, and
13 remains, on the State of South Carolina to prove guilt
14 beyond a reasonable doubt.

15 Now, if you do decide to testify, Mr. Rivers, you
16 would be subject to the same rules that govern other
17 witnesses, and you may be examined and cross-examined on
18 any relevant issue in this case. In addition, if you have
19 any convictions involving dishonesty or false statement or
20 for crimes punishable by imprisonment for more than one
21 year and I determine that the probative value of admitting
22 this evidence outweighs its prejudicial effect to you, the
23 solicitor will be able to introduce your record for the
24 purpose of attacking your credibility, and that only.

25 If you decide to testify, this decision on your part

1 must be freely, voluntarily and intelligently made, with
2 knowledge of the protections given to you by the Fifth
3 Amendment and the consequences of your decision to
4 testify.

5 If you decide not to testify, I will direct and
6 instruct the jurors that they cannot give the fact that
7 you chose not to testify any consideration whatsoever and
8 that there is to be absolutely no prejudice to you because
9 you did not testify. In fact, I will tell this jury that
10 they can't even discuss your decision not to testify in
11 the jury room, that that is not a matter for them to
12 discuss, that the burden is, and remains, on the State of
13 South Carolina. You don't have to prove anything. That's
14 a part of my charge.

15 Now, here's what's important, though. Your decision
16 to testify or not to testify, Mr. Rivers, is left, and
17 must be left, entirely up to you. Of course, I urge you
18 to continue to talk and continue your discussions with Mr.
19 Bryan. I'm sure you've been doing that. I want you to
20 speak with your family members or friends or people whose
21 opinion you trust, but you must know, Mr. Rivers, that the
22 final decision whether to testify or not to testify is
23 left entirely up to you. You have to make that decision.

24 Do you understand what I've explained to you?

25 **DEFENDANT, MR. RIVERS:** Yes, ma'am.

1 **THE COURT:** Do you have any questions about what I
2 have explained to you?

3 **DEFENDANT, MR. RIVERS:** No, ma'am.

4 **THE COURT:** Are you sure?

5 **DEFENDANT, MR. RIVERS:** Yes, ma'am.

6 **THE COURT:** Positive?

7 **DEFENDANT, MR. RIVERS:** Positive.

8 **THE COURT:** Now, Mr. Rivers, do you need to discuss
9 with Mr. Bryan or anyone else, family or friends, as I
10 said, your decision and whether you wish to testify or not
11 testify?

12 **DEFENDANT, MR. RIVERS:** I don't need to.

13 **THE COURT:** Are you ready to make that decision?

14 **DEFENDANT, MR. RIVERS:** Yes, ma'am.

15 **THE COURT:** All right. And have you made that
16 decision?

17 **DEFENDANT, MR. RIVERS:** Yes, ma'am.

18 **THE COURT:** Do you wish to testify or not to testify?

19 **DEFENDANT, MR. RIVERS:** No, ma'am. I wish not to
20 testify.

21 **THE COURT:** Thank you.

22 I think my hearing is going. I don't think it's you.

23 Very well. Understand that I will certainly give the

24 -- I will give the jury that instruction that I told you
25 about. Okay? Very well.

1 Thank you. You may be seated.

2 All right. Now, what I think we will do, gentlemen,
3 is I will have -- I will have the jury come back in and
4 then you'll rest on the record. Then I'm going to explain
5 to them that we'll have argument and charge in the morning
6 at 9:30.

7 Very well. Let me have my jury.

8 (DECEMBER 12, 2012, 4:11 P.M., WHEREUPON, THE JURY
9 ENTERS THE COURTROOM, AND THE FOLLOWING PROCEEDINGS
10 WERE HELD IN THEIR PRESENCE.)

11 **THE COURT:** All right, ladies and gentlemen, before
12 you just took your leave from the courtroom, I told you
13 that you had heard the witnesses and received the evidence
14 that you would from the State in the State's case in
15 chief. We will now turn to the defense.

16 Mr. Bryan?

17 **MR. BRYAN:** The defense rests, Your Honor.

18 **THE COURT:** Very well.

19 Ladies and gentlemen, you have now received the
20 evidence which you will in this case. What remains for us
21 are the arguments of counsel and then my charge or the
22 instruction on the law, and then you will receive this
23 case for your deliberation.

24 Now, one of the first things they teach you as a baby
25 judge, and for goodness sake, I'm not a baby judge

1 anymore, I left that decades ago it seems, one doesn't
2 charge and argue after 4:00 o'clock in the afternoon. And
3 the reason for that is that that means that the jury will
4 get the case about 6:00 o'clock, and we don't want to do
5 that.

6 So, ladies and gentlemen, we've got some matters that
7 we will -- I'll be talking to the lawyers about so that we
8 will be ready in the morning, but we will hear the
9 arguments of counsel and then my charge on the law in the
10 morning at 9:30, in the morning at 9:30.

11 Now, ladies and gentlemen, you are not prepared to
12 deliberate. You are not prepared to discuss this matter,
13 so hence the instruction: Do not discuss this matter or
14 allow anyone to discuss it with you.

15 Now, some of my jurors, y'all have become frequent
16 flyers. You know that people at your house are going to
17 be hunting tonight, and it's perfectly fine for you to
18 say: You know the case that went to trial, that case
19 resolved, but alas, I was selected again.

20 That's perfectly fine to say. Again, if they're
21 curious, you can say it's a criminal matter, as opposed to
22 a civil matter, but beyond that, you must not discuss this
23 matter or allow anyone to discuss it with you.

24 Now particularly those that will have told whoever is
25 curious, now this will be night number two, and there

1 might be a little frustration. Remember, put it on the
2 judge. Don't you take any upset. You tell them the judge
3 said you can't talk about this matter.

4 Remember, when you have been discharged from your
5 service on this jury, I promise you there will be no
6 question in your mind that that has come, you will be at
7 liberty to talk about this case if you wish. But until
8 then, ladies and gentlemen, you must not discuss this
9 matter or allow anyone to discuss it with you.

10 When the time has come to deliberate with your fellow
11 jurors, there will be no question in your minds when that
12 time has come, because I'm going to tell you specifically:
13 It's time to deliberate.

14 Now, ladies and gentlemen, please keep that in your
15 mind over the balance of the evening. Now, ladies and
16 gentlemen, don't read anything, don't listen to anything
17 about this matter. I don't know whether or not there will
18 be any sort of publicity about it. I simply don't know
19 that, but you must not read anything or listen to anything
20 about this case, and that means the radio, the television,
21 and of course the Internet.

22 Do not access any social media with regards to this
23 matter. That means no tweeting, no blogging, no linking,
24 no FaceBook, no Space -- MySpace. You must receive all of
25 the information from which you will make up your mind here

1 in court while court is in session.

2 Don't do any Columbo. Don't do any investigation.
3 Don't go on the Internet to define different terms for
4 yourself. Again, you must receive all of the information
5 from which you will make up your minds here in court while
6 court is in session.

7 Ladies and gentlemen, with that admonition and those
8 instructions, I will say to you good evening, and I look
9 forward to seeing you in the morning at 9:30. Thank you
10 so much. You may go with the bailiff.

11 (DECEMBER 12, 2012, 4:16 P.M., WHEREUPON, THE JURY
12 RETIRES FROM THE COURTROOM, AND THE FOLLOWING
13 PROCEEDINGS WERE HELD OUT OF THEIR PRESENCE.)

14 **THE COURT:** Now that you have rested, you would renew
15 your motions as before, Mr. Bryan?

16 **MR. BRYAN:** Yes, Your Honor. I would once again
17 bring the Court's attention to the Briefs I handed up.

18 **THE COURT:** Yes.

19 **MR. BRYAN:** And the case of the State versus Odems,
20 which was decided last year, and also Jackson versus
21 Virginia from 1979, which more explicitly states the rule
22 I've cited.

23 And, once again, I would renew my motion. I think
24 the State has produced a modicum of evidence sufficient
25 for speculation and guesswork, but to say for the jury to

1 look at this and say beyond a reasonable doubt that my
2 client is guilty is ridiculous.

3 **THE COURT:** Thank you so much. And on the same
4 basis, respectfully, I deny your motion -- your motions,
5 and note your exceptions thereto.

6 Counsel, if you would be so kind, I would greatly
7 appreciate it if you would have an informal charge
8 conference with me. I would appreciate that greatly, and
9 go over the verdict form and the charge. And so if you
10 would retire to chambers and do that with me, I would be
11 so grateful.

12 Now, before you all leave, though, it is my
13 understanding that all of the exhibits that have been
14 admitted into evidence are State's exhibits; am I correct?

15 **MR. KNIGHT:** That's correct.

16 **THE COURT:** Very well. So you'll get the last
17 argument. Okay.

18 (WHEREUPON, THIS CASE WAS RECESSED FOR THE DAY.
19 THEREAFTER, ON DECEMBER 13, 2012, AT 9:55 A.M., THE
20 FOLLOWING PROCEEDINGS WERE HELD ON THE RECORD OUT OF THE
21 PRESENCE OF THE JURY:)

22 **THE COURT:** All right. Is everybody ready? Are you
23 ready on behalf of the State for your closing?

24 **MR. KNIGHT:** Yes, ma'am.

25 **THE COURT:** On behalf of the defense?

1 **MR. BRYAN:** Yes, Your Honor.

2 **THE COURT:** Wonderful. I'm going to tell the jury
3 they'll first hear from you.

4 **MR. KNIGHT:** Yes, ma'am.

5 **THE COURT:** And then they'll hear from Mr. Bryan.

6 And we're ready to proceed. Very well. All right.
7 Let us have the jury.

8 (DECEMBER 13, 2012, 9:55 A.M., WHEREUPON, THE JURY
9 ENTERS THE COURTROOM, AND THE FOLLOWING PROCEEDINGS
10 WERE HELD IN THEIR PRESENCE.)

11 **THE COURT:** Good morning, ladies and gentlemen. Good
12 morning.

13 We have traveled this week from being like summertime
14 to being like the dead of winter. It's not only cold, but
15 damp and cold.

16 Now, I want to tell you how we're going to be
17 proceeding this morning. The first thing that is going to
18 happen is that you're going to hear from Mr. Knight and
19 his closing argument on behalf of the State. And then
20 you're going to hear from Mr. Bryan in his closing
21 argument on behalf of Mr. Rivers.

22 Then there is going to be a very short break, which
23 is going to be self-explanatory when we reach that point.
24 Then I will deliver the charge or the instruction on the
25 law to you. And then there will be another very short

1 break, and then I'll explain that when we reach that
2 point. And then you will receive this case for your
3 deliberations.

4 So, ladies and gentlemen, at this time, I ask that
5 you please draw close as we listen to the closing
6 arguments of our attorneys.

7 Mr. Knight?

8 **MR. KNIGHT:** May it please the Court, Your Honor?

9 **THE COURT:** Yes, sir.

10 **MR. KNIGHT:** Madam Forelady, and ladies and gentlemen
11 of the jury, I want to discuss with you an important
12 principle. Part of the oath you took says this: You
13 must, you must, accept the law that His Honor charges you,
14 whether you like it or not. Whether you agree with it or
15 not, you must accept that law as the law to be applied to
16 the facts of this case.

17 Now I'm going to discuss with you the law, as I
18 understand it. I won't do as well as His Honor will do,
19 but I'm going to try.

20 The first thing we have is attempted murder.
21 Attempted murder is a person with intent to kill attempts
22 to kill another person with malice aforethought, either
23 expressed or implied, commits that offense. That's one
24 charge.

25 The other charge is possession of a weapon during the

1 commission of a violent offense. The South Carolina
2 Legislature has defined attempted murder as a violent
3 offense. Therefore, if you have a weapon and you're
4 convicted of it during the commission of that offense,
5 that's the possession of a weapon during the commission of
6 a violent offense.

7 Another principle that we live on and we go by in
8 this courtroom is called the credibility of the witnesses.
9 And basically that says this. You can believe part of a
10 witness's statement or none of a witness's statement, one
11 witness's testimony versus another. You can believe all
12 or none.

13 You also have to determine, when using this word
14 credibility, the demeanor of the witness on the stand, his
15 or her bias or prejudice. They can be prejudiced to
16 testify one way or the other. You do that by observing
17 the witnesses, and that's called the credibility of the
18 witnesses. And only you can make that decision. I can't
19 and His Honor can't. Only you can.

20 Another principle is called the hand of one is the
21 hand of all. It's sort of like if one commits an act and
22 the other one is participating, even though he didn't
23 commit that particular act, he's guilty also. I'll give
24 you a couple of examples.

25 You drive a car -- I drive the car to a convenience

1 store and the fellow with me has a weapon and he's going
2 in to rob the convenience store. He says: Keep the car
3 running.

4 I never go into the store, but I'm as guilty as he is
5 for robbing the store with a weapon.

6 Another example is I go with my friend. He says:
7 I'm going into the convenience store. You stand outside
8 and be my lookout.

9 I'm as guilty as he is. That's called the hand of
10 one is the hand of all. Even though I didn't go inside, I
11 didn't point the gun at the clerk, I'm as guilty as he is.

12 Now, mere presence, just because you're at the scene
13 of a crime doesn't mean that you're guilty, but if you
14 understand the plan, you understand what's going on,
15 you're participating, aiding, assisting in some form or
16 fashion, you're not there just as a result of mere
17 presence. You're participating in the event.

18 Intent, you know I first said with intent to kill
19 attempts to kill. Intent is a big word. Now, we can't
20 define intent. We can't look inside a person's brain and
21 say it's his intent to do this, his intent to do that, but
22 what we can do is look at his or her actions and the
23 participation of this event.

24 Actions sometimes speak louder than words. Most of
25 the time they do. And, for example, if I'm -- in this

1 instance, you saw it on the video. If you're trying to
2 get away from the police, what are you doing? You're
3 doing a hundred miles an hour. There's shooting.

4 And your intent is: I haven't done anything.

5 So you stay in the car when it flips over in the
6 grassy area off the road? No, you take off running. What
7 is your intent? That's important. Those actions show
8 what your intent is in this event.

9 The video speaks for itself. You saw it. Speeds up
10 to a hundred miles an hour on I-95 South, ninety to a
11 hundred miles an hour on Highway 61. You saw the bumping
12 of the vehicle by Lieutenant Burnette. It spins, rolls
13 over into a grassy area, not a rocky area, but a grassy
14 area.

15 You then see law enforcement chasing these
16 individuals. You don't see anybody staying in the car.
17 You see them running, trying to avoid apprehension after
18 this chase all over the world, so to speak, from 95 South
19 into Colleton County on Highway 61.

20 Justin Eaches told you how he identified the driver,
21 Maurio Rivers, back here. He pulled up parallel to the
22 vehicle, saw the hairstyle that Mr. Rivers had, and we
23 have a photograph showing on the same day that was his
24 hairstyle.

25 Officer Burnette, you heard him making a radio call

1 as to the events that were occurring that particular day.
2 He says he saw some movement by the passenger, and he saw
3 the passenger come out. Some people call it a moonroof.
4 I call it a sunroof, whatever. And there's fire -- shots
5 are fired.

6 What else did Officer Burnette testify to? When they
7 went off the road, they being the black Acura, it was spun
8 around, there was a second round of shots, a second round.
9 And I think in State's Exhibit 8F, you'll see where those
10 rounds were coming from; inside of the vehicle on the
11 driver's side.

12 Now remember, we've got testimony in this case that
13 there were three weapons, not one, not two, but three
14 weapons. Somewhere between seven and ten rounds were
15 fired. You have a diagram showing where they were on the
16 road, the side of the road. Then we have two fragments of
17 the .38 Special that were found.

18 And I think Michelle Eichenmiller's testimony is
19 very, very interesting. She tested two guns. Those guns
20 fired the casings that were found by Mr. Ethridge. And
21 the .38 Special, the fragments, were fired by the .38
22 Special, which Officer Ethridge found also.

23 But more importantly, I think she testified, and I
24 stand to be corrected if I'm wrong, you take what came off
25 the witness stand and not what I say, is that when the

1 bullet was fired from inside the car, it would cause a
2 fragment because it hit something. What did it hit? The
3 window. That's what all that testimony is about.

4 Now, think about this. Why would you run from the
5 police if you haven't done anything?

6 First we have a chase on I-95 South into Colleton
7 County, ninety to a hundred miles an hour. But more
8 importantly, the car is bumped by Lieutenant Burnette, it
9 flips over. If you haven't done anything, why would you
10 run to avoid apprehension? Flight is an inference of
11 guilt.

12 That's what this is all about. It's not mere
13 presence. It's avoiding apprehension and the inference of
14 guilt.

15 I submit to you, ladies and gentlemen of the jury,
16 that we have proved beyond a reasonable doubt that Maurio
17 Rivers is guilty of two counts of attempted murder and
18 possession of a weapon during the commission of a violent
19 offense. Thank you.

20 **THE COURT:** Thank you, Mr. Knight.

21 **MR. KNIGHT:** Yes, ma'am.

22 **THE COURT:** Mr. Bryan?

23 **MR. BRYAN:** May it please the Court?

24 **THE COURT:** Yes.

25 **MR. BRYAN:** Now you have to keep in mind that for

1 attempted murder there's a specific intent to kill. That
2 means you intended to kill somebody. That's just one
3 thing, but another thing is for accomplice liability, you
4 have to prove that the person not only knew of the crime,
5 but he was helping, he was assisting, he was
6 participating.

7 A person can be present. That doesn't make them
8 guilty.

9 If I drive a friend to a convenience store and he
10 robs it, I'm not guilty unless I knew that's what he was
11 doing and that's why I took him there. If I just drove
12 him there and he whips out a gun, to my surprise, I'm not
13 guilty. I didn't help. I didn't know.

14 Now what we do have, we've got testimony and we've
15 got video. If y'all want to see the video again, feel
16 free to ask. We'll play it for you.

17 The car started to pull over when that blue light
18 came on. Y'all saw that car go into the emergency lane
19 and slow down, and then it took off.

20 And then when the car rolled over, both of them ran,
21 but what did the officers say? One of them ran straight
22 into the woods and one of them ran at a forty-five degree
23 angle. One of them was running from -- both of them might
24 have been running from the police, but one of them was
25 also running from the other one.

1 There's no evidence that these two knew each other,
2 or if they knew each other how long they knew each other,
3 what they had in common, how long they had been riding,
4 how long they had been driving, nothing.

5 There's no DNA evidence. You saw the officer
6 testify, the detective: I took swabs of the trigger for
7 DNA analysis.

8 DNA analysis would have proven who had a finger on
9 that trigger. The State had that evidence. They did not
10 submit it. They didn't bring it to this courtroom today.
11 That would have been better than guesswork, and that's
12 what we have here today is guesswork and speculation.

13 Fingerprints; there is no testimony of any
14 fingerprints on any weapon or any magazine clip or bullets
15 or anything.

16 A gunshot residue kit was taken. No results of that
17 were presented to y'all today. That could have made a
18 difference.

19 We've got Officer Burnette saying he got -- he saw
20 Mr. Shelley get up. He was the passenger. There's no
21 doubt who was the passenger.

22 Eaches was the first. He said Mr. Shelley was the
23 passenger. Mr. Burnette said Mr. Shelley was the
24 passenger, and Mr. Burnette said he saw the passenger
25 shooting at him. And when you look at the video, you can

1 see the passenger hop up, and you can hear the gunshot
2 rounds. Pop, pop, pop, pop.

3 Then he said there was another gunshot. But when did
4 that gunshot happen? The car is spinning around backwards
5 and you hear that gunshot, what he calls a gunshot, as
6 soon as it hits something solid enough to flip that car
7 over.

8 Now, listen to it. Does that sound like a gunshot,
9 or does it sound like a massive object hitting another
10 massive object like a two and a half ton car hitting
11 something hard enough to make it bounce around and flip
12 over? Does it sound like a gunshot?

13 The State's theory appears to be that after this car
14 was struck by Officer Burnette, while it was spinning
15 around and rolling backwards and flipping over that Mr.
16 Rivers let go of the steering wheel and grabbed a gun and
17 fired rounds off through the windshield. When you drive a
18 car fast, if you've ever done it, the faster you go, the
19 more you have to control the car. Two hands. And when
20 that car is hit, what's your instinct? Both hands on the
21 steering wheel, trying to recover control of the car.
22 They're saying he did the opposite. He let go and let the
23 car do what it wants to do. I want to get a round off.

24 That's the State's theory. That is guesswork. That
25 is speculation. That is contrary to normal human

1 experience.

2 When y'all get picked to go on a jury, you're
3 entitled to rely on your everyday common experience. You
4 don't have to check in your common sense when you walk
5 into a courthouse.

6 Another thing, shooting at a policeman, there were
7 three cars after them. That was completely nuts. Number
8 one, you would have to stop all three officers, and then
9 where are you going to go in a wrecked car when you've got
10 more coming in, because every police car these days has a
11 radio? The State is going to ask you to say they were
12 both that crazy in that car. Do they have any evidence of
13 that?

14 Burnette said he saw a man shooting at him. He said
15 it was the passenger. He said he didn't see anyone else
16 shooting at him. He said he thought he got shot at and he
17 heard a bang, but if you watch the video, you see that
18 bang is when that car hits something and flips over.

19 And if you look at the timing on this, the shots come
20 out at it looks like 19:08:44. The car is hit at
21 19:09:00. That's sixteen seconds between the first round
22 and when the car is hit. Ten seconds later, the car is
23 rolling over. Five seconds after that, the officer is
24 already out of the car with the dog, chasing them.

25 How much reaction time is that? I mean, the guy is

1 driving the car, holding onto the steering wheel. And
2 they're assuming in that short, limited amount of time
3 he's going to let go of the steering wheel and grab a gun.
4 Doesn't it make a lot more sense to think that crazy
5 passenger had emptied one gun and had grabbed another?

6 And another thing is if you look at the photographs
7 of the windshield of the Acura, even assuming those are
8 bullet holes coming out of the front of the car, when you
9 look at the video, look at the angles of these two cars to
10 each other. You've got the Acura on the left side of the
11 road on the left shoulder rolling backwards, and you've
12 got the police car over here. If the passenger was going
13 to shoot towards the police car, he would have to shoot to
14 the left, at least at certain points. If the driver was
15 shooting, he'd be shooting out of the driver's window or
16 right next to the window pillar, windshield post. Just
17 look at the evidence.

18 Another strange thing is this crime happened, you
19 heard the testimony it happened in Colleton County, but
20 the investigation was done by detectives from Dorchester
21 County. The only reason apparently for that was the
22 victims were from Dorchester County. I don't know why.
23 There was no S.L.E.D. investigation. Colleton County
24 detectives weren't called out to do the work. It was all
25 in-house, and that might cast a little bit of doubt on

1 what exactly happened. I don't know. It's just unusual,
2 and I don't know what to make of that.

3 But if you look at the videos, if you listen to the
4 videos, if you look at the time on it and just use common
5 experience, if someone is driving fast, they're hanging
6 onto the wheel. If they're spinning around, they're
7 white-knuckling that steering wheel.

8 The State has already convicted the man that did the
9 shooting. All this case they have today is speculation
10 and guesswork, and that's no reason to send somebody to
11 prison, folks. That costs a lot of money. It ruins a
12 life.

13 I would just ask you to just pay attention to the
14 evidence. If you want to see the video again, ask for it.
15 They'll do it. And I thank you for your time.

16 **THE COURT:** Thank you, Mr. Bryan.

17 All right, here is that first break. Just stand up.
18 Do you know why I want you to do that? I just want to get
19 oxygen moving a little bit, because you've got to listen
20 to me for a little bit of time, so I want to be sure that
21 oxygen is moving and you've moved a little bit.

22 Now, let me ask you this question. Does anybody need
23 a comfort break, because it's going to take me probably
24 close to thirty minutes to deliver the charge to you? So
25 does anybody need a comfort break? Don't be shy.

1 **JUROR:** (RAISED HAND.)

2 **THE COURT:** Very well. Here's what we're going to
3 do. I'm going to send you all to your jury room,
4 everybody. See, you're the one that spoke up, but I bet
5 there are other people that need a little comfort break.

6 When you all have finished your comfort break, I want
7 you to knock at the door. We will be -- we will be
8 waiting on you. It won't be a set time, but when
9 everybody has had their comfort break, knock on the door.
10 At that point you're going to return, and I will deliver
11 the instruction or the charge to you.

12 Remember, do not discuss this matter or allow anyone
13 to discuss it with you, because you haven't heard my
14 instruction on the law. You are not prepared to
15 deliberate. Hence, you must not discuss this matter or
16 allow anyone to discuss it with you. When you finish your
17 comfort break, then you all will come back in at that
18 point.

19 If you will, go with your security detail and take
20 your comfort break. Thank you.

21 (DECEMBER 13, 2012, 10:15 A.M., WHEREUPON, THE JURY
22 RETIRES FROM THE COURTROOM, AND THE FOLLOWING
23 PROCEEDINGS WERE HELD OUT OF THEIR PRESENCE.)

24 **THE COURT:** All right, we'll be at ease until we hear
25 from our jury. Thank you, Counsel.

1 (WHEREUPON, A BREAK WAS TAKEN. THEREAFTER, THE
2 FOLLOWING PROCEEDINGS WERE HELD ON THE RECORD OUT OF THE
3 PRESENCE OF THE JURY:)

4 **THE COURT:** All right, bring us the jury, please.

5 (DECEMBER 13, 2012, 10:23 A.M., WHEREUPON, THE JURY
6 ENTERS THE COURTROOM, AND THE FOLLOWING PROCEEDINGS
7 WERE HELD IN THEIR PRESENCE.)

8 **BAILIFF:** Your Honor, may I approach?

9 **THE COURT:** Yes, sir.

10 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE
11 RECORD AND OUT OF THE HEARING OF THE JURY. THEREAFTER,
12 THE FOLLOWING PROCEEDINGS WERE HELD ON THE RECORD IN THE
13 PRESENCE AND HEARING OF THE JURY:)

14 **THE COURT:** I am so sorry. There is something I must
15 take up outside your presence. It's my fault, but you
16 won't be out of the courtroom more than one minute. I am
17 so -- it's my fault, my bad. If you will please just step
18 to your room. I apologize. My bad. Bad judge.

19 Just a moment. Bear with me just a moment.

20 (DECEMBER 13, 2012, 10:23 A.M., WHEREUPON, THE JURY
21 RETIRES FROM THE COURTROOM, AND THE FOLLOWING
22 PROCEEDINGS WERE HELD OUT OF THEIR PRESENCE.)

23 (THE DEFENDANT WAS BROUGHT INTO THE COURTROOM.)

24 **THE COURT:** All right. When the jury came back in
25 after their break, Mr. Rivers was not out, and so what I

1 did is just send the jury back out and told them there was
2 a matter I needed to take up outside their presence. I
3 told them it was my fault completely. I don't believe
4 they had an opportunity to notice that Mr. Rivers wasn't
5 here, and I didn't want Mr. Rivers escorted in from --
6 into the courtroom, so we sent the jury back out. Now Mr.
7 Rivers has joined us, and now we'll bring our jury out.

8 (DECEMBER 13, 2012, 10:25 A.M., WHEREUPON, THE JURY
9 ENTERS THE COURTROOM, AND THE FOLLOWING PROCEEDINGS
10 WERE HELD IN THEIR PRESENCE.)

11 **THE COURT:** Wonderful. Madam Presiding Juror and
12 ladies and gentlemen of our jury, it is now my duty to
13 charge you regarding the law of this case. Now, that's
14 the term we use, charge. I'm going to instruct you on the
15 law. I'm going to try to condense some of what I spent
16 three years of law school doing, I'm going to see if I
17 can't condense it in a very short period of time and be
18 your instructor on the law.

19 Ladies and gentlemen, the State of South Carolina has
20 charged the defendant, Mr. Mauricio Rivers, with two
21 charges, two indictments it's also said, two counts of
22 attempted murder and one charge or one indictment of
23 possession of a weapon during the commission of a violent
24 crime.

25 Now, ladies and gentlemen, while I hold these

1 indictments up before you, I do remind you that the fact
2 that Mr. Rivers was arrested, charged, and indicted in
3 this case is not evidence in this case, nor does it create
4 any presumption or inference of guilt. These documents
5 are simply the formal written instruments which contain
6 the charges made against the defendant. They are formal
7 documents by which this case is brought into this court.

8 They are notice documents. I mean, you've got to
9 notify somebody that the State maintains, alleges, that
10 they violated a crime. That's all they are. They are
11 just notice documents. Now, they are not evidence of any
12 of the allegations that they contain.

13 Ladies and gentlemen, as I just -- we talked
14 yesterday, and I now repeat, Mr. Rivers has pled not
15 guilty to each and every one of these indictments, and
16 those pleas of not guilty place the burden on the State of
17 South Carolina to prove Mr. Rivers guilty beyond a
18 reasonable doubt.

19 Now, ladies and gentlemen, as we go through this
20 matter, I may refer to Mr. Rivers as the defendant. If I
21 say the defendant, I mean Mr. Rivers.

22 Now, ladies and gentlemen, a person charged with
23 committing a criminal offense or criminal offenses in
24 South Carolina is never, is never, required to prove
25 himself or herself innocent. The burden to prove guilt

1 is, and remains, on the State. I charge you that it is an
2 important rule of the law that a defendant in a criminal
3 trial, no matter of the seriousness of what the charge may
4 be or the charges may be, that person is always presumed
5 to be innocent of the crimes for which the indictments
6 were issued, unless guilt has been proven by evidence
7 satisfying you of that guilt beyond a reasonable doubt.

8 Ladies and gentlemen, the presumption of innocence
9 does not end when you begin your deliberation, but it
10 accompanies Mr. Rivers throughout the trial until you
11 reach a verdict of guilt based on evidence satisfying you
12 of that guilt beyond a reasonable doubt.

13 Ladies and gentlemen, the presumption of innocence is
14 not a mere legal theory. It is not merely a legal phrase.
15 It is a substantial right to which every defendant is
16 entitled, unless you, the jury, are satisfied from the
17 evidence of the defendant's guilt beyond a reasonable
18 doubt.

19 Now, what then is reasonable doubt in the law? A
20 reasonable doubt is the kind of doubt that would cause a
21 reasonable person to hesitate to act. A reasonable doubt
22 is the kind of doubt that would cause a reasonable person
23 to hesitate to act.

24 The State has the burden of proving the defendant,
25 Mr. Rivers, guilty beyond a reasonable doubt. Some of you

1 may have served as jurors in civil cases where you were
2 told that it was only necessary to prove that a fact was
3 more likely true than not true, which is by the greater
4 weight or the preponderance of the evidence. Ladies and
5 gentlemen, in criminal cases, the State's proof must be
6 more powerful than that. It must be beyond a reasonable
7 doubt.

8 Proof beyond a reasonable doubt is proof that leaves
9 you firmly convinced of the defendant's guilt. There are
10 very few things in this world that we know with absolute
11 certainty, and in criminal cases, the law does not require
12 proof that overcomes every possible doubt.

13 If based on your consideration of the evidence you
14 are firmly convinced that the defendant is guilty of the
15 crime charged, you must find him guilty. If, on the other
16 hand, you think there is a real possibility that the
17 defendant is not guilty, you must give the defendant the
18 benefit of the doubt and find him not guilty.

19 Now, ladies and gentlemen, you're going to consider
20 these indictments separately. You are going to consider
21 these indictments separately, and I'm going to talk to you
22 a little bit more about that in just a moment, but each of
23 the attempted murder indictments stand alone. You would
24 consider each of them. The State maintains the burden of
25 proving each of these indictments and each allegation in

1 each of these indictments beyond a reasonable doubt.

2 Now, the same is true with the indictment for
3 possession of a weapon during a violent crime. This
4 indictment, the State must prove each of the allegations
5 beyond a reasonable doubt, and with one exception, and
6 I'll talk about that in a moment. It stands also on its
7 own.

8 Now, ladies and gentlemen, I remind you that during
9 this trial, you and I have had certain duties to perform.
10 As the trial judge, it is my responsibility to preside
11 over the trial of this case, and I also have the duty to
12 rule on the admissibility of the evidence offered during
13 this trial. You are to consider only the competent
14 evidence before you. And that, what is that? Well,
15 that's the sworn testimony of the witnesses who have
16 testified in this case and any exhibits which are admitted
17 into evidence and inferences which can reasonably be
18 drawn.

19 Ladies and gentlemen, I have the additional duty to
20 charge you regarding the law applicable to this case. As
21 the presiding judge, I am the sole judge of the law of
22 this case, and it is your duty as jurors to accept and to
23 apply the law as I now state it to you. If you already
24 have any idea as to what the law is or what it should be,
25 you must abandon your preconceived idea, because you are

1 sworn by your oath to accept and to apply the law exactly
2 as I state it to you.

3 Ladies and gentlemen, in every case tried in this
4 court before a jury, the jury, you, become the sole, the
5 only, the exclusive judge of the facts in this case. A
6 trial judge cannot intimate, state, comment on, or make
7 any statement regarding the facts in the case, since you,
8 the jury, are the sole judges of the facts in this case.

9 You are not to infer from anything that may have --
10 that I may have said during the progress of this trial in
11 ruling upon the admissibility of evidence, or otherwise,
12 or anything that I say to you now during the course of
13 this instruction to you that I have any opinion about the
14 facts in this case. The law does not allow me to have an
15 opinion about the facts in this case. I don't have an
16 opinion regarding the facts in this case. That is a
17 matter solely for you to determine. As jurors, ladies and
18 gentlemen, it is your duty to determine the effect, the
19 value, the weight, and the truth of the evidence presented
20 during this trial.

21 Now, ladies and gentlemen, there are two types of
22 evidence which are generally presented during a trial.
23 One is called direct evidence. The other is called
24 circumstantial evidence.

25 Direct evidence is the testimony of a person who

1 claims to have actual knowledge of a fact, such as an
2 eyewitness. It is evidence which immediately establishes
3 the main fact to be proved.

4 Circumstantial evidence is proof of a chain of facts
5 and circumstances indicating the existence of a fact. It
6 is evidence which immediately establishes collateral facts
7 from which the main fact may or may not be inferred.
8 Circumstantial evidence is based on inference and not on
9 personal knowledge or observation.

10 I'm going to give you an example of what I'm talking
11 about. Ladies and gentlemen, I want you to imagine with
12 me it's February. It's cold. The sky has kind of that
13 gray look to it. Snow is forecast. You go outside after
14 supper and you look around and low and behold, snow starts
15 knocking you in the face, and you look up and it's
16 snowing. Ladies and gentlemen, that's direct evidence.
17 You are literally an eyewitness to the fact that it is
18 snowing. If you were to say it's snowing, you would be an
19 eyewitness to the fact that it was snowing. That would be
20 direct evidence.

21 Now, my next example. We're still in February. It's
22 still cold. Snow is still forecast, but when you go out
23 about let's say 11:00 o'clock at night and you know snow
24 is forecast. The sky is kind of still that kind of gray.
25 You look around and what you see is a brown, crunchy

1 grass. You go in, go to bed. You wake up to go to work
2 the next day. You walk outside, and low and behold,
3 everywhere you can see, snow is covering everything.

4 Well, here's what you can testify to. Well, it's
5 February. It's very cold. Snow was forecast. When I
6 went to bed, there wasn't a thing but brown, crunchy
7 grass, but when I -- when I woke up the next morning and
8 went outside, snow covered everything. You can testify to
9 each of those as collateral facts which point to the fact
10 by inference that it snowed overnight. That's
11 circumstantial evidence that it snowed overnight, those
12 collateral facts that you testified to.

13 You didn't see it snow, but you know that it snowed.
14 You can say it snowed last night based on the inference.
15 In other words, you know the collateral facts, but then by
16 inference you know it snowed overnight.

17 Now, ladies and gentlemen, the law makes absolutely
18 no distinction between the weight or value to be given to
19 either direct or circumstantial evidence, nor is a greater
20 degree of certainty required of circumstantial evidence
21 than of direct evidence. You should weigh all the
22 evidence in the case, and after weighing all the evidence
23 if you are not convinced of the guilt of the defendant
24 beyond a reasonable doubt, you must find the defendant not
25 guilty. On the other hand, after hearing all of the

1 evidence in this case, if you are convinced of the guilt
2 of the defendant beyond a reasonable doubt, you must find
3 the defendant guilty. And, again, you will do that for
4 each of these indictments.

5 Now, ladies and gentlemen, necessarily then, you must
6 determine the credibility of witnesses who have testified
7 in this case. Credibility simply means believability.

8 It becomes your duty as jurors to analyze and
9 evaluate the evidence and to determine which evidence
10 convinces you of its truth. In determining the
11 believability of the witnesses who have testified in this
12 case, you may believe one witness over several witnesses
13 or several witnesses over one witness. You may believe a
14 part of the testimony of a witness and reject the
15 remaining part of the testimony of that same witness. You
16 may believe the testimony of a witness in its entirety, or
17 you may reject the testimony of a witness in its entirety.

18 You may consider whether any witness has exhibited to
19 you any interest or bias, prejudice, or other motive in
20 this case. And you may also consider the appearance and
21 the manner of the witness while on the witness stand.

22 Now, ladies and gentlemen, in this case you have
23 heard the testimony of a witness who was determined to be
24 an expert witness. Our Rules of Evidence ordinarily do
25 not permit witnesses to testify regarding their opinions

1 or conclusions. There is an exception to this rule, and
2 that exists for witnesses deemed to be expert witnesses.

3 A witness, who by education and experience,
4 knowledge, perhaps profession, has become an expert in
5 some field, perhaps art, science, profession, those
6 witnesses are allowed to give an opinion regarding the
7 subject the witness claims to be an expert, and they may
8 also give their reasons for their opinion or opinions.

9 You should consider any expert opinion given by a
10 witness, and like any other evidence, you give it the
11 weight that you think it deserves. If you decide that an
12 expert witness's opinion is not based on sufficient
13 education or experience, or if you decide that the reasons
14 given in support of the opinion are not sound, or that the
15 opinion is outweighed by other evidence, you may disregard
16 that opinion entirely.

17 An expert witness's testimony is to be given no
18 greater weight than that of other witnesses, simply
19 because the witness is an expert. And you do not have to
20 accept an expert's opinion, even though it is
21 uncontradicted or uncontroverted.

22 Now, ladies and gentlemen, I instruct you and I want
23 to emphasize that the fact that Mr. Rivers did not testify
24 is not a factor to be considered by you in any way in your
25 deliberation and in your consideration on the question of

1 whether Mr. Rivers is guilty or not guilty. The fact that
2 he chose not to testify must not be considered by you in
3 any manner whatsoever. A defendant has the constitutional
4 right to remain silent, and the assertion of this right
5 must not be considered by you in your deliberations.

6 I repeat, under your oath, you are to draw no
7 conclusion whatsoever from the fact that the defendant in
8 this case did not testify. The fact that this defendant
9 did not testify should not even be discussed in your jury
10 room.

11 Ladies and gentlemen, a defendant is not required to
12 prove he is not guilty, to prove his innocence. The
13 burden of proof is, and remains, on the State to prove
14 guilt beyond a reasonable doubt.

15 Now, an issue has been in this case regarding the
16 identification of the defendant, Mr. Rivers, as the person
17 who committed the crimes charged. The State has the
18 burden of proving identity beyond a reasonable doubt. You
19 must be satisfied beyond a reasonable doubt of the
20 accuracy of the identification of the defendant before you
21 may convict the defendant.

22 Identification testimony is an expression or belief
23 or impression by a witness. You must determine the
24 accuracy of the identification of the defendant.

25 You must consider the believability of each

1 identification witness in the same way as any other
2 witness. You may consider whether the witness had an
3 adequate opportunity to observe the offender at the time
4 of the offense. This will be affected by things like how
5 long or short time was available, how far or close the
6 witness was, the lighting condition, whether the witness
7 had the chance to see or know the person in the past.

8 Once again I instruct you, the burden of proof on the
9 State extends to every element of each of the crimes
10 charged, and this specifically includes the burden of
11 proving beyond a reasonable doubt the identity of the
12 defendant as the person who committed the crime, and you
13 will do this for each of these three indictments. If
14 after examining the testimony you have a reasonable doubt
15 as to the accuracy of the identification, you must find
16 the defendant not guilty.

17 Now, ladies and gentlemen, I'm going to now charge
18 you that if a crime is committed by two or more persons,
19 two or more people, who are acting together in committing
20 the crime, the act of one is the act of all. A person who
21 joins with another to commit an unlawful act is criminally
22 responsible for everything done by the other person which
23 happens as a probable or natural consequence of the acts
24 done in carrying out the common plan or purpose.

25 For example, ladies and gentlemen, two people can be

1 responsible and can be guilty of burglary if one -- only
2 one person went into the house and one person was the
3 lookout and driving the car or the getaway car and the
4 lookout but only one person actually went into the house
5 at night. Ladies and gentlemen, although only the one
6 person went into the house, both people are guilty of
7 burglary in the first degree because they acted together
8 in concert to commit a burglary.

9 Ladies and gentlemen, prior knowledge that a crime is
10 going to be committed, without more, is not sufficient to
11 make a person guilty of that crime. Mere knowledge that
12 another person is going to commit a crime, even if the
13 defendant is present when the crime is committed, is not
14 sufficient to convict the defendant as a principle. If
15 two or more people are together acting together assisting
16 each other in committing the offense, the act of one is
17 the act of all, or as it is sometimes said, the hand of
18 one is the hand of all.

19 Now, guilt as a principle is shown by actual or
20 constructive presence at the scene as a result of prior
21 arrangement. Therefore, a finding of a prior arranged
22 plan or common scheme is necessary for a finding of guilt
23 as a principle. The State must prove beyond a reasonable
24 doubt by competent evidence the theory of the hand of one
25 is the hand of all.

1 A principle in a crime is one who either actually
2 commits the crime or who is present, aiding, abetting, or
3 assisting in committing the crime. When a person does an
4 act in the presence of and with the assistance of another,
5 the act is done by both.

6 Whether two or more are acting with a common plan or
7 intent or are present at the commission of a crime --
8 excuse me. Let me begin again. Where two or more, acting
9 with a common plan or intent, are present at the
10 commission of a crime, it does not matter who actually
11 commits the crime. All are guilty. The hand of one is
12 the hand of all.

13 Present at the commission of crime means to be
14 sufficient near -- sufficiently near to aid and abet and
15 assist in the commission of the crime; however, mere
16 presence at the scene of a crime is not sufficient to
17 convict one as a principle on the theory of aiding and
18 abetting.

19 Intent is also a necessary element, for there must
20 have been a common design or intent to commit the crime,
21 and the crime must have been committed pursuant thereto
22 with the person aiding and abetting by some overt act.
23 Intent means intending the result which actually occurs,
24 not accidentally or involuntarily. Intent may be shown by
25 acts and conduct of the defendant and other circumstances

1 from which you may naturally and reasonably infer intent.
2 The State must prove these elements beyond a reasonable
3 doubt.

4 Mere presence at the scene is not sufficient to prove
5 someone guilty of a crime. A defendant's presence where a
6 crime is being committed or mere association with a person
7 who commits a crime does not make a defendant an
8 accomplice or an aider or abettor of the person committing
9 the crime.

10 The burden is on the State to prove the elements of
11 the crime charged. If you find, after reviewing all of
12 the evidence, that the State has proved that the defendant
13 was only present at the scene of the crime and that they
14 have not proved beyond a reasonable doubt any other
15 participation in the crime, then you must find the
16 defendant not guilty. The law is that proof of mere
17 presence at the scene of the crime is not sufficient to
18 find someone guilty.

19 Now, in order to establish criminal liability,
20 criminal intent is required. For example, the mental
21 state required to be proved by the State for a particular
22 crime might be purpose, intent, knowledge, recklessness,
23 or criminal negligence.

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

1 must be determined by a jury from the circumstances
2 surrounding the situation.

3 There is no way to prove intent to a mathematical
4 certainty. There is no way medical science could dissect
5 a person's brain and determine what the person had in
6 mind, so the law says that criminal intent may be inferred
7 from the circumstances shown to have existed. This is how
8 you make a determination of whether or not the element
9 requiring intent was present.

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

16 Criminal intent is a mental state, a conscious
17 wrongdoing. It is up to you to determine what the
18 defendant intended to do, based on the circumstances shown
19 to have existed.

20 Criminal intent can arise from action or a failure to
21 act. It may arise from negligence, recklessness, or an
22 indifference to duty or to circumstances that are
23 considered by the law to be the equivalent of criminal
24 intent.

25 Now, ladies and gentlemen, if you find the defendant

1 guilty of either charge or both charges of attempted
2 murder in this case, then you can also find the defendant
3 either guilty or not guilty of possession of a weapon
4 during the commission of a violent crime. If you find the
5 defendant not guilty of both charges of attempted murder,
6 then you may not find the defendant guilty of possession
7 of a weapon during a violent crime. You will be asked to
8 write a separate verdict of guilty or not guilty for each
9 charge, following the instructions on your verdict form.

10 I will now define these offenses for you. What do we
11 mean when we use the term attempt, attempt? This, of
12 course, we have the two charges of attempted murder. What
13 does attempt mean in the law?

14 An attempt is an effort to accomplish a crime which
15 does not succeed. An attempt includes a specific intent
16 to do a particular criminal act, along with an act falling
17 short of the act intended.

18 The State must show more than mere preparation and
19 intent. There must be some overt act committed in the
20 effort to commit the crime.

21 Intent means intending the result which actually
22 occurs, not accidentally or involuntarily. Intent may be
23 shown by acts and conduct of the defendant and other
24 circumstances from which you may naturally and reasonably
25 infer intent.

1 Now, Section 16-3-29 defines -- this is a statutory
2 provision, and it defines attempted murder. A person who,
3 with intent to kill, attempts to kill another person with
4 malice aforethought, either expressed or implied, commit
5 -- commits the offense of attempted murder.

6 What is malice? Malice is hatred, ill-will, or
7 hostility towards another person. It is the intentional
8 doing of a wrongful act, without just cause or excuse, and
9 with an intent to inflict an injury or under circumstances
10 that the law will infer an evil intent.

11 Malice aforethought does not required that malice
12 exist for any particular time before the act is committed,
13 but malice must exist in the mind of the defendant just
14 before and at the time that the act is committed.
15 Therefore, there must be a combination of the previous
16 evil intent and the act.

17 Malice aforethought may be expressed or inferred.
18 These terms, expressed and inferred, they don't mean
19 different kinds of malice but merely the manner in which
20 malice may be shown to exist; that is, either by direct
21 evidence or by inference from the facts and circumstances
22 which are proved beyond a reasonable doubt.

23 Express malice is shown when a person speaks words
24 which express hatred or ill-will for another, or when the
25 person prepared beforehand to do the act which was later

1 accomplished. For example, lying in wait for a person, or
2 any other act or preparation going to show that the deed
3 was within the defendant's mind would be expressed malice.
4 Malice may be inferred from conduct showing a total
5 disregard for human life.

6 Now, ladies and gentlemen, I've charged you with
7 regards to the law on attempted murder. I am now going to
8 charge you the law with regards to possession of a weapon
9 during the commission of or attempt to commit a violent
10 crime.

11 Ladies and gentlemen, the State must prove beyond a
12 reasonable doubt that the defendant was in possession of a
13 firearm or visibly displayed what appeared to be a firearm
14 during the commission of a violent crime. A firearm means
15 any machine gun, automatic rifle, revolver, pistol, or any
16 weapon which will, is designed to, or may be readily
17 converted to expel a projectile.

18 In order to find the defendant guilty of possession
19 of a firearm during the commission of a violent crime, you
20 must find that the defendant -- you must find the
21 defendant guilty of either committing a violent crime or
22 attempting to commit a violent crime. I charge you that
23 the offense of attempted murder is a violent crime under
24 the laws of South Carolina.

25 Now, ladies and gentlemen, I have now charged you

1 regarding the law in order to help guide you to a fair and
2 just verdict in this case. You are the judges of the
3 facts in this case, and so based on your determination of
4 the facts in this case and the law as I've explained it to
5 you, you will soon begin your deliberations.

6 You have been selected as fair and impartial jurors.
7 You are sworn to fairly and impartially try and determine
8 the facts of this case, and when you comply with your oath
9 to do so, no one can criticize your verdict. You are to
10 decide this case based solely on the testimony you have
11 heard from the sworn witnesses who have testified before
12 you, along with the evidence which has been admitted in
13 this case, meaning the exhibits which have been admitted
14 in this case. You will have these exhibits with you in
15 your jury room -- in your jury room.

16 Now, ladies and gentlemen, you must decide the issues
17 in this proceeding without any bias or prejudice towards
18 or against either party. You cannot allow yourself to be
19 governed by passion or prejudice for or against any
20 person, by public opinion, or by any other arbitrary
21 factor. Both the defendant and the State have the right
22 to expect that each of you will carefully and impartially
23 consider all of the evidence in this case and that you
24 will follow the law as I have instructed you in reaching
25 your verdict in this case.

1 Now we're going to go over the verdict form. I'm
2 going to come down there to do it.

3 Ladies and gentlemen, even before we go over the
4 verdict form, I want to explain to you two things. First,
5 your verdict must be unanimous. This must be the verdict
6 of each and every one of you. This is not the verdict of
7 any one of you or of the majority of you. This is the
8 verdict, and must be the verdict, of each and every one of
9 you.

10 That should be a hint for you. Madam Alternate, I
11 want you to stay with me on this next occasion when the
12 jury leaves. Okay? Thank you.

13 Now, the other thing that I want to tell you, even
14 before we go over the verdict form, is that as to each of
15 these indictments, there are two possible verdicts. Now,
16 ladies and gentlemen, I've had to put these two possible
17 verdicts on this piece of paper, and they are in an order.
18 They could have been in the other order, but they are in a
19 particular order. Please don't take any hidden meaning
20 from the order in which these possible verdicts have been
21 placed on paper. It's just reality. If I'm going to put
22 two possible verdicts on this piece of paper, one has got
23 to be first and one has got to be second. There is no
24 hidden meaning in the order in which these matters have
25 been placed, these two possible verdicts, have been placed

1 on this paper.

2 Now, here is your verdict form. Ladies and
3 gentlemen, I'm going to read it to you. The first matter
4 is, Number One, as to the charge of attempted murder of
5 the alleged victim, Deputy J. Burnette, we the jury,
6 unanimously, see it says unanimously? My children think
7 I'm a nag. Y'all are going to be thinking I'm a nag by
8 the time y'all finish.

9 We, the jury, unanimously find the defendant, and
10 there are two possible verdicts, guilty or not guilty.
11 Now, remember, I could have just as easily put not guilty
12 first. There isn't a hidden meaning.

13 Ladies and gentlemen, based on the instruction as I
14 have given it to you, you will consider Number One, and
15 you will render your unanimous verdict.

16 Irrespective of what that verdict is, I want you to
17 circle it so there's no question what is the unanimous
18 verdict of the jury.

19 Now, ladies and gentlemen, Number Two states as
20 follows: We, as to -- excuse me. As to the charge of
21 attempted murder of the Deputy -- I'm reading upside down,
22 y'all. Excuse me. Deputy J. Eaches, we, the jury,
23 unanimously find the defendant, and again there are two
24 possible verdicts, guilty or not guilty.

25 Which ever is the unanimous verdict of the jury, you

1 will circle it so there's no question what is the
2 unanimous verdict of the jury.

3 Now, the third -- Number Three reads as follows: As
4 to the charge of possession of a weapon during the
5 commission of a violent crime, we, the jury, unanimously
6 find the defendant, and again two possible verdicts,
7 guilty and not guilty.

8 Which ever is the unanimous verdict of the jury, you
9 will circle that verdict.

10 I do want to tell you this, though. If you find Mr.
11 Rivers not guilty of attempted murder, and that's
12 contained in Number One and Number Two, if you find him
13 not guilty with regards to both charges of attempted
14 murder, then you don't consider Number Three. And the
15 reason is, is that as I have charged you, attempted murder
16 is a violent crime. So if he's not guilty of a violent
17 crime, he can't be guilty of possession of a weapon during
18 the commission of a violent crime. So if you find him not
19 guilty of One and Two, don't even consider Three.

20 Now, ladies and gentlemen, when you have finished
21 your deliberations and you have filled out your verdict
22 form, then you're going to sign it, and you know who you
23 are. And for your reference, just for your reference,
24 today is December the -- gosh, I was going to mess that
25 up. I'm so glad you're here. December 13th, 2012. I'm

1 going to ask you to, of course, sign and date the verdict
2 form.

3 Now, when you have finished your deliberations and
4 you have filled out your verdict form, you will return to
5 -- you will knock on the door, and you will be escorted
6 back into the courtroom. You will pass the verdict form
7 to one of my bailiffs who will pass it to me. You do not
8 publish the verdict.

9 Now, ladies and gentlemen, in just a moment I'm going
10 to ask you to step to your jury room with this
11 instruction: Do not discuss this matter or allow anyone
12 to discuss it with you.

13 And you ought to be saying to me right now: Now wait
14 a minute. You've been telling us for two days this was
15 when we were going to deliberate. What are you doing now?

16 So I'm going to tell you what I'm going to do now.
17 When you step back to your jury room on this next
18 occasion, I'm going to turn to these lawyers and I'm going
19 to ask them two questions: Have I given this jury all the
20 law that they may need for their deliberations, and have I
21 stated it for them correctly?

22 Now, ladies and gentlemen, sometimes I fail to give
23 juries all of the law that they may need for their
24 deliberations, and these lawyers let me know that. In the
25 event that I need to bring you back out because I have

1 failed to give you all of the law that you may need for
2 your deliberations, I ask you in advance, please don't
3 consider that -- when I bring you back out to give you
4 that additional part of the law, don't consider that with
5 any emphasis. Just know this is my chance to get this
6 right, to give you all of the law that you -- all of the
7 law that you might need for your deliberations.

8 Now, sometimes, and goodness knows it's unintended,
9 something may just come out wrong. Sometimes I need to
10 bring juries back out so that I can correct an error that
11 I have made. In the event that I need to bring you back
12 out for that reason, please allow me to correct my error
13 in your mind, I ask in advance.

14 Now, know that this is my chance to get this right to
15 give you all of the law that you may need for your
16 deliberations and to state it for you correctly. In the
17 event that I do not need to bring you back out, you will
18 be brought the verdict form and the exhibits and an
19 instruction to begin your deliberations. Now, in the
20 event that whoever brings you the verdict form and the
21 exhibits fails to specifically say, "Begin your
22 deliberations," trust me, if you have your verdict form
23 and your exhibits, it's time to begin your deliberations.

24 Now, I must tell you that all twelve of you must be
25 together for you to deliberate. So if somebody needs to

1 take a comfort break or whatever, you need to take a
2 break, stop your deliberations, take your break, and then
3 reconvene your deliberations when all twelve of you are
4 together again. You cannot deliberate unless all twelve
5 of you are together. So please keep that in mind as well.

6 Now, ladies and gentlemen, I want to leave you now
7 with this concluding thought, and it is this: The word
8 "verdict" comes from the Latin phrase "veridicto," which
9 means to speak the truth, to speak the truth, which is now
10 your task.

11 Please step to your jury room and do not discuss this
12 matter or allow anyone to discuss it with you, except for
13 my alternate.

14 (DECEMBER 13, 2012, 11:11 A.M., WHEREUPON, THE JURY
15 RETIRES FROM THE COURTROOM, AND THE FOLLOWING
16 PROCEEDINGS WERE HELD OUT OF THEIR PRESENCE.)

17 (WHEREUPON, THE ALTERNATE JUROR WAS RELEASED.)

18 **THE COURT:** Exceptions, additions from the State?

19 **MR. KNIGHT:** None, Your Honor.

20 **THE COURT:** From the defense?

21 **MR. BRYAN:** Um, ---

22 **THE COURT:** Are you trying to remember what it was
23 last night that you were concerned about?

24 **MR. BRYAN:** I thought it was specific intent, and I
25 think you did address that, but not in great detail.

1 **THE COURT:** Very well. Thank you so very much.
2 Thank you so much. I believe that it's covered pretty
3 well, but I note your exception for the record.

4 **MR. BRYAN:** Thank you, Your Honor.

5 **THE COURT:** Now, Counsel, here's what I need you to
6 do for me. If you would, please, individually look at
7 both the verdict form and the exhibits so that I can rest
8 assured that my lawyers have looked at each of the
9 exhibits going back to this jury carefully and concurred
10 that that's what's supposed to go back, because I am the
11 judge that had the confession in the back pocket of the
12 pants. So I'm a little sensitive about that. So I look
13 to my lawyers to help me one more time. So if y'all will,
14 look at these exhibits and know that what's going back to
15 the jury is what is supposed to be going back to this
16 jury.

17 **MR. BRYAN:** Now, Your Honor, with the videos, ---

18 **MR. KNIGHT:** They're staying out here.

19 **THE COURT:** They'll stay out here.

20 **MR. BRYAN:** And they could just look at them if they
21 want to.

22 **THE COURT:** Yes. You did a wonderful job of telling
23 them that.

24 **MR. BRYAN:** Thank you.

25 **THE COURT:** Thank you for that, Mr. Bryan. You were

1 very clear that if they need it, they can see it.

2 **MR. KNIGHT:** I'm satisfied, Your Honor, with all of
3 the exhibits.

4 **THE COURT:** Very well.

5 Mr. Bryan, please take your time and take a look.

6 **MR. KNIGHT:** I'm satisfied with the form of verdict.

7 **MR. BRYAN:** The evidence appears to be in order, Your
8 Honor.

9 **THE COURT:** Very well. We'll be in recess until we
10 hear from our jury.

11 (WHEREUPON, AT 11:16 A.M., THE EXHIBITS WERE TAKEN TO
12 THE JURY TO BEGIN DELIBERATIONS AND THIS CASE WAS RECESSED
13 UNTIL 12:24 P.M., WHEN THE FOLLOWING PROCEEDINGS WERE HELD
14 ON THE RECORD OUT OF THE PRESENCE OF THE JURY:)

15 **THE COURT:** All right. Y'all saw the note? Did
16 everybody see the note?

17 **MR. KNIGHT:** Yes, ma'am. It was to see Lieutenant
18 Burnette's video to start from the time the car flipped.

19 **THE COURT:** From the time -- right before the shots
20 were fired until it flipped.

21 **MR. KNIGHT:** The first shots fired until it was
22 flipped. It's only a few minutes.

23 And then the second thing was a charge again ---

24 **THE COURT:** The hand of one is the hand of all.

25 **MR. KNIGHT:** --- on the hand of one is the hand of

1 all.

2 **MRS. STALLINGS:** This is set at about thirty seconds
3 before the first round of shots.

4 **THE COURT:** That's where you are now?

5 **MRS. STALLINGS:** Yes, ma'am. Do you want me to get
6 closer than that?

7 **THE COURT:** You know, you're going to probably click
8 it, and you're going to go after it.

9 **MRS. STALLINGS:** I can play it at regular speed and
10 then pause it.

11 **THE COURT:** Just go with where you've got it.

12 All right. Let's bring our jury out.

13 (DECEMBER 13, 2012, 12:25 P.M., WHEREUPON, THE JURY
14 ENTERS THE COURTROOM, AND THE FOLLOWING PROCEEDINGS
15 WERE HELD IN THEIR PRESENCE.)

16 **THE COURT:** Ladies and gentlemen, I got -- I got your
17 note, and we will play the tape that you have requested,
18 and then I am prepared to deliver the charge again to you,
19 that portion that you have requested. So I'm now going to
20 sit down and hit "Play".

21 (WHEREUPON, STATE'S EXHIBIT NUMBER THIRTEEN WAS
22 PLAYED TO THE JURY FROM 19:08:14 TO 19:09:16. THEREAFTER,
23 THE FOLLOWING PROCEEDINGS WERE HELD ON THE RECORD IN THE
24 PRESENCE OF THE JURY:)

25 **THE COURT:** Thank you.

1 Ladies and gentlemen, I am now going to recharge you
2 regarding the hand of one is the hand of all. If a crime
3 is committed by two or more people who are acting together
4 in committing a crime, the act of one is the act of all.

5 A person who joins with another to commit an unlawful
6 act is criminally responsible for everything done by the
7 other person which happens as a probable or a natural
8 consequence of the acts done in carrying out the common
9 plan and purpose. For example, two people can be guilty
10 of burglary when only one of the people goes into the
11 house and the other person sits in the car as the lookout
12 and is the getaway driver.

13 If two or more people are together, acting together,
14 assisting each other in committing the offense, the act of
15 one is the act of all, or as it is sometimes said, the
16 hand of one is the hand of all.

17 In the example that I gave you, only one person went
18 into the house and actually committed the going into the
19 house, the burglary; however, both are responsible, both
20 are guilty if they are acting together, assisting each
21 other in committing the offense.

22 Prior knowledge that a crime is going to be
23 committed, without more, is not sufficient to make a
24 person guilty of that crime. Mere knowledge that another
25 person is going to commit a crime, even if the defendant

1 is present when the crime is committed, is not sufficient
2 to convict the defendant as a principle. Guilt as a
3 principle is shown by actual or constructive presence at
4 the scene as a result of prior arrangement. Therefore, a
5 finding of a prior arranged plan or common scheme is
6 necessary for a finding of guilt as a principle. The
7 State must prove beyond a reasonable doubt by competent
8 evidence the theory of the hand of one is the hand of all.

9 A principle in a crime is one who either actually
10 commits the crime or who is present, aiding, abetting, or
11 assisting in committing the crime. When a person does an
12 act in the presence of and with the assistance of another,
13 the act is done by both.

14 Where two or more, acting with a common plan or
15 intent, are present at the commission of a crime, it does
16 not matter who actually commits the crime. All are
17 guilty. The hand of one is the hand of all.

18 Present at the commission of crime means to be
19 sufficiently near to aid and abet and assist in the
20 commission of the crime; however, mere presence at the
21 scene of a crime is not sufficient to convict one as a
22 principle on the theory of aiding and abetting. Intent is
23 also a necessary element, for there must have been a
24 common design or intent to commit the crime, and the crime
25 must have been committed pursuant thereto with the person

1 aiding and abetting by some overt act.

2 Intent means intending the result which actually
3 occurs, not accidentally or involuntarily. Intent may be
4 shown by acts and conduct of the defendant and other
5 circumstances from which you may naturally and reasonably
6 infer intent. The State must prove these elements beyond
7 a reasonable doubt.

8 Ladies and gentlemen, I believe that that responds to
9 your requests. I ask that you please retire to your jury
10 room and continue your deliberations. And we are seeing
11 to getting some lunch for you, too.

12 (DECEMBER 13, 2012, 12:32 P.M., WHEREUPON, THE JURY
13 RETIRES FROM THE COURTROOM, AND THE FOLLOWING
14 PROCEEDINGS WERE HELD OUT OF THEIR PRESENCE.)

15 **THE COURT:** All right. Anything further from the
16 State at this time?

17 **MR. KNIGHT:** No, ma'am.

18 **THE COURT:** From the defense?

19 **MR. BRYAN:** No, Your Honor, but it might be better if
20 you explain probable and natural consequence, they may
21 conceivably be hung up on the hand of one is the hand of
22 all. I think you do address it and say a probable and
23 natural consequence, but you don't really explain that
24 element, and that might be where the jury is getting
25 confused.

1 **THE COURT:** Mr. Knight?

2 **MR. KNIGHT:** I think you sufficiently described to
3 the jury what a natural and probable consequence was when
4 you said with the aiding and abetting. I think that
5 showed the consequence of that aiding and abetting. I
6 don't think any additional definition of those words would
7 be necessary.

8 **THE COURT:** I'll note your exception for the record.
9 My concern is I think that the -- I think this particular
10 charge as a whole, I think it does two things. I think it
11 tries to talk about the fact that if people are working in
12 concert and it is an intention to work in concert, that
13 while each person may not do a particular act, that they
14 are -- that they are responsible for the commission of the
15 crime in its entirety. And -- and I think the charge
16 tries to differentiate that circumstance from somebody
17 that knows a crime is about to be committed and they just
18 happen to be there. And I think it does a pretty good job
19 of that.

20 I guess my concern about the natural and probable
21 consequences, because I don't know -- it's one of those
22 words that I think is pretty self-explanatory. What is
23 natural and what is probable? And I don't know how to
24 simplify it.

25 It seems to me that -- that those words are plain

1 words, and they are -- they are part of the definition, if
2 you will, but I note your exception for the record, and
3 respectfully not attempt to define natural and probable,
4 because I think that those are words that are a part of
5 the definition themselves.

6 But if they -- if they send another question that
7 highlights that perhaps that is a concern, I will
8 certainly revisit. But I think the charge in its entirety
9 is pretty complete and thank you for that.

10 All right. We will continue our recess until we hear
11 from our jury.

12 (WHEREUPON, THIS CASE WAS RECESSED. THEREAFTER, AT
13 2:15 P.M., THE FOLLOWING PROCEEDINGS WERE HELD ON THE
14 RECORD OUT OF THE PRESENCE OF THE JURY:)

15 **THE COURT:** All right, anything from the State before
16 we bring the jury out?

17 **MR. KNIGHT:** No, ma'am.

18 **THE COURT:** From the defense?

19 **MR. BRYAN:** Nothing from the defense, Your Honor.

20 **THE COURT:** Very well. Let us have our jury, please.

21 (DECEMBER 13, 2012, 2:15 P.M., WHEREUPON, THE JURY
22 ENTERS THE COURTROOM, AND THE FOLLOWING PROCEEDINGS
23 WERE HELD IN THEIR PRESENCE.)

24 **CLERK:** Madam Forelady, have you reached a verdict?

25 **FOREPERSON:** Yes, ma'am.

1 **THE COURT:** Thank you.

2 That's the note. That needs to be made a Court's
3 exhibit.

4 (WHEREUPON, Court's Exhibit No. 1 was marked for
5 identification only.)

6 **THE COURT:** All right. Thank you.

7 **CLERK:** Indictment Number 2011-GS-15-549,
8 2011-GS-15-550, 2011-GS-15-551, the State of South
9 Carolina versus Maurio Rivers, as to the charge of
10 attempted murder of the alleged victim, Deputy J.
11 Burnette, we, the jury, unanimously find the defendant
12 guilty.

13 As to the charge of attempted murder of Deputy J. --
14 what's that?

15 **THE COURT:** Eaches.

16 **CLERK:** Eaches, we, the jury, unanimously find the
17 defendant not guilty.

18 As to the charge of possession of a weapon during the
19 commission of a violent crime, we, the jury, unanimously
20 find the defendant not guilty, signed by the foreperson,
21 Hazel Breland.

22 If this is your verdict, please raise your right
23 hand.

24 (WHEREUPON, ALL JURORS RAISED THEIR RIGHT HAND.)

25 **CLERK:** Thank you.

1 **THE COURT:** All right. Anything further from the
2 State before we dismiss the jury?

3 **MR. KNIGHT:** Nothing from the State, Your Honor.

4 **THE COURT:** From the defense?

5 **MR. BRYAN:** Request a polling of the jury, Your
6 Honor.

7 **THE COURT:** Very well.

8 **CLERK:** As I call your name, please stand.

9 Hazel L. Breland, is this your verdict?

10 **JUROR:** Yes.

11 **CLERK:** Is it still your verdict?

12 **JUROR:** Yes.

13 **CLERK:** Thank you.

14 Iriel -- Amy D. Iriel, is this your verdict?

15 **JUROR:** Yes, ma'am.

16 **CLERK:** Is this still your verdict?

17 **JUROR:** Yes, ma'am.

18 **CLERK:** Tony F. Shider, is this your verdict?

19 **JUROR:** Yes, ma'am.

20 **CLERK:** Is it still your verdict?

21 **JUROR:** Yes, ma'am.

22 **CLERK:** You may have a seat.

23 Antwaun D. Manigo, is this your verdict?

24 **JUROR:** Yes.

25 **CLERK:** Is it still your verdict?

1 JUROR: Yes.

2 CLERK: Ada L. Bentley, is this your verdict?

3 JUROR: Yes.

4 CLERK: Is it still your verdict?

5 JUROR: Yes.

6 CLERK: Robert L. Edwards, is this your verdict?

7 JUROR: Yes.

8 CLERK: Is it still your verdict?

9 JUROR: Yes.

10 CLERK: Donna K. Myers, is this your verdict?

11 JUROR: Yes.

12 CLERK: Is it still your verdict?

13 JUROR: Yes.

14 CLERK: Anita L. Ford, is this your verdict?

15 JUROR: Yes.

16 CLERK: Is it still your verdict?

17 JUROR: Yes.

18 CLERK: Raheem T. Jones, is this your verdict?

19 JUROR: Yes, ma'am.

20 CLERK: Is it still your verdict?

21 JUROR: Yes, ma'am.

22 CLERK: Daniel I. Hawk, is this your verdict?

23 JUROR: Yes, ma'am.

24 CLERK: Is it still your verdict?

25 JUROR: Yes, ma'am.

1 **CLERK:** Ruby C. Dandridge, is this your verdict?

2 **JUROR:** Yes, ma'am.

3 **CLERK:** Is it still your verdict?

4 **JUROR:** Yes, ma'am.

5 **CLERK:** Teresa W. Childers, is this your verdict?

6 **JUROR:** Yes, ma'am.

7 **CLERK:** Is it still your verdict?

8 **JUROR:** Yes, ma'am.

9 **CLERK:** The jury has been polled.

10 **THE COURT:** Very well.

11 Anything further from the State at this time?

12 **MR. KNIGHT:** No, ma'am.

13 **THE COURT:** From the defense before we dismiss the
14 jury?

15 **MR. BRYAN:** No, Your Honor.

16 **THE COURT:** Very well.

17 Ladies and gentlemen, I want to thank you for your
18 service on this jury and on this jury panel this week.
19 That should be a clue to you that I'm about to be able to
20 dismiss you for the balance of the week, but I do want to
21 give you some instruction, especially since I told you
22 each and every time we've left each other that you cannot
23 discuss this matter or allow anyone to discuss it with
24 you. I will now share with you that you are at liberty to
25 talk about this case, if you want to. And if you don't

1 want to talk about it, that's perfectly fine.

2 And let me share with you that -- and I do this
3 because I'm afraid if I don't, then it will happen.

4 Ladies and gentlemen, if someone should want to talk to
5 you about this case, and you've shared with them, "No, I
6 don't want to talk about it," and they should persist, you
7 will contact your clerk of court. She will contact me,
8 and I will be happy to intercede on your behalf.

9 Now, having said that, I don't want anybody to be
10 concerned, because in fifteen years, maybe, arguably maybe
11 once there was a group doing some research and they
12 contacted a juror and maybe they were a little more --
13 they probably had an assignment, so they were a little
14 more aggressive than they may have been, and that's the
15 only time. So I make it a policy to always mention that
16 to jurors, because I know if I don't say it, it'll happen,
17 so that's why I do that.

18 Let me tell you and remind you that you are -- you
19 have an exemption for your jury service for 2013 and 2014.
20 I know you're upset, but remember, that's an exemption.
21 You can exercise it if you wish, and don't have to
22 exercise it if you do not wish.

23 I will tell you that you are now not eligible to
24 serve on a jury for the balance of 2012, but we only have
25 one more week of jury for this year, so I think y'all are

1 safe on that one. But in any event, I share that with you
2 nonetheless. Should you get home and there's a summons to
3 come to Common Pleas or General Sessions, I'm sorry to
4 share with you, but you're not eligible for that term of
5 court.

6 Now I used to tell people in Dorchester County that
7 the check was in the mail, but the clerk said: No, it's
8 not. Don't tell them that.

9 And I'm like: Oh, I thought maybe it was.

10 The check for your jury service is not in the mail,
11 but it will be very soon; right?

12 **CLERK:** Right. By the Finance Office.

13 **THE COURT:** By the Finance Office. Ladies and
14 gentlemen, no trip to Tahiti. It will get you to
15 Cottageville. It is a very small token of all that you
16 have given to us, and that is a whole bunch of your dear,
17 precious time, and for that I am so grateful.

18 On behalf of myself and behalf of all of our court
19 personnel and lawyers and all the folks in this matter, I
20 am so grateful that you have been so kind and have given
21 so much of your time, your energy and your effort to what
22 I would submit to you is the greatest system of justice
23 that people have ever come up with, because there are
24 people like you all over our country who have come
25 together this week, this day, to help fellow citizens

1 resolve disputes. It's a wonderful and powerful system,
2 and you have been an essential part of it. I will submit
3 to you that this is where the rubber meets the road in a
4 democracy, and I am so truly grateful to you.

5 Now those of you that are dashing off to work, we'll
6 be delighted to get in the clerk's office, ---

7 **CLERK:** In the General Sessions Office.

8 **THE COURT:** --- in the General Sessions Office that
9 is downstairs. When you exit the step, it's on the right.

10 **CLERK:** Right. The third door on the left.

11 **THE COURT:** The third door on the left. And on
12 behalf of myself and all of us, I just thank you so much.

13 Ladies and gentlemen, obviously you've given us so
14 much of your dear and precious time, if anybody has any
15 comments or questions or the like, if you want to retire
16 to your jury room, I'm happy to give you some of my time.
17 I'm delighted to do that. If you'll just retire to the
18 jury room and let them know.

19 For your informational purposes, though, we are going
20 to go forward at this time and I'm going to hear from the
21 attorneys and then go forward with sentencing regarding
22 Mr. Rivers, if you wish to remain.

23 Sometimes jurors want to know if they're allowed to.
24 Of course you are. So, if you wish to remain, you
25 certainly may remain, and you're fine where you are. If

1 you wish to retire, you're certainly welcome to do that.
2 I'll leave it up to you, but you go with my thanks and
3 have a happy holiday season. Thank you very much.

4 (WHEREUPON, THE JURY WAS RELEASED.)

5 THE COURT: All right.

6 MR. KNIGHT: May I approach, Your Honor?

7 THE COURT: Yes.

8 MR. KNIGHT: I just want to make sure I've got the
9 right sentencing sheet.

10 THE COURT: Sure.

11 MR. KNIGHT: It's 549.

12 THE COURT: All right. Okay. I want to hear Mr.
13 Rivers' record, please, and then I'll hear from Deputy
14 Burnette. Anything he wishes to tell me, I'm happy to
15 hear from him as well.

16 MR. KNIGHT: From the beginning?

17 THE COURT: Yes, sir.

18 MR. KNIGHT: Beginning in 1995, he was convicted of
19 crack cocaine, 4/20/1995; 11/8/1994, shoplifting;
20 4/15/1996 manufacture and distribution of marijuana; 12/4
21 of 1995, fraudulent check; 4 -- that was the start date;
22 2/18/1997, one, two, three, four, five, six, seven fraud
23 checks -- I'm wrong, twelve fraud check convictions,
24 that's 1/10/1997; 3/5/2003, it looks like possession of
25 cocaine, two counts; 8/5/2010, possession of marijuana, it

1 looks like it was in Atlanta, Georgia; and then there was
2 a charge of it looks like unlawful possession of a pistol
3 and the date was -- it looks like 4/15/1996. That's all.

4 Lieutenant Burnette does not wish to address the
5 Court.

6 **MR. BRYAN:** Your Honor, my review of the RAP sheet
7 shows fewer convictions for fraudulent check and the
8 Atlanta -- it shows an arrest but not a disposition.

9 **THE COURT:** I won't consider one.

10 **MR. BRYAN:** Thank you.

11 **THE COURT:** I'm listening to you, sir.

12 **MR. BRYAN:** Your Honor, Mr. Rivers is thirty-five
13 years old. He was working in Atlanta at two places, a
14 Nissan car dealership and Chevrolet as an assistant auto
15 detail manager. He's been there since 2005.

16 He's got three children. He's got a boy that's seven
17 and another one that's four and a girl that's two, and
18 he's engaged.

19 In 2007 he attended school at Trident Tech. He
20 studied film. In 2010 he got his job back in Atlanta as
21 the auto detailer. He was working.

22 He's got a bad record, Your Honor, but it's not the
23 worst I've seen, and it's old. It's not showing any
24 convictions for the last eight years. He's been trying to
25 straighten his life out, and we would just request the

1 mercy of the Court.

2 **THE COURT:** Thank you.

3 All right. I have written my sentence, and I know
4 Deputy Burnette -- I know that you haven't spoken, beyond
5 your testimony, but I feel compelled to say something to
6 you. The tape is remarkable in this regard. First of
7 all, I'm -- I've never seen an SUV go so fast. It was
8 remarkable.

9 And secondly, your calmness, your professionalism was
10 extraordinary throughout the entire process. I was truly
11 moved by that.

12 And I noticed that when the shots were fired and you
13 realized that the shots were fired, not only were you
14 calm, but obviously you made a decision. You had his tag
15 number, and you must have made a decision whether to back
16 off and hope to catch these folks later, or whether or not
17 there was a risk to the community at large.

18 And you can see that there were houses along the way.
19 And it's real clear to me that you made a decision to put
20 your life on the line and to stop these people who were,
21 (a), willing to wield weapons and to fire them into the
22 open. It was remarkable.

23 The way that you were able to control yourself and
24 not hurt yourself or your dog and that they were not hurt
25 or killed, and the way that you were able to tap that --

1 just tap that car going ninety miles an hour, at least,
2 and to end the car chase has to be beyond by the book. It
3 really ought to be used, the entire episode, your entire
4 conduct, ought to be used as a training film all over this
5 country.

6 I am very proud of your conduct. You did not pull
7 your weapon, even in the face of having been shot. You
8 didn't -- I understand -- I must comment about your
9 testimony is that when always when there is a K-9
10 apprehension: I always call EMS.

11 I understand that, but the restraint was remarkable.
12 You do great honor, sir, to your profession.

13 And, Mr. Rivers, for you I would say you obviously
14 have so many good qualities. You obviously work very
15 hard. You have three children that you care about,
16 obviously. If I could take this back, if I could cause
17 you to have made different decisions at so many different
18 spots along the way, I would do that.

19 If I could have made you -- you pulled over. If I
20 could have stuck glue on your tires and make that car stay
21 there, I would do that. I so wish that that decision had
22 stayed with you, because you made the right decision. You
23 did, Mr. Rivers, and I so wish that you had remained with
24 that decision. I do.

25 I am grateful that, although I understand you were

1 hurt and maybe as much by the K-9 apprehension as you were
2 from the vehicle accident, and I am sorry for that, I am
3 grateful that you are here and that you were not killed in
4 what could have been a fatal accident. I really am
5 grateful that you are here.

6 I so wish you had made different choices. I know it
7 happened very quickly, but I so wish that you had made
8 different choices along the way. And if I could take that
9 back, I would, because clearly there's good. You went to
10 school. You know, you sought employment, you sought good
11 employment. Obviously there were people that trusted you
12 to allow you to be in the position that you are in.

13 I am so, so sorry that you've found yourself in this
14 situation on this day. I truly am.

15 Now, at this point I would just simply ask is there
16 any reason why anyone would say at this point I should not
17 pass sentence on Mr. Rivers? I'm happy to hear from
18 anyone else that wishes to speak or any objection to
19 passing sentence at this time.

20 **MR. KNIGHT:** Nothing from the State, Your Honor.

21 **THE COURT:** Very well.

22 **MR. BRYAN:** None from the defense.

23 **THE COURT:** Yes, sir, Mr. Rivers?

24 **DEPUTY:** Do you want me to bring him to the mic,
25 ma'am?

1 **THE COURT:** He's fine. I can hear him.

2 **DEFENDANT, MR. RIVERS:** I would like to thank you for
3 your compassion in the whole situation. I would like to
4 apologize to Officer Burnette and Officer Eaches for what
5 they had to go through. That wasn't my intention that
6 that happen. It wasn't my plan, but I understand that,
7 you know, I am involved and I'm going to have to pay for
8 it. I look at it as the will of the Creator. That's it.

9 **THE COURT:** Well, it is my hope that you will
10 continue to be a guiding light for your children and that
11 you will use this mistake on your part to be a guiding
12 light for them.

13 All right. With regards to Indictment
14 2011-GS-15-549, which is an indictment for attempted
15 murder, Mr. Rivers, I am going to commit you to the State
16 Department of Corrections for a period of thirty years,
17 giving you credit for the time that you have served. And
18 I wish you good luck and peace.

19 **(END OF REQUESTED TRANSCRIPT OF RECORD.)**
20
21
22
23
24
25

CERTIFICATE OF REPORTER

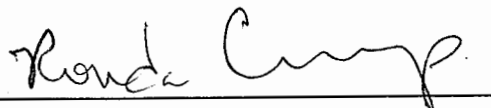
STATE OF SOUTH CAROLINA

COUNTY OF COLLETON

I, Ronda T. Cummings, Official Court Reporter for the
Judicial Department of the State of South Carolina, do
hereby certify that the foregoing is a true, accurate and
complete Transcript of Record of the proceedings had and
evidence introduced in the trial of the captioned case,
relative to appeal, in the Court of General Sessions for
Colleton County, South Carolina, on the 12th and 13th day
of December, 2012.

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

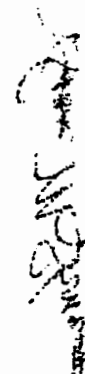
May 10, 2013



Ronda T. Cummings, CVR-M
Official Court Reporter

COLLETON COUNTY
GENERAL SESSIONS COURT

2011 AUG 25 PM 1:09



DOCKET NO. 2011-GS-15-00549

The State of South Carolina

County of Colleton

COURT OF GENERAL SESSIONS

August Term 2011

THE STATE

vs.

Maurio Daetrel Rivers

Indictment for

Attempted Murder

SC Code: 16-03-0029
CDR Code:3410

WITNESSES

A. Inabinett, CCSO

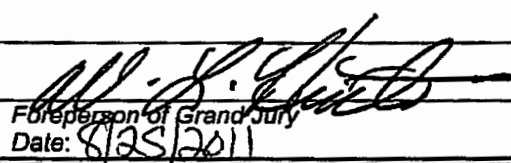
ARREST WARRANT NUMBER

M104323

July 15, 2011

ACTION OF GRAND JURY

TRUE BILL


Foreperson of Grand Jury
Date: 8/25/2011

VERDICT

Foreperson of Petit Jury
Date:

INDICT

STATE OF SOUTH CAROLINA)
COUNTY OF COLLETON)

INDICTMENT

2011-GS-15-00549

At a Court of General Sessions, convened on August 25, 2011, the Grand Jurors of Colleton County present upon their oath:

Attempted Murder

That in Colleton County, South Carolina, on or about July 12, 2011, the Defendant, Maurio Daetrel Rivers, with malice aforethought accompanied by a present ability to complete the act and the intent to kill, either express or implied, did attempt to kill the victim, Deputy J. Burnette with the Dorchester County Sheriff's Office, while on Augusta Highway, by shooting at the victim; in violation of S.C. Code of Laws Section 16-03-0029 of the South Carolina Code of Laws (1976), as amended.

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



Isaac M. Stone, III, Solicitor

843+549+6857
COUNTY OF
STATE

CC Clerk of Court/Common Plea

Colleton

VS.

Maurio Rivers

11:56:40 a.m. 06-14-2016

16/22

AKA:

Race: Sex: M Age: 35

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: Attempted Murder

INDICTMENT/CASE#: 2011GS1500549

A/W#: M104323

Date of Offense: 7/12/2011

S.C. Code § : 16-03-0029

CDR Code #: 3410

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-03-0029 of the S.C. Code of Laws, bearing CDR Code # 3410

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC §17-25-45 w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Knight, Steve

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

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

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)	\$	\$ 3.90
TOTAL	\$	\$ 133.90

PTUP

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

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

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

Diane S. Smith
2/10/13
13, 2013

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Colleton County

Diane Schafer Goodstein, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MAURIO DAETREL RIVERS,

APPELLANT.

APPELLATE CASE NO. 2012-213729

FINAL BRIEF OF APPELLANT

CARMEN V. GANJEHSANI
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUES ON APPEAL

- I. The Trial Court erred in failing to grant Appellant's motion for a directed verdict on the charge of attempted murder where: (1) there was no evidence that Appellant fired any gunshots; (2) the State failed to present any evidence of a common scheme or plan between Appellant and his passenger, the person who fired the gunshots, to commit any criminal act; and (3) the State failed to establish that Appellant had the requisite specific intent to kill as required by S.C. CODE ANN. § 16-3-29.
- II. The Trial Court erred in failing to instruct the jury that they could not convict Appellant of attempted murder unless they found that Appellant had a specific intent to kill.

STATEMENT OF THE CASE

On August 25, 2011, Appellant Maurio Daetrel Rivers was indicted by the Colleton County Grand Jury for (1) one count of attempted murder of Deputy J. Burnette; (2) one count of attempted murder of Deputy J. Eaches; and (3) one count of possession of a weapon during the commission of a violent offense. R. 8, ll. 8 -12; 9, l. 16 – 10, l. 2; R.197.

Appellant was tried before the Honorable Diane S. Goodstein and a jury on December 12-13, 2012. R. 1. Appellant was represented by John D. Bryan, and the State was represented by Assistant Solicitor Steven Knight. Id.

On December 13, 2012, the jury found Appellant not guilty of attempted murder of Deputy J. Eaches and not guilty of the possession charge. R. 181, ll. 13-21. The jury found Appellant guilty of attempted murder of Deputy J. Burnette. R. 181, ll. 7-12. Judge Goodstein sentenced Appellant to thirty years imprisonment. R. 193, ll. 13-17; R.199.

Appellant timely filed and served his Notice of Appeal on December 17, 2012.

STATEMENT OF FACTS

On July 12, 2011, at 7:00 p.m., Deputy Justin Eaches with the Dorchester County Sheriff's Office was conducting traffic enforcement on I-95 when he observed a black vehicle traveling southbound move off to the right and then make an abrupt lane change to the left without using a turn signal. R. 27, l. 19 – 28, l. 24. Deputy Eaches exited his stationary position in the median and attempted to stop the vehicle. Deputy Eaches testified that he first pulled along side of the vehicle and observed two black males inside the vehicle. Deputy Eaches identified Appellant as the driver. R. 29, l. 1 – 30, l. 1. According to Deputy Eaches, he attempted to stop the vehicle with blue lights and siren but the vehicle did not stop. R. 31, l. 25 – 32, l. 16.

Deputy Eaches sought the assistance of Lieutenant Joseph Burnette with the Dorchester County Sheriff's Office in the chase of the vehicle, and Lt. Burnette took over the pursuit. R. 32, l. 25 – 33, l. 12; 42, l. 9 – 43, l. 24. The vehicle in pursuit exited off of I-95 onto Highway 61. R. 115, ll. 5-10. Lt. Burnette testified that during the chase on Highway 61, he heard gunshots. R. 52, ll. 15-17. He forcefully made contact with the vehicle with his car in order to stop it. The black vehicle flipped over on its roof. Lt. Burnette testified that in the course of the vehicle going backwards just prior to it flipping over, he heard gunshots again. R. 49, l. 13 – 52, l. 25.

According to Lt. Burnette, both the driver and passenger fled the vehicle after it wrecked. R. 50, ll. 19-24. Lt. Burnette released his K-9 on them, and with the assistance of the K-9, Lt. Burnette apprehended Appellant. R. 50, l. 12 – 51, l. 11.

Deputy Eaches assisted in the apprehension of the passenger, Bronson Shelley. Shelley had a holster in his pocket when he was apprehended. R. 38, ll. 4 – 17.

At trial, Lt. Burnette testified that it was the passenger Bronson Shelley that shot at him and that Shelley had looked at him. R. 57, l. 19 – 58, l. 7. Lt. Burnette testified that while there were two different volleys of shootings that he heard, he only saw one person, Bronson Shelley, shoot. R. 62, ll. 4-15.

There were three guns recovered from the wreck scene. One gun was found on the ground after the vehicle was rolled upright. R. 71, ll. 9-18. Another gun was found lying in plain view while the vehicle was still upside down. R. 74, ll. 1-4. The last gun was found inside the glove box of the black vehicle. R. 76, ll. 22-24. Swabs of DNA were taken from the guns, but the swabs were not tested. R. 101, ll. 10-18.

Appellant was ultimately charged and found guilty of the attempted murder of Lt. Burnette.

ARGUMENT

- I. The Trial Court erred in failing to grant Appellant’s motion for a directed verdict on the charge of attempted murder where: (1) there was no evidence that Appellant fired any gunshots; (2) the State failed to present any evidence of a common scheme or plan between Appellant and his passenger, the person who fired the gunshots, to commit any criminal act; and (3) the State failed to establish that Appellant had the requisite specific intent to kill as required by S.C. CODE ANN. § 16-3-29.**

The Trial Court erred in failing to direct a verdict for Appellant on the charge of attempted murder of Lt. Burnette where the evidence, taken in the light most favorable to the State, fails to establish that Appellant (1) fired any gunshots himself; (2) attempted to kill another person under the theory of accomplice liability; or (3) had the requisite specific intent to kill. R. 153, l. 11 – 120, l. 24; 130, l. 19-131, l. 5. S.C. CODE ANN. § 16-3-29 provides that a person commits the offense of attempted murder when the person “with intent to kill, attempts to kill another person with malice aforethought, either express or implied.”

A defendant is entitled to a directed verdict at trial when the State fails to present evidence on a material element of the offense charged. State v. Brown, 360 S.C. 581, 586, 602 S.E.2d 392, 395 (2004). The grant of a directed verdict motion for acquittal by a defendant is proper if there is a failure of competent evidence tending to prove the charge. State v. Jackson, 395 S.C. 250, 254, 717 S.E.2d 609, 611 (Ct. App. 2011).

If there is any direct or substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the trial court should submit the case to the jury. Otherwise, “a trial judge should grant a directed verdict motion when the evidence merely raises a suspicion the accused is guilty.” “Suspicion” implies a belief or opinion as to guilt based upon facts or circumstances which do not amount to proof. State v. Buckmon, 347 S.C.

316, 321-22, 555 S.E.2d 402, 404-05 (2001); see also State v. Odems, 395 S.C. 582, 586, 720 S.E.2d 48, 50 (2011); State v. James, 362 S.C. 557, 561, 608 S.E.2d 455, 457 (Ct. App. 2004).

A. The State failed to present any evidence that Appellant fired the shots at Lt. Burnette.

As an initial matter, there was no evidence presented at trial that Appellant actually fired shots at Lt. Burnette. Lt. Burnette testified that it was the passenger Bronson Shelley that shot at him. R. 57, l. 19 – 58, l. 7. Lt. Burnette further testified that while there were two different volleys of shootings that he heard, he only saw one person, Bronson Shelley, shoot. R. 62, ll. 4-15.

The jury found Appellant not guilty on the charge of possession of a weapon during the commission of a violent offense. R. 181, ll. 18-21. By finding that Appellant was not in the possession of a firearm or visibly displayed what appears to be a firearm during the commission of a violent crime, the jury implicitly found that Appellant did not fire the shots at Lt. Burnette. See S.C. CODE ANN. § 16-23-490(A). Therefore, if the jury found Appellant guilty of attempted murder, it had to have done so under the theory of accomplice liability.

B. The evidence presented by the State was insufficient to support a conviction for attempted murder under the theory of accomplice liability.

The State also failed to present sufficient evidence that Appellant is guilty of attempted murder under an accomplice liability theory.

Under the “hand of one is the hand of all” theory of accomplice liability, “one who joins with another to accomplish an illegal purpose is liable criminally for everything done by his confederate incidental to the execution of the common design and purpose. . . . Under

accomplice liability theory, a person must personally commit the crime or be present at the scene of the crime and intentionally, or through a common design, aid, abet, or assist in the commission of that crime through some overt act.” State v. Mattison, 388 S.C. 469, 479, 697 S.E.2d 578, 584 (2010) (internal citations omitted).

“In order to be guilty as an aider or abettor, the participant must be chargeable with knowledge of the principal's criminal conduct. . . . Prior knowledge that a crime is going to be committed, without more, is not sufficient to make a person guilty of the crime. . . . Mere presence at the scene is not sufficient to establish guilt as an aider or abettor.” Id. at 480, 697 S.E.2d at 584 (internal citations omitted).

“To admit evidence under [the accomplice liability] theory, the existence of the common design and the participation of the accused against whom the evidence is offered should first be shown.” State v. Langley, 334 S.C. 643, 648, 515 S.E.2d 98, 101 (1999).

The State failed to present sufficient circumstantial evidence of a common plan or scheme to accomplish an illegal purpose between Appellant and his passenger, Bronson Shelley. The State's evidence only shows that Appellant and Shelley were traveling in a car together and that Appellant was driving at a high rate of speed and did not stop for a blue light. There is no evidence in the record of (1) how long Appellant and Shelley knew either other; (2) why Shelley was in the vehicle with Appellant; (3) why Appellant was driving at a high rate of speed and did not stop for a blue light; or (4) that Appellant knew his passenger would fire shots at law enforcement. There is also no evidence that Appellant maneuvered the vehicle in any way to make it easier for Shelley to fire at Lt. Burnette. Accordingly, the record lacks sufficient circumstantial evidence that Appellant agreed to, and did act in concert with Shelley, to achieve an illegal purpose.

Where there is insufficient evidence to establish that Appellant joined with Shelley to accomplish an illegal purpose through a common scheme or design, Appellant cannot be liable for the acts spontaneously and independently committed by Shelley and thus is not guilty of attempted murder. The Trial Court therefore erred in failing to grant Appellant's motion for a directed verdict on the charge of attempted murder.

C. The State failed to establish that Appellant had the requisite specific intent to kill as required by S.C. CODE ANN. § 16-3-29.

Assuming *arguendo* that there was sufficient evidence that Appellant and Shelley were acting together to flee or elude law enforcement, Appellant is nevertheless entitled to a directed verdict on the charge of attempted murder where there is no evidence that possessed the requisite specific intent to kill as required by S.C. CODE ANN. § 16-3-29.

Attempted murder is defined by statute as: "A person who, *with intent to kill*, attempts to kill another person with malice aforethought, either expressed or implied, commits the offense of attempted murder." § 16-3-29 (emphasis added). This statute became effective on June 2, 2010 and replaced the former common law statute of assault and battery with intent to kill, formerly S.C. CODE ANN. § 16-3-620.

The statute defining attempted murder requires a specific intent to kill. In State v. Sutton, 340 S.C. 393, 532 S.E.2d 283 (2000), the South Carolina Supreme Court declined to recognize the offense of attempted murder which had not yet been codified. The court, in its reasoning, observed that an attempt to commit murder requires a specific intent to kill:

In general, "[a]ttempt is a specific intent crime." 21 Am.Jur.2d Criminal Law § 176 (1998). "The act constituting the attempt must be done with the intent to commit that particular crime." *Id.* See also Wharton's Criminal Law Attempt §§ 694-695 (1996) ("To constitute an attempt, there must be an intent to commit a particular crime ... Although a murder may be committed without an intent to kill, an attempt to commit murder requires a specific intent to kill.") In the context of an "attempt" crime, specific

intent means that the defendant consciously intended the completion of acts comprising the choate offense. In other words, the completion of such acts is the defendant's purpose. United States v. Calloway, 116 F.3d 1129 (6th Cir.1997). *Attempted murder would require the specific intent to kill and conduct towards that end.* ABIK requires an unlawful act of violence to the person of another with malice. Clearly, each offense has an element the other does not. However, simply because convictions for both offenses would not violate double jeopardy, we are not constrained to recognize the offense of attempted murder.

Sutton, 340 S.C. at 397, 532 S.E.2d at 285 (footnote omitted) (emphasis added).

For a jury to convict Appellant of attempted murder, the State must present evidence that Appellant possessed a specific intent to kill. State v. Brown, 360 S.C. 581, 586, 602 S.E.2d 392, 395 (2004). The State failed to prove that material element of attempted murder.

The State did not prove that Appellant used a deadly weapon. The State at most has shown that Appellant and Shelley were in a vehicle together fleeing police. Even if Appellant and Shelley acted in concert to flee the police, the State must still prove that Appellant shared Shelley's intention to kill Lt. Burnette. "But where the purpose established is less in degree than such an intention, and where the record shows merely a spontaneous act of [attempted murder] by one, the other is not, without a greater showing of a personal designed to kill, guilty of [attempted murder.]" People v. Hayes, 117 A.D.2d 621, 622 (N.Y. Sup. Ct. 1986) (internal citations omitted); see also State v. Adams, 319 S.C. 509, 511, 462 S.E.2d 308, 209 (Ct. App. 1995) ("[W]hile conspirators are responsible for all incidental and consequential acts growing out of a general design, conspirators are not responsible for the independent acts of any one conspirator.").

The record is lacking of any evidence that Appellant shared Shelley's specific intent to kill. That Appellant was driving a vehicle in which the two were fleeing police is not

sufficient to support a conviction for attempted murder when Appellant did not fire the shots at Lt. Burnette. According, Appellant is entitled to a directed verdict on the charge of attempted murder for the State's failure to present any evidence of his specific intent to kill.

II. The Trial Court erred in failing to instruct the jury that they could not convict Appellant of attempted murder unless they found that Appellant had a specific intent to kill.

Appellant requested that the Trial Court charge the jury that attempted murder requires a specific intent to kill. R.194 [Memorandum on Specific Intent to Kill.] The Trial Court did not instruct the jury that attempted murder requires a specific intent to kill. R. 161, l. 19 – 165, l. 5. Defense counsel objected to the Trial Court's failure to charge the jury that they must find Appellant specifically intended to kill Lt. Burnette before the jury could convict him of attempted murder. R. 172, ll. 24-25. The Trial Court noted his exception for the record. R. 173, ll. 1-3.

As set forth above, attempted murder, as defined by statute, requires a specific intent to kill. § 16-3-29.

"To warrant reversal, a trial judge's refusal to give a requested jury charge must be both erroneous and prejudicial to the defendant." State v. Mattison, 388 S.C. 469, 479, 697 S.E.2d 578, 583 (2010). "A trial court has a duty to give a requested instruction that is supported by the evidence and correctly states the law applicable to the issues." State v. Lee-Grigg, 374 S.C. 388, 405, 649 S.E.2d 41, 50 (Ct. App. 2007). A trial court commits reversible error where it fails to give a requested charge on an issue raised by the evidence. Id. at 406, 649 S.E.2d at 50.

Appellant was prejudiced by the Trial Court's failure to charge the jury that attempted murder requires a specific intent to kill where Appellant was not the person

who fired the shots at Lt. Burnette. It cannot be said, beyond a reasonable doubt, that a charge that Appellant must have specifically intended to kill Lt. Burnette would not have made a difference in the outcome of the case. The Trial Court's failure to charge the jury that attempted murder requires a specific intent to kill requires reversal.

CONCLUSION

For the reasons set forth above, Appellant Maurio Daetrel Rivers requests that this Court issue an Order of acquittal on the charge of attempted murder, or in the alternative, reverse Appellant's conviction and remand this case for a new trial.

Respectfully submitted,



Carmen V. Ganjehsani
Appellate Defender

ATTORNEY FOR APPELLANT

This 16th day of June, 2014.

CERTIFICATE OF COUNSEL FOR APPELLANT

The undersigned certifies that to the best of my ability the Final Brief complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

June 16th, 2014



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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Colleton County

Diane Schafer Goodstein, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MAURIO DAETREL RIVERS,

APPELLANT.

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Mary S. Williams, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 16th day of June, 2013.



Carmen V. Ganjehsani
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 16th day of June, 2013.



(L.S.)
Notary Public for South Carolina
My Commission Expires: July 3, 2023.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Colleton County
The Honorable Diane S. Goodstein, Circuit Court Judge
Appellate Case No. 2012-213729

THE STATE,

Respondent,

v.

MAURIO DAETREL RIVERS,

Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

I.

For purposes of directed verdict, there was evidence that: (1) Appellant could have fired upon law enforcement himself, though it was unnecessary to show that Appellant was the triggerman under a theory of accomplice liability; (2) Appellant and Shelley carried out a common scheme or plan; and (3) Appellant acted with the intention of encouraging and abetting Shelley's actions in firing upon law enforcement. Regardless of whether Shelley alone fired or Appellant fired the second volley, these actions as the two attempted to elude capture clearly constitute attempted murder. As such, the court correctly denied Appellant's request for a directed verdict and submitted the case to the jury.

II.

The trial court's charge thoroughly covered substance of the law regarding the intent to kill required for a finding of attempted murder. Any failure to charge specific verbiage was not error.

STATEMENT OF THE CASE

Appellant was indicted for two counts of attempted murder and one count of possession of a weapon during commission of a violent crime. Appellant was tried before a jury on December 12-13, 2012. The jury found him guilty of one count of attempted murder.¹ (R. p. 181, lines 7-21.) Appellant was sentenced by the Honorable Diane S. Goodstein to a term of thirty years imprisonment. (R. p. 193, lines 15-16.)

¹ The two counts of attempted murder involved two police officers, Deputy Eaches and Lieutenant Burnette. Appellant was found guilty of attempted murder as to Lieutenant Burnette.

STATEMENT OF FACTS

On July 12, 2011, Dorchester County Sheriff's Deputy Justin Eaches was working on I-95 Southbound, near mile marker 74. (R. p. 28, lines 10-14.) Around 7:00 pm, Deputy Eaches observed a black Acura enter "partially into the emergency lane from the number two lane, and then all the way over into the number one lane, failing to use a turn signal." (Tr. p. 28, lines 18-24; p. 30, line 23 – p. 66, line 6.) He decided to stop the vehicle due to this traffic infraction. Per procedure, he initially pulled alongside the vehicle to identify the occupants and check for seatbelts. (R. p. 29, lines 1-10.) Deputy Eaches observed two black males in the vehicle. Appellant, his hair in "some type of ponytail," was driving, and another man with twists in his hair, later identified as Bronson Shelley ("Shelley"), occupied the passenger seat. (R. p. 29, lines 13-25.)

Deputy Eaches first activated blue lights to initiate the traffic stop. (R. p. 31, line 25 – p. 32, line 4.) Appellant signaled and moved into the emergency lane but failed to stop. (R. p. 32, lines 4-6.) Appellant then changed lanes erratically, and Deputy Eaches activated the siren. (R. p. 32, lines 5-8.) Once back in traffic lanes, Appellant reached speeds in excess of 100 mph and proceeded a few miles on the interstate. (R. p. 32, lines 14-16; State's 11, in-car video.) Deputy Eaches was driving an older model vehicle, and due to the condition of his car and the extreme speed of the pursuit, another vehicle operated by Lieutenant Joseph Burnette took over lead of the pursuit. (R. p. 32, line 23 – p. 33, line 18; p. 43, lines 5-18.) A third officer, Deputy Paul Timothy Knight, left another traffic stop and fell third in line in the pursuit. (R. p. 114, line 24 – p. 115, line 17.) During the pursuit, Appellant exited I-95 onto Highway 61. (R. p. 115, lines 9-10.)

Appellant proceeded on Highway 61 at high rates of speed. (State's 11, in-car video; State's 13, in-car video.) As the chase proceeded, radio traffic indicates Burnette

observed movement on the passenger side of the vehicle. (State's 13, in-car video; 19:08:30-19:08:50.) Shortly thereafter, shots were fired from Appellant's vehicle. Lieutenant Burnette saw the passenger fire at him. (R. p. 50, lines 4-6; p. 58, lines 3-7.) The shots impacted Lieutenant Burnette's driver's side bumper. (R. p. 56, line 18 – p. 57, line 7.)

The chase ended when Burnette made contact with Appellant's vehicle, sending the Acura off the road. (State's 13.) After making contact with the vehicle, Burnette heard another loud noise and realized he was being fired upon again as the suspect vehicle turned and rolled. (R. p. 50, lines 8-11; R. p. 51, line 16 – p. 52, line 10; p. 52, lines 15-25; p. 61, lines 15-17; p. 62, line 8 – p. 63, line 20; State's 13.) The shot impacted the windshield near the VIN plate, right where Lieutenant Burnette was seated in the vehicle. (R. p. 55, line 19 – p. 56, line 12.) Appellant's vehicle ultimately landed on its roof. (R. p. 49, lines 13-15; State's 13.)

Lieutenant Burnette immediately exited his vehicle with his dog. (R. p. 49, line 16 – p. 50, line 3; p. 50, lines 12-18.) As Lieutenant Burnette neared the overturned vehicle, both Appellant and Shelley fled the overturned vehicle on foot. (R. p. 35, lines 16-17; p. 85, lines 15-21; State's 11.) Lieutenant Burnette testified "both of them ran in the same general direction and then veered into the woods." (R. p. 50, lines 21-24.) According to Deputy Eaches, one ran straight and the other veered at a 45-degree angle into the woods. (R. p. 35, lines 21-24.) Deputy Knight followed Lieutenant Burnette in the foot chase into the woods. (R. p. 115, lines 20-22.) Lieutenant Burnette released his dog in pursuit, and he and Deputy Knight ultimately apprehended Appellant in the woods. (R. p. 51, line 25 – p. 51, line 11; p. 115, line 23 – p. 116, line 4.)

Deputy Eaches secured the law enforcement vehicles. When Deputy Eaches approached the Appellant's car, he observed a handgun in plain view. (R. p. 36, lines 6-10.) The handgun, a Bursa Firestone .380, was found with the slide back, indicating all bullets had been fired from the weapon. (R. p. 74, lines 1-20; p. 98, lines 11-16.) Another handgun, a Taurus .38 special, was found on the ground when Appellant's vehicle was righted. (R. p. 70, line 21 – p. p. 71, line 18; p. 72, line 19 – p. 73, line 4.) A third weapon, a Colt .45, was found in Appellant's glovebox. (R. p. 76, line 9 – p. 77, line 3.) A box of ammunition was also in the car. (R. p. 86, line 21 – p. 87, line 3.) Five shell casings were recovered on Highway 61. (R. p. 81, lines 11-18; p. 81, line 24 – p. 117, line 4.) Bullet fragments were also collected in the vicinity of the crash. (R. p. 81, lines 19-23; p. 82, lines 6-11.) There were four holes in the windshield of Appellant's Acura where shots had been fired outward. (R. p. 89, line 1 – p. 92, line 1; p. 94, lines 11-12; State's Exhibits 8(a) – 8(f), photos of Acura windshield.) The holes in the windshield ranged from the passenger's side to the driver's side. (State's Exhibits 8(a) – 8(f).)

Fired cartridge casings collected matched the Bursa .380 pistol. (R. p. 110, lines 11-12.) A fired bullet fragment was fired by the Taurus .38. (R. p. 111, lines 2-3.) The firearms expert opined that the bullet could have been fragmented as a result of being fired through the windshield. (R. p. 112, lines 5-11.) Shelley had a holster in his pocket. (R. p. 38, lines 12-17.)

ARGUMENT

I.

For purposes of directed verdict, there was evidence that: (1) Appellant could have fired upon law enforcement himself, though it was unnecessary to show that Appellant was the triggerman under a theory of accomplice liability; (2) Appellant and Shelley carried out a common scheme or plan; and (3) Appellant acted with the intention of encouraging and abetting Shelley's actions in firing upon law enforcement. Regardless of whether Shelley alone fired or Appellant fired the second volley, these actions as the two attempted to elude capture clearly constitute attempted murder. As such, the court correctly denied Appellant's request for a directed verdict and submitted the case to the jury.

"If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the appellate court must find the case was properly submitted to the jury." State v. Weston, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006). "In reviewing the denial of a motion for a directed verdict in a criminal case, an appellate court must view the evidence in the light most favorable to the State." State v. Al-Amin, 353 S.C. 405, 411, 578 S.E.2d 32, 35 (Ct. App. 2003).

A. It is not necessary that the State present evidence that Appellant fired shots at Lt. Burnette in order for the matter to survive a directed verdict challenge. Nonetheless, evidence existed from which the jury could infer that Appellant had fired shots.

It is unnecessary that the State show that Appellant was the triggerman. As discussed in detail below, substantial evidence supports a finding of guilt pursuant to a theory of accomplice liability. However, evidence did exist in the record from which the jury could infer that Appellant fired a weapon. There were multiple guns found in the car, there were bullet fragments from two guns collected, Burnette could not tell who fired the second volley of shots, and the Acura's windshield had an array of outward bound bullet holes ranging from the passenger to the driver's side of the vehicle. While Shelley had a holster, multiple weapons were found in the car, indicating that either man could have

possessed a gun. Further, the jury's ultimate finding regarding possession of a weapon should not be considered in this court's evaluation of the failure to direct a verdict in Appellant's favor. A directed verdict rests upon whether there is *any* evidence to support the charge, and the jury must weigh this evidence against the reasonable doubt standard.

B. Substantial circumstantial evidence supports a finding of Appellant's guilt under a theory of accomplice liability.

As set forth in State v. Mattison, 388 S.C. 469, 479-480, 697 S.E.2d 578, 584

(2010):

"Under accomplice liability theory, 'a person must personally commit the crime or be present at the scene of the crime and intentionally, or through a common design, aid, abet, or assist in the commission of that crime through some overt act.'" State v. Langley, 334 S.C. 643, 648, 515 S.E.2d 98, 101 (1999)(quoting State v. Austin, 299 S.C. 456, 459, 385 S.E.2d 830, 832 (1989)).

"In order to be guilty as an aider or abettor, the participant must be chargeable with knowledge of the principal's criminal conduct." State v. Leonard, 292 S.C. 133, 137, 355 S.E.2d 270, 272 (1987); see Wilson v. Wilson, 319 S.C. 370, 373, 461 S.E.2d 816, 817 (1995)("Prior knowledge that a crime is going to be committed, without more, is not sufficient to make a person guilty of the crime."). ...

"Any person who is present at a homicide, aiding and abetting, is guilty of the homicide as a principal, even though another does the killing." State v. Zeigler, 364 S.C. 94, 103, 610 S.E.2d 859, 864 (Ct. App. 2005).

Further,

In order to establish the parties agreed to achieve an illegal purpose, thereby establishing presence by pre-arrangement, the State need not prove a formal expressed agreement, but rather can prove the same by circumstantial evidence and the conduct of the parties.

State v. Gibson, 390 S.C. 347, 354, 701 S.E.2d 766, 770 (Ct. App. 2010). Under the

hand of one is the hand of all theory of accomplice liability, acts committed by the

principal are imputed to the accused, making him guilty of any acts done incidental to the execution of the common design or scheme of the crime. State v. Thompson, 374 S.C. 257, 647 S.E.2d 702 (Ct. App. 2007). Viewing the evidence in the light most favorable to the State, the trial judge properly denied Appellant's motion for a directed verdict on each charge and submitted the case to the jury.

The collusion between Appellant and Shelley is clear in Appellant's conduct and other circumstantial evidence. Appellant and Shelley clearly participated in a common scheme or plan to elude law enforcement. Appellant's participation was clear as he drove at a high rate of speed for several miles, putting the lives of officers, his passenger, and numerous civilians at risk. Shelley assisted in the escape effort by firing a gun at the officer in pursuit. As evidenced from radio traffic in Burnette's vehicle dashcam, several miles into the pursuit, Shelley began making furtive movements indicating to Burnette, the officer in pursuit, that he may be armed. As Burnette observed Shelley's movements, Appellant continued to drive without slowing. If Shelley's actions were visible to Burnette, they were certainly known to Appellant inside the car. Clearly, this was not a matter of a sudden, unforeseen act by Shelley. After the first volley was fired, Appellant continued his dangerous flight, braking only just before Burnette's car impacted his rear bumper. Further, after his vehicle was disabled, Appellant fled along with Shelley, indicating his continued concert with Shelley. Gibson v. State, *supra*. (finding, *inter alia*, appellant's flight along with triggerman to be evidence appropriate for consideration under theory of accomplice liability involving charge of murder); see also State v. Gilbert, 107 S.C. 443, 93, 93 S.E. 125 (1917) S.E.125, 125-126 (1917) ("If several persons in pursuance of a common design to commit an unlawful act, whether it be a felony or misdemeanor, set out together or in small parties, and each takes the part agreed

upon or assigned him, some to commit the act, others to watch at proper distances and stations to prevent interference or surprise or to encourage the commission of the unlawful act or to favor, if necessary, the escape of those immediately engaged in the commission of the unlawful act, under these circumstances, if the unlawful act is committed, the act of one is the act of all and all are presumed to be present and guilty; for this would be in pursuance of a common purpose in a common cause with them each operating in his station at one and the same instant to arrive at a common end. The act of each would tend to give countenance, encouragement, and protection to the whole gang and to insure the success of the common undertaking in the commission of the unlawful act.”)

Additionally, there were at least three weapons in the vehicle, two immediately accessible in the passenger compartment and one in Appellant’s glovebox. There was also a box of ammunition in the passenger compartment accessible to either party. While Shelley had a holster, the additional weapons and ammunition in the vehicle operated by Appellant support an inference that Appellant could have supplied ammunition and/or weaponry used.

Both Appellant and Shelley engaged in these actions with the common purpose of evading law enforcement. The attempt to murder the officer in pursuit was part and parcel of their flight. Therefore, they certainly were acting in concert as shots were fired.

C. Evidence exists that Appellant had the requisite intent to kill to support a charge of attempted murder.

In order to determine that the pair committed attempted murder, the jury would need to find intent to kill. Indeed, attempted murder requires, “[a] person who, *with intent to kill*, attempts to kill another person with malice aforethought, either expressed or

implied.”S.C. Code Ann. § 16-3-29 S.C. Code Ann. § 16-3-29. There was evidence in the record that Appellant had the requisite intent to be found guilty of attempted murder as an accomplice.

Under accomplice liability, in order to establish the requisite intent, evidence would have to show that Appellant was either “acting with the intent to promote or assist the homicide, sharing the principal's specific intent to kill, acting with knowledge that his or her actions would promote or facilitate the murder, or entering into a conspiracy with the requisite specific intent.” 41 C.J.S. Homicide § 510 (March 2014). Appellant’s actions during the chase indicate that he certainly knew of Shelley’s actions when Shelley armed himself in order to fire the first volley of shots. The murder attempt was part and parcel to the pair’s attempt to escape police. Appellant’s actions in maintaining speed and continuing on course as Shelley prepared to fire and ultimately did fire upon officers are evidence of his intent and support of Shelley’s actions. Moreover, for purposes of directed verdict, there was evidence from which the jury could infer that Appellant himself fired during the second volley.

II.

The trial court’s charge thoroughly covered substance of the law regarding the intent to kill required for a finding of attempted murder. Any failure to charge specific verbiage was not error.

With regard to intent, the trial court charged:

Where two or more, acting with a common plan or intent are present at the commission of a crime, it does not matter who actually commits the crime. All are guilty. The hand of one is the hand of all.

(R. p. 160, lines 8-12.) The trial court went on to charge mere presence. (R. p. 160, lines 13-18.) She then charged:

Intent is also a necessary element, for there must have been a common design or intent to commit the crime, and the crime must have been committed pursuant thereto with the person aiding and abetting by some overt act. Intent means intending a result which actually occurs, not accidentally or involuntarily. Intent may be shown by acts and conduct of the defendant and other circumstances from which you may naturally and reasonably infer intent. The state must prove these elements beyond a reasonable doubt.

(R. p. 160, line 19 – p. 196, line 3.) She added:

Now, in order to establish criminal liability, criminal intent is required. For example, the mental state required to be proved by the state for a particular crime might be purpose, intent, knowledge, recklessness, or criminal negligence.

(R. p. 161, lines 19-23.) She defined the intent required in an attempt crime:

Intent means intending a result which actually occurs, not accidentally or involuntarily. Intent may be shown by acts and conduct of defendant and other circumstances from which you may naturally and reasonably infer intent.

She then read the statutory definition of attempted murder pursuant to S.C. Code Ann. § 16-3-29, including the verbiage regarding intent to kill. (R. p 164, lines 1-5.)

Following the charge, defense counsel stated he had been concerned about specific intent and “[he] thought [the court] addressed that, but not in great detail.” (R. p. 172, lines 24-25.) “A jury charge is correct if, when the charge is read as a whole, it contains the correct definition and adequately covers the law. A jury charge which is substantially correct and covers the law does not require reversal.” Zeigler, 364 S.C. 94. The charge given by the court in this case clearly apprises the jury of the requisite intent

to kill and the necessity that it find such intent before finding guilt. Therefore, Appellant's conviction should not be reversed on this basis.²

It may also be noted that the jury was informed during arguments by the solicitor that the charge of attempted murder required a finding that "a person with intent to kill attempts to kill another person... ." (R. p. 24, lines 14-19.) The solicitor repeated this definition in his closing argument. (R. p. 133, lines 20-24.) The solicitor discussed intent to kill and how Appellant's actions evidenced that intent. (Tr. p. 170, line 18 – p. 173, line 19.) Defense counsel also discussed intent with the jury before describing the facts he believed illustrated that his client did not collude with Shelley in firing at officers. (R. p. 138, line 25 – p. 179, line 15.)

Finally, the jury's verdict wherein Appellant was found guilty of attempted murder only as to Burnette lends credence to the assertion that the jury understood the intent required. Only Burnette's car was fired upon according to the evidence, and the jury found Appellant not guilty of attempted murder of Eaches. (R. p. 181, lines 7-21.)

² To the extent that the referenced brief submitted by Appellant is considered as the substance of his objection, the section regarding felony murder is inapplicable. Appellant was not tried under a theory of felony murder.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

ALAN WILSON
Attorney General

MARY S. WILLIAMS
Assistant Attorney General

ISAAC McDUFFIE STONE, III
Solicitor, Fourteenth Judicial Circuit

BY: 

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ATTORNEYS FOR RESPONDENT

June 19, 2014

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Colleton County
The Honorable Diane S. Goodstein, Circuit Court Judge

Appellate Case No. 213729

THE STATE,

Respondent,

v.

MAURIO DAETREL RIVERS,

Appellant.

CERTIFICATE OF COUNSEL

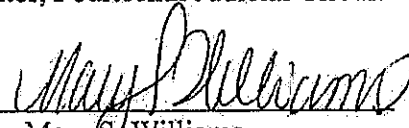
The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

ALAN WILSON
Attorney General

MARY S. WILLIAMS
Assistant Attorney General

ISAAC McDUFFIE STONE, III
Solicitor, Fourteenth Judicial Circuit

BY:


Mary S. Williams
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ATTORNEYS FOR RESPONDENT

June 19, 2014

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Colleton County
The Honorable Diane S. Goodstein, Circuit Court Judge

Appellate Case No. 2012-213729

THE STATE,

Respondent,

v.

MAURIO DAETREL RIVERS,

Appellant.

PROOF OF SERVICE

I, Ellen DuBois, certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Carmen V. Ganjehsani, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211

I further certify that all parties required by Rule to be served have been served.
This 19th day of June, 2014.

Ellen DuBois
ELLEN DUBOIS
Legal Assistant

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

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

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

The State, Respondent,

v.

Maurio Daetrel Rivers, Appellant.

Appellate Case No. 2012-213729

Appeal From Colleton County
Diane Schafer Goodstein, Circuit Court Judge

Unpublished Opinion No. 2014-UP-441
Heard November 5, 2014 – Filed December 3, 2014

AFFIRMED

Appellate Defender Carmen Vaughn Ganjehsani, of
Columbia, for Appellant.

Attorney General Alan McCrory Wilson and Assistant
Attorney General Mary Shannon Williams, both of
Columbia, for Respondent.

PER CURIAM: Maurio Rivers appeals his conviction for attempted murder, arguing the trial court erred in denying his motion for a directed verdict and not instructing the jury as to the required specific intent to kill for an attempted murder conviction. We affirm pursuant to Rule 220(b), SCACR, and the following

authorities: *State v. Baccus*, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006) ("In criminal cases, the appellate court sits to review errors of law only."); *State v. Odems*, 395 S.C. 582, 586, 720 S.E.2d 48, 50 (2011) ("On appeal from the denial of a directed verdict, [the appellate court] must view the evidence in the light most favorable to the State."); *id.* ("[I]f there is any direct or *substantial* circumstantial evidence reasonably tending to prove the guilt of the accused, an appellate court must find the case was properly submitted to the jury.") (emphasis in original); *Clark v. Cantrell*, 339 S.C. 369, 389, 529 S.E.2d 528, 539 (2000) ("An appellate court will not reverse the trial court's decision regarding jury instructions unless the trial court abused its discretion."); *id.* ("An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support."); *Sheppard v. State*, 357 S.C. 646, 665, 594 S.E.2d 462, 472-73 (2004) (holding "the trial court is required to charge only the current and correct law of South Carolina" and stating "[a] jury charge is correct if it contains the correct definition of the law when read as a whole").

AFFIRMED.

FEW, C.J., and LOCKEMY, J., and CURETON, A.J., concur.

FORM 5

STATE OF SOUTH CAROLINA)

County of COLLETON)Maurio D. Rivers #232669)

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

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

16-CP-15-647

APPLICATION FOR

POST-CONVICTION RELIEF

2016 JUN -1 AM 10:17
PATRICIA C. GRANT
COLLETON COUNTY
COMMON PLEAS**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 McCormick Correctional Institution
386 Redemption Way McCormick S.C. 29899
2. Name and location of Court which imposed sentence Colleton County
Courthouse, 101 Hampton Street P.O. Box 620 Walterboro SC 29488
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) 2011-GS-15-00549 (Attempted Murder)
 - (b) _____

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) December 13, 2012 (30 Years)
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty No
- (b) after a plea of not guilty Yes
- (c) after a plea of nolo contendere No
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. S.C. Court of Appeals
- ii. Supreme Court of South Carolina
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Conviction Affirmed/ S.C. Ct of App.
- ii. Petition for Writ of Certiorari Denied/Supreme Ct. S.C.
- iii. _____
- (c) the date of each such result:
- i. December 3, 2014
- ii. November 19, 2015
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. OP. No 2014-UP-441
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Defendants trial counsel was ineffective assistance
- (b) see also; attached page titled Issues Presented
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) see attached pages titled Argument(s) "A", "B" and "C"
- (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? Yes
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
- (d) any other petitions, motions or applications in this or any other Court? No
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. The trial Court erred in failing to grant Appellant's
- ii. motion for a directed verdict for Attempted Murder charge.
- iii. The trial Court erred in failing to instruct the jury that
- iv. they must find the Appellant had a specific intent to kill.
- (b) the name and location of the Court in which each was filed:
- i. P.O. Box 11629, Columbia SC. 29211 (S.C. Court of Appeals)
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. Conviction Affirmed/ S.C. Ct. of App.
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. December 3, 2014
- ii. _____
- iii. _____
- iv. _____

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

- i. OP. No 2014-UP-441
- 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) Trial Counsel was ineffective assistance.
 (b) Issue could not be presented until PCR stage.
 (c) _____

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

- (a) your arraignment and plea? No
 (b) your trial, if any? Yes
 (c) your sentencing? Yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
No

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. Trial Counsel: John D. Bryan (P.O. Box 1111
Walterboro, South Carolina 29488)
 ii. Appeal Attorney: Carmen V. Ganjehsani (P.O. Box 11589
Columbia, South Carolina 29211-1589)
 iii. _____
 (b) the proceedings at which each such attorney represented you:
 i. John D. Bryan: Jury Trial
 ii. Carmen Ganjehsani: Direct Appeal and Oral Argument
 iii. _____

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

Reversal of Attempted Murder conviction

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

No

STATE OF SOUTH CAROLINA)

County of COLLETON)

VERIFICATION

I, Maurio D. Rivers, 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.

Maurio Rivers

SWORN to and subscribed before me this

day of

May

2nd

2016

Michael Camano

(L.S.)

Notary Public

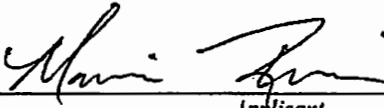
My Commission Expires:

July 09, 2026

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

I, Maurio D. Rivers, 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.


Applicant

SWORN or affirmed to and subscribed before me this

2nd day of May, 2016.

Notary Public

My Commission Expires: July 09, 2026

PATRICIA C. GRANT
COLLETON COUNTY
COMMON PLEAS
2016 JUN -1 AM 10:18

Issues Presented

A. Defendants trial counsel was ineffective assistance for failing to object to the jury instructions charging the hand of one is the hand of all that allowed the jury to convict Rivers of Attempted Murder under a different theory than that alleged in the indictment.

B. Defendants trial counsel was ineffective assistance for failing to motion for a directed verdict on the charge of accomplice liability in regard to Attempted Murder.

C. Defendants trial counsel was ineffective assistance for failing to object to the inclusion of a criminal offense for which the defendant was not indicted (Burglary and a get away driver) as an example to the jury defining accomplice liability/ or the hand of one is the hand of all.

Argument A

The indictment charging Rivers with Attempted Murder specifically alleged that Rivers shot at the victim with malice aforethought accompanied by a present ability to complete the act and the intent to kill.

The primary purpose of an indictment are to put the defendant on notice of what he is called upon to answer, to apprise him of the elements of the offense and to allow him to decide whether to plea guilty or stand trial, and to enable the circuit court to know what judgement to pronounce if the defendant is convicted. State v. Gentry 363 S.C. 93, 102, 610 S.E. 2d 494, 500(2005)

The indictment is a notice document... here the indictment charging Rivers with attempted murder specifically alleged that Rivers shot at the victim. Thus the indictment advised Rivers that he had to defend only against the allegation that he shot at the victim. In South Carolina it is a rule of universal observance in administering the criminal law that a defendant must be convicted, if convicted at all of the particular offense charged, in the bill of indictment. State v. Gunn 313 S.C. 124, 136, 437 S.E. 2d 75, 82(1993)

Therefore the jury was limited to a determination of whether he committed this act. Based on the not guilty verdict in regard to possession of a weapon during commission of a violent crime the jury found no evidence that Rivers "shot" at the victim. The jury therefore found a material variance between the act alleged in the indictment and the states proof.

While a conviction may be sustained under an indictment which is defective because it omits essential elements of the offense such is not true when the indictment facially charges a complete offense and the state presents evidence which convicts under a different theory than that alleged. Thompson v. State 892 S.W. 2d 8, 11(Tex. Criminal App. 1994)

A conviction under this circumstance violates principles of due process because the state has failed to prove beyond a reasonable doubt. Every fact necessary to constitute the crime with which the defendant was charged.

A material variance that violates a defendants substantial right to be tried only on charges presented in an indictment constitutes fatal error and warrants reversal on an appeal of judgement of conviction of the offense not charged in the indictment. The indictment did not apprise Rivers that he would have to also defend against the allegation of aiding and or abetting/encouraging the shooting of the victim by another alleged shooter. One way an indictment can be improperly modified is through a variance where by the charging terms of the indictment are left unaltered but the evidence offered at trial proves facts materially different from those alleged in the indictment. Furthermore the hand of one is the hand of all instruction to the jury in the present case is erroneous because there was no evidence to base it upon. The evidence so far as the court is permitted to notice it as

contained in the Bill of Indictment and set forth in the charge shows no facts from without the jury could have properly found that the murder attempt was the result of any previous conspiracy or arrangement with another.

The trial judges instructions improperly enlarged the indictment by instructing the jury that it could convict Rivers of a crime not alleged in the indictment.

For the above said reasons the defendants trial counsel was ineffective assistance for not objecting to the supplemental jury instruction the hand of one is the hand of all.

Argument B

Defendants Trial Counsel was ineffective assistance of for failing to motion to the court for a directed verdict on the charge of Accomplice Liability in regard to Attempted Murder.

There is no evidence in the record that Rivers knew a passenger in the vehicle possessed a weapon. Furthermore the state presented no evidence Rivers knew the passenger would fire shots. Rivers did not attempt to use the vehicle as a weapon in any way, nor did Rivers maneuver the vehicle in a way to make it easier for the passenger to fire shots. Most of all there is no evidence that Rivers intended the use of a fire arm or encourage the use of a fire arm. There is no evidence of a specific intent to kill or malice. There is also no evidence of how long Rivers knew the passenger or if he knew him at all. More still, there is no evidence of why the passenger was in the vehicle with Rivers or why Rivers was driving at such a high rate of speed and did not stop for a blue light. It cannot be said beyond a reasonable doubt that the firing of gunshots was not a matter of a sudden unforeseen act by the passenger.

;see State v. Adams, 319 S.C. 509, 511, 462 S.E. 2d 308, 209(Ct. App. 1995)

While conspirators are responsible for all incidental and consequential acts growing out of a general design, conspirators are not responsible for the independent acts of any one conspirator.

The court explained when an accomplice knows beforehand of a confederates design to carry a gun he can attempt to alter that plan or if unsuccessful withdraw from the enterprise; It is deciding instead to go ahead with his role in the venture that shows his intent to aid an armed offense; In contrast when an accomplice knows nothing of a gun until it appears at the scene, he may have already completed his acts of assistance; or even if not he may at that late point have no realistic opportunity to quit the crime. Thus the court concluded not only must the defendant have foreknowledge of the gun but he must acquire that

knowledge at a time when he or she can still do something with it, most notably opt to walk away. The courts withdrawal rule thus bars jury instructions such as the one given in Rivers trial which permit conviction where a defendant upon discovering a gun has no opportunity to withdraw from the crime. One basic example of this is where the defendant discovers a gun after he has completed his role in the criminal enterprise. Another example is where as was alleged in Rosemond v. U.S. 134 S.Ct. 1240 shots were fired at the close of a drug sale causing participants to disband. Still another example not directly mentioned in the opinion but contemplated in it's outcome is when the firearm is used against the defendant himself by requiring the government to prove aiding and abetting in this way, Rosemonds withdrawal rule ensures that defendants are not swept up in what amounts to a strict Liability standard. Accordingly the record lacks sufficient circumstantial evidence that Rivers agreed to, and did act in concert with passenger, to attempt a murder.

In general, "attempt is a specific intent crime." 21 Am.Jur.2d Criminal Law § 176 (1998). "The act constituting the attempt must be done with the intent to commit that particular crime." Id. See also Wharton's Criminal Law Attempt §§ 694-695 (1996) ("To constitute an attempt, there must be an intent to commit a particular crime ... Although a murder may be committed without an intent to kill, an attempt to commit murder requires a specific intent to kill.") In the context of an "attempt" crime, specific intent means that the defendant consciously intended the completion of acts comprising the choate offense. In other words, the completion of such acts is the defendant's purpose. United States v. Calloway, 116 F.3d 1129 (6th Cir. 1997). Attempted murder would require the specific intent to kill and conduct towards that end.

The record is lacking evidence that Rivers shared the passenger specific intent to kill. That Rivers was driving a vehicle in which the two were fleeing police is not sufficient to support a conviction for attempted murder when Rivers did not fire the shots at Lt. Burnette. Sutton, 340 S.C. at 397, 532 S.E.2d at 285 (footnote omitted) (emphasis added). For a jury to convict Rivers of attempted murder, the State must present evidence that Rivers possessed a specific intent to kill. State v. Brown, 360 S.C. 581, 586, 602 S.E.2d 392, 395 (2004). The state failed to prove that material element of attempted murder.

The State did not prove that Rivers used a deadly weapon. The State at most has shown that Rivers and passenger were in a vehicle together fleeing police. Even if Rivers and the passenger acted in concert to flee the police, the State must still prove that Rivers shared the passengers intention to kill Lt. Burnette. "But

//

where the purpose established is less in degree than such an intention, and where the record shows merely a spontaneous act of Attempted Murder by one, the other is not, without a greater showing of a personal designed to kill, guilty of Attempted Murder." People v. Hayes, 117 A.D.2d 621, 622 (N.Y. Sup. Ct. 1986)

The state argues that because the passenger in Rivers vehicle actions were visible to the pursuing officers they must have been known to Rivers, however according to the pursuing officer Rivers was driving right around 90 miles per hour to a 100 miles per hour when the shots were fired.

TR. P. 67 L. 14-15
TR. P. 86 L. 24-25
TR. P. 87 L. 1-2

Furthermore in review of the video (States exhibit no. 13) Rivers is driving on a two lane highway at the time the shots are fired. Therefore it cannot be said beyond a reasonable doubt that Rivers was aware of the passengers movements in the vehicle while driving at such a high rate of speed on a two lane highway.

The state argues that Rivers continued his dangerous flight after the shots were fired.

The record shows the first shots are fired at 19:08:44 then sixteen seconds later Rivers car is hit by the pursuing officers patrol car at 19:09:00. Rivers then loses control of the Acura crashes and rolls over. Therefore, this dangerous flight the state claims that Rivers continued lasted exactly sixteen seconds. (TR. P. 177 L. 19-22) Furthermore by Rivers driving at such a high rate of speed it logically would have taken a reasonable amount of time to slow the vehicle to a stop and Rivers brake lights are seen after the shots and before the car is hit by the pursuing officers vehicle (initial brief of respondent Pg. 8). Furthermore the record shows two minutes and sixteen seconds after the first shots are fired that Rivers is in handcuffs at 19:11:00. (States Exhibits 13).

The state argues after Rivers vehicle is disabled that Rivers fled on foot along with the passenger indicating his continued concert however, according to the record Rivers ran away from the passenger as well as the pursuing officer.

TR. P. 70 L. 17-24
TR. P. 73 L. 18-21
TR. P. 174 L. 20-25

Furthermore the record shows that after Rivers vehicle had overturned, a second volley of gunshots was fired.

TR. P. 97 L. 4-15

Rivers was found not guilty of possessing a weapon.

TR. P. 216 L. 18-20

Therefore Rivers was unarmed.

By Rivers being unarmed, and with gunshots being fired so close it is not so unreasonable to conclude Rivers would have been afraid enough to run away from the overturned vehicle in an attempt to avoid being shot.

Therefore Rivers flight, absent any act which one could infer Rivers intent was to harm, injure, or point a firearm is insufficient to support a conviction for attempted murder under the theory of accomplice liability.

Rivers Trial Counsel was ineffective assistance for failing to motion the court for a directed verdict on the charge of accomplice liability in regard to Attempted Murder.

Argument C

Defendants trial counsel was ineffective assistance for failing to object to the inclusion of a criminal offense (Burglary and a get away driver) for which the defendant was not indicted as an example to the jury defining the hand of one is the hand of all. Transcript: P. 193 L. 17-25 and P. 194 L. 1-8 and P. 211 L. 9-12

The inclusion of an example of a Burglary and a get away driver to define the hand of one is the hand of all in Rivers Attempted Murder Trial created a mandatory presumption which unconstitutionally shifted to the defendant the burden of persuasion on the elements of Intent to kill and Malice. The example of the Burglary and a get away driver made the jury instruction erroneous because it suggested to the jury a specific showing that Rivers had intended to facilitate or encourage the use of the firearm was unnecessary and only a showing that Rivers intended to elude law enforcement was necessary to find him guilty of a Attempted Murder under the theory of Accomplice Liability.

The trial judges inclusion of the example of the Burglary and a get away driver in her jury instructions explaining the hand of one is the hand of all may have confused the issues as to guilt as an Aider or Abettor in a Burglary and guilt as an Aider and Abettor in a Attempted Murder. Generally it is not error to read to the jury a statute defining a crime which the defendant is not charged if the purpose is to enlighten the jury regarding the issues before it.

When however the inclusion of the charged offense has the effect of confusing the issues the jury must determine, the statute should not be read to the jury. State v. Woods 1 S.E. 2d 190 (1939)... The purpose of the jury instructions is to enlighten the jury and aid it in arriving at the correct verdict.

Furthermore the trial Judge was required to make clear to the jury that in order for Rivers (the driver) to be held liable for the murder attempt of a pursuing officer by a passenger in his vehicle, the murder attempt would have had to be a Natural or Probable consequence of an act agreed upon by both Rivers and the passenger.

It was clear by the jury requesting that the trial Judge re-explain the Hand of One is the Hand of All charge (Tr. P. 209 L. 23) that the jury was unsure if Rivers failure to stop for bluelights and sirens amounted to guilt as an aider or abettor in the Murder Attempt.

This uncertainty was then further confused by an erroneous inclusion of an example of a getaway driver to a burglary in the jury instruction defining the Hand of One is the Hand of All. The elements of proof in regard to aiding and abetting a burglary would be different from the elements of proof required to establish guilt as an aider or abettor in a Murder Attempt. Therefore the erroneous inclusion of an example of a get away driver to a burglary coupled together with the trial Judge's refusal to define Natural and Probable consequences to the jury (Tr. P. 213 L. 20 to Tr. P. 215 L. 9) created a presumption that Rivers should be held liable for the Murder Attempt by the passenger merely for his failure to stop for bluelights and siren or Attempting to getaway driving.

Natural Consequence—Something that predictably happens as a result of an act.

Probable Consequence—An effect or result that is more likely than not to follow its supposed causes.

The trial Judge's refusal to explain to the jury what probable or natural consequence means was error and permitted the jury to convict Rivers merely by finding that he attempted to get away driving.

It is error to give the jury instructions which are calculated to mislead the jury. State v. Hewitt 31 S.E. 2d 257 (1944)

For the above said reasons Rivers trial counsel was ineffective assistance for failing to object to the inclusion of a burglary and a getaway driver in the example defining the Hand of One is the Hand of All to the jury.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF COLLETON	)	FOURTEENTH JUDICIAL CIRCUIT
	)	
Maurio D. Rivers, #232669,	)	2016-CP-15-00647
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

In response to the post-conviction relief application filed on June 1, 2016, Respondent would show this Court:

I. PROCEDURAL HISTORY

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Colleton County Clerk of Court's orders of commitment. Applicant was indicted by the August 2011 term of the Colleton County Grand Jury for two counts of attempted murder (2011-GS-15-00549, -550) and possession of a weapon during the commission of a violent crime (2011-GS-15-551). John D. Bryan, Esquire, represented him. Solicitor Steven Knight prosecuted the case. On December 12-13, 2012, Applicant proceeded to trial before the Honorable Diane S. Goodstein. Applicant was found guilty as indicted of one count of attempted murder (2011-GS-15-549). Applicant was found not guilty of attempted murder (2011-GS-15-550) and possession of a weapon during the commission of a violent crime (2011-GS-15-551). Judge Goodstein sentenced Applicant to incarceration for thirty years.

Applicant filed a timely notice of appeal. Carmen V. Ganjehsani, Esquire represented Applicant and filed an *Anders* brief. On December 3, 2014, the South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Rivers, Op. No. 2014-UP-441 (S.C. Ct. App.,

Filed December 3, 2014).

Applicant subsequently filed a petition for rehearing on December 4, 2014. Applicant also filed a petition for writ of certiorari to the South Carolina Supreme Court. On December 17, 2014 the South Carolina Supreme Court issued an order stating that it would construe Applicant's notice of appeal as a petition for writ of certiorari, and dismiss the petition without prejudice until the South Carolina Court of Appeals issues its decision on Applicant's petition for rehearing. The Remittitur was sent down on December 31, 2014. On January 29, 2015, the South Carolina Court of Appeals issued an order recalling the remittitur. On January 30, 2015, the South Carolina Court of Appeals granted Applicant's motion to relieve his counsel, and thereafter, proceeded pro se. On April 16, 2015, the South Carolina Court of Appeals denied Applicant's petition for rehearing.

On April 27, 2015, the South Carolina Supreme Court received Applicant's petition for writ of certiorari. On November 19, 2015, certiorari was denied. The Remittitur was sent down on December 7, 2015.

II. ALLEGATIONS

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

1. Ineffective Assistance of Counsel
 - a. "Failing to object to the jury instructions charging the hand of one is the hand of all."
 - b. "Failing to motion for a directed verdict on the charge of accomplice liability in regard to Attempted Murder."
 - c. "Failing to object to the inclusion of a criminal offense for which the defendant was not indicted (Burglary and a getaway driver) as an example to the jury defining accomplice liability/or the hand of one is the hand of all."

Attached herewith and incorporated herein by reference are the records of the Colleton County Clerk of Court regarding the subject convictions, the transcript from Applicant's trial, Applicant's appellate records, and Applicant's records from the Department of Corrections.

Respondent reserves the right to amend its return upon the receipt of other relevant records.

III. INEFFECTIVE ASSISTANCE OF COUNSEL

Applicant's PCR application claims Ineffective Assistance of Counsel. Respondent contends that Applicant's counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

In a post-conviction relief proceeding, Applicant bears the burden of proving the allegations in their application. See Butler, 286 S.C. at 442, 334 S.E.2d at 814. Where ineffective assistance of counsel is alleged as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. See Strickland, 466 U.S. at 669. Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, (citing Strickland, 466 U.S. at 688). Second, counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to plea counsel, Applicant must show that there is a

reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. See Hill v. Lockhart, 474 U.S. 52, 52 (1985).

Respondent submits that Applicant cannot satisfy either requirement of the Strickland test. However, where an application for post-conviction relief alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record, a question of fact is raised which can only be resolved by an evidentiary hearing. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983). If the court does determine that Applicant alleges specific instances of ineffective assistance which are not conclusively refuted by the record, then Respondent would request an evidentiary hearing to fully resolve this issue.

IV. AMENDMENT

Respondent denies Applicant is entitled to relief on any of these claims and demands strict proof thereof. Applicant must specify any claims he intends to raise at the PCR trial. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing. S.C. Code § 17-27-10 et seq; SCRCF 71.1. All claims should be made well in advance of the PCR hearing. If Applicant has an attorney appointed, the attorney, and not the inmate, is the only one authorized to file amendments. SCRCF Rule 11. Filings by inmates will not be considered at the PCR hearing.

V. CONCLUSION

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied. WHEREFORE, the Respondent requests that an evidentiary hearing be held solely for the purpose of determining whether the Applicant's trial

counsel was ineffective.

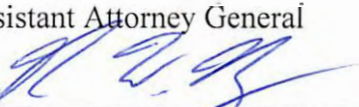
Respectfully submitted,

ALAN WILSON
Attorney General

ROBERT BOLCHOZ
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

RUSTON W. NEELY
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

April 17th, 2017

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF COLLETON	)	
	)	
	)	2016-CP-15-0647
MAURIO D. RIVERS, #232669,	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
_____	)	

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

James Falk, Esquire
Falk Law Firm
PO Box 1058
Charleston, SC 29402

DATED this 17th day of April, 2017.


 Brianna Arnone, Legal Assistant
 For Respondent

RECEIVED

NOV 20 2017

Referred to Neely / dm
Answered _____

STATE OF SOUTH CAROLINA
IN THE COURT OF COMMON PLEAS

COUNTY OF COLLETON

Case No. 16-CP-15-647

MAURIO DAETREL RIVERS,

PLAINTIFF,

V.

STATE OF SOUTH CAROLINA,

DEFENDANT,

MOTION TO WITHDRAW ATTORNEY OF RECORD

Comes now, Maurio D. Rivers (Pro Se' Plaintiff) and respectfully moves the Court, pursuant to Rule 11(b), for permission to withdraw Mr. James K. Falk as counsel for the Plaintiff. Plaintiff will continue to be represented in this matter by himself (Pro Se'). The withdrawal of counsel of record will not cause any delay in the proceedings. It would be extremely prejudicial to the Plaintiff Mr. Maurio D. Rivers to be represented by Mr. Falk, seeing he is and has been counsel to Mr. Bronson Shelley since 2015. Mr. Shelley was also charged in the 2011 Colleton County shooting which Mr. Rivers appeals his conviction of. It would not be in the best interest of the Plaintiff to continue with Mr. James K. Falk as counsel seeing clearly that it would be a Conflict of Interest.

Wherefore, the undersigned respectfully requests this Court's permission to relieve duty of representation of the Plaintiff in this matter.

Respectfully submitted,

Dated this 14th day of November, 2017

s/ Maurio D. Rivers

Maurio D. Rivers
990 Wisacky Hwy
Bishopville, SC 29010

STATE OF SOUTH CAROLINA

COUNTY OF COLLETON

 IN THE COURT OF COMMON PLEAS

 CASE NO. 2016-CP-15-00647

MAURIO DAETREL RIVERS,

PLAINTIFF,

V.

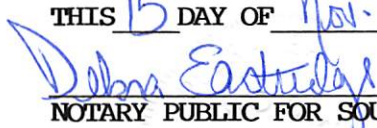
STATE OF SOUTH CAROLINA,

DEFENDANT,

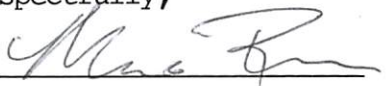
 AFFIDAVIT (Certificate) OF SERVICE

I, Maurio Daetrel Rivers, certify that I have served the Motion To Withdraw Attorney Of Record upon the Defendant by depositing a copy of the same in the United States Mail, postage prepaid, addressed to: OFFICE OF THE ATTORNEY GENERAL
 POST OFFICE BOX 11549
 COLUMBIA, SC 29211

SUBSCRIBED AND SWORN TO BEFORE ME

THIS 15 DAY OF Nov., 2017.

 NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: 3/3/2024

Respectfully,

s/ 

STATE OF SOUTH CAROLINA

COUNTY OF COLLETON

IN THE COURT OF COMMON PLEAS

Case No. 2016-CP-15-00647

MAURIO DAETREL RIVERS,

Plaintiff,

v.

STATE OF SOUTH CAROLINA,

Defendant.

MOTION TO AMEND

PCR APPLICATION

Now comes the above named applicant who moves this court to Amend the PCR application for Post Conviction Relief adding the following grounds and supplementing existing grounds:

(1) Trial Counsel "J.D. Bryan" was Ineffective assistance for failing to request that the trial judge "Diane S. Goodstein" instruct the prosecution to "Motion to Elect" a theory by which to prosecute the applicant.

Trial counsels failure to request that the trial judge instruct the prosecution to motion to elect a theory was deficient performance and prejudicial to the applicant.

Trial counsels failure to request that the trial judge instruct the prosecution to "Motion to Elect" a theory allowed the applicant to be indicted as the Principal and convicted as an accessory.

(2) Trial counsel was ineffective assistance for failing to object to the jury instructions charging the hand of one is the hand of all.

Trial counsels failure to object to the jury instructions charging the hand of one is the hand of all was deficient performance and prejudicial to the applicant.

Trial counsels failure to object to the jury instructions charging the hand of one is the hand of all allowed the applicant to be found guilty of Attempted Murder under a different theory than the theory alleged in the indictment.

(3) Trial counsel was ineffective assistance for failing to motion for a directed verdict on the charge of accomplice liability in regard to Attempted Murder.

Trial counsels failure to motion for a directed verdict was deficient performance and prejudicial to the applicant.

Trial counsels failure to motion for a directed verdict on the charge of "Accomplice Liability" allowed the applicant to be convicted of a murder "attempt" without any evidence circumstantial, or direct, proving a "Attempt" or "Overt Act" toward the accomplishment of a homicide.

Furthermore, the state failed to present any evidence of

of an agreement between the applicant and his alleged co-conspirator to injure or attempt to injure, kill, or attempt to kill the victim.

(4) Trial counsel was ineffective assistance for failing to object to the inclusion of a criminal offense (burglary and a get away driver) for which the defendant was not indicted as an example to the jury defining the hand of one is the hand of all.

Trial counsels failure to object to the inclusion of the "Burglary and the get away driver" was deficient and prejudicial to the applicant.

Trial counsels deficient performance in failing to object to the inclusion of a burglary and a get away driver in the example explaining the hand of one hand of all to the jury, allowed the applicant to be presumed guilty of Attempted Murder if proof could be presented that the applicant attempted to get away driving.

(5) Trial counsel was ineffective assistance for failing to introduce evidence of the unreliable credibility of the states witness "Det. Allen Inabinett", whose testimony was the sole testimony relied upon at the applicants preliminary hearing and used to obtain the indictment for attempted murder.

Trial counsels failure to introduce evidence of states witness "Det. Allen Inabinett" conviction for "Falsifying Statements"... was deficient performance and prejudicial to the applicant.

Trial counsels failure to introduce evidence of the unreliable credibility of the states witness "Det. Allen Inabinett" allowed the applicant to be convicted of Attempted Murder through an indictment obtained by unreliable testimony.

(6) Trial counsel was ineffective assistance for failing to object to the trial judges abuse of discretion in refusing to define and or explain "Natural and Probable consequences".

Trial counsels failure to object to the trial judges abuse of discretion was deficient performance and prejudicial to the applicant.

Trial counsels failure to object to the trial judges refusal to define "natural and probable consequences" allowed the jury to presume only evidence of the applicants failure to stop for blue lights and siren was neccessary and not a "Specific Intent to kill" to find the applicant guilty of Attempted Murder.

T. P. 213 L. 19-25 and T. P. 214, and P. 215 L. 1-9

(7) Trial counsel was ineffective assistance for failing to object to the trial judges abuse of discretion in refusing to instruct the jury on "Specific Intent" and instead instructing the jury on "Criminal Intent"...saying "It is not necessary to establish intent by direct and positive evidence, but intent may be established by inference in the same way as any other fact. It may arise from negligence, recklessness, or an indifference to duty or circumstances that are considered by law to the equal of "Criminal Intent".

The trial judge also abused her discretion in instructing the jury on Malice aforethought and Malice expressed and inferred Trial counsel was ineffective assistance for not objecting to the trial judges instruction (T. P. 199 L. 1-25 and P. 200 L.1-5)

The trial judges jury instructions on Malice and Intent were extremely prejudicial in that they suggested that the applicant should be found guilty of a Murder Attempt by shooting if only evidence of a disregard for human life in regard to reckless or negligent driving could be shown.

T. P. 196 L. 1-25 and P. 197 L. 1-24

Trial counsels failure to object to the judges abuse of discretion was deficient performance and prejudicial to the applicant in that trial counsels deficient performance allowed the applicant to be found guilty of the Specific Intent crime of Attempted Murder without a showing of a individual Specific Intent to Kill at all. Furthermore without any individual showing of malice or evil or ill will toward the victim further more no evidence of offer of injury of any sort to the victim.

For all the fore mentioned reasons the Applicant requests tthis Honorable court grant the motion to Amend PCR Application.

November 15, 2017

Respectfully, Maurio D. Rivers

Maurio D. Rivers S/

STATE OF SOUTH CAROLINA
COUNTY OF COLLETON

IN THE COURT OF COMMON PLEAS

Case no. 2016-CP-15-00647

MAURIO DAETREL RIVERS,

Plaintiff,

v.

STATE OF SOUTH CAROLINA,

Defendant.

AFFIDAVIT (certificate) OF SERVICE

I, Maurio Rivers certify that I have served upon the Motion to Amend PCR Application upon the Defendant by depositing a copy of the same in the United States Mail, postage prepaid addressed to: Office of the Attorney General

Post Office Box 11549

Columbia, SC 29211

SWORN BEFORE ME THIS 15 DAY OF NOVEMBER, 2017.

Debra Easterday
NOTARY PUBLIC FOR SC

My Commission Expires: 3/3/2021

Maurio Rivers
M.D. RIVERS

STATE OF SOUTH CAROLINA	)	THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	DOCKET NO. 2016-CP-15-0647
	)	
	)	
MAURIO D. RIVERS	)	
	)	
Applicant	)	
	)	
vs.	)	
	)	
STATE OF SOUTH CAROLINA	)	
	)	
Respondent	)	
	)	
	)	
	)	
	)	TRANSCRIPT OF RECORD

April 1, 2019
 Beaufort, South Carolina

VOLUME 1 (of 2)

B E F O R E:

THE HONORABLE WILLIAM H. SEALS, JR., JUDGE

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

LESLIE T. SARJI, ESQ.
 Attorney for the Applicant

BENJAMIN LIMBAUGH, ESQ.
 Attorney for the Respondent

JOYCE C. RUEGER,
 Certified Verbatim Reporter-Master
 Circuit Court Reporter

[Certified Transcript Provided for: SCCID]

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CERTIFICATE OF THE COURT REPORTER	9

INDEX TO EXHIBITS
No Exhibits were introduced

Maurio Rivers v State
Post Conviction Relief
April 1, 2019

1 PROCEEDINGS

2 THE COURT: Good afternoon.

3 MR. LIMBAUGH: Good afternoon, Your Honor.

4 THE COURT: Take your time but I'm ready whenever
5 you are.

6 MR. LIMBAUGH: May it please the Court, Your Honor?

7 THE COURT: Yes, sir.

8 MR. LIMBAUGH: In lieu of giving you your Judge's
9 packet right now I think we're going to have a scheduling
10 readjustment.

11 THE COURT: Okay.

12 MR. LIMBAUGH: But I'll short call the case and
13 then we can deal with that if that's okay with Your
14 Honor.

15 THE COURT: Okay. Sure.

16 MR. LIMBAUGH: Mr. Trevin Milledge -- this is Ben
17 Limbaugh for the State. This is Trevin Milledge, case
18 number 2018-CP-07-1621 -- I apologize; that is the wrong
19 case.

20 THE COURT: That's the one we just finished.

21 MR. LIMBAUGH: That's correct, Your Honor.

22 THE COURT: And we're going to come back and
23 complete.

24 MR. LIMBAUGH: On Wednesday.

25 THE COURT: Wednesday.

Maurio Rivers v State
Post Conviction Relief
April 1, 2019

1 MR. LIMBAUGH: Yes sir, Your Honor. This is Maurio
2 D. Rivers, my apologies to the Court, case number 2016-
3 CP-15-0647. Mr. Rivers is represented by Ms. Leslie
4 Sarji and I will hand it over to her for now.

5 THE COURT: All right. Ms. Sarji?

6 MS. SARJI: Thank you, Judge. And Mr. Rivers is
7 in the jury box right now. There was a motion that was
8 filed on November 27th, 2017 to amend his PCR
9 application.

10 I inherited this case fairly recently. I got it
11 late last year; I got it in late August, and then was not
12 transmitted file materials from the prior PCR attorney I
13 think. Mr. Limbaugh as well inherited this from prior
14 counsel for the AG's office.

15 And so I think both of us were, I was certainly
16 operating under the assumption that the Motion to Amend
17 with the fact that it's over a year old had been heard
18 and ruled upon and we were operating from these amended
19 grounds.

20 Mr. Limbaugh was not aware of the motion being
21 pending. He was not aware of these additional grounds.
22 I do believe that in order for me to present the best
23 case that I can for Mr. Rivers I am hoping that Your
24 Honor would grant his Motion to Amend. I do have some
25 additional amendments that I would like to submit

Maurio Rivers v State
Post Conviction Relief
April 1, 2019

1 verbally and I don't think that Mr. Limbaugh has an
2 objection to that. Specifically Judge, although I think
3 it is already covered within the body of Mr. Rivers'
4 Motion to Amend we would include as a basis for
5 ineffective assistance of counsel that Mr. Bryan failed
6 to object or to bring to the Court's attention the fact
7 that implied malice is not sufficient to support a
8 conviction on a specific intent crime; in this case it
9 was an attempted murder.

10 There has been subsequent case law in State v King
11 that explicitly recognizes that there can't be implied
12 malice in that kind of a case. The case -- I don't think
13 it's relevant to my argument to you right now but I do
14 want to make sure and be very clear that Mr. Limbaugh is
15 aware is that I am reading several paragraphs within this
16 Motion to Amend to encompass that specific argument which
17 we will be making.

18 I also needed to amend to add the fact that trial
19 counsel failed to object to the trial Judge's
20 instructions at the beginning of the trial that the
21 jury's duty is to quote render a true and just verdict in
22 the case as well as to allege ineffective assistance of
23 counsel for failing to properly advise Mr. Rivers
24 regarding whether or not his prior convictions would be
25 admissible if he testified at trial or to discuss with

Maurio Rivers v State
Post Conviction Relief
April 1, 2019

1 him the balancing act that the Court would perform if he
2 were to testify and there were convictions that the State
3 would intend to get into against him as well as the fact
4 that trial counsel did not advise Mr. Rivers about his
5 5th Amendment right and that he could have evoked his
6 privilege against self-incrimination in order not to
7 answer questions about uncharged criminal conduct.

8 There was a stolen car that was involved that he was
9 driving and he was not advised that in response to any
10 questions about that he could have invoked the right
11 against self-incrimination. So that would be our
12 complete amended application for PCR. I understand that
13 Mr. Limbaugh needs a little bit of time to just research
14 the legal issues presented specifically by the State v
15 King. And I think that he is agreeable to us coming back
16 on Wednesday of this week so...

17 THE COURT: Okay.

18 MR. LIMBAUGH: Yes, Your Honor. The State would
19 have definitely objected to these verbal amendments had
20 we gone forward today or if you were inclined to go
21 forward today. But I've spoken with Ms. Sarji and Mr.
22 Bryan and we believe that we can be ready by Wednesday.
23 I would just like some time to research these new
24 allegations and these new issues. If that is fine with
25 Your Honor then I think that the State is fine with that.

Maurio Rivers v State
Post Conviction Relief
April 1, 2019

1 THE COURT: It's fine with me. Is that okay with
2 you? I hate to tie up your time ---

3 MR. BRYAN: --- yes, Your Honor.

4 THE COURT: Okay. We'll come back Wednesday.
5 We'll do that one and the Milledge case.

6 MS. SARJI: So Judge should I come back at 9:30 or
7 should we come back -- does everybody just come back at
8 9:30 on Wednesday?

9 THE COURT: What do you want to do, Solicitor? It
10 doesn't matter to me. See what we've got.

11 MR. LIMBAUGH: We have Andre Green and Travis
12 Polite at the moment. There are some other scheduling
13 issues that I need to discuss with Your Honor. So I have
14 two plus the Milledge examination of the Solicitor so
15 whatever is more amenable to you both. I don't have a
16 problem calling cases before this one or...

17 THE COURT: I'm good with anything. We could come
18 back at 9 if it's okay with the court reporter. Y'all
19 want to start at 9 or do we need to do the others first
20 since they were scheduled first?

21 MR. LIMBAUGH: No, Your Honor. I can call the
22 cases.

23 THE COURT: You just tell me when you need me and
24 I'll be there. How about that?

25 MS. SARJI: I will do my absolute best to be here

Maurio Rivers v State
Post Conviction Relief
April 1, 2019

1 by 9, Judge. I'm coming from Charleston so it's a little
2 bit over an hour ---

3 THE COURT: --- okay, that's fine ---

4 MS. SARJI: --- but I should be able to be here by
5 then if Mr. Bryan is available first thing in the morning
6 we can go ahead and get everybody done.

7 THE COURT: Or we could do yours at the end of
8 everybody -- it doesn't matter to me. You all just tell
9 me.

10 MS. SARJI: I will be at Mr. Bryan's mercy because
11 I know that he's going to have to come back and that is
12 up to him.

13 THE COURT: Okay. You have the power, Mr. Bryan.

14 MR. BRYAN: 9 o'clock on Wednesday?

15 MS. SARJI: Okay. Thank you, Judge.

16 THE COURT: What time did he say?

17 MR. BRYAN: 9 o'clock ---

18 MR. LIMBAUGH: --- 9 o'clock, Your Honor.

19 THE COURT: 9 o'clock.

20 MR. BRYAN: I guess I can do that.

21 THE COURT: Okay.

22 MR. LIMBAUGH: Thank you, Mr. Bryan. Thank you,
23 Your Honor.

24 THE COURT: Thank you.

25 *****END OF TRANSCRIPT OF RECORD*****

Maurio Rivers v State
Certificate of the Court Reporter
April 1, 2019

C E R T I F I C A T E

I, the undersigned, Joyce C. Rueger, Official
Circuit Court Reporter for the Ninth Judicial Circuit of
the State of South Carolina, do hereby certify that the
foregoing is a true, accurate, and complete Transcript of
Record of the proceedings had and evidence introduced in
the trial of the captioned case, relative to appeal, in
the Court of Common Pleas for Beaufort County, South
Carolina on the 1st day of April, 2019.

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

September 17, 2020

Joyce C. Rueger, CVR-M
Court Reporter

STATE OF SOUTH CAROLINA	)	THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	DOCKET NO. 2016-CP-15-0647
	)	
	)	
MAURIO D. RIVERS	)	
	)	
Applicant	)	
	)	
vs.	)	
	)	
STATE OF SOUTH CAROLINA	)	
	)	
Respondent	)	
	)	
	)	
	)	
	)	TRANSCRIPT OF RECORD

April 3, 2019
Beaufort, South Carolina

VOLUME 2 (of 2)

B E F O R E:

THE HONORABLE WILLIAM H. SEALS, JR., JUDGE

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

LESLIE T. SARJI, ESQ.
Attorney for the Applicant

BENJAMIN LIMBAUGH, ESQ.
Attorney for the Respondent

JOYCE C. RUEGER,
Certified Verbatim Reporter-Master
Circuit Court Reporter

[Certified Transcript Provided for: SCCID]

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PROCEEDINGS

THE COURT: Everybody have a seat. Good morning.

MR. LIMBAUGH: Good morning, Your Honor, may I approach?

THE COURT: Yes, sir.

[Whereupon, Mr. Limbaugh provides documents to the Court]

THE COURT: All right. If you will, call your case.

MR. LIMBAUGH: May it please the Court, Your Honor.

THE COURT: Yes, sir.

MR. LIMBAUGH: This is Benjamin Limbaugh representing the State of South Carolina. The applicant is currently incarcerated with the South Carolina Department of Corrections pursuant to the Colleton County Clerk of Court's orders of commitment.

Applicant was indicted by the August 2011 term of the Colleton County Grand jury for two counts of attempted murder and possession of a weapon during the commission of a violent crime. John D. Bryan, Esquire represented him. Solicitor Steven Knight prosecuted the case.

On December 12th through 13th, 2012 Applicant proceeded to trial before the Honorable Diane S. Goodstein. Applicant was found guilty as indicted of one

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1 count of attempted murder. Applicant was not found
2 guilty of attempted murder and possession of a weapon
3 during the commission of a violent crime. Judge
4 Goodstein sentenced the Applicant to incarceration for 30
5 years.

6 Applicant filed a timely notice of appeal. Carmen
7 V. Ganjehsani, Esquire represented the Applicant and
8 filed an Anders brief. On December 3, 2014 South
9 Carolina Court of Appeals confirmed Applicant's
10 conviction and sentence.

11 Applicant subsequently filed a petition for
12 rehearing on December 4th, 2014. Applicant also filed a
13 petition for writ of certiorari to the South Carolina
14 Supreme Court. On December 17, 2014 the South Carolina
15 Supreme Court issued an order stating that it would
16 construe Applicant's notice of appeal as a petition for
17 writ of certiorari and dismiss the petition without
18 prejudice until the South Carolina Court of Appeals
19 issues its decision on Applicant's petition for a
20 rehearing.

21 The Remittitur was sent down on December 31, 2014.
22 On January 29, 2015 the South Carolina Court of Appeals
23 issued an order recalling the remittitur. On January 30,
24 2015 the South Carolina Court of Appeals granted
25 Applicant's motion to relieve his counsel and thereafter

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1 proceeded pro se. On April 16, 2015 the South Carolina
2 Court of Appeals denied Applicant's petition for
3 rehearing. On April 27, 2015 the South Carolina Supreme
4 Court received Applicant's petition for writ of
5 certiorari. On November 19th, 2015 certiorari was
6 denied. The Remittitur was sent down on December 7,
7 2015.

8 Applicant filed an application for post-conviction
9 relief on June 1, 2016 in which he alleges the following
10 grounds:

11 Ineffective assistance of counsel, failing to object
12 to the jury instructions charging the hand of one is the
13 hand of all.

14 Failing to motion for a directed verdict on the
15 charge of accomplice liability in regard to attempted
16 murder.

17 Failing to object to the inclusion of a criminal
18 offense for which the defendant was not indicted
19 (burglary and getaway driver) as an example to the jury
20 defining accomplice liability or the hand of one is the
21 hand of all.

22 The Applicant is represented by Leslie Sarji who has
23 amended and added a few allegations Your Honor and I'll
24 let her speak on those now.

25 THE COURT: All right. Ms. Sarji?

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1 MS. SARJI: Thank you, Your Honor. As stated
2 during the brief hearing on Monday Mr. Rivers
3 additionally alleges that trial counsel improperly
4 advised him regarding the consequences of his prior
5 convictions if he were to testify as well as failing to
6 advise him that he could invoke his 5th Amendment
7 privilege against self-incrimination with regard to
8 uncharged criminal conduct.

9 I also do want to make clear as I did on Monday,
10 Judge that we believe that Mr. Rivers' original amended
11 application does encompass our allegation of error in
12 terms of trial counsel failing to object to specifically
13 the inclusion of an implied or inferred malice with
14 regard to a specific intent crime.

15 And there was case law subsequent to the trial that
16 very clearly spells out that that is reversible error,
17 Judge as well as the fact that he didn't preserve
18 adequately what his objection to the specific intent
19 charge was.

20 So with those amendments, Judge, and I'm not, I did
21 not recall hearing him say that we also had objected that
22 the cumulative error that was caused as well by his
23 failure to object to the Judge's instruction at the
24 beginning of the trial that the jury's duty is to find
25 the truth. He failed to object to that and we believe

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1 that is an appropriate ground as well.

2 THE COURT: All right. If you want to, call your
3 first witness?

4 MS. SARJI: Thank you, Judge.

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1 MS. SARJI: I'll call Maurio Rivers to the stand.

2 [Whereupon, Mr. Rivers comes forward]

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

5 - - - - -

6 MAURIO RIVERS,

7 Having been first duly sworn,

8 Was examined and testified as follows:

9 DIRECT EXAMINATION

10 BY MS. SARJI:

11 Q. Mr. Rivers if you could, please state your full name
12 for the record?

13 A. Maurio Datrelle [phonetic] Rivers.

14 Q. And where do you currently reside? Where are they
15 housing you ---

16 A. --- Bishopville.

17 Q. I'm sorry, at Bishopville?

18 A. Lee County Correctional, Bishopville.

19 Q. Thank you. And that's a result of this trial that
20 you had in December of 2012, is that correct?

21 A. Yes, ma'am.

22 Q. And at that time Mr. Bryan represented you as your
23 attorney, is that right?

24 A. Yes, ma'am.

25 Q. And had you had prior attorneys before Mr. Bryan?

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1 A. Yes, ma'am.

2 Q. And did you only have them for about three months
3 prior to going to trial, is that right?

4 A. I don't really remember the length of time that I
5 had them but I know that I had prior attorneys because he
6 wasn't really on the case very long.

7 Q. Okay. Did you and Mr. Bryan go through the
8 discovery in your case?

9 A. Together? Not really.

10 Q. Okay. So he never discussed with you what the
11 evidence in the case was?

12 A. Briefly.

13 Q. Okay. Did he look at the video with you and that
14 kind of thing?

15 A. I don't recall watching it with him. I recall
16 watching the video by myself.

17 Q. So you had access to your discovery?

18 A. I watched the video once in the Sheriff's Office I
19 think courtesy of Mr. Bryan I believe or maybe it was
20 courtesy of the State. I really don't know who initiated
21 me to be able to watch it.

22 Q. Did you ---

23 A. --- but I saw it once.

24 Q. I'm sorry. So you saw the video once. So did you
25 and Mr. Bryan before trial ever talk about trial strategy

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1 and that sort of thing?

2 A. I don't recall ever talking about the trial
3 strategy.

4 Q. Do you recall whether you and Mr. Bryan ever talked
5 about whether you would testify in the case?

6 A. Yeah. He told me that it wouldn't be a good idea
7 for me to testify because they would bring up my past, my
8 prior record and that would count against me and he
9 recommended that I shouldn't.

10 Q. Okay. Did he ever tell you that your past record
11 that only part of it would come in or maybe he could keep
12 some of it out?

13 A. No, he didn't say that. He said that they would
14 definitely be talking about my prior record.

15 [Whereupon, Applicant's exhibit number 1 is marked
16 by the court reporter]

17 MS. SARJI: Thank you. May I approach the
18 witness, Judge?

19 THE COURT: Yes, ma'am.

20 Q. [Mr. Sarji] Mr. Rivers, I'm going to hand you what
21 I've just had marked as Applicant's exhibit 1.

22 [Whereupon, the witness is shown exhibit]

23 Q. Did Mr. Bryan ever go through that with you?

24 A. I believe he showed me this. I'm not -- he may have
25 shown me some of it but not the whole thing.

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1 Q. Did Mr. Bryan ever tell you that this was a record
2 of your convictions?

3 A. I believe so.

4 Q. Okay. Did he ever talk to you about the fact that
5 convictions older than ten years would not necessarily
6 come into trial against you?

7 A. No, ma'am.

8 Q. Okay. Did he ever talk to you; did he ever say
9 anything to you with regard to whether or not any prior
10 gun charges or convictions that dealt with weapons would
11 come into evidence?

12 A. He mentioned that they would use the weapons.

13 Q. He didn't tell you that he could challenge those
14 convictions?

15 A. He didn't say that, no.

16 Q. He didn't tell you that those, that the only
17 conviction that you had for a gun charge was over ten
18 years old and would not likely have come into evidence?

19 A. No. Had he said that I would have testified.

20 Q. So you and Mr. Bryan never talked about the fact
21 that the Judge even on any convictions that you had that
22 were less than ten years old that the Judge would still
23 have to consider whether to let those in?

24 A. Can you ask ---

25 Q. --- yes, certainly ---

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1 A. --- that again?

2 Q. Did Mr. Bryan ever talk to you about the fact that
3 there is a legal procedure that he could ask the Judge to
4 do to decide whether to let in convictions that were less
5 than ten years old?

6 A. No, ma'am.

7 Q. So was it your understanding that if you testified
8 everything you had ever done in your life was going to be
9 held against you?

10 A. That's what he told me. He told me that if I get up
11 there and testify they're going to talk about a gun
12 charge that I had when I was in my young teens, prior
13 drug charges; all of that would count against me and
14 probably weigh in the decision.

15 Q. Okay. And before we get into what you would have
16 said if you had testified if you had known that all those
17 prior convictions would not have come in would you have
18 decided to testify?

19 A. Yes, ma'am.

20 Q. Even if you thought that maybe there was a chance
21 that those prior convictions would not come in would you
22 have decided to testify?

23 A. Can you?

24 Q. If there was a chance that those convictions may not
25 have come in against you verses an absolute ---

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1 A. --- I would have testified have I thought that they
2 wasn't going to be able to use my record.

3 Q. Would you have at least asked him, asked Mr. Bryan
4 to get the Judge to engage in that balancing test to see
5 what you would have been looking at ---

6 A. --- if I would have known that, yes.

7 Q. Mr. Rivers, were there other reasons that Mr. Bryan
8 told you that you may not want to testify or that you
9 should not testify at the trial of this case?

10 A. Well, he mentioned something about like an argument.
11 I'm not -- I can't really -- I just remember him saying
12 something about he wanted the last argument or something
13 like that ---

14 Q. --- okay ---

15 A. --- and it had something to do with my testimony.

16 Q. Do you remember him telling you about -- did you and
17 he talk about that there might be an issue of a stolen
18 car that would come up if you testified?

19 A. Yeah, it was -- that was a concern.

20 Q. Okay. Whose concern was that?

21 A. I was slightly concerned but I had told him I knew
22 about a car being stolen but I didn't steal it.

23 Q. Did Mr. Bryan tell you that if you testified at the
24 trial that the jury would hear things about you knowing
25 that the car was stolen?

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1 A. Yeah, he told me if I testified they was going to
2 talk about the car and they was going to talk about my
3 prior record.

4 Q. Did he ever advise you that you could have invoked
5 your 5th Amendment right against self-incrimination with
6 regard to whether you knew the car was stolen?

7 A. I don't recall him ever telling me anything about
8 5th Amendment anything.

9 Q. So he never said that you can get up on the stand
10 and if they ask you about the car you can say I plead the
11 5th?

12 A. He didn't tell me that.

13 Q. Okay. Had you known that you would have been able
14 to invoke a 5th Amendment right against self-
15 incrimination with regard to uncharged criminal conduct
16 would that have influenced your decision to testify?

17 A. I didn't know anything about the law at that time.
18 I didn't know anything about the 5th Amendment. I had no
19 access to the law library and he didn't tell me anything
20 about that.

21 Q. Okay. So my question is is that if he had told you
22 about it, if he had said Mr. Rivers I'm not so worried
23 about the stolen car because you can say I plead the 5th.
24 If he had told you that would that have influenced your
25 decision about whether to testify?

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1 A. Yes, ma'am. I would have testified.

2 Q. Okay. And so if you had known that your prior
3 convictions would likely not have come in because they're
4 so remote in time and you had known that you would have
5 been protected against self-incrimination with regard to
6 the car you said that you would have testified.

7 A. Can you repeat that?

8 Q. I'm asking you too many compound questions. If you
9 had known that your prior convictions probably wouldn't
10 have come in against you you would have testified,
11 correct?

12 A. Yeah, I would have testified had I known that there
13 was a chance that they wouldn't use my record against me
14 I would have spoken.

15 Q. And if you had known that you could have said I
16 plead the 5th with regard to that stolen car you would
17 also have testified.

18 A. I definitely would have testified.

19 Q. Okay. Now, what I want to ask you is if you had
20 testified what would you have told the jury?

21 A. Well, first I would have told them I didn't, I never
22 had any kind of weapon and I didn't know that there was a
23 weapon present in the vehicle.

24 That I ran because I was afraid that I was going to
25 get shot. I heard gunshots. I never saw anyone

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1 shooting. When I heard the gunshots I actually thought
2 that it was officers who were shooting at me and I had
3 just been hit from behind by the officer's patrol car
4 going about 90 to 100 miles an hour.

5 I braced, I braced the steering wheel and closed my
6 eyes; I thought I was dead. And the car was spinning and
7 it flipped over. And basically I ran because I was
8 afraid. I thought I was going to get shot. So that's
9 the only reason I ran.

10 I never ran because I planned to do anything to harm
11 these officers or I never had no intention of harming the
12 officers. My only intention was to try to avoid being
13 arrested.

14 And I realize that that was pretty dumb to flee from
15 the officers. At the time I made a bad choice. But I
16 never intended to harm anyone. My only intention was to
17 get away. Period.

18 Q. And so when you say you never intended to harm
19 anyone in this case you mean in this case, correct?

20 A. I mean those officers, the officers that I'm charged
21 with attempting to harm I never attempted to harm any of
22 them. And I never intended to harm any of them. The
23 only thing I ever did was try to get away from them.

24 Q. Would you have told them anything about your
25 relationship to Mr. Shelly Bronson or Bronson Shelly; I'm

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1 sorry?

2 A. I didn't even know his name. I would have told them
3 that, yeah.

4 Q. Would you ---

5 A. --- I didn't even know -- I learned, I learned his
6 name from being on my charge papers in county jail. I
7 did not know him.

8 Q. Would you have told the jury anything with regard to
9 whether you and Mr. Bronson had -- and I'm sorry; I keep
10 saying Mr. Bronson, it's actually Mr. Shelly, whether you
11 and Mr. Shelly had worked out beforehand or at the time
12 that all of this was occurring that he should be shooting
13 at those officers?

14 A. Can you please repeat the question?

15 Q. Would you have had anything to tell the jury about
16 whether you and Mr. Shelly came to some kind of an
17 agreement between the two of you that he needed to shoot
18 those officers so you could get away?

19 A. I would have told the jury that I didn't even know
20 that there was a gun present in the vehicle. I didn't
21 know anything about the gun.

22 The first time I saw a weapon period was at my trial
23 on December 12 and December 13, 2012. That was the first
24 time I ever saw any of those weapons outside the
25 photographs that they showed inside my discovery.

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1 Q. You actually thought that you were being shot at at
2 the time that you were driving?

3 A. Yes, ma'am. It was about a two minute window this
4 whole thing, not that the actual chase was longer than
5 that but if you review the record shots are fired and
6 then about two minutes later I'm in handcuffs.

7 And there was a lot of decisions to make in that two
8 minutes and I admittedly made, I made the wrong decision
9 in running but like I said I heard shots. I thought I
10 was being shot at. I thought they was trying to kill me.

11 So my only, I was thinking stay alive; run and stay
12 alive. I never planned to harm any of those officers and
13 I never discussed with the passenger about shooting or
14 possessing a weapon.

15 I didn't even know that anyone had it. I didn't
16 know that anyone had a weapon. And I already testified
17 to this already in a federal trial in 2016 I already said
18 this.

19 Q. Okay. In the federal trial was that a civil case
20 that you had against the officers?

21 A. It was a civil case against the officers, yes ma'am.

22 Q. And in that case did you -- they ended up paying you
23 money.

24 A. Yes, ma'am. They gave me 10,000 dollars to
25 basically let it go away.

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1 Q. Okay. Did you during the trial do you remember when
2 the Judge was telling the jury about what the law was
3 that they had to consider?

4 A. Can you repeat the question?

5 Q. You know when the jury, after everybody had finished
6 up the evidence and all the questions were done by the
7 lawyers do you remember that?

8 A. I think so.

9 Q. Okay. So before the jury got to go back in their
10 room and think about the case the Judge told them about
11 what the law was. Do you remember that?

12 A. Yeah. She gave the jury instructions.

13 Q. Okay. So you know what the jury instructions were.

14 A. I remember some of them.

15 Q. Okay. Do you have a problem with any of the jury
16 instructions or did you at the time that Mr. Bryan
17 brought up or that maybe he didn't fight over?

18 A. Yeah. There was an issue about probable and natural
19 consequences. She kept on saying that it had to be a
20 probable or natural consequence of -- the Judge said that
21 it had to be a probable or natural consequence in regard
22 to -- the shooting had to be a probable or natural
23 consequence of my actions.

24 And I felt like the jury, I was looking at them and
25 they seemed confused. So I asked Mr. Bryan I said could

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1 you please ask the Judge to explain natural and probable
2 consequences and he wouldn't for a period of time.
3 Basically, I kept kind of nudging him, nudging him, and
4 nudging him and then he still was like he looked at me
5 and he said she doesn't have to answer that.

6 And when he said that I was about to stand up and
7 ask the Judge myself and at that point then he asked the
8 Judge can you please explain probable and natural
9 consequences to the jury and she said that she didn't
10 know how to was her response. She said that she felt it
11 was pretty self-explanatory.

12 And the jury basically inferred from another -- she
13 gave an example of a burglary and a getaway driver as the
14 example of the hand of one is the hand of all in her jury
15 instruction.

16 Q. Did Mr. Bryan object to that?

17 A. No, he didn't. And I think that that was pretty
18 much what prejudiced me the most because it made the jury
19 think that they only thing I had to do to be guilty of
20 attempting to harm the officers was trying to get away
21 driving. And I think that was the most prejudicial thing
22 in the instructions was that.

23 Q. Did Mr. Bryan do you recall whether or not he
24 objected at the time. And I know the transcript speaks
25 for itself but do you recall whether Mr. Bryan objected

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1 about specific intent or inferred malice?

2 A. He mentioned specific intent but he asked, if I'm
3 not mistaken Mr. Bryan was the one that requested that
4 the general intent charge be charged to the jury. But he
5 mentioned that it was a specific intent crime. I
6 remember him saying that. And the Judge never charged
7 specific intent. The Judge charged general intent.

8 They never said that I had to specifically intend to
9 harm the officers. Basically they said that my reckless
10 driving was enough to infer that I intended to harm the
11 driver -- to harm the officers.

12 Q. Do you recall whether Mr. Bryan objected to your
13 recollection of the jury charges?

14 A. Can you repeat that?

15 Q. Did Mr. Bryan object to the Judge's charge regarding
16 inferred malice to your recollection?

17 A. I don't remember him objecting to anything dealing
18 with the malice. And he allowed them to infer that I had
19 malice based off of my driving. He said that I drove --
20 I drive aggressive.

21 You know I'm not saying I'm a saint. I realize I
22 shouldn't have tried to get away from the officers. I
23 drive aggressive and basically they said my aggressive
24 driving was enough to prove that I intended to harm the
25 officers. My driving didn't have anything to do with the

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1 shooting. Like I said I didn't even know that there was
2 a gun present.

3 Q. Did your lawyer stand up during the trial to object
4 to the Judge telling the jury that they had to find the
5 truth? Do you remember that?

6 A. I remember the Judge saying that they had to, that
7 they were the finders of the truth but I don't remember
8 him objecting to that, no.

9 Q. Okay. And you said that you had a problem with the
10 hand of one is the hand of all charge. Are you aware of
11 whether your lawyer objected in any way to the language
12 that the Judge included?

13 A. Mr. Bryan was the one that requested the accomplice
14 liability charge. I don't remember the State ever asking
15 for a hand of one hand of all charge. It was Mr. Bryan
16 that had asked the Judge to charge the jury with the hand
17 of one hand of all charge.

18 And I think that that was very prejudicial to me
19 because there was never no evidence that I conspired or
20 had any kind of plan to harm the officers. I never
21 possessed a weapon or pointed or presented a weapon at
22 any of the officers at any time.

23 I didn't use the vehicle to harm the officers in no
24 way. The only way I used the vehicle for was to try to
25 put as much space in between me and them as possible.

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1 And I don't feel as though, I don't feel as though the
2 hand of one hand of all charge was ever even warranted.

3 Q. Whether it was warranted or not, you didn't hear Mr.
4 Bryan in front of the Judge saying that he objected to
5 the language or anything like that?

6 A. No, ma'am. He never objected.

7 Q. Okay. I want to make sure that we're talking about
8 everything that you think that your attorney did wrong in
9 your trial whether it was something he did or something
10 he didn't do, okay.

11 So, I think that I've covered everything but if
12 there is anything that I have left out can you tell us
13 what it is now?

14 A. I think that I was never put on notice that I was
15 going to have to ever, that I was going to have to defend
16 against the hand of one hand of all. The whole time I
17 was made to believe that they were going to think that I
18 shot at these officers and that I got to defend against
19 shooting at these officers.

20 And my whole reading and studying and everything
21 that I was learning was just based on trying to disprove
22 the fact that I didn't shoot at these officers.

23 I never knew that they were going to say that you
24 know you worked in, you worked together to shoot at the
25 officer. I thought that according to them they was

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1 saying that I was the shooter. That's what my indictment
2 says. I never had a co-defendant in my indictment. I
3 thought that they were going to say just like my
4 indictment I shot at these officers, which I didn't.

5 Another thing was the witness. I only had one
6 witness at my preliminary hearing. His name was Allen
7 Inabinet. And basically he was already convicted of
8 falsifying statements to federal agents prior to me being
9 even in the courtroom.

10 And I told him, I told him, I made him aware of that
11 and he just kind of brushed it off. But it was his
12 testimony that got me indicted so I felt like that was an
13 issue.

14 And it was never brought before the Court or never
15 put before the Court or anything. And based off of his
16 testimony I was indicted and I felt like that was an
17 issue.

18 Q. So your attorney didn't challenge the sufficiency of
19 the indictment because it was based on the testimony of a
20 witness who was, who had been previously found to be
21 untruthful?

22 A. Yeah. He was already convicted. He never
23 challenged, he never challenged that or even said
24 anything about it at all you know. And I told him and he
25 basically just kind of shrugged it off like it wasn't

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1 nothing. Another issue was like I said the abuse of
2 discretion. I feel like he should have motioned or told
3 the Judge once they found me not guilty of possessing the
4 weapon he should have asked the Judge for a directed
5 verdict or to set aside the verdict in regards to the
6 indictment of me shooting at the officers.

7 There was never a question of who was the shooter.
8 He in the transcript he says that he knew that there was
9 one shooter.

10 Q. Let me ask you this, Mr. Rivers. During your trial
11 other than you -- was there ever any evidence presented
12 at trial that you recall that you had expressed malicious
13 intent toward the officers?

14 A. Can you repeat that?

15 Q. Was there ever any evidence offered at trial that
16 you had expressed malicious intent, that there was
17 express malice present ---

18 A. --- no ---

19 Q. --- for the shooting?

20 A. There was never an issue. The only thing that they
21 said I did was run. Period.

22 Q. And so ---

23 A. --- I tried to get away. I was never assaultive or
24 anything like that. There was one thing where they said
25 that I hit the dog. But the dog was biting me in the

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1 groin which is what I sued for. And that's what we
2 basically what we settled for. The dog was biting me
3 even after the handcuffs they still let the dog bite me
4 for a period of time; longer than was justifiable.

5 And I was never -- there was never no malice. As
6 far as what I did the only thing I ever did was try to
7 get away from the officers to try to put as much space
8 inbetween me and them as possible. Like I said I thought
9 they were shooting at me.

10 MS. SARJI: I don't think I have anything further,
11 Judge. Thank you.

12 THE COURT: All right.

13 Q. [Mr. Sarji] I'm sorry; Mr. Rivers was there anything
14 else that you wanted to tell the Judge? I kind of
15 stopped you in the middle of talking about Mr. Inabinet
16 and the indictment and expressed malice.

17 Was there anything else that we haven't covered that
18 you want to tell the Judge that your lawyer did wrong?

19 [Whereupon, the witness reviews documents]

20 A. I think that's about it.

21 Q. Okay. Thank you.

22 MS. SARJI: No further questions, Judge.

23 THE COURT: All right.

24 MR. LIMBAUGH: May it please the court, Your Honor?

25 THE COURT: Yes, sir.

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1 CROSS-EXAMINATION

2 BY MR. LIMBAUGH:

3 Q. Good morning, Mr. Rivers.

4 A. Good morning.

5 Q. I want to go over a few things. So you say that you

6 still would have testified knowing that it was still

7 possible that your convictions could have come in?

8 A. I would have testified if I would have thought that

9 there was any possibility that it wouldn't have come in.

10 Q. Okay. So even if they possibly could have come in

11 against you, you still would have testified?

12 A. If he would have told me that he could have tried to

13 suppress it or anything that he could have done to cause

14 the prior gun charge, that's what he said they were going

15 to use against me was the gun charge and a prior drug

16 charge.

17 Q. Okay. There were multiple guns found at the scene,

18 is that correct?

19 A. According to the record there was three guns found.

20 Q. Okay. And testing found that bullets were fired

21 from two of them at least, is that correct?

22 A. I believe so.

23 Q. Okay. Did Mr. Bryan review the elements of the

24 charges you were facing with you before your trial?

25 A. Yeah. I'm pretty sure he mentioned that I had to

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1 have malice and I had to have an intent to kill.

2 Q. Okay.

3 A. I didn't have any malice or an intent and I told him
4 that. And I felt like that was the main reason why I
5 really wasn't worried about them proving that I shot at
6 the officers was because I never possessed a weapon and I
7 never intended, I never showed any intention to harm
8 anyone. My only intent was like I said to get away.

9 Q. Do you remember Mr. Bryan basically making that
10 exact argument for you in his directed verdict motion at
11 the end of your trial?

12 A. I remember him saying that the State's case is
13 primarily speculation and that the only evidence that
14 they ever presented against me was flight or something
15 similar to that, yeah.

16 Q. Okay. So he did ultimately make the argument that
17 you're making today for you, is that correct?

18 A. He made a partial argument of that, yeah.

19 Q. Okay.

20 A. He never said anything about the malice, no. But he
21 did say something about the specific intent and that's
22 what I mean when I say partial.

23 Q. Okay.

24 MR. LIMBAUGH: Moment's indulgence, Your Honor.

25 THE COURT: Take your time.

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1 [Whereupon, Mr. Limbaugh reviews documents]

2 Q. [Mr. Limbaugh] You believe the Judge's example of
3 accomplice liability is prejudicial to you?

4 A. It was very prejudicial. I even, I saw the jury, I
5 saw the jury change, they're holding me to change when
6 she -- they came back two times when they went for, what
7 do you call it when they take a break and they go, and
8 they went in and they came back.

9 And they asked again can you explain hand of one
10 hand of all and she did it again. She used the same
11 example of a burglary and a getaway driver.

12 And the jury basically you could tell from their
13 faces that they was like okay, well if the burglar is
14 guilty or the guy in the car waiting is guilty as the guy
15 that goes in then he's guilty for trying to get away as
16 the shooter.

17 Q. The jury heard your whole case though at this point,
18 right?

19 A. Excuse me?

20 Q. The jury they had heard your case to this point,
21 correct? They would have known that your specific case
22 was not a burglary and a getaway driver, right?

23 A. They knew that it was an attempted murder case if
24 that's what you're asking. But the example like I said
25 that she was using in the attempted murder case was an

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1 example of a burglary and a getaway driver. She didn't
2 use an example of an attempted murder. So, I don't
3 anything about the law. I know if I was a juror I would
4 have thought that too. I would have thought you know if
5 the driver is just as guilty as the burglar then surely
6 the driver in this vehicle is just as guilty as the murder
7 attempted. I would have thought it too. And he didn't
8 object to that at all.

9 MR. LIMBAUGH: That's all I have of this witness,
10 Your Honor.

11 THE COURT: Any redirect?

12 MS. SARJI: Yes, Your Honor. And first I need to
13 move Applicant's exhibit 1 into evidence. You may have
14 it in your file already but just out of an abundance of
15 caution.

16 THE COURT: Any objections from the State?

17 MR. LIMBAUGH: It's just his rap sheet probably.

18 MS. SARJI: It's just his rap sheet, yes.

19 MR. LIMBAUGH: No objection.

20 THE COURT: It's in evidence.

21 MS. SARJI: I'm sorry Judge. I tend to plow ahead
22 a little too quickly when I have as much caffeine ---

23 THE COURT: --- I do too.

24 [Whereupon, Applicant's exhibit number 1 is entered
25 into evidence by the Court]

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REDIRECT EXAMINATION

BY MS. SARJI:

Q. So Mr. Rivers, when the State just asked you about that you would have testified even if there was a possibility that the convictions would have come in you didn't know that your lawyer before you testified could have asked the Judge to decide which convictions could come in against you.

A. No, ma'am.

Q. Okay. And with regard to the gun charge that your lawyer told you was going to be considered against you is that the 1995 conviction of -- I'm sorry, maybe I've got that date wrong, the 1996 conviction for a weapon? Is that how long ago it was?

A. It would have to be because that's the only time I ever had a gun conviction.

Q. I want to make sure I have this right. So that's the April 17th, 19 -- April 15th, 1996 court date with the custody that started April 17th, 1996 does that sound right?

A. That sounds about right. I think I was ---

Q. --- and you were -- had you been out of whatever confinement whether it was a YOA that you did, it looks like you went up and did a YOA on that. Do you recall that?

1 A. Yeah. I had a Youthful Offender Act sentence.

2 Q. And were you out of that YOA? Had you been done
3 with that YOA being confined more than ten years before
4 you went to trial in 2012?

5 A. Yes, ma'am.

6 Q. Okay. So given -- and did you lawyer talk to you
7 about all of those intricacies with regard to that
8 conviction?

9 A. No, ma'am. He just said that they would use it
10 against me.

11 Q. The reason that you have a problem with that
12 burglary example being used is that because the Judge was
13 talking about a completed offense in that? Is that part
14 of the reason?

15 A. The offense that she was talking about definitely
16 was complete but I don't know if that's the, I don't know
17 if I can say that that's the only reason.

18 I felt just listening to it if I was a juror I would
19 have convicted somebody off that, you know. And I know
20 better now. I know that there is no way that she should
21 have used that as an example.

22 It was confusing to the jury. It was like it was
23 calculated to mislead them. He should have objected to
24 that and he didn't.

25 Q. With regard to whether or not your lawyer said all

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1 of the things in his argument to the jury that you would
2 have testified to, do you remember when Mr. Limbaugh just
3 asked you if your lawyer actually got all of that out to
4 the jury because that's what he argued? Do you remember
5 just a minute ago?

6 A. Can you repeat that one more time?

7 Q. Mr. Limbaugh was asking you he said so Mr. Bryan
8 actually told the jury all the stuff that you would have
9 said on the stand in his argument, do you remember that?

10 A. Yeah. Mr. Bryan didn't tell the jury all the stuff
11 that I would have said if that's what you mean. He
12 didn't tell them half, not even a third because he didn't
13 really know what was going on. The only person that
14 knows what was going on if anything was me.

15 Like I said I was afraid that I was going to get
16 shot by those officers. I never even knew that the
17 passenger was shooting. If you read the transcript he
18 was shooting through the sunroof and I was going 100
19 miles per hour.

20 How was I aware of what he was doing? It's a two
21 lane highway. If you drive fast you know that you've got
22 to have your eyes on the road going that fast.

23 Q. Okay. So despite Mr. Bryan arguing that there was
24 no evidence before the jury about what you were thinking
25 because you didn't tell them, is that right?

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1 A. No, I didn't.

2 Q. Okay.

3 MS. SARJI: I don't have anything further, Judge.

4 THE COURT: All right. Anything else?

5 MR. LIMBAUGH: Nothing further from the State, Your
6 Honor.

7 THE COURT: You may step down. Thank you.

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

10 THE COURT: Call your next witness.

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1 MS. SARJI: Thank you, Judge. I'll call Mr. Bryan
2 to the stand.

3 [Whereupon, Mr. Bryan comes forward]

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

6 - - - - -

7 JOHN BRYAN,

8 Having been first duly sworn,

9 Was examined and testified as follows:

10 DIRECT EXAMINATION

11 BY MS. SARJI:

12 Q. Mr. Bryan, could you please state your full name for
13 the record?

14 A. Its John Douglas Bryan.

15 Q. And do you currently practice law here in Beaufort
16 County?

17 A. In Colleton County.

18 Q. Okay. And at the time of this trial back in 2012
19 were you practicing in Colleton County?

20 A. I was.

21 Q. And you were appointed to represent Mr. Rivers, is
22 that right?

23 A. Yes.

24 Q. And do you recall that it was a pretty short period
25 of time that you had him as a client before you got

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1 called for trial, is that safe to say?

2 A. It was a few months.

3 Q. So -- but most of the time, is it your experience
4 that most of the time when we get appointed on things
5 like murders or attempted murders we generally have more
6 than three months or four months before we're called to
7 trial, is that your experience? Or do they pull the rug
8 out from under you in Colleton County regularly?

9 A. Sometimes they try and ambush me but yeah. Three
10 months; I had time to go through everything.

11 Q. Okay. Do you recall whether or not you ever sat
12 down with Mr. Rivers and went through in detail the
13 discovery in this case?

14 A. I went to see him several times and we discussed
15 things. And there was a lot of discovery. There were a
16 lot of papers and then there were videos. I'm not sure I
17 got to show him all the videos. Some of the videos were
18 recorded on the police cars.

19 One of them had, I was able to download an app to
20 play it and one of it I had to watch myself at the
21 Solicitor's office because I couldn't get it to play on
22 my computer.

23 But we did discuss the evidence. And it's a fairly
24 straight forward case. There is video of the car chase,
25 of the co-defendant popping out of the sunroof and

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1 shooting at the police officers and then the ramming the
2 car and the car overturns and they run off. It's -- and
3 then there was the, you know, then there is video of the
4 police car showing up and there is kind of a manhunt.
5 But it's an overgrown area so you can't see anyone.
6 Q. Did you ever get a copy of the prelim transcript in
7 the case?
8 A. Of the prelim transcript?
9 Q. Yes, sir?
10 A. I don't believe so.
11 Q. Why did you decide not to get that?
12 A. We never get the copy of the prelim transcript.
13 Q. Do you ever request a copy of the prelim transcript
14 in your practice?
15 A. Well, no. You got to the Magistrate and they tape
16 record them. There is no court reporter at the prelim.
17 Q. Yes, sir. Did you ever get a copy of the recording
18 of the prelim in this case?
19 A. No.
20 Q. Why did you decide that it wasn't important to get
21 the sworn testimony of the officer who investigated
22 before going to trial on an attempted murder?
23 A. Because usually they just read the report.
24 Q. But you don't know that because you didn't get the
25 recording, is that right?

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1 A. I don't remember now.

2 Q. You don't have the recording of the prelim in your
3 file do you?

4 A. No.

5 Q. And you don't, you weren't present yourself at the
6 prelim, is that right? You weren't representing Mr.
7 Rivers at the time.

8 A. I don't remember.

9 Q. Okay. So when Mr. Rivers talked to you about Mr.
10 Inabinet who was an officer at the time and that he may
11 have given tainted testimony before the Grand Jury or at
12 the prelim that he felt would have undermined the
13 sufficiency of his indictment did you ever follow up on
14 any of that?

15 A. No.

16 Q. Did you not think that challenging whether the
17 indictment was a valid indictment was important in his
18 case?

19 A. It could have given me more time.

20 Q. Would more time have allowed you to be better
21 prepared in the case?

22 A. I don't think so.

23 Q. Okay. So do you not think that the sufficiency of
24 an indictment is one of the sort of threshold issues that
25 we as trial lawyers face in criminal court?

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1 A. Well, if we quashed the indictment they would have
2 gone back to the Grand Jury and gotten another indictment
3 with another officer. He might have discussed that with
4 Inabinet with me but I don't remember exactly.

5 Q. In any event you didn't follow up by getting a copy
6 of the preliminary hearing recording?

7 A. No.

8 Q. You didn't follow up by asking the Judge to require
9 that the Grand Jury minutes be turned over to you?

10 A. There are no Grand Jury minutes on a county Grand
11 Jury. The proceedings are secret.

12 Q. You didn't ask for anything with regard to the Grand
13 Jury?

14 A. Well, there wouldn't be any. It would be illegal
15 for the Grand Jury to discuss anything. The proceedings
16 of the state Grand Jury they have a transcript. The
17 county Grand Jury they are secret; there is no
18 transcript.

19 Q. So you don't know who even testified at the Grand
20 Jury. You don't know whether it was Inabinet or more
21 people than that.

22 A. Right.

23 Q. Did you ever talk about that with the Solicitor?

24 A. No.

25 Q. You did nothing to follow up on Mr. Rivers' claims

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1 that this indictment was issued was a flawed indictment;
2 issued based upon the perjured testimony potentially of
3 an officer who had been convicted of perjury in the past.

4 A. I don't remember that the officer had been convicted
5 of perjury at the time of the indictment. It's possible
6 but seems like if he had told me that I would have looked
7 into it.

8 Q. Do you recall specifically whether you all talked
9 about officer or Mr. Inabinet's creditability with regard
10 to his testimony before the Grand Jury prior to the trial
11 of this case?

12 A. We might have.

13 Q. Okay. You don't, you don't even remember talking to
14 Mr. Rivers about it?

15 A. We talked a good bit but he did most of the talking.
16 When I -- he would interrupt me and I'd and -- yeah, we
17 talked a bit but it was mostly him.

18 Q. Okay. And so in what he was relaying to you what I
19 am asking you is whether you recall him telling you that
20 he believed that the Grand Jury process may have been
21 tainted by virtue of perjured testimony by Officer
22 Inabinet. Do you recall that specifically?

23 A. I don't -- I don't recall him saying that.

24 Q. Okay. Do you keep notes of your conversations with
25 your clients?

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1 A. Yes. My memory is not too good so I try to write
2 everything down.

3 Q. Did you look through your notes in order to prepare
4 for your testimony here today?

5 A. I did.

6 Q. You did not or you did?

7 A. I did over the weekend.

8 Q. Did your notes reflect anything about Mr. Rivers
9 talking to you about his problems with the indictment?

10 A. Hang on.

11 [Whereupon, the witness retrieves documents from his
12 file]

13 Q. You just read those notes right, before you came in
14 today?

15 A. Over the weekend.

16 Q. Over the weekend?

17 A. Today is Wednesday.

18 Q. So would you remember whether or not or you just
19 want to take a look at your notes right now?

20 [Whereupon, the witness reviews documents]

21 A. There is nothing from the 30th of October interview.
22 Let's see.

23 Q. How about this? We'll come back to that if we need
24 to. Can I ask you this Mr. Bryan? Did you ever talk
25 about what the indictment was saying to Mr. Rivers that

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1 he did? Did you go over the indictment with him?

2 A. I don't remember. I know we went over what he was
3 charged with. And generally the way an indictment works
4 in South Carolina it's just a notice document. It tells
5 you what you're charged with and if it gives the Judge
6 enough information to figure out what sentence to...

7 Q. Yes, sir I understand what an indictment is.

8 A. Yeah.

9 Q. I'm asking you if you talked with Mr. Rivers about
10 his indictment. And did you go over with him what the
11 indictment said? Did you say here's your indictment;
12 let's read it. It says that on this date you did this.

13 A. I don't remember it.

14 Q. Okay. Is that something that you routinely do with
15 your clients; go over indictments and warrants and that
16 sort of thing?

17 A. We went over the warrants, of course.

18 Q. Okay. So, you don't know whether you ever talked to
19 him about his indictment whether to tell him what he was
20 facing in terms of the charges at trial, is that what
21 you're saying?

22 A. Yeah. I told him what charges he was facing at
23 trial.

24 Q. Okay. But you guys never went over the indictment
25 to say they are saying that on or about this date you did

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1 X, Y, and Z.

2 A. Yeah. I would have told him that. I mean that
3 would have been on a warrant and that would have been on
4 the indictment.

5 Q. Are you aware of whether or not the indictment
6 indicated that there was going to be information
7 introduced at his trial pertaining to a co-defendant in
8 theory by the State that would be advanced under hand of
9 one is the hand of all? Did you talk to Mr. Rivers about
10 that?

11 A. I would -- yeah.

12 Q. Okay. So before trial you're saying that you told
13 him what his indictment said but you told him that the
14 State could come behind that and introduce accomplice
15 liability information. Did you tell him that?

16 A. Yeah. The whole State's case was that they were
17 acting in concert. I mean that was from the very
18 beginning.

19 Q. Okay. And I may not be stating myself clearly
20 enough because you were here for Mr. Rivers' testimony
21 just a moment ago, is that right?

22 A. Yes. Yes.

23 Q. And you heard him say that he never knew before he
24 was coming into trial that there would be a theory
25 advanced about hand of one is hand of all because there

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1 was no co-defendant listed in his indictment. Did you
2 hear him testify to that just a moment ago?

3 A. Well, I guess he -- I don't remember exactly what he
4 said when he -- yeah, but they -- they were charged -- we
5 discussed separating the trials. We got them severed.

6 Bronson Shelly was tried earlier and then Maurio
7 Rivers was tried. I mean the whole -- there would be no
8 way to discuss this case with him without that theory
9 coming up.

10 Q. Okay. And I understand what you're saying is that
11 you knew that the State intended to introduce evidence
12 about hand of one is hand of all or accomplice liability
13 we can agree on that right? You knew?

14 A. Yeah. Yeah.

15 Q. Did you tell Mr. Rivers that is what I'm asking you?

16 A. Yeah.

17 Q. Okay. Did you also talk to him about testifying in
18 this case?

19 A. We did but he said he didn't remember what happened.
20 He said that he was driving and then he was getting beat
21 up in the brush and the dog was biting him.

22 And then he woke up in the police car and then he
23 woke up again in the hospital and then he woke up again
24 in the jail. But he didn't actually remember the chase
25 or the gunshots or any of it.

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1 Q. Okay. Regardless of what he told you that he
2 remembered or did not remember ---

3 A. --- yeah ---

4 Q. --- did you talk to him about testifying and whether
5 or not his prior convictions would be admissible at trial
6 against him?

7 A. Oh yeah, I always discuss that with my clients.

8 Q. And did you tell him that his prior record was going
9 to come in?

10 A. Well, yeah but only if it's fresh. I mean if, if
11 over ten years have passed since you've completed your
12 sentence then that's normally not admissible.

13 Q. Okay. I understand what the law is, sir. I'm
14 asking you if you discussed that with Mr. Rivers.

15 A. Yes.

16 Q. So you explained to him in detail which of these
17 convictions would come in?

18 A. I don't remember but it seems like I would have
19 discussed that.

20 Q. Did you go through with him line by line though
21 convictions and the charges on his NCIC; on the rap
22 sheet?

23 A. I don't remember. Normally, my procedure is to do
24 that. But when he told me he didn't remember anything it
25 didn't seem that his testimony would add too much to the

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1 defense.

2 Q. And so whether or not you believed that it is always
3 the defendant's right to decide whether or not to
4 testify. Would you agree with me there?

5 A. That's correct.

6 Q. And if a defendant is being given flawed advice
7 about what might happen if he testified would you agree
8 with me that that might actually impair his judgment in
9 terms of whether or not to testify. Would you agree with
10 me there?

11 A. Possibly, yeah, yeah.

12 Q. And so if you decided whether or not you thought
13 that his testimony would be important or not would you
14 agree with me that a standard in the profession would be
15 to give your client correct advice about their prior
16 record and which convictions would be admissible? Would
17 you agree with me there?

18 A. Yes.

19 Q. And what you're saying is that you dismissed that
20 issue because you didn't think he had anything to add to
21 the case, is that right?

22 A. What I'm saying is I can't remember what I told him
23 six years ago. But, and normally I do it, but it is
24 possible that I didn't do it in that detail.

25 Q. Do you recall whether you told him that his past gun

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1 convictions would be admissible against him?

2 A. I don't remember.

3 Q. Do you recall whether you told him that if he
4 testified everything about that stolen car was coming in
5 in front of the jury?

6 A. I was concerned that the State would try to drag
7 that in to provide a motive for him to flee in the
8 vehicle.

9 Q. Well sir, I mean that's a two -- that's sort of --
10 you're opening the door. You thought that the State
11 bringing that evidence in would provide a motion for him
12 to flee. Would that not be something that you might want
13 the jury to hear?

14 A. Well, they were charged with acting in concert. And
15 the other defendant also had warrants on him for a
16 kidnapping out of Nevada.

17 Q. Okay. I want to go back to my original question.

18 A. Uh Huh.

19 Q. Did you ever tell him that if he testified all that
20 stuff about the stolen car was going to come into
21 evidence?

22 A. I don't remember telling him that.

23 Q. Did you ever tell him that you were concerned that
24 if he testified all the stuff about that stolen car was
25 going to come into evidence?

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1 A. There wouldn't have been a conviction so I don't see
2 how that could be used for impeachment evidence. So I
3 don't, I don't think I would have told him that the car
4 would, that stealing the car would come in if he
5 testified because he hadn't been convicted of it.

6 Q. Do you remember ---

7 A. --- but I don't remember specifically what I told
8 him back then.

9 Q. Do you remember talking to me outside yesterday,
10 outside of the courtroom? Do you remember that?

11 A. We spoke Monday.

12 Q. Or sorry; Monday. Do you remember that
13 conversation?

14 A. Yeah.

15 Q. Do you remember telling me that you told him that
16 the car stuff was going to come in in front of the jury
17 if he testified?

18 A. I didn't tell you that. I said I was worried that
19 the car would come in, that the State would try to find a
20 way to get it in.

21 Q. Do you recall advising Mr. Rivers that he could
22 invoke his right against self-incrimination with regard
23 to the car charge or the car being stolen because it was
24 uncharged conduct?

25 A. I don't remember that, no. I probably didn't tell

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1 him that.

2 Q. Okay. Other than your argument to the jury about
3 what was going on in Mr. Rivers' head there was no
4 evidence in the trial about his intent or what he was
5 thinking during all of this other than your argument to
6 the Judge or the jury, is that correct?

7 A. That's correct.

8 Q. And you knew at the time of this trial that
9 attempted murder is a specific intent crime, is that
10 right?

11 A. Any attempt is a specific intent crime.

12 Q. You can't attempt an unintended result, is that fair
13 to say?

14 A. Right.

15 Q. And that was your understanding of the law at the
16 time that you went to trial on this case, is that right?

17 A. Yes, yes.

18 Q. And so also you would have been aware that because
19 you can't intend an unintended result there can't be
20 implied malice with regard to an attempt crime, is that
21 fair to say?

22 A. Yeah.

23 Q. And you knew that at the time of this trial.

24 A. Yeah.

25 Q. And yet you did not argue or object or preserve

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1 anything for the record with regard to the Judge's charge
2 that would allow the jury to find inferred or implied
3 malice, is that correct?

4 A. I guess I didn't.

5 Q. Okay.

6 A. But I think the transcript would say whether I
7 objected or not.

8 Q. If the transcript indicates that you said nothing
9 with regard to express or implied malice as far as
10 objecting to that you would defer to what the transcript
11 says?

12 A. Yes.

13 Q. So Mr. Rivers was acquitted on the gun charges,
14 correct?

15 A. Right.

16 Q. So is it safe for us to say then that -- and there
17 was no evidence about Mr. Rivers intent or his state of
18 mind or any of that because he didn't testify, right?

19 A. Right.

20 Q. Did you ever -- did y'all have your charge
21 conferences back in chambers with Judge Goodstein?

22 A. I don't remember.

23 Q. Is it ever your practice if you are objecting to
24 what the Judge is charging or anything like that to come
25 back out on the record and say Judge, I take exception to

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1 this, this, and this?

2 A. Yes.

3 Q. Did you do that in this case?

4 A. I guess not.

5 Q. In fact you actually submitted you own written jury
6 charges in this case; your own request for jury charges
7 in this case, is that right?

8 A. Yes.

9 MS. SARJI: And I'm going to have this marked as
10 Applicant's number 2 if I could. Judge, I have an extra
11 copy of it as you like if you want to look at it while
12 he's testifying or not.

13 THE COURT: No.

14 MS. SARJI: Okay.

15 [Whereupon, Applicant's exhibit number 2 is marked
16 by the court reporter]

17 Q. [Mr. Sarji] I'm going to hand you what I've had
18 marked just now as Applicant's number 2.

19 [Whereupon, the witness is shown document]

20 Q. Is that your request to charge on intent in this
21 case?

22 A. Yes.

23 Q. And in that you expressly state that his intent is
24 something that could be inferred.

25 A. Yes.

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1 Q. Okay. Now, you also were present, you were present
2 at all the critical stages of this case, is that right?

3 A. I believe so.

4 Q. And so you actually heard when the Judge was talking
5 to the jury beforehand; you would have been present in
6 the courtroom for that before the case, the trial even
7 started.

8 A. Yes.

9 Q. Okay. And you were there when she gives her initial
10 remarks to the jury.

11 A. Yes.

12 Q. Okay. And during that time you actually heard her
13 start to tell the jury that their duty is to render a
14 true and correct verdict. Do you recall that?

15 A. Yes.

16 Q. Do you recall that she says that their duty is to
17 find the truth essentially?

18 A. Uh Huh.

19 Q. Is that a yes?

20 A. Yes.

21 Q. And sir, are you aware that those are prejudicial
22 remarks?

23 A. No, I'm not.

24 Q. So you were not aware at the time of that, at the
25 time of this case about case law that says you can't, the

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1 Judge shouldn't be doing that?

2 A. No. I was unaware of that.

3 Q. Okay. And you're not aware of that today.

4 A. Right.

5 Q. Okay. So suffice it to say because you weren't
6 aware that that was maybe giving the jury an improper
7 charge you weren't aware that that was objectionable?

8 A. Right.

9 Q. Okay. Do you remember also when the Judge said the
10 State is going to go first to the jury? Did that ring
11 any alarm bells for you?

12 A. The State is going to go first?

13 Q. Uh Huh; that the State would go first in their
14 presentation of evidence. Did that ring any alarm bells
15 for you?

16 A. No.

17 Q. You don't think that implies that the defense is
18 going to go second?

19 A. Well, I guess it does.

20 Q. But it didn't occur to you at the time?

21 A. No, not at the time.

22 Q. Okay. With regard to, and part of the reason why
23 I'm asking you some of these questions is because the
24 record is pretty much devoid of anything that y'all
25 discussed with regard to accomplice liability and that

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1 sort of thing.

2 A. Uh Huh.

3 Q. Okay. Do you recall whether you actually are the
4 one that asked for a hand of one is the hand of all
5 charge?

6 A. I asked for that?

7 Q. I'm sorry? I'm asking you whether you remember
8 whether it was you or not. Mr. Rivers testified that he
9 believes that it was you that asked for the accomplice
10 liability charge. So I'm asking you whether that is your
11 recollection as well because none of ---

12 A. --- no, I wouldn't have asked for that. The State
13 would have.

14 Q. Okay. So your recollection is that you did not ask
15 for that, is that right?

16 A. Right.

17 Q. And forgive me because my piece of paper that I need
18 right now is not presently at hand. But Mr. Rivers is
19 incredibly prepared. This is the only -- I have it in
20 there but...

21 MS. SARJI: If I could have this marked as number 3.

22 [Whereupon, Applicant's exhibit number 3 is marked
23 by the court reporter]

24 MS. SARJI: And Judge before I go any further Judge
25 I would move Applicant's number 2 into evidence although

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1 it should be a part of the record.

2 THE COURT: Any objection?

3 MR. LIMBAUGH: No objection, Your Honor.

4 THE COURT: All right. Number 2 is in evidence.

5 MS. SARJI: Thank you, Judge.

6 [Whereupon, Applicant's exhibit number 2 is entered
7 into evidence by the Court]

8 Q. [Mr. Sarji] I'm going to show you what we've had
9 marked as Applicant's number 3.

10 [Whereupon, the witness is shown exhibit]

11 A. Uh Huh.

12 Q. Do you recognize that?

13 A. Well, maybe I did ask for it.

14 Q. Okay. So you do recognize that as your requested
15 jury charge?

16 A. Well, when I go into trial I type up a lot of
17 charges and I don't usually hand them all up but
18 sometimes I do. And maybe -- but I'm sure the State
19 would have asked for it.

20 Q. Well sir, I'm asking you what you remember with
21 specificity today because speculation is not something
22 that we need in front of this -- in this hearing, okay?

23 A. Okay.

24 Q. It's a big deal for Mr. Rivers.

25 A. Okay.

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1 Q. So I am asking you now that you see what you have
2 specifically been presented with ---

3 A. --- uh huh ---

4 Q. --- that is your request to charge on accomplice
5 liability, is that correct?

6 A. It's the form I use, yeah.

7 Q. Okay. And as far as whether or not you submitted
8 that if you sent that along to the Court of Appeals
9 surely it would have been something that you had
10 requested from the trial Judge, is that right?

11 A. Probably -- yeah.

12 Q. Okay. So if I'm telling you that I got that from
13 your file ---

14 A. --- okay ---

15 Q. --- with the stuff that was sent to the Court of
16 Appeals would you disagree with me that you actually
17 submitted that to the trial Judge?

18 A. [No response]

19 Q. Do you have a record here with you today sir of the
20 information that you sent to the Court of Appeals?

21 A. Well, when I appeal I send the notice of appeal to
22 the Court of Appeals and then the Office of Appellate
23 Defense or whatever they call it now they request a copy
24 of every piece of paper I've got in my file and I send it
25 all to them.

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1 Q. Okay. And, so part of what Appellate Defense would
2 have asked you for were the jury charges that you
3 submitted to the Judge, is that right?

4 A. They would have asked for every piece of paper.
5 They want everything.

6 Q. Okay. Would you agree with me then that part of
7 what they would have asked you for were the jury charges
8 that you submitted to the Judge?

9 A. Yeah, I guess so.

10 Q. Okay. And so if you sent to them that jury charge
11 that is in front of you ---

12 A. --- uh huh ---

13 Q. --- would you agree with me that it would have been
14 your practice to send that to them because you submitted
15 it to the Judge?

16 A. I would have sent it to them because it was in my
17 file.

18 Q. Are you denying sir that you submitted that to the
19 Judge?

20 A. I don't remember. It seems like the trial records
21 would have what I submitted but...

22 Q. Well, actually they don't because you didn't protect
23 any of that for the record, sir.

24 A. Oh.

25 Q. So, I'm asking you if you sent that to Appellate

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1 Defense whether or not it was something that was likely
2 that you had submitted to the Judge.

3 MR. LIMBAUGH: Objection, Your Honor. Asked and
4 answered.

5 THE COURT: Sustained.

6 Q. [Ms. Sarji] Is it your practice to send things to
7 Appellate Defense that aren't relevant to an appeal?

8 A. It's my practice to send them everything just about.
9 They seem to want everything. The more detail the
10 better.

11 MS. SARJI: Judge, on this point I would ask the
12 Court to leave the record open so that I can go back to
13 the Clerk's Office in Colleton County and see whether
14 that specific jury charge was filed in the General
15 Sessions case.

16 I think it is absolutely pivotal to Mr. Rivers' PCR
17 that his counsel actually requested the hand of one is
18 the hand of all, the accomplice liability charge, because
19 that is the only theory upon which the jury could have
20 convicted him.

21 THE COURT: Did you not have time to check that
22 file before today?

23 MS. SARJI: Sir, I didn't know that he was going to
24 deny having sent it -- having submitted it to the Court.

25 THE COURT: I'll tell you what let's do. After

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1 this hearing I'll leave the record open for you to go
2 ahead and check it out today and let me know.

3 MS. SARJI: Yes sir, I will do that.

4 THE COURT: If we need to reconvene today we will
5 be we've got so many of these things ---

6 MS. SARJI: --- yes, sir. No, I understand ---

7 THE COURT: --- if I leave it open I'll forget
8 about it ---

9 MS. SARJI: --- I am not trying to ---

10 THE COURT: --- you can call and check; it
11 shouldn't take long ---

12 MS. SARJI: --- belabor the issue but yes sir, I
13 will have my paralegal drive over there if necessary.

14 THE WITNESS: If it helps I don't, I didn't deny
15 it. I don't remember it. I might have. If it's printed
16 it's more likely than not that I did. But I just don't
17 remember, Your Honor.

18 THE COURT: I understand.

19 Q. [Ms. Sarji] You give the Judge all the jury charges
20 that you're requesting that you printed out when you're
21 going to trial?

22 A. Well, when I go to trial I print out everything I
23 think that might come up. And sometimes I hand them --
24 sometimes I hand them all up and sometimes the Judge goes
25 well, I'm covering that and I'm covering that and hands

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1 them back to me. Or she will say it's in my standard
2 charge, it's in my standard charge, it's in my standard
3 charge. And sometimes something will come up that's not
4 relevant and I don't submit it.

5 Q. Okay.

6 MS. SARJI: Court's indulgence, Your Honor.

7 THE COURT: All right.

8 [Whereupon, Ms. Sarji confers with her client]

9 Q. [Ms. Sarji] Now, suffice it to say though Mr. Bryan
10 you certainly didn't object when the Judge gave the hand
11 of one is the hand of all charge.

12 A. No, I probably didn't.

13 Q. And you didn't object when she gave the example of a
14 getaway driver in a burglary case to demonstrate ---

15 A. --- no, I didn't ---

16 Q. --- accomplice liability. You didn't object to the
17 fact that that example that she gave was with regard to a
18 completed crime versus an attempt. You didn't object to
19 it at all, right?

20 A. Right.

21 Q. So you didn't object to it on that basis either, is
22 that fair to say?

23 A. Right.

24 Q. Did you make the distinction that an intent requires
25 a higher level of mens rea than a completed crime?

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1 A. Did I make the decision?

2 Q. Did you make the distinction, do you understand

3 yourself ---

4 A. --- oh the distinction?

5 Q. Yes, sir.

6 A. Yes.

7 Q. Did you ever ask the Judge to tell the jury that?

8 A. I don't think I did.

9 Q. And so with regard to that burglary example that she

10 gave it didn't occur to you to say Judge, you're giving

11 them a flawed example or anything like that or after she

12 was done to preserve it for the record?

13 A. I don't remember objecting. If I did object it

14 would be in the trial transcript.

15 Q. Okay. In fact, the only thing that you objected to

16 was, and I don't think it even, I don't know if it's an

17 objection you brought up to her specific intent

18 afterwards and you did make an exception to her specific

19 intent charge, is that right? Do you recall?

20 A. I guess I did. I mean if it's in the record I made

21 the objection.

22 Q. Okay. But all you said was I thought it was

23 specific intent and I think you did address that but not

24 in great detail. Do you recall?

25 A. I don't recall.

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1 Q. Do you recall I mean you know that we have to put
2 all of our bases for objections on the record for it to
3 be able to be...

4 A. Yes.

5 Q. Is it your practice not to go into detail when
6 you're in trial?

7 A. Normally I do.

8 Q. But in this case you didn't.

9 A. I guess not.

10 Q. I think I've covered it. Thank you, Mr. Bryan.

11 MS. SARJI: No further questions.

12 THE COURT: Let's take a little short break before
13 we do cross-examination. And if you want to contact your
14 paralegal ---

15 MS. SARJI: --- I will, yes sir, thank you ---

16 THE COURT: --- to go ahead and check it out feel
17 free.

18 [Whereupon, Court is in recess from 10:32 a.m. until
19 10:45 a.m.]

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1 THE COURT: Are you done with him?

2 MS. SARJI: I am, Judge. But I messed up again and
3 did not move in Applicant's number 3 into evidence. And
4 so I would move that in at this time, Judge.

5 THE COURT: Any objection?

6 MR. LIMBAUGH: No objection, Your Honor.

7 THE COURT: All right. Number 3 is in evidence
8 without objection.

9 MS. SARJI: Thank you, Judge.

10 [Whereupon, Applicant's exhibit number 3 is entered
11 into evidence by the Court]

12 MR. LIMBAUGH: Are we holding the record open after
13 the State's cross for...

14 THE COURT: Hopefully she will let me know
15 something today before I leave.

16 MS. SARJI: I'm trying. I asked my paralegal who
17 is following up on it right now to see whether that is in
18 the court's file.

19 THE COURT: All right. Go ahead.

20 MR. LIMBAUGH: Thank you, Your Honor.

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CROSS-EXAMINATION

BY MR. LIMBAUGH:

Q. Good morning, Mr. Bryan.

A. Good morning.

Q. So you said you reviewed the discovery with Mr. Rivers, correct?

A. Yes.

Q. Okay. And if you didn't go over all the videos with him did you discuss what was in those videos with him?

A. Yes.

Q. Okay. And what was in those videos again for the most part?

A. Well, the dash cam footage of the cars basically and it shows the chase pretty much from the beginning to where the car flips over and they jump out and run off in the brush.

And then I think there is one or two others that have video basically of officers, and its dash cam footage of just cars pointed at the woods and you hear the radio because the foot pursuit went through like a pine cut down or overgrown area and you couldn't really see. Once everyone went into there you couldn't see what was going on.

Q. Okay. Do you recall there being three guns recovered?

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1 A. Yeah.

2 Q. And do you recall bullets or bullet fragments being
3 recovered from two separate weapons?

4 A. Yes.

5 Q. Okay. There was a lot of mention about the
6 indictments in this case.

7 A. Uh Huh.

8 Q. Would it have been your normal practice to go over
9 the indictments and the warrants and things of that
10 nature with Mr. Rivers?

11 A. To go over the indictments? Normally I don't really
12 go over the indictments with a client because essentially
13 the indictment is the charging document.

14 It states what they are charged with; that's also on
15 the warrant. About every indictment I've ever seen in
16 South Carolina it's just a cursory statement of facts.

17 Q. So would you have gone over the charges against him
18 and the elements of those charges with him?

19 A. Oh yeah.

20 Q. Okay. So would you have covered if not the
21 indictment itself the implication contained in the
22 indictment?

23 A. Yes.

24 Q. Okay. It was mentioned that you didn't move to
25 quash the indictment. It is your typical practice to try

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1 and do that?

2 A. I've never had any luck getting an indictment
3 quashed.

4 Q. So would you believe that to be frivolous?

5 A. Pretty much, yeah.

6 Q. Okay. And why so?

7 A. Under early common law it was a common procedure to
8 move to quash an indictment for some kind of variance or
9 failure to list an element of the crime or just about any
10 technical defect.

11 But nowadays you go to the Court and the Court will
12 say well, it's sufficient to put the defendant on charges
13 to what -- the charges and the Judge to know what the
14 charge is so that the sentencing will be done you know.

15 Q. And they're typically sufficient on their face, is
16 that correct?

17 A. Right.

18 Q. Okay.

19 A. I mean I don't think I've even heard of an
20 indictment being successfully quashed in a South Carolina
21 trial court unless something is very wrong.

22 Q. And I believe you said even if you were successful
23 you would expect the Solicitor's office to go back and
24 re-indict.

25 A. Right.

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1 Q. Okay. I believe you testified earlier that you also
2 believe you spoke to them about the hand of one hand of
3 all with this case?

4 A. Yeah. And that was the whole State's theory on this
5 thing. Their theory was that Mr. Rivers was driving and
6 Mr. Shelly was shooting.

7 Q. I believe you testified earlier it would have been
8 impossible for you not to discuss that with him.

9 A. Yeah. I don't see how I -- I mean ---

10 MS. SARJI: --- objection, Your Honor. I believe
11 he's already testified ---

12 THE COURT: --- I'm going to overrule it. This is
13 cross-examination. Go ahead.

14 MR. LIMBAUGH: Thank you, Your Honor.

15 A. Yeah, we discussed it. It would have been
16 impossible not to.

17 Q. [Mr. Limbaugh] Okay. And did you discuss his right
18 to testify with him?

19 A. Yeah.

20 Q. Okay. Did you discuss his prior convictions and
21 whether or not they would come in?

22 A. I don't remember specifically but it's my normal
23 practice to do that.

24 Q. Okay. And it's also true that even if convictions
25 are older than ten years they still could possibly be

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1 admissible, is that correct?

2 A. Well, a lot is left to the discretion of the Judge
3 as far as the rules of evidence goes.

4 Q. Thank you. So even if you were to have tried to
5 get those convictions not brought up it would have been
6 up to the discretion of the Judge whether to grant that,
7 is that correct?

8 A. Yeah.

9 Q. Okay. Can you talk with me a little bit about your
10 concern over the stolen vehicle?

11 A. Yeah. The State, the State's theory and I think
12 North Carolina might have had a pending charge on him but
13 the vehicle had been recently stolen in the Charlotte
14 area by my client.

15 And I didn't want that to come in because that would
16 just really hurt things for us. But I don't, I don't
17 think I would have discussed that as a reason not to
18 testify because that wasn't a conviction.

19 It wouldn't have been so much for impeachment but
20 the State would want to use that to establish a motive
21 for him to run.

22 Q. When you're going over a defendant's right to
23 testify would the 5th Amendment typically be included in
24 that conversation?

25 A. No.

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1 Q. No? Okay.

2 A. I -- I don't think, I mean, I don't think it's ever
3 come up for me before discussing the 5th Amendment as far
4 as discussing whether or not to testify or not.

5 Q. Okay. And you discussed -- well, the defendant
6 discussed with you his memory of the events from that
7 day?

8 A. He did.

9 Q. And did you come to a decision jointly or was it his
10 decision ultimately not to testify?

11 A. Well, when he said he didn't have much -- when we
12 talked he said he couldn't remember. He didn't really
13 want to testify because he didn't really remember
14 anything. He didn't see where it would help. His words
15 were I must have been driving because I got -- that's
16 where I was.

17 But he didn't remember the chase, he didn't remember
18 the shooting, he didn't remember the foot pursuit, he
19 didn't remember -- he remembered waking up and getting
20 beaten on, the dog biting him and then he woke up again
21 in the police car, and then he woke up again in the
22 hospital, and then he woke up again in the jail.

23 Q. Okay. A lot was made of you not objecting to the
24 inferred or implied malice charge. Do you recall that?

25 A. I don't remember. The -- but it seems like you know

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1 even a specific intent could be inferred.

2 Q. Right. But also that charge was good law at the
3 time of this trial was it not?

4 A. I think it was.

5 Q. Okay. So you wouldn't have had any reason to object
6 based on the law at that point, is that correct?

7 A. No.

8 Q. Okay. And you don't recall whether or not you
9 submitted the hand of one or hand of all charge is that
10 correct?

11 A. I don't remember. I printed up -- when I go to
12 trial I print up a lot of requests and then as the trial
13 goes I'll go well, I don't need this and I don't need
14 that. And I might have handed it up. I don't remember.
15 I just don't remember.

16 Q. Okay. But unless you find out otherwise it's not
17 your practice that just because something is printed off
18 in your file that it was necessarily introduced in Court,
19 is that correct?

20 A. No, I don't usually hand them every jury charge I
21 print out.

22 Q. Okay. Do you recall why you didn't object to the
23 burglary example from the Judge?

24 A. No, I don't remember why I didn't object.

25 Q. Do you believe the jury would have known the

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1 difference between the burglary example and this case?

2 A. I think they could have made the distinction.

3 MR. LIMBAUGH: Moment's indulgence.

4 [Whereupon, Mr. Limbaugh reviews documents]

5 Q. [Mr. Limbaugh] And you made a directed verdict
6 motion in this case. Do you recall that?

7 A. Yes. I always do.

8 Q. Okay. And do you recall arguing to the Judge a lot
9 of the arguments that we've heard in this courtroom today
10 from Mr. Rivers?

11 A. I don't remember specifics. The trial transcript
12 could tell you better than my memory could. I tell
13 you...

14 Q. So if the record reflected that you would concede to
15 the record?

16 A. Yes.

17 Q. Okay. And the Judge denied that motion, is that
18 correct?

19 A. Yeah.

20 Q. Okay.

21 MR. LIMBAUGH: That's all I have, Your Honor.

22 THE COURT: All right. Yes, ma'am?

23 MS. SARJI: Bear with me, Judge.

24

25

Maurio Rivers v State
Post Conviction Relief- John Bryan-Redirect Examination by Ms. Sarji
April 3, 2019

1 REDIRECT EXAMINATION

2 BY MS. SARJI:

3 Q. You indicated during your direct when I was
4 questioning you, although I did tend to cross-examine you
5 a bit, you indicated that you knew at the time of this
6 trial that express malice was required for an attempt
7 crime. Do you recall testifying to that just moments
8 ago?

9 A. Specific intent is required.

10 Q. Yes, sir. And that express malice is required
11 within a specific intent crime. You testified that at
12 the time of this trial ---

13 A. --- that express malice?

14 Q. Yes, sir. When I questioned you a moment ago ---

15 A. --- uh huh ---

16 Q. --- you testified that you knew that at the time of
17 this trial that express malice would have been required
18 for a specific intent crime.

19 A. I must have thought you meant specific intent. I
20 don't remember.

21 Q. You don't remember what you just testified to when I
22 was questioning you?

23 A. No.

24 Q. But you have a really specific memory about what my
25 client told you six years ago?

Maurio Rivers v State
Post Conviction Relief- John Bryan-Redirect Examination by Ms. Sarji
April 3, 2019

1 A. I wrote it down.

2 Q. Okay. So you wrote down and you remember everything
3 that he said but you can't remember what you told me just
4 half an hour ago?

5 A. If -- it was something about express intent. No, I
6 was not aware that express intent was required for an
7 attempt crime if that's what you're asking.

8 Q. Even though just moments ago you told me that you
9 were aware of that at the time of trial ---

10 A. --- I must have misunderstood you somehow. Specific
11 intent is required.

12 Q. Specific intent is required. Are you aware that
13 that because you can't attempt to commit an unintended
14 result, right?

15 A. Right.

16 Q. And when we talked about it earlier you agreed with
17 me that there is also a higher level of mens rea required
18 for attempt crimes.

19 A. Right, and that's specific intent.

20 Q. And that within that express malice is required. So
21 you agreed with me when I questioned you earlier about
22 it.

23 Now Mr. Limbaugh has questioned you about it and you
24 flipped and now you're telling me that you if you said
25 that earlier you didn't mean to.

Maurio Rivers v State
Post Conviction Relief- John Bryan-Redirect Examination by Ms. Sarji
April 3, 2019

1 A. Correct me if I'm wrong but express intent means you
2 express an intent, right?

3 Q. I'm sorry; express malice. If I messed up and said
4 wrongly I apologize.

5 A. Oh.

6 Q. Express malice is required. And you said that at
7 the time of this trial you understood, and correctly so,
8 that express malice is required for an attempt crime.

9 A. I might have.

10 Q. It's an unusual circumstance when we as criminal
11 defense attorneys have to explain 5th Amendment
12 privileges to clients, is that safe to say?

13 A. It's not a common thing.

14 Q. It's an unusual event that you'd have to get into
15 that, yes?

16 A. Uh Huh.

17 Q. Is that a yes?

18 A. That's correct. Yes.

19 Q. And so if you had talked to Mr. Rivers about his
20 ability to invoke 5th Amendment privileges regarding the
21 stolen car is it likely you would remember that because
22 it would be an unusual circumstance.

23 A. You're right. And I don't think I did discuss 5th
24 Amendment rights with him.

25 Q. You talked about that you generally tell, maybe I

Maurio Rivers v State

Post Conviction Relief- John Bryan-Redirect Examination by Ms. Sarji

April 3, 2019

1 misunderstood, I misunderstood what you said when you
2 were talking to Mr. Limbaugh I understood you to say that
3 because it's in the Judge's discretion whether prior
4 convictions come in that you don't talk to your clients
5 about that. Did I misunderstand what you said a moment
6 ago?

7 A. I think you did misunderstand it. I mean you
8 discuss what happened -- it's not what they've been
9 convicted of in the last ten years.

10 It's what the sentences ended on in the last ten
11 years; in other words if they got ten years that's like
12 adding another ten years.

13 But the -- ultimately any evidentiary issue is going
14 to be in the discretion of a Judge unless it rises to a
15 constitutional ground.

16 Q. And that's your understanding of what the Judge
17 would have to determine when looking at old convictions?

18 A. Yes.

19 Q. It's not your understanding of the law that there's
20 a balancing test that the Judge would have to engage in
21 to determine whether the probative value outweighed the
22 prejudicial effect?

23 A. Oh yeah, that's what, that's what they consider.

24 Q. Okay. And so I understood you to say -- did you
25 ever talk about that balancing test with Mr. Rivers?

Maurio Rivers v State
Post Conviction Relief- John Bryan-Redirect Examination by Ms. Sarji
April 3, 2019

1 A. I doubt it.

2 Q. And is that because you believe that since it's in
3 the Judge's discretion you don't need to talk to your
4 clients about that?

5 That's what I understood you to say when Mr.
6 Limbaugh was questioning you. I want to make sure I'm
7 clear on that.

8 A. I don't remember exactly every detail I spoke with
9 him about seven years ago. And I tried to write
10 everything down because my memory isn't that good so I
11 make a lot of notes. But I don't remember doing that.

12 But when he told me he didn't remember what happened
13 it didn't seem that beneficial to have his testimony,
14 especially when you consider the benefits of arguing last
15 and also that the State likes to build its case by
16 tearing into the defendant when he takes the stand.

17 That's something I noticed very early on starting
18 out. If the State has a weak case there's nothing they
19 love more than acting like the defense, like the
20 defendant is the biggest liar on earth.

21 And they can do it just from their conduct and the
22 way they hold themselves. It gives them a big tactical
23 advantage.

24 Q. You would agree with me that it is the defendant's
25 right to choose whether or not to exercise his right to

Maurio Rivers v State

Post Conviction Relief- John Bryan-Redirect Examination by Ms. Sarji

April 3, 2019

1 testify and when not to testify?

2 A. That's correct.

3 Q. And it is solely his right to decide whether or not
4 he should do that. Is that right?

5 A. That's right.

6 Q. And so regardless of whether you thought there was
7 any value to his testimony it was ultimately his decision
8 to make, is that right?

9 A. That's right.

10 Q. And it is your job as his lawyer to provide him with
11 the rules applicable to what would happen if he
12 testified, is that correct?

13 A. That's correct.

14 Q. And what you're saying is that you did not provide
15 him with an explanation of those rules that you can
16 recall.

17 A. I don't remember going into the 5th Amendment with
18 him and I probably didn't go into the 5th Amendment with
19 him. I should have gone into it and it's normal in my
20 practice to discuss the ten years and all that with him
21 but I can't remember specifically whether I did or not.

22 It's normally my practice to do that. I've tried a
23 lot of criminal cases and I have a procedure I go
24 through. I start out with the jury trial rights and just
25 work through it. But he also didn't seem to think that

Maurio Rivers v State
Post Conviction Relief- John Bryan-Redirect Examination by Ms. Sarji
April 3, 2019

1 his testimony would be very relevant because he couldn't
2 remember anything.

3 Q. Mr. Bryan, my question is not whether you believe
4 that his testimony would have been relevant.

5 A. Right.

6 Q. My question to you is whether or not you adequately
7 advised him so that he could make an informed decision.

8 And my understanding is that you're saying I usually
9 do but I don't remember whether I did or not in Mr.
10 Rivers case with regard to those prior convictions. Is
11 that correct; am I understanding you correctly?

12 A. Right.

13 Q. Okay. Now, one final question for you. Do you
14 believe that it's not important to make motions or
15 objections during a criminal trial because you're usually
16 going to lose them?

17 A. I could make a lot of motions in a criminal trial
18 that I know I would lose.

19 Q. Is it your practice not to do so because you assume
20 that you're going to lose?

21 A. And then there are others where if it's a shot, if I
22 think I have a chance I'll make it.

23 Q. Okay. My question to you was, and I guess maybe I
24 should ask it to you this way. Yes or no, do you believe
25 it is not important to make motions in a criminal trial

Maurio Rivers v State
Post Conviction Relief- John Bryan-Redirect Examination by Ms. Sarji
April 3, 2019

1 because you think that you're going to lose them?

2 A. If I'm certain that it will be pointless to make the
3 motion normally I don't. If I think I need to preserve
4 the record for an appeal even if I'm not going to win in
5 trial I will.

6 Q. Don't we always need to preserve the record for an
7 appeal in a criminal case?

8 A. Yes.

9 Q. Thank you.

10 MS. SARJI: I don't have anything further, Judge.

11 MR. LIMBAUGH: Just briefly, Your Honor.

12 THE COURT: Sure.

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Maurio Rivers v State
Post Conviction Relief- John Bryan-Recross-Examination by Mr. Limbaugh
April 3, 2019

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RECROSS-EXAMINATION

BY MR. LIMBAUGH:

Q. If there are any facts in the record the Judge --
it's up to the Judge's discretion as to what to charge,
is that correct?

A. Well, the Judge is constrained by what the law is.
But you know when the trial is going on the Judge is the
one that decides what to charge and then I can make
exceptions if necessary.

Q. And the Judge can bring up, bring in a charge some
facet of the law if they see there is evidence in the
record to support it, is that correct?

A. Yes.

Q. Okay. And I believe what Ms. Sarji was mentioning
was our reference earlier to the quashing the
indictments. Is it your practice to make frivolous
motions to the Court?

A. No, not frivolous motions.

Q. Okay. And have you ever seen a motion to quash an
indictment in your practice be granted?

A. No.

Q. Okay. That's all I got.

THE COURT: All right. You may step down.

Maurio Rivers v State
Post Conviction Relief
April 3, 2019

1 THE COURT: Any other witnesses?

2 MR. LIMBAUGH: None from the State, Your Honor.

3 THE COURT: All right.

4 MS. SARJI: Judge, I just wanted to let you know
5 that my paralegal has contacted the Clerk's office and
6 they have said that they looked and that there is nothing
7 in the file at all with reference to jury charges.

8 The only thing that they have is a sentencing sheet
9 and a verdict form with regard to the trial and the
10 exhibits are kept in a safe which she doesn't have access
11 to. And she gave me the Clerk's information if you
12 wanted to verify that with them.

13 I would ask Judge in light of Mr. Bryan's testimony
14 if I could recall my client to clarify with him how he
15 got a copy of that request to charge as well.

16 THE COURT: Go ahead.

17 MS. SARJI: Just do it from right here?

18 THE COURT: That's fine. He's still under oath.

19 MS. SARJI: Yes, sir.

20 THE COURT: Get him on up here in case the State
21 wants to cross-examine him in that regard.

22 THE WITNESS: I can...

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

24 [Whereupon, the witness is excused and exits the
25 witness stand]

Maurio Rivers v State
Post Conviction Relief-Maurio Rivers (recalled)-Direct Examination by Ms. Sarji
April 3, 2019

1 [Whereupon, Mr. Rivers returns to the witness stand]
2 THE COURT: You're under oath. Go ahead and have a
3 seat.

4 [Whereupon, Mr. Rivers is seated]

5 THE COURT: Go ahead.

6 MS. SARJI: Thank you.

7 - - - - -

8 MAURIO RIVERS,

9 Having been previously duly sworn,

10 Was examined and testified as follows:

11 DIRECT EXAMINATION

12 BY MS. SARJI:

13 Q. Mr. Rivers, on this issue about the jury charges
14 that were submitted and you kindly provided me with your
15 copy so that we could put it into evidence here at this
16 PCR. And you remember just now giving me your copy?

17 A. Yes.

18 Q. Where did you get that?

19 A. I got him from him.

20 Q. You got it ---

21 A. --- I got it from Mr. Bryan. He gave it to me at
22 trial, the day of trial. He said that he was going to
23 ask the Judge to charge these instructions to the jury.

24 Q. And when he -- so he handed you that in a stack of
25 papers that he told you he was giving to the Judge to ask

Maurio Rivers v State

Post Conviction Relief-Maurio Rivers (recalled)-Direct Examination by Ms. Sarji

April 3, 2019

1 the Judge to tell to the jury.

2 A. Well, it was 12 of those. I just gave you the one
3 concerning accomplice liability. But he gave me
4 something called voir dire or something like that and 12
5 jury charges.

6 Q. Okay.

7 MS. SARJI: I don't have anything further on that.

8 THE COURT: All right. From the State?

9 MR. LIMBAUGH: Nothing from the State, Your Honor.

10 THE COURT: All right. You can step down.

11 [Whereupon, the witness is excused and exits the
12 witness stand]

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Maurio Rivers v State
Post Conviction Relief
April 3, 2019

1 THE COURT: Anything else?

2 MS. SARJI: Nothing Your Honor. We would rest.

3 THE COURT: Okay. I'll take it under advisement.

4 MS. SARJI: Thank you, Judge.

5 THE COURT: Thank you.

6 MS. SARJI: I do have, I can present the Court with
7 case law and citations to the record to support some of
8 the references that we made to the transcript as far as
9 like where the Judge said that it was the jury's duty to
10 render a true and -- I'm happy to provide ---

11 THE COURT: --- I read it. It's in there ---

12 MS. SARJI: --- okay ---

13 THE COURT: --- and whatever is in there is in
14 there and it will be preserved.

15 MS. SARJI: Okay. Thank you, Judge.

16 THE COURT: Thank you.

17 *****END OF TRANSCRIPT OF RECORD*****
18
19
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21
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25

Maurio Rivers v State
Certificate of the Court Reporter
April 3, 2019

C E R T I F I C A T E

I, the undersigned, Joyce C. Rueger, Official
Circuit Court Reporter for the Ninth Judicial Circuit of
the State of South Carolina, do hereby certify that the
foregoing is a true, accurate, and complete Transcript of
Record of the proceedings had and evidence introduced in
the trial of the captioned case, relative to appeal, in
the Court of Common Pleas for Beaufort County, South
Carolina on the 3rd day of April, 2019.

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

September 17, 2020

Joyce C. Rueger, CVR-M
Court Reporter

394

--Response: DORSC0005 - 1--

TO: DORSC0005-692481 110713 14:22:59 003FAB2577
 FROM: SCCH-11216247 110713 14:22:59 271004C145

ICHR REQUEST FOR RAP SHEET
 ORI-SC0180000 FBI-684722WA1 PUR-C
 ATN-ASBELL

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PAGE-01 DATE-07/13/2011 TIME-14:28:48
 REQ ORI-SC0180000 DORCHESTER CNTY SC
 SID-SC00977677 FBI-684722WA1
 NAME-RIVERS, MAURIO DAETREL SEX-M RACE-B
 HEIGHT-510 WEIGHT-135 EYES-BRO HAIR-BLK SKIN-DRK BORN-SC
 FPC-13TT062114PIX0031817 HENRY-13 M 5 T IO 14
 I 3 W OIO

PHOTOGRAPH AVAILABLE
 PALM PRINTS AVAILABLE
 1-FINGERPRINT IMAGES ON THIS SUBJECT ARE STORED ON SCAFIS

DATE RECORD ENTERED--11/16/1994 DATE OF LAST UPDATE--08/01/2008

ADDITIONAL IDENTIFIERS NAME	BIRTH DATES	MARKS	SOC SEC	MISC NUM
RIVERS, MAURIO D				
RIVERS, MAURIO DAETREL				
RIVERS, MARIO DAETREL				
RIVERS, MAURIO DEATREL				
RIVERS, MARIO L				
RIVERS, MARIO DAETRAL				
WILLIAMS, LAETREL				
RIVERS, MAURIO DAETRAL				

CONTRIBUTOR/SUBJECT DOA/RCVD CHARGE/DISPOSITION/ETC

RIVERS, MAURIO DAETREL 07/23/1994
 SC0100800 NORTH CHARLESTON PD
 CASE-94069770N

ARREST CHARGE 01-POSSESSION
 W/INTENT DISTRIBUTE CRACK
 OFFENSE DATE-07/23/1994
 PHOTOGRAPH AVAILABLE
 ARREST CHARGE 02-POSS CONTROL
 LED SUBST W/IN PROXIMITY
 SCHOOL
 OFFENSE DATE-07/23/1994

CIT-44-53-375
 DOC-94GS1006038 WARR-E164015

COURT CHARGE D1-CRACK COCAINE
 , POSS < 1 GRAM, 1ST OFF
 COURT DISP-CONVICTED; YOA SEC
 5(C) NTE 5 YRS SUS 3 YRS
 PROB
 COURT DATE-04/20/1995



RIVERS, MAURIO DAETREL
SC0100800 NORTH CHARLESTON
CASE-94108010N

11/07/1994

ARREST CHARGE 01-SHOPLIFTING
OFFENSE DATE-11/07/1994
PHOTOGRAPH AVAILABLE
COURT CHARGE 01-SHOPLIFTING
COURT DISP-CONVICTED;30D
SUSPENDED ON 48HRS PSW
COURT DATE-11/08/1994

RIVERS, MAURIO DAETREL
SC0100100 CHARLESTON POLICE DE
CASE-146264
WARR-E591489

06/17/1995

ARREST CHARGE 01-SIMPLE ASSAULT
PHOTOGRAPH AVAILABLE
COURT CHARGE 01-SIMPLE ASSAULT
COURT DISP-NON-CONVICTION;
DISMISSED

RIVERS, MAURIO DAETREL
SC0100100 CHARLESTON POLICE DE
CASE-146264
WARR-E616427

06/30/1995

ARREST CHARGE 01-DISTRIBUTION
OF MARIJUANA
PHOTOGRAPH AVAILABLE

WARR-E616428

ARREST CHARGE 02-DISTRIBUTION
OF MARIJUANA W/I PROXIMITY
SCHOOL

CIT-44-53-370(B)(2) FELONY
DOC-95GS1004471 WARR-E616427

COURT CHARGE 01-MANUFACT, POSSESS
OTHER SUB SCH I, II, III
WITD-1ST
COURT DISP-CONVICTED; YOA SEC
5(C) NTE 1-6 YRS-COURT
ORDERED SHOCK
COURT DATE-04/15/1996

CIT-44-53-445(B)(1) FELONY
DOC-95GS1004472 WARR-E616428

COURT CHARGE 02-DIST, SELL, ETC
DRUG OTHER THAN CRACK COCAINE
NR SCH
COURT DISP-NON-CONVICTION;
NOLLE PROSSED
COURT DATE-04/15/1996

RIVERS, MAURIO DAETREL
SC0180000 DORCHESTER CNTY SO
CASE-95D23734

10/31/1995

ARREST CHARGE 01-FRAUDULENT
CHECK
OFFENSE DATE-10/31/1995
PHOTOGRAPH AVAILABLE

CIT-N/A MISDEMEANOR
DOC-R84 WARR-E600409

COURT CHARGE 01-FRAUDULENT

CHECK
COURT DISP-CONV ED; SENTENCE
UNKNOWN
COURT DATE-12/04/1995

RIVERS, MAURIO DAETREL 01/24/1996
SC0100100 CHARLESTON POLICE DE
CASE-146264
WARR-F037187

ARREST CHARGE 01-POSSESSION
MARIJUANA W/INTENT DISTRIB
UTE
PHOTOGRAPH AVAILABLE
PALM PRINTS AVAILABLE

WARR-F037186

ARREST CHARGE 02-POSSESSION
MARIJUANA W/INTENT DIST/PR
OX/SCHOOL

WARR-F037188

ARREST CHARGE 03-POSSESSION
GUN BY FELON

CIT-44-53-370(B)(2) FELONY
DOC-00GS10 WARR-F037186

COURT CHARGE 01-MANUFT, POSSES
S OTHER SUB SCH I, II, III
WITD-1ST
COURT DISP-NON-CONVICTION; NO
BILL
COURT DATE-03/07/1996

CIT-44-53-445(B)(1) FELONY
DOC-00GS10 WARR-F037187

COURT CHARGE 02-DIST, SELL, ETC
, DRUG O/THAN CRACK COCAINE
NR SCH
COURT DISP-NON-CONVICTION; NO
BILL
COURT DATE-03/07/1996

CIT-16-23-30 FELONY
DOC-96GS1001796 WARR-F037188

COURT CHARGE 03-SALE OF PISTO
L TO, AND POSS BY, CERTAIN
PERSON
COURT DISP-CONVICTED; YOA SEC
5(C) NTE 1-2 YRS-COURT
ORDERED SHOCK
COURT DATE-04/15/1996

SC018025C LIEBER RECT EVAL CT 04/17/1996 CUSTODY STATUS-RECEIVED
CASE-232669
CIT-44-53-370(D)(1) MISDEMEANOR
START DATE-04/17/1996

COURT CHARGE 01-POSS SCHED
I(B)(C) LSD/SCHED II(COCAIN
E)-1ST
COURT DISP-CONVICTED; YOA 5C
NTE 6Y PROBATION

CIT-44-53-370(D)(2) MISDEMEANOR

COURT CHARGE 02-POSS OTHER
CONTROLLED SUB IN SCHED I
TO V-1ST
COURT DISP-CONVICTED; YOA CC

CIT-16-23-20 MISDEMEANOR

COURT CHARGE 03-UNLAWFUL

CARRYING OF PISTOL
COURT DISP-CONVI ED; YOA CC

RIVERS, MAURIO DAETREL 01/07/1997
SC0100100 CHARLESTON POLICE DE
CASE-146264
WARR-E327105

DOC-10 WARR-E275503

ARREST CHARGE 01-POSSESSION
OF MARIJUANA
PHOTOGRAPH AVAILABLE
PALM PRINTS AVAILABLE
COURT CHARGE 01-FRAUDULENT
CHECK, UNDER \$500 - 1ST
OFFENSE

COURT DISP-CONVICTED; 30 DYS
JL COMMITTED

COURT DATE-02/18/1997

DOC-10 WARR-E275504

COURT CHARGE 02-FRAUDULENT
CHECK, UNDER \$500 - 1ST
OFFENSE

COURT DISP-CONVICTED; 30 DYS
JL COMMITTED

COURT DATE-02/18/1997

DOC-10 WARR-E275505

COURT CHARGE 03-FRAUDULENT
CHECK, UNDER \$500 - 1ST
OFFENSE

COURT DISP-CONVICTED; 30 DYS
JL COMMITTED

COURT DATE-02/18/1997

DOC-10 WARR-E322348

COURT CHARGE 04-FRAUDULENT
CHECK, UNDER \$500 - 1ST
OFFENSE

COURT DISP-CONVICTED; 30 DYS
JL COMMITTED

COURT DATE-02/18/1997

DOC-10 WARR-E322349

COURT CHARGE 05-FRAUDULENT
CHECK, UNDER \$500 - 1ST
OFFENSE

COURT DISP-CONVICTED; 30 DYS
JL COMMITTED

COURT DATE-02/18/1997

END OF PAGE 01 - PAGE 02 TO FOLLOW

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PAGE-02 DATE-07/13/2011 TIME-14:28:48
REQ ORI-SC01800G0 DORCHESTER CNTY SC
SID-SC00977677 FBI-684722WA1

CONTRIBUTOR/SUBJECT DOA/RCVD CHARGE/DISPOSITION/ETC

DOC-10 WARR-E322350

COURT CHARGE 06-FRAUDULENT
CHECK, UNDER \$500 - 1ST
OFFENSE

COURT DISP-CONVICTED; 30 DYS
JL COMMITTED

COURT DATE-02/18/1997

DOC-10 WARR-E322351

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CHECK, UNDER 500 - 1ST
OFFENSE
COURT DISP-CONVICTED; 30 DYS
JL COMMITTED
COURT DATE-02/18/1997
COURT CHARGE 08-FRAUDULENT
CHECK, UNDER \$500 - 1ST
OFFENSE
COURT DISP-CONVICTED; 30 DYS
JL COMMITTED CC SUSP.
COURT DATE-02/18/1997
COURT CHARGE 09-FRAUDULENT
CHECK, UNDER \$500 - 1ST
OFFENSE
COURT DISP-CONVICTED; 30 DYS
JL COMMITTED CC SUSP.
COURT DATE-02/18/1997

DOC-10 WARR-E322352

DOC-10 WARR-E322353

CIT-44-53-370(D)(3) FELONY
DOC-R84 WARR-F327105

COURT CHARGE 10-POSS OF 28G
OF MARIJ OP. 10G OF HASH -
1ST
COURT DISP-CONVICTED; \$314/30D
COURT DATE-01/10/1997

RIVERS, MAURIO DEATREL
SC0100000 CHARLESTON CNTY SO
CASE-95085105B

A01/07/1997

ARREST CHARGE 01-VIOLATION
CHECK LAW 13 CTS
PHOTOGRAPH AVAILABLE

SC018025C LIEBER RECT EVAL CT 02/21/1997 CUSTODY STATUS-RECEIVED
CASE-232669 START DATE-02/21/1997
COURT CHARGE 01-FRAUD CHECKS
9 CTS
COURT DISP-CONVICTED; 270 DAYS

SC040055C R & E CENTER COLA 11/16/2000 CUSTODY STATUS-RECEIVED
CASE-232669 START DATE-11/16/2000
CIT-17-15-30-UNCLASSIFIED

COURT CHARGE 01-YOUTHFUL
OFFENDER PAROLE REVOCATION
COURT DISP-CONVICTED; SERVING
TIME
ATN-

RIVERS, MARIO DAETREL
SC0100800 NORTH CHARLESTON PD
CASE-01-046708N
ATN-
WARR-98181BY
CIT-56-1-460-MISDEMEANOR

12/18/2001

ARREST CHARGE 01-DUI (LICENSE
NOT SUSP DUI)-2ND
OFFENSE DATE-12/18/2001
PHOTOGRAPH AVAILABLE

RIVERS, MAURIO DAETREL

10/17/2002

SC0100100 CHARLESTON POLICE DE
 CASE-146264
 ATN-
 WARR-H195379
 CIT-44-53-370(B) (2)-FELONY

ARREST CHARGE 01-MANUFT, POSSE
 SS OTHER SUB SCH I, II, III
 WITD-1ST
 PHOTOGRAPH AVAILABLE
 PALM PRINTS AVAILABLE

WARR-H195380
 CIT-44-53-445(B) (2)-FELONY

ARREST CHARGE 02-DIST, SELL, ET
 C, CRACK COCAINE, OR PWID,
 NR SCHOOL

WARR-H136682
 CIT-61-9-87-MISDEMEANOR

ARREST CHARGE 03-OPEN CONTAIN
 ER OF BEER/WINE

CIT-44-53-370(B) (1) FELONY
 DOC-G3GS1000137 WARR-H195379

COURT CHARGE 01-MDP, DRUGS
 SCH I B, C, LSD AND SCH
 II, COCAINE-1ST
 COURT DISP-CONVICTED; 1 YEAR
 - DEF CRED 74 DAYS JAIL
 TIME
 COURT DATE-03/05/2003
 ATN-

CIT-44-53-445(B) (1) FELONY
 DOC-03GS1000136 WARR-H195380

COURT CHARGE 02-D/5/P/M DRUG
 O/T C/COCAINE/PWID/NEAR
 SCHOOL
 COURT DISP-CONVICTED; 1 YEAR
 - DEF CRED 74 DAYS JAIL
 TIME/CONC W/03-137
 COURT DATE-03/05/2003

CIT-61-9-87-MISDEMEANOR
 DOC-R84 WARR-H136682

COURT CHARGE 03-OPEN CONTAIN
 R OF BEER/WINE
 COURT DISP-NON-CONVICTION;
 DISMISSED

 SC040015C SC DEPT CORRECTIONS 03/10/2003 CUSTODY STATUS-RECEIVED
 CASE-232669 START DATE-03/10/2003
 CIT-44-53-370(B) (2)-FELONY

COURT CHARGE 01-MANUFT, POSSES
 S OTHER SUB SCH I, II, III
 WITD-1ST
 COURT DISP-CONVICTED; 1 YR CC
 ATN-500300028010

CIT-44-53-445(B) (2)-FELONY

COURT CHARGE 02-DIST, SELL, ETC
 , CRACK COCAINE, OR PWID,
 NR SCHOOL
 COURT DISP-CONVICTED; 1 YR CC

 RIVERS, MARIO DAETRAI
 SC0100000 CHARLESTON CNTY SO
 CASE-04-999999X

03/11/2004

400

ACR-10X004572036
WARR-W10010866
CIT-N/A-MISDEMEANOR

ARREST CHARGE 01-PAROLE VIOLA
TION
OFFENSE DATE-03/11/2004
PHOTOGRAPH AVAILABLE

SC040015C SC DEPT CORRECTIONS 03/24/2004 CUSTODY STATUS-RECEIVED
CASE-232669 START DATE-03/24/2004
CIT-N/A-UNCLASSIFIED

COURT CHARGE 01-PAROLE REVOC
ATION
COURT DISP-CONVICTED;NTE 6
YRS
ATN-500200036119

RIVERS, MAURIO DAETRAL 03/27/2005
SC0100800 NORTH CHARLESTON PD
CASE-05011428N
ATN-10X005086056
WARR-NA @
CIT-44-53-370(B)(2)-FELONY

ARREST CHARGE 01-MANUFT, POSSE
SS OTHER SUB SCH I,II,III
WITD-1ST
OFFENSE DATE-03/27/2005
PHOTOGRAPH AVAILABLE

WARR-NA @
CIT-44-53-445(B)(1)-FELONY

ARREST CHARGE 02-D/S/P/M
DRUG O/T C/COCAINE/PWID/NE
AR SCHOOL
OFFENSE DATE-03/27/2005

RIVERS, MAURIO DAETRAL 05/19/2005
SC0100000 CHARLESTON CNTY SO
CASE-05012439B
ATN-10X005139055
WARR-80754DF
CIT-61-9-87-MISDEMEANOR

ARREST CHARGE 01-OPEN CONTAIN
ER OF BEER/WINE
OFFENSE DATE-05/19/2005
PHOTOGRAPH AVAILABLE

RIVERS, MAURIO DAETRAL 08/01/2008
SC0100800 NORTH CHARLESTON PD
CASE-2008034356
ATN-10D100542790
WARR-79219EN
CIT-56-1-460-MISDEMEANOR

ARREST CHARGE 01-DRIVING
UNDER SUSPENSION
OFFENSE DATE-08/01/2008
PALM PRINTS AVAILABLE

WARR-79220EN
CIT-56-1-520-MISDEMEANOR

ARREST CHARGE 02-UNINSURED

MOTOR VEHICLE EE VIOLATIO
N
OFFENSE DATE-09/01/2008

WARR-79221EN
CIT-56-3-110-UNCLASSIFIED

ARREST CHARGE 03-OPERATING
VEHICLE WHICH IS NOT REGIS
TERED/LIC
OFFENSE DATE-09/01/2008

@ - WARRANT OCCURS WITH MORE THAN ONE SID NUMBER

BASED ON SEARCH OF SCLED CJIS CCH FILE USING FBI/684722WA1
REQUESTED FOR CRIMINAL JUSTICE PURPOSES

SCLED CJIS RECORD INDICATES SUBJECT HAS OUT OF STATE ARREST INFORMATION
REQUEST FORWARDED TO NCIC FOR OUT-OF-STATE INFORMATION
INFORMATION FROM OTHER STATES TO FOLLOW THRU NLETS VIA YOUR TERMINAL

INQUIRY WILL BE FORWARDED TO: NCIC WANTED PERSONS

INDIVIDUAL PROHIBITED FROM POSSESSING OR ACQUIRING FIREARM OR AMMUNITION
PURSUANT TO FEDERAL GUN CONTROL ACT OF 1968

INFORMATION SUBMITTED TO SLED CCH INDICATES THIS INDIVIDUAL HAS BEEN
CONVICTED OF A FELONY ACCORDING TO THE SOUTH CAROLINA CODE OF LAWS.
THEREFORE, THIS PERSON IS INELIGIBLE TO SHIP, TRANSPORT, OR RECEIVE ANY
FIREARM OR AMMUNITION AFFECTED BY INTERSTATE OR FOREIGN COMMERCE, AS
DEFINED BY THE GUN CONTROL ACT OF 1968 (18.U.S.C. 922(G)).

** S C CJIS END OF RECORD **

TO: DORSO005-692483 20110713 14:23:06 00068D1DEF
FROM: NC2K-9248255 20110713 14:23:06 271004C146
1L01271004C1462QWA
SC0180000

NO NCIC WANT FBI/684722WA1

NO NCIC WANT SOC/ [REDACTED]

***MESSAGE KEY QWA SEARCHES ALL NCIC PERSONS FILES WITHOUT LIMITATIONS.

TO: DORSO005-692484 20110713 14:23:08 0035F365FD
FROM: III-15951357 20110713 14:23:08 271004C145
EL01271004C1452QR
SC0180000

THIS INTERSTATE IDENTIFICATION INDEX RESPONSE IS THE RESULT OF YOUR
RECORD REQUEST FOR FBI/684722WA1. INDIVIDUAL'S RECORD WILL BE
COMPLETE WHEN ALL RESPONSES ARE RECEIVED FROM THE FOLLOWING SOURCES:
GEORGIA - STATE ID/GA3141075H
NORTH CAROLINA - STATE ID/NC1376364A

AN ADDITIONAL RECORD MAY BE OBTAINED FROM FILES WITHIN YOUR STATE.
END

TO: DORSO005-692485 20110713 14:23:11 0008E34131
FROM: NLETS-14893361 20110713 14:23:10 271004C145
CR.NCIII0000'

402

11:21 57898

07/13/2011 32197 SCU08000

*271004C145

TXT

HDR/2L01271004C1452QR

ATN/ASBELL

***** CRIMINAL HISTORY RECORD *****

***** Introduction *****

This rap sheet was produced in response to the following request:

Subject Name(s)	RIVERS, MAURIO DOETREL
FBI Number	684722WA1
State Id Number	NC1376364A (NC)
Request Id	UNKNOWN
Purpose Code	C
Attention	ASBELL

The information in this rap sheet is subject to the following caveats:

BASED ONLY ON SID NUMBER (NC)
THIS CRIMINAL HISTORY IS FOR A MULTI-STATE RECORD. (NC)
THIS RESPONSE CONTAINS ONLY NORTH CAROLINA CHARGES. (NC)
A MULTI-STATE NCIC RESPONSE WILL BE PROVIDED BY THE FBI. (NC)
THIS CRIMINAL HISTORY RECORD INFORMATION ON THE ABOVE-NAMED INDIVIDUAL
IS A CERTIFIED COPY SUBSTANTIATED BY FINGERPRINTS, AS IT APPEARS IN THE
SBI/DCI FILES. STATE/FEDERAL REGULATIONS REQUIRE A ONE-YEAR RECORD OF
DISSEMINATION. * * * CAUTION * * * CHANGES TO THIS RECORD MAY OCCUR AT
ANY TIME AND A NEW INQUIRY SHOULD BE MADE FOR SUBSEQUENT USE. THIS
RECORD MUST NOT BE USED AFTER 2011-10-11 (NC)

***** IDENTIFICATION *****

Subject Name(s)

RIVERS, MAURIO DAETRAL

Subject Description

FBI Number	State Id Number
684722WA1	NC1376364A (NC)

Sex	Race
Male	Black

Height	Weight	Date of Birth
5'10"	160	

Hair Color	Eye Color
Black	Brown

Place of Birth
South Carolina

***** CRIMINAL HISTORY *****

===== Cycle 1 =====

Tracking Number 01
 Earliest Event Date 2009-06-16 Incident Date 2009-05-27

 Arrest Date 2009-06-16
 Arresting Agency NC0600000 MECKLENBURG CO SO - CHARLOTTE
 Subject's Name RIVERS, MAURIO DAETRAL
 Offender Id Number 4395BBQ
 Charge 01
 Charge Literal ROBBERY WITH DANGEROUS WEAPON-BUSINESS/OTHER PLACE
 Statute (14 -087.000000; NC)
 Severity Felony
 Charge 02
 Charge Literal POSSESSION OF FIREARM BY FELON
 Statute (14 -415.010000; NC)
 Severity Felony
 Charge 03
 Charge Literal CARRYING CONCEALED WEAPON - GUN M
 Statute (14 -269.000A10; NC)
 Severity Misdemeanor

 Booking Case Number
 Booking Agency NC0600000 MECKLENBURG CO SO - CHARLOTTE

Court Disposition (Cycle 1)
 Court Case Number 2009CR 228153
 Court Agency NC060025J MECKLENBURG CO DIST COURT -CHARL
 Charge Literal ROBBERY WITH DANGEROUS WEAPON
 Statute (14-87; NC)
 Severity Felony
 Disposition (2009-07-08; Dismissal Without Leave (By DA))
 Court Comment Special Condition: VD GRAND JURY/ML

Court Disposition (Cycle 1)
 Court Case Number 2009CR 228964
 Court Agency NC060025J MECKLENBURG CO DIST COURT -CHARL
 Charge Literal POSSESSION OF FIREARM BY FELON
 Statute (14-415.1; NC)
 Severity Felony
 Disposition (2009-07-08; Dismissal Without Leave (By DA))
 Court Comment Special Condition: VD GRAND JURY/ML

Court Disposition (Cycle 1)
 Court Case Number 2009CR 228965
 Court Agency NC060025J MECKLENBURG CO DIST COURT -CHARL
 Charge Literal CARRYING CONCEALED GUN(M)
 Statute (14-269(A1); NC)
 Severity Misdemeanor
 Disposition (2009-07-08; Dismissal Without Leave (By DA))
 Court Comment Special Condition: VD GRAND JURY/ML
 ***** INDEX OF AGENCIES *****

Agency MECKLENBURG CO SO - CHARLOTTE; NC0600000;

404

Agency

ME HENBURG CO DIST COURT -CHARL; N 60025J;

* * * END OF RECORD * * *

--[Response: DQFS0005 -]--

TO: DQFS0005-69248 20 0713 14:23:21 0008E34137
 FROM: MLETS-14893367 20110713 14:23:21 271004C145
 CR.GA1110000
 11:21 57904
 07/13/2011 65705 SC0180000
 *271004C145

TXT

HDR/2LC1271004C1452QR

ATN/ASBELL

***** CRIMINAL HISTORY RECORD *****

***** Introduction *****

This rap sheet was produced in response to the following request:

FBI Number: 684722WA1
 State Id Number: GA5141075H ()
 Purpose Code: C
 Attention: ASBELL

The information in this rap sheet is subject to the following caveats:

**THIS RESPONSE IS BEING PRODUCED FOR YOUR REQUEST SENT: 2011-07-13
 (GA; 2007-08-11)

Important! Criminal history record information is obtained one of two ways: 1) by conducting an inquiry using personal identifiers such as name and date of birth (name search), or 2) by submitting fingerprint cards to the Georgia Crime Information Center (GCIC). When conducting a name search for criminal history record information, there is a possibility that the information returned belongs to a different person with the same, or similar, identifiers. In this case, a positive match of the person whose criminal history record is sought requires submission of fingerprint cards to GCIC. When conducting a fingerprint search for criminal history record information, the information returned does, in fact, belong to the individual. In this case, conducting a name search using the individual's personal identifiers would be the same information. (GA; 2007-08-11)

When the information contained in a criminal history report causes an adverse employment or licensing decision the individual, business or agency making the decision must inform the applicant of all information pertinent to the decision. The disclosure must include information that a criminal history record check was conducted, the specific contents of the record and the effect the record had upon the decision. Failure to provide all such information to the person subject to the adverse decision is a misdemeanor offense under Georgia law. Additionally, any unauthorized dissemination of this record or information herein also violates Georgia law. The plea of nolo contendere may be considered a conviction for some purposes; however, except as otherwise provided by law, it shall not be used against the defendant in any other court as a conviction or admission of guilt or for the purpose of effecting any civil disqualification of the defendant to hold public office, to vote, to serve upon any jury, or any other civil disqualification imposed upon a person convicted of any offense under the laws of this state. (GA; 2007-08-11)

In the event that identifiers are not clearly associated to a specific cycle, the information is most likely non-fingerprint based information received from the Department of Corrections at the time of release from incarceration. (GA; 2007-08-11)

***** IDENTIFICATION *****

Subject Name(s)

RIVERS, MAURIO DAETREL
 RIVERS, MARIO L (AKA)
 RIVERS, MAURIO D (AKA)
 RIVERS, MAURIO DAETREL (AKA)

Subject Description

FBI Number State Id Number
 684722WA1 GA3141075H

Social Security Number

Sex Race
 Male Black

Height Weight Date of Birth
 5'10" 140 [REDACTED]
 155

Hair Color Eye Color
 Black Brown

Place of Birth Citizenship
 SOUTH CAROLINA US

***** CRIMINAL HISTORY *****

===== Cycle 1 =====

Tracking Number 00117694872
 Earliest Event Date 2003-12-26 Incident Date 2003-12-26

 Arrest Date 2003-12-26
 Arrest Case Number 000794372
 Arresting Agency GA0330200 COBB COUNTY POLICE DEPARTMENT
 Subject's Name RIVERS, MAURIO DAETREL
 Arrest Type Adult
 Charge 1
 Charge Number 00117694872001
 Charge Tracking Number 00117694872
 Charge Literal CROSSING STATE/COUNTY GUARD LINES WITH WEAPONS, INTOXICANTS
 , DRUGS WITHOUT CONSENT
 Charge Description (F)
 Statute (42-5-15; GA)
 State Offense Code 5850
 Severity Felony
 Charge 2
 Charge Number 00117694872002
 Charge Tracking Number 00117694872
 Charge Literal FUGITIVE FROM JUSTICE
 Charge Description (F)

Statute (16-13-33; GA)
 State Offense Code 491
 Severity Felony

***** Cycle 2 *****
 Tracking Number 88376089675
 Earliest Event Date 2010-08-04 Incident Date 2010-08-04

 Arrest Date 2010-08-04
 Arrest Case Number 1021210747
 Arresting Agency GAAPD0000 ATLANTA POLICE DEPARTMENT
 Subject's Name RIVERS, MAURIO DAETREL
 Arrest Type Adult
 Charge 1
 Charge Number 88376089675001
 Charge Tracking Number 88376089675
 Charge Literal MARIJUANA-POSSESS LESS THAN 1 OZ.
 Statute (16-13-2(B); GA)
 State Offense Code 3514
 Severity Misdemeanor

***** INDEX OF AGENCIES *****

Agency COBB COUNTY POLICE DEPARTMENT; GA0330200;
 Agency Telephone (770) 499-3920
 Address 140 NORTH MARIETTA PARKWAY
 MARIETTA, GA 300600000

 Agency ATLANTA POLICE DEPARTMENT; GAAPD0000;
 Agency Telephone 404-546-7461
 Address 3493 DONALD LEE HOLLOWELL PKWY
 ATLANTA, GA 30331

 Agency COBB COUNTY POLICE DEPARTMENT; GA0330200;

 Agency ATLANTA POLICE DEPARTMENT; GAAPD0000;

*** END OF RECORD ***

State of South Carolina,)
County of Colleton.)

In the Court of General Sessions.

Indictments Numbered
2011-GS-15-549, -550, -551, & -759.

The State of South Carolina)
)
 versus)
)
Maurio Rivers.)

Request to Charge No. 8
Intent.

Furthermore, for the Defendant to be guilty, you must find that the Defendant intended to commit the crime charged. For the Defendant to be guilty, he must have intended to do a forbidden act. The intent of the Defendant is something that can be inferred from all the circumstances of this case.

Authority: "In offenses at common law, and under statutes which do not disclose a contrary legislative purpose, to constitute a crime, the act must be accompanied by a criminal intent, or by such negligence or indifference to a duty or to consequences as is regarded by the law as equivalent to a criminal intent." *State v. American Agricultural Chemical Co.*, 118 S.C. 333, 110 S.E. 800 (1922).

Our statute does not specifically dispose of the intent requirement. Implying a disposal of the intent requirement would violate the Due Process guarantees of the Constitutions of the State of South Carolina and the United States. Due Process requires a criminal statute to give fair warning of the conduct which it prohibits. "No one may be required at peril of life, liberty or property to speculate as to the meaning of penal statutes. All are entitled to be informed as to what the State commands or forbids." *Bouie v. City of Columbia*, 378 U.S. 347, 84 S.Ct. 1697, 12 L.Ed. 2d 894 (1964), quoting *Lanzetta v. New Jersey*, 306 U.S. 451, 453 (19____). "Judicial enlargement of a criminal statute by interpretation is at war with a fundamental concept of the common law that crimes must be defined with appropriate definiteness." *Bouie v. City of Columbia*, 378 U.S. 347, 84 S.Ct. 1697, 12 L.Ed. 2d 894 (1964), quoting *Pierce v. United States*, 314 U.S. 306, 311 (______). In *Bouie*, the United States Supreme Court held that South Carolina could not affirm a conviction under the criminal trespass statute where the statute required notice before entry on real property; and the South Carolina Supreme Court held that notice after entry upon the property was sufficient, as in civil trespass, if the defendants thereafter remained.



Furthermore, it is axiomatic that penal statutes are strictly construed against the state and in favor of liberty.

Respectfully submitted,

.....
J.D. Bryan
Counsel for the Accused.
P.O. Box 1111
Walterboro, SC 29488

843-549-9455

State of South Carolina,) In the Court of General Sessions.
County of Colleton.)

Indictments Numbered
2011-GS-15-549, -550, -551, & -759.

The State of South Carolina)
)
 versus)
)
Maurio Rivers.)

*Defendant's Request to Charge No. 12.
Accomplice Liability.*

To convict for attempted murder under accomplice liability, you must find that the attempted homicide was a natural or probable consequence of the acts actually agreed on by the defendants before the law would hold him responsible for such a crime.

Authority: *State v. Peterson*, 287 S.C. 244, 335 S.E.2d 800 (1985)

Respectfully submitted,

.....
J.D. Bryan
Counsel for the Accused.
P.O. Box 1111
Walterboro, SC 29488

843-549-9455



STATE OF SOUTH CAROLINA
COUNTY OF COLLETON

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

Maurio D. Rivers, #232669,

2016-CP-15-0647

Applicant,

v.

ORDER OF DISMISSAL

State of South Carolina,

Respondent.

2020 JAN -2 AM 11:51

COLLETON COUNTY
COMMON PLEAS COURT

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Colleton County Clerk of Court's orders of commitment. Applicant was indicted by the August 2011 term of the Colleton County Grand Jury for two counts of attempted murder (2011-GS-15-00549, -550) and possession of a weapon during the commission of a violent crime (2011-GS-15-551). John D. Bryan, Esquire, represented the Applicant. Solicitor Steven Knight prosecuted the case. On December 12-13, 2012, Applicant proceeded to trial before the Honorable Diane S. Goodstein. Applicant was found guilty as indicted of one count of attempted murder (2011-GS-15-549), and Applicant was found not guilty of attempted murder (2011-GS-15-550) and possession of a weapon during the commission of a violent crime (2011-GS-15-551). Judge Goodstein sentenced Applicant to incarceration for thirty years.

Applicant filed a timely notice of appeal. Carmen V. Ganjehsani, Esquire represented Applicant and filed an *Anders* brief. On December 3, 2014, the South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Rivers, Op. No. 2014-UP-441 (S.C. Ct. App., Filed December 3, 2014).

Applicant subsequently filed a petition for rehearing on December 4, 2014, and Applicant also filed a petition for writ of certiorari to the South Carolina Supreme Court. On December 17,

2014 the South Carolina Supreme Court issued an order stating that it would construe Applicant's notice of appeal as a petition for writ of certiorari and dismiss the petition without prejudice until the South Carolina Court of Appeals issued its decision on Applicant's petition for rehearing. The remittitur was sent down on December 31, 2014. On January 29, 2015, the South Carolina Court of Appeals issued an order recalling the remittitur. On January 30, 2015, the South Carolina Court of Appeals granted Applicant's motion to relieve his counsel. Thereafter, the Applicant proceeded pro se. On April 16, 2015, the South Carolina Court of Appeals denied Applicant's petition for rehearing.

On April 27, 2015, the South Carolina Supreme Court received Applicant's petition for writ of certiorari, and on November 19, 2015, certiorari was denied. The remittitur was sent down on December 7, 2015.

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

1. Ineffective Assistance of Counsel
 - a. "Failing to object to the jury instructions charging the hand of one is the hand of all."
 - b. "Failing to motion for a directed verdict on the charge of accomplice liability in regard to Attempted Murder."
 - c. "Failing to object to the inclusion of a criminal offense for which the defendant was not indicted (Burglary and a getaway driver) as an example to the jury defining accomplice liability/or the hand of one is the hand of all."

Findings of Facts and Conclusions of Law

This Court has thoroughly reviewed the record in its entirety. Additionally, this Court heard the testimony presented at the evidentiary hearing and was able to observe the witnesses presented, which allowed the Court to scrutinize the witness credibility. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

Applicant has alleged numerous instances of ineffective assistance of counsel against trial counsel, John Bryan. Each allegation is addressed fully below.

The Sixth Amendment to the United States Constitution guarantees a defendant the right to effective assistance of counsel. U.S. Const. amend. VI; Strickland v. Washington, 466 U.S. 668 (1984); Lomax v. State, 379 S.C. 93, 665 S.E.2d 164 (2008).

In a post-conviction relief action, an applicant bears the burden of proving the allegations in his or her application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that “counsel’s conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result.” Strickland, 466 U.S. 668; Butler, 286 S.C. at 442, 334 S.E.2d at 814.

Strickland does not guarantee perfect representation, only a “‘reasonably competent attorney.’” 466 U. S. at 687 (quoting McMann v. Richardson, 397 U. S. 759, 770 (1970)). Representation is constitutionally ineffective only if it “so undermined the proper functioning of the adversarial process” that the defendant was denied a fair trial. Strickland, 466 U.S. at 686. Just as there is no expectation that competent counsel will be a flawless strategist or tactician, an attorney may not be faulted for a reasonable miscalculation or lack of foresight or for failing to prepare for what appear to be remote possibilities. See generally id.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668. First, an applicant must prove that counsel’s performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney’s performance by its “reasonableness under prevailing professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting

Strickland, 466 U.S. at 690). The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Butler, 286, 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Id. (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel’s deficient performance must have prejudiced the applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Although courts may not indulge “post hoc rationalization” for counsel’s decision making that contradicts the available evidence of counsel’s actions, Wiggins, 539 U.S. at 526–527, neither may they insist counsel confirm every aspect of the strategic basis for his or her actions. There is a “strong presumption” that counsel’s attention to certain issues to the exclusion of others reflects trial tactics rather than “sheer neglect.” Yarborough v. Gentry, 540 U. S. 1, 8 (2003) (per curiam). After an adverse verdict at trial even the most experienced counsel may find it difficult to resist asking whether a different strategy might have been better, and, in the course of that reflection, to magnify their own responsibility for an unfavorable outcome. Strickland, however, calls for an inquiry into the objective reasonableness of counsel’s performance, not counsel’s subjective state of mind. Id. at 688; Harrington v. Richter, 562 U.S. 86 (2011).

With respect to prejudice, an applicant must demonstrate “a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Id. “A reasonable probability is a probability sufficient to undermine confidence in the outcome.” Id. at 694. It is not enough “to show that the errors had some conceivable effect on the outcome of

the proceeding.” *Id.* at 693. Counsel’s errors must be “so serious as to deprive the defendant of a fair trial, a trial whose result is reliable.” *Id.* at 687; *Harrington*, 562 U.S. 86.

“Surmounting *Strickland*’s high bar is never an easy task.” *Padilla v. Kentucky*, 559 U.S. 356, 371 (2010). An ineffective assistance of counsel claim can function as a way to escape rules of waiver and forfeiture and raise issues not presented at trial, and so 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 689–690. Even under de novo review, the standard for judging counsel’s representation is a most deferential one. Unlike a later reviewing court, the attorney observed the relevant proceedings knew of materials outside the record and interacted with the client, with opposing counsel, and with the judge. It is “all too tempting” to “second-guess counsel’s assistance after conviction or adverse sentence.” *Id.* at 689; see also *Bell v. Cone*, 535 U. S. 685, 702 (2002); *Lockhart v. Fretwell*, 506 U. S. 364, 372 (1993). The question is whether an attorney’s representation amounted to incompetence under “prevailing professional norms,” not whether it deviated from best practices or most common custom. *Strickland*, 466 U.S. at 690.

In assessing prejudice under *Strickland*, the question is not whether a court can be certain counsel’s performance had no effect on the outcome or whether it is possible a reasonable doubt might have been established if counsel acted differently. *Wong v. Belmontes*, 558 U. S. 15 (2009); *Strickland*, 466 U.S. at 693. Instead, *Strickland* asks whether it is “reasonably likely” the result would have been different. *Id.* at 696. This does not require a showing that counsel’s actions “more likely than not altered the outcome,” but the difference between *Strickland*’s prejudice standard and a more-probable-than-not standard is slight and matters “only in the rarest case.” *Id.* at 693,

697. The likelihood of a different result must be substantial, not just conceivable. Id. at 693; Harrington, 562 U.S. 86.

Based on this standard set forth above, this Court finds Applicant has failed to meet his requisite burden of establishing any constitutional ineffectiveness of counsel as to any of his various allegations. Applicant's allegation is addressed fully below:

Failure to Object to Hand of One is the Hand of All Jury Charge

Applicant alleges that counsel was deficient for failing to object to the hand of one is the hand of all jury instruction given to the jury. Applicant testified that his attorney is the one who requested the hand of one is the hand of all charge, and Applicant testified that he did not remember counsel objecting to the charge being given to the jury. Further, Applicant testified that counsel did not advise him of the law surrounding the hand of one is the hand of all. Counsel testified that he reviewed the hand of one is the hand of all with Applicant, and Counsel testified that he also reviewed accomplice liability with Applicant, prior to trial. Counsel testified that there was no way to discuss the case with Applicant without the hand of one is the hand of all being a part of the conversation. Additionally, Counsel testified that he did not recall objecting to the charge being given to the jury. This Court finds that Applicant has failed to meet his burden and that counsel was not deficient in regards to this allegation. Evidence in the record supports a charge on the hand of one is the hand of all and the charge was appropriately given to the jury. As counsel noted in his testimony, the hand of one is the hand of all was one of the more pivotal points of law in this case. Therefore, this Court finds that counsel was not deficient for failing to object to the charge being given and dismisses this allegation.

Failure to Move for a Directed Verdict

Applicant alleges that counsel was deficient for failing to move for a directed verdict on

the charge of accomplice liability in regard to Attempted Murder. This allegation is directly refuted by the trial transcript. Upon review of the record, this Court finds that counsel did in fact move for a directed verdict at trial. Counsel moved for a directed verdict and the trial court ruled against him. This Court therefore finds that Applicant has failed to meet his burden and this allegation is dismissed.

Failing to Object to Example Given of Accomplice Liability

Applicant alleges counsel was deficient for failing to object to the Solicitor giving an illustration of a burglary and a getaway car as an example of accomplice liability.

It is well settled that “the solicitor must confine his arguments to the evidence in the record and its reasonable inferences.” State v. Tucker, 324 S.C. 155, 169, 478 S.E.2d 260, 267 (1996). “If a Solicitor’s closing argument remains within the record evidence and the reasonable inferences therefrom, no error occurs.” State v. New, 338 S.C. 313, 319, 526 S.E.2d 237, 240 (Ct. App. 1999) (internal citations omitted). “Undoubtedly, a Solicitor may argue the State’s version of the testimony presented, and furthermore may comment on the weight to be accorded such testimony.” Id. Further, “[i]mproper comments do not automatically require reversal if they are not prejudicial to the defendant, and the [defendant] has the burden of proving he did not receive a fair trial because of the alleged improper argument.” Humphries v. State, 351 S.C. 362, 373, 570 S.E.2d 160, 166 (2002). “The relevant question is whether the solicitor’s comments so infected the trial with unfairness as to make the resulting conviction a denial of due process.” Id.

In addition, the Court finds even if the comment was objectionable, Applicant suffered no prejudice. See State v. Rudd, 355 S.C. 543, 550, 586 S.E.2d 153, 157 (Ct. App. 2003) (appellate courts will review the alleged impropriety of an opening or closing argument in the context of the entire record). “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,” and [t]he burden of proof is on [Applicant] to show prejudice.” Tucker, 324 S.C. at 169, 478 S.E.2d at 267–68 (internal citations omitted). “In evaluating prejudice, a number of factors should be considered: (1) the degree to which the prosecutor’s remarks have a tendency to mislead the jury and to prejudice the accused; (2) whether the remarks were isolated or extensive; (3) absent the remarks, the strength of competent proof introduced to establish the guilt of the accused; and (4) whether the comments were deliberately placed before the jury to divert attention to extraneous matters.” United States v. Mason, 344 F. App’x 851, 854 (4th Cir. 2009). When making this determination, courts “review the ‘alleged impropriety of argument in the context of the entire record.’” State v. Liberte, 336 S.C. 648, 521 S.E.2d 744 (1999) (quoting Brown v. State, 383 S.C. 506 (2009)). This Court finds that Applicant has failed to meet his burden in regard to this allegation.

Applicant testified that counsel should have objected to the example being used by the Solicitor. Counsel testified he did not object to the example and did not feel the need to do so. This Court finds that counsel is given latitude in remarks made during closing argument and that the court corrected any potential error by charging the jury on the law of accomplice liability. This Court also finds that even if counsel did err in failing to object, the error would have been harmless and would not have prejudiced Applicant. This Court finds that Applicant has failed to meet his burden and this allegation is dismissed.

Failure to Object to Judge Instructions

Applicant alleges that counsel was deficient for failing to object to the trial judge’s comments at the beginning of the trial that the jury should seek a true and just verdict. Counsel testified that he did not know that this was objectionable. This Court finds that any potential

error of counsel in not objecting to the comment made by the trial judge was harmless and did not prejudice Applicant. The mention of a true and just verdict was made only once by the trial court and was not repeated. The trial court also included all of the standard language concerning the State's burden of proof in criminal cases in its colloquy to the jury. This Court finds that Applicant has failed to meet his burden in regards to this allegation and dismisses this allegation.

CONCLUSION

Based on all the forgoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations before or during his trial and sentencing proceedings. Counsel was not deficient, nor was Applicant prejudiced by Counsel's representation. Therefore, this PCR application must be denied and dismissed with prejudice.

The Court notes Applicant must file and serve a notice of appeal within thirty days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. The application for post-conviction relief be denied and dismissed with prejudice; and
2. Applicant be remanded to the custody of Respondent.

AND IT IS SO ORDERED this 21 day of December, 2019.

A handwritten signature in black ink, appearing to read 'W. H. Seals Jr.', written over a horizontal line.

WILLIAM H. SEALS JR.
Presiding Judge
Fourteenth Judicial Circuit

State of South Carolina

County of Colleton

In the Court of Common Pleas

Case no. 2015-cp-15-00647

Maurio Daetrel Rivers

Applicant,

VS.

State of South Carolina

Respondent,

Motion to Amend and Alter Judgement

SCRCP 59(e)

Applicant files this Motion to Amend and Alter Order and Judgment pursuant to Rule 59(e) of the S.C.R.C.P. and respectfully requests this Court to amend its Order and Judgment dismissing his claims against the Respondent, the State of South Carolina, and to re-open the case for the purpose of adequately addressing all the issues raised both in the PCR application and at the PCR evidentiary hearing.

In support of this motion, Applicant Rivers states the following: The PCR Court erred in finding Trial Counsel was not ineffective assistance for requesting the accomplice liability charge to the jury.

RECEIVED

JAN 15 2020

Referred to Limbungan IPB
 Answered _____

As an initial matter, there was no evidence presented of a specific Intent to Kill, nor any evidence of any overt act which one could reasonably infer that Rivers had any malice towards the victim Lt. Burnette at all.

The only evidence presented against Rivers was his flight or his intent to avoid arrest. There was no evidence presented that Rivers was aware that his passenger possessed a concealed weapon prior to it being fired. Neither was there evidence presented of an agreement to fire a weapon at the victim. Rivers was charged with weapon possession and was found not guilty. Furthermore, Rivers testified at the PCR evidentiary hearing that he did not know that weapons were in the vehicle.

Due to the Accomplice Liability charge the applicant was ultimately convicted of a murder attempt without any evidence of the essential elements necessary to constitute Attempted Murder.

The PCR Courts order also states it was the solicitor (S. Knight) who used the example of the getaway car driver and the burglary defining Accomplice Liability when it was in fact the judge (D. Goodstein). Her example shifted the burden of proof to the applicant inferring that to be guilty of the murder attempt, only the evidence of Rivers' flight was necessary.

Additionally, the PCR Court's order failed to address the issue of whether or not Trial Counsel was ineffective assistance for failing to introduce the evidence of the uncredibility of State's witness Det. Allan Innabinet who had been convicted of falsifying statements to federal agents.

Det. Allan Innabinet's testimony was the only testimony at the Applicants preliminary hearing and was used in obtaining the indictment for attempted murder from the grand jury.

Accordingly, Trial Counsels performance was deficient for failing to introduce the uncredibility of the state's witness Allan Innabinet The failure to introduce the evidence of the uncredibility of Allan Innabinet was extremely prejudicial to the applicant.

Also, the courts order fails to address the issue of whether or not Trial Counsel was ineffective assistance for failing to motion to elect a theory of criminal liability. The failure to elect a theory permitted the state to prosecute Applicant as both the principle (shooter) and the Alleged

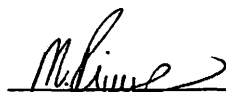
Accomplice (driver). The failure to motion to elect a theory was both deficient performance and prejudicial to the applicant.

Let the court please note that on November 15th 2017, I the Applicant submitted a Motion to Amend the PCR application raising all the above unaddressed issues. And now am requesting this court address all issues adequately. (Marlar vs. State 375 S.C. 407, 410 – 653 SE.2d 266, 267 (2007))

Conclusion

For all the above mentioned reasons Applicant respectfully request this court alter its judgement to dismiss Applicants PCR claims and vacate the thirty year sentence or in the alternative reverse the Attempted Murder conviction and remand for a new trial.

Respectfully,



Maurio Daetrel Rivers #232669

L.C.C.I (F7-176)

990 Wisacky highway

Bishopville SC. 29010

January 10th, 2020

State of South Carolina
County of Colleton
In the Court of Common Pleas
Case no. 2016-CP-15-00647

MAURIO DAETREL RIVERS, Applicant,

V.

STATE OF SOUTH CAROLINA, Respondent

CERTIFICATE OF SERVICE

I, Mauro Daetrel Rivers, certify that on this 13th day of January 2020, I have served the 59(e) Motion to Alter or Amend Judgement upon the Respondent by depositing a copy of the same in the United States Mail, postage prepaid, addressed to:

**OFFICE OF THE ATTORNEY GENERAL
POST OFFICE BOX 11549
COLUMBIA, SC 29211**

Mario D. Rivers, #232669

State of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: William H. Seals, Jr.

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ 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: After a very careful and deliberate consideration and re-consideration of evidence and argument presented at the evidentiary hearing, case law, the signed Order of Dismissal, Applicant's Rule 59(e) Motion, and the State's Return to Applicant's Motion, Judge Seals is hereby denying Applicant's Motion Pursuant to Rule 59(e), SCRP.

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.


Circuit Court Judge

2157
Judge Code

July 23, 2020
Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 2020 and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 2020 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

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-Filers or who are appearing pro se. See Rule 77(d), SCRPC.

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	)	IN THE COURT OF COMMON PLEAS
COUNTY OF COLLETON	)	FOURTEENTH JUDICIAL CIRCUIT
MARIO D. RIVERS, #232669,	)	C/A NO.: 2016-CP-15-0647
Applicant,	)	
-versus-	)	
STATE OF SOUTH CAROLINA,	)	MOTION TO ALTER OR AMEND THE
Respondent.	)	JUDGMENT PURSUANT TO RULE
	)	59(e), S.C.R.Civ.P.

Applicant, by and through undersigned counsel, hereby moves this Honorable Court to alter or amend the judgment filed on January 2, 2020 and received by undersigned counsel on January 6, 2020 to include rulings on all issues raised by Applicant in his Applications and during the hearing of this matter.

COLLETON COUNTY
COMMON PLEAS COURT
2020 JAN 23 AM 11:26

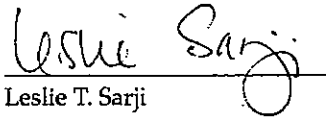
The grounds for this Motion are as follows:

1. That the judgment does not address applicant's assertion that trial counsel was ineffective for failing to request a jury charge instructing the jury that specific intent to kill must be proven in order to support a conviction for Attempted Murder;
 2. That the judgment does not address the issue raised in Applicant's amended application filed November 27, 2017 that trial counsel was ineffective for failing to move to require the State to elect a theory or basis of criminal liability;
 3. That the judgement failed to address the issue raised in Applicant's amended application filed November 27, 2017 regarding disparity in sentences received by Applicant and his co-defendant;
- and

4. That the judgment fails to address the issue raised during Applicant's post-conviction relief hearing that trial counsel was ineffective for failing to properly advise Applicant regarding his testimony at trial and whether any prior convictions would be admissible against him.

Applicant requests this Court alter or amend the judgment in this case to include specific rulings on each of the issues raised.

Respectfully submitted,

A handwritten signature in black ink, reading "Leslie Sarji", written over a horizontal line.

Leslie T. Sarji
SC Bar No.: 15672
PO Box 20248
Charleston, SC 29413
(843)722-5354
Attorney for Applicant

Charleston, South Carolina
January 15, 2020

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF COLLETON	)	FOURTEENTH JUDICIAL CIRCUIT
	)	
Maurio D. Rivers, #232669,	)	2016-CP-15-0647
	)	
Applicant,	)	
	)	
v.	)	
	)	RETURN TO APPLICANT'S
		"MOTION TO AMEND AND ALTER
		JUDGMENT PURSUANT TO RULE
		59(E), SCRPC"
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

Respondent, by and through undersigned counsel, making its Return to Applicant's "Motion to Alter or Amend Judgment Pursuant To Rule 59(e), SCRPC," would respectfully show unto this Court:

I.

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Colleton County Clerk of Court's orders of commitment. Applicant was indicted by the August 2011 term of the Colleton County Grand Jury for two counts of attempted murder (2011-GS-15-00549, -550) and possession of a weapon during the commission of a violent crime (2011-GS-15-551). John D. Bryan, Esquire, represented him. Solicitor Steven Knight prosecuted the case. On December 12-13, 2012, Applicant proceeded to trial before the Honorable Diane S. Goodstein. Applicant was found guilty as indicted of one count of attempted murder (2011-GS-15-549). Applicant was found not guilty of attempted murder (2011-GS-15-550) and possession of a weapon during the commission of a violent crime (2011-GS-15-551). Judge Goodstein sentenced Applicant to incarceration for thirty years.

Applicant filed a timely notice of appeal. Carmen V. Ganjeheh, Esquire represented Applicant and filed an *Anders* brief. On December 3, 2014, the South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Rivers, Op. No. 2014-UP-441 (S.C. Ct. App., Filed December 3, 2014).

Applicant subsequently filed a petition for rehearing on December 4, 2014. Applicant also filed a petition for writ of certiorari to the South Carolina Supreme Court. On December 17, 2014 the South Carolina Supreme Court issued an order stating that it would construe Applicant's notice of appeal as a petition for writ of certiorari, and dismiss the petition without prejudice until the South Carolina Court of Appeals issues its decision on Applicant's petition for rehearing. The Remittitur was sent down on December 31, 2014. On January 29, 2015, the South Carolina Court of Appeals issued an order recalling the remittitur. On January 30, 2015, the South Carolina Court of Appeals granted Applicant's motion to relieve his counsel, and thereafter, proceeded pro se. On April 16, 2015, the South Carolina Court of Appeals denied Applicant's petition for rehearing.

On April 27, 2015, the South Carolina Supreme Court received Applicant's petition for writ of certiorari. On November 19, 2015, certiorari was denied. The Remittitur was sent down on December 7, 2015.

II.

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

1. Ineffective Assistance of Counsel
 - a. "Failing to object to the jury instructions charging the hand of one is the hand of all."
 - b. "Failing to motion for a directed verdict on the charge of accomplice liability in regard to Attempted Murder."
 - c. "Failing to object to the inclusion of a criminal offense for which the defendant was not indicted (Burglary and a getaway driver) as an example to the jury defining accomplice liability/or the hand of one is the hand of all."

An evidentiary hearing into the matter was convened at the Beaufort County Courthouse. Applicant was present at the hearing and was represented by Leslie Sarji, Esquire. Respondent was represented by Assistant Attorney General Benjamin Limbaugh of the South Carolina Attorney General's Office. After hearing all the testimony presented at the evidentiary hearing, as well as arguments from both parties, this Court issued an order of dismissal on January 2, 2020, denying and dismissing the application with prejudice.

Subsequently, on January 15, 2020, Applicant submitted a “Motion to Amend and Alter Judgment Pursuant To Rule 59(e), SCRCF.” This Return follows.

III.

In his “Motion to Amend and Alter Judgment Pursuant To Rule 59(e), SCRCF,” Applicant asserts trial counsel was deficient for requesting the accomplice liability charge to the jury, failing to introduce the uncredibility of the state’s witness Allan Innabine, and failing to elect a theory of criminal liability. In support of these allegations, Applicant asserts the evidence did not support a jury charge on accomplice liability, counsel should have introduced that Detective Innabine had been convicted for falsifying statements to federal agents, and not moving to elect a theory allowed the State to prosecute Applicant as both the principle and the alleged accomplice. Applicant asserts that this Court should alter or amend the order and grant Applicant post-conviction relief.

Respondent submits this Court’s order of dismissal contains the required findings of facts and conclusions of law as required by S.C. Code Ann. §17-27-80 (1976) and Rule 52(a) SCRCF. *See also McCray v. State*, 305 S.C. 329, 408 S.E.2d 241 (1991). Respondent submits the Court fully enumerated its reasoning in the order, including citations. Respondent submits Applicant’s motion does not provide any insight not already considered by this Court when making its ruling.

Respondent submits this Court fully ruled on all issues properly presented through Applicant's post-conviction relief application and Applicant's "Motion to Amend and Alter Judgment Pursuant To Rule 59(e), SCRCP" should be denied. As each properly raised allegation was addressed fully in the order, Respondent submits Applicant's assertions are without merit.

IV.

WHEREFORE, having made its Return to the motion, the State requests the relief requested in the motion be denied and that said motion be dismissed.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

BENJAMIN LIMBAUGH
Assistant Attorney General

By: s/ Benjamin Limbaugh
ATTORNEYS FOR RESPONDENT

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

July 21, 2020

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Colleton County

Honorable William H. Seals, Circuit Court Judge

MAURIO D. RIVERS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2020-001106

PETITION FOR WRIT OF CERTIORARI

KATHRINE H. HUDGINS
Appellate Defender

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

ATTORNEY FOR PETITIONER

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ISSUES PRESENTED

1. Did the PCR judge err in refusing to find trial counsel ineffective for failing to object to the trial judge's instruction to the jury on accomplice liability/hand of one is the hand of all when the State failed to show a pre-arranged common design or purpose between the co-defendant and Petitioner to attempt to kill the police officer who was chasing the vehicle driven by Petitioner?
2. Did the PCR judge err in refusing to find trial counsel ineffective for failing to object to the example given by the judge to the jury of accomplice liability because, under the facts of this case, the example was an improper comment on the facts that diluted the State's burden of proof?
3. Did the PCR judge err in refusing to find trial counsel ineffective for failing to object to the trial judge's preliminary comment to the jury that a trial is a search for the truth to make sure that justice is done between the parties because this language diluted the State's burden of proof?

STATEMENT

In August of 2011, the Colleton County Grand Jury indicted Petitioner, Maurio Daetrel Rivers for two counts of attempted murder and one count of possession of a weapon during the commission of a violent crime, indictments #2011-GS-15-00549, 00550, 00551. (App. pp. 230-231). On December 12, 2012, Petitioner proceeded to jury trial before the Honorable Diane S. Goodstein. John D. Bryan represented Petitioner at trial. Steven Knight prosecuted the case. The jury found Petitioner not guilty of one count of attempted murder and not guilty of the weapon charge. The jury found Petitioner guilty of one count of attempted murder. Judge Goodstein sentenced Petitioner to thirty (30) years. (App. p. 232). A timely notice of intent to appeal and the direct appeal perfected. A three-judge panel of the South Carolina Court of Appeals heard argument in the case on November 5, 2014, and on December 3, 2014, affirmed the conviction in an unpublished opinion. State v. Rivers, Op. No. 2014-UP-441 (S.C. Ct. App. Filed December 3, 2014). (App. pp. 269-270). Petitioner filed a petition for rehearing and filed a motion to relieve counsel and proceed *pro se*. The Court of Appeals granted the motion to relieve counsel and on April 16, 2015, denied the petition for rehearing. Petitioner then filed a petition for writ of certiorari with the South Carolina Supreme Court that was denied on November 19, 2015.

On June 1, 2016, Petitioner filed an application for post-conviction relief [PCR]. (App. pp. 271-284). The State filed a return on April 17, 2017. (App. pp. 285 - 290). On November 15, 2017, Petitioner filed a motion to relieve PCR counsel and an amended PCR application. (App. pp. 291-298). An evidentiary hearing was held on April 1, 2019, and April 3, 2019, before the Honorable William H. Seals, Jr.. Leslie T. Sarji represented Petitioner at the PCR hearing. Benjamin Limbaugh represented the State. In a written order signed December 21, 2019, Judge

Seals denied relief and dismissed the application. (App. pp. 411-420). On January 10, 2020, Petitioner filed a motion to alter or amend pursuant to Rule 59(e) SCRCF. (App. pp. 421-424). Judge Seals denied the motion on July 23, 2020. (App. pp. 425-426). A timely notice of intent to appeal was filed on August 7, 2020. This appeal follows.

ARGUMENTS

1. **The PCR judge erred in refusing to find trial counsel ineffective for failing to object to the trial judge's instruction to the jury on accomplice liability/the hand of one is the hand of all when the State failed to show a pre-arranged common design or purpose between the co-defendant and Petitioner to attempt to kill the police officer who was chasing the vehicle driven by Petitioner.**

The jury found Petitioner guilty of the attempted murder of Lieutenant Joseph Burnette with the Dorchester County Sheriff's Office. On July 12, 2011, at 7:00 PM Deputy Justin Eaches with the Dorchester County Sheriff's Office attempted to stop a black car on Interstate 95 for failure to use a turn signal. (App. p. 63, lines 10 – p. 64, lines 1-2). The deputy testified that he saw two black males in the car and he identified Petitioner as the driver. (App. p. 64, lines 13-25). A chase ensued and the deputy asked for assistance from Lt. Burnette. (App. p. 67, line 3 – p. 68, lines 1-9). Lt. Burnette took over the pursuit of the car because of the condition of Deputy Eaches' patrol car and the high rate of speed of the chase. (App. p. 68, lines 1-6). Lt. Burnette testified that he heard gunshots after the car exited the interstate onto Highway 61. (App. p. 87, lines 15-16). Lt. Burnette testified that these first set of shots were fired by the passenger. (App. p. 85, lines 4-7). Lt. Burnette confirmed that the passenger, Bronson Shelley, stuck his head out of the sunroof, looked at the officer and shot at him. (App. p. 92, line. 19 – p. 93, lines 1. 7; p. 96, line 22 – p. 97, lines 1-7).

The black car was eventually struck by Lt. Burnette's patrol vehicle. (App. p. 84, lines 13-15). According to Lt. Burnette, as the black car was traveling backwards out of control before flipping over, he heard a second set of what he later determined to be gunshots. (App. p. 97, line 8 – p. 98, lines 1-20). Lt. Burnette testified that while there were two different sets of shootings, he only saw one person, the passenger and co-defendant, Bronson Shelley, shoot during the first set. (App. p. 97, lines. 4-15). Lt. Burnette did not testify as to who was shooting the second time. According to Lt. Burnette, both the driver and passenger fled from the vehicle after it wrecked. (App. p. 85,

lines. 19-24. Lt. Burnette released his K-9 and Petitioner was apprehended¹. (App. p. 85, line 12 – p. 86, lines 1- 11). Deputy Eaches assisted in the apprehension of the passenger, Bronson Shelley. Shelley had a holster in his pocket when he was apprehended. (App. p. 73, lines 4 – 17).

There were three guns recovered from the wreck scene. One gun, a .38 special, was found on the ground after the car was rolled upright. (App. p. 105, line 21 – p. 106, lines 1-18, p. 107, line 19 – p. 108, lines 1-4). Another gun, a Bursa Firestone .380, was found lying in plain view while the car was still upside down. (App. p. 109, lines 1-4; p. 133, lines). This gun was found with the slide back indicating all bullets had been fired from the weapon. (App. p. 109, lines 1-20; p. 133, lines 11-16). A third gun, a Colt .45, was found inside the glove box of the black car. (App. p. 111, line 11 – p. 112, lines 1-3).

Five shell casings were recovered on Highway 61. (App. p. 116, line 11- p. 117, lines 1-4). These casings matched the Bursa Firestone .380. (App. p. 145, lines 11-12). Bullet fragments were collected at the scene of the wreck. (App. p. 116, lines 19-23; p. 117, lines 6-11). One of the fragments was fired by the .38 special. (App. p. 146, lines 2-3). There were four holes in the windshield of the black car where shots had been fired outward. (Tr. p. 124, line 1 – p. 127, line 1; p. 129, lines 11-12).

Petitioner was charged with the attempted murder of both Lt. Burnette and Deputy Eaches and charged with possession of a weapon during the commission of a violent offense. The jury found Petitioner not guilty of the attempted murder of Deputy Eaches and not guilty of the weapon charge. The indictment for the attempted murder of Lt. Burnette reads, “That in Colleton County, South Carolina, on or about July 12, 2011, the defendant, Maurio Daetrel Rivers, with malice

¹ Petitioner testified at the PCR hearing that he filed a federal civil suit against the officers for allowing the dog to continue to bite him in the groin. (App. p. 333, line 23 – p. 334, lines 1-4). Petitioner testified that he received a settlement of ten thousand dollars (\$10,000). (App. p. 326, lines 15-25).

aforethought accompanied by a present ability to complete the act and the intent to kill, either express or implied, did attempt to kill the victim, Deputy J. Burnette with the Dorchester County Sheriff's Office, while on Augusta Highway, by shooting at the victim; in violation of S.C. Code of Laws Section 16-03-0029 of the South Carolina Code of Laws (1976), as amended.” (App. p. 231). The indictment does not contain accomplice liability language.

In his closing argument the prosecutor discussed the principle of “the hand of one is the hand of all.” (App. p. 169, line 20 - p. 170, lines 1-17). The prosecutor gave the examples of a get away driver and a look out as examples of the hand of one is the hand of all. (App. p. 169, line 25 – p. 170, lines 1-11). The prosecutor emphasized the high speed chase and fleeing from the car to show intent. (App. p. 170, line 18 – p. 171, lines 1-8). Unlike a get away driver or look out example where there is a prior agreement, the high speed chase and fleeing from the car fail to establish a prior agreement between Petitioner and the passenger to shoot at the officers. The prosecutor also argued that the second round of shots came from inside the car on the driver's side. (App. p. 172, lines 6-11). Defense counsel argued that mere presence is not sufficient for accomplice liability. (App. p. 173, line 25 – p. 174, lines 1-13). Defense counsel also argued that it was impractical to believe that Petitioner, the driver, fired the second round of shots at the same time as he was trying to regain control of the car as it spun out of control and flipped over. (App. p. 176, line 13 – p. 177, lines 1-5). In finding Petitioner not guilty of the weapon charge, the jury appears to have rejected the State's argument that Petitioner was the shooter of the second round of shots. The jury's verdict reflects that the jury found Petitioner guilty based on accomplice liability, “the hand of one is the hand of all.” This theory of liability, however, is inapplicable under the facts of this case and should not have been charged to the jury.

Trial counsel did not object when the judge instructed the jury on the law of accomplice liability, “the hand of one is the hand of all.” (App. p. 193, line 17 – p. 194, 195, lines 1-18). Trial counsel only made the following exception to the jury charge, “I thought it was specific intent, and I think you did address that, but not in great detail.” (App. p. 207, lines 24-25). Upon request by the jury, the judge re-charged the law on accomplice liability, “the hand of one is the hand of all.” (App. p. 209, line 23 – p. 210, 211, 212, 213, lines 1-11). When asked if there was anything further after the re-charge defense counsel said, “No, Your Honor, but it might be better if you explain probable and natural consequence, they may conceivably be hung up on the hand of one is the hand of all. I think you address it and say a probable and natural consequence, but you don’t really explain that element, and that might be where the jury is getting confused.” (App. p. 213, lines 19-25). The judge declined to define probable and natural consequence. (App. p. 214, line 8 – p. 215, lines 1-11).

In the PCR application Petitioner alleges ineffective assistance of counsel “for not objecting to the supplemental jury instruction the hand of one is the hand of all.” (App. p. 280). In the amended PCR application Petitioner alleges ineffective assistance of counsel “for failing to object to the jury instructions charging the hand of one is the hand of all.” (App. p. 294). During the PCR hearing Petitioner testified that trial counsel actually requested the accomplice liability charge. (App. p. 330, lines 13-17). At first trial counsel denied requesting the accomplice liability charge. (App. p. 362, lines 3-16). PCR counsel showed trial counsel a document titled, “Defendant’s Request to Charge No. 12 Accomplice Liability” which was admitted in evidence as Applicant’s exhibit #3. (App. p. 362, line 17 – p. 363, lines 1-12; p. 410). Trial counsel then testified, “Well, maybe I did ask for it.” (App. p. 363, line 13). Trial counsel then testified that he did not remember if he submitted the request to the judge or just printed the request for his file. (App. p.

363, lines 16-19; p. 365, lines 18-21). Trial counsel testified that whether he requested the charge or not, he was sure the State would have requested the accomplice liability charge. (App. p. 363, lines 18-19). Trial counsel agreed that he probably did not object to the accomplice liability, “the hand of one is the hand of all” charge. (App. p. 368, lines 9-12).

In the order of dismissal the PCR judge wrote, in regard to the failure to object to the hand of one is the hand of all jury charge, “This Court finds that Applicant has failed to meet his burden and that counsel was not deficient in regards to this allegation. Evidence in the record supports a charge on the hand of one is the hand of all and the charge was appropriately given to the jury. As counsel noted in his testimony, the hand of one is the hand of all was one of the more pivotal points of law in this case. Therefore, this Court finds that counsel was not deficient for failing to object to the charge being given and dismisses this allegation.” (App. p. 416). The PCR judge erred. The charge was not proper because the State failed to establish the requisite prior agreement or arrangement between Petitioner and the passenger to commit an unlawful act that resulted in an attempt to kill the officer. Under the facts of this case the high speed chase and fleeing from the car after the wreck is not sufficient to hold Petitioner accountable under a theory of accomplice liability for the actions of his passenger in shooting at the officers. The evidence did not support the charge.

In the motion to alter or amend pursuant to Rule (59e), Petitioner wrote, “The only evidence against Rivers was his flight or his intent to avoid arrest. There was no evidence presented that Rivers was aware that his passenger possessed a concealed weapon prior to it being fired. Neither was there evidence of an agreement to fire a weapon at the victim. Rivers was charged with weapon possession and was found not guilty. Furthermore, Rivers testified at the PCR evidentiary hearing that he did not know that weapons were in the vehicle.” (App. p. 422). The PCR judge denied the motion the motion to alter or amend. The PCR judge erred. Trial counsel was

ineffective for requesting and then not objecting to the accomplice liability/the hand of one is the hand of all jury instruction when there was no evidence to support the charge. Petitioner was prejudiced by the deficient performance.

A criminal defendant is guaranteed the right to effective assistance of counsel under the Sixth Amendment to the United States Constitution. U.S. Const. amend. VI; Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). Courts evaluate allegations of ineffective assistance of counsel using a two-pronged test. Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989) (citing Strickland, 466 U.S. at 668, 104 S.Ct. 2052). First, the applicant must demonstrate counsel's representation was deficient, which is measured by an objective standard of reasonableness. Strickland, 466 U.S. at 687–88, 104 S.Ct. 2052. “Under this prong, ‘[t]he proper measure of attorney performance remains simply reasonableness under prevailing professional norms.’” Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S.Ct. 2052). Second, the applicant must demonstrate he was prejudiced by counsel's performance in such a manner that, but for counsel's error, there is a reasonable probability the result of the proceedings would have been different. Strickland, 466 U.S. at 694, 104 S.Ct. 2052. “A reasonable probability is a probability sufficient to undermine confidence in the outcome.” Id.

In State v. Harry, 420 S.C. 290, 299, 803 S.E.2d 272, 276–77 (2017), the South Carolina Supreme Court wrote:

“ ‘Under the hand of one is the hand of all theory [of accomplice liability], one who joins with another to accomplish an illegal purpose is liable criminally for everything done by his confederate incidental to the execution of the common design and purpose.’ ” State v. Thompson, 374 S.C. 257, 261–62, 647 S.E.2d 702, 704–05 (Ct. App. 2007) (alteration in original) (quoting State v. Condrey, 349 S.C. 184, 194, 562 S.E.2d 320, 324 (Ct. App. 2002)) (internal quotation marks omitted). “Mere presence and prior knowledge that a crime was going to be committed, without more, is insufficient to constitute guilt.” Id. at 262, 647

S.E.2d at 705. “However, ‘presence at the scene of a crime by pre-arrangement to aid, encourage, or abet in the perpetration of the crime constitutes guilt as a [principal].’ ” *Id.* (alteration in original) (quoting *State v. Hill*, 268 S.C. 390, 395–96, 234 S.E.2d 219, 221 (1977)).

The trial judge should not have charged the jury with the law of accomplice liability/hand of one is the hand of all because the State failed to present evidence of a pre-arranged common design or purpose between Petitioner and the co-defendant for some illegal purpose of which the attempt to murder the police officers was incidental or a natural or probable consequence.² This case is different from most other cases dealing with the hand of one hand of all accomplice liability charge where the parties pre-arrange to meet for some illegal act, usually a burglary or a robbery, and in the process someone is shot or killed. Petitioner was the driver of the car that failed to stop for a minor traffic violation. The co-defendant was a passenger in Petitioner’s car who shot at police. There was no evidence of a pre-arranged plan. Even if the driver, with control of the car, and the passenger could have developed a plan to flee from the police, the shooting is not incidental or a natural or probable consequence of any assumed plan to evade law enforcement.

As to the second round of shots, it is unclear who fired these shots. The judge should not have charged the jury with the law of accomplice liability/hand of one is the hand of all with regard to the second round of shots because, again, the State presented no evidence that Petitioner joined with the co-defendant to accomplish an illegal purpose which resulted in the attempted murder of the officer. At this point, as the car was crashing, it was each man to himself. If Petitioner shot the second round of shots, he was acting as a principle. The jury, however, found Petitioner not guilty of the weapon charge, indicating that the jury did not

² There is mention of a stolen car during the PCR hearing but this was not discussed at trial. (App. p. 304, lines 8-9; p. 355, lines 3-8).

believe that Petitioner was the shooter of the second round of shots. If the co-defendant continued with his shooting spree and fired the second set of shots, he was acting as principle without the assistance of Petitioner. Neither of the shootings is incidental or a natural or probable consequence of any possible pre-arranged plan to flee from the police

Trial counsel was ineffective for requesting and then not objecting to the jury instruction on accomplice liability/hand of one is the hand of all. Petitioner was prejudiced by the deficient performance. The jury appears to have struggled with the instruction, requesting a re-charge on accomplice liability. (App. p. 209, line 23 – p. 210, 211, 212, 213, lines 1-11). The jury, finding Petitioner not guilty of the weapon charge, appears to have found Petitioner guilty based solely on a theory of accomplice liability. There is a reasonable probability that, but for the accomplice liability charge, the outcome of the trial would have been different. The PCR judge erred in refusing to grant relief based on trial counsel's deficient performance.

2. The PCR judge erred in refusing to find trial counsel ineffective for failing to object to the example given by the judge to the jury of accomplice liability because, under the facts of this case, the example was an improper comment on the facts that diluted the State's burden of proof.

During the erroneous instruction on accomplice liability/hand of one is the hand of all the trial judge gave the following example:

For example, ladies and gentlemen, two people can be responsible and can be guilty of burglary if one – only one person went into the house and one person was the lookout and driving the car or the getaway car and the lookout but only one person actually went into the house at night. Ladies and gentlemen, although only one person went into the house, both people are guilty of burglary in the first degree because they acted together in concert to commit a burglary.

(App. p. 193, line 25 – p. 124, lines 1-8). In the PCR application Petitioner alleged that trial counsel was ineffective for failing to object to the example given by the trial judge. (App. pp. 283-284). In

the amended application Petitioner also alleged that trial counsel was ineffective in failing to object to the example given. (App. p. 295).

During the PCR hearing Petitioner testified, “And the jury basically inferred from another – she gave an example of a burglary and a getaway driver as the example of the hand of one is the hand of all in her jury instruction.” (App. p. 328, lines 12-15). Petitioner testified that trial counsel did not object to the example and then testified, “And I think that was pretty much what prejudiced me the most because it made the jury think that they only thing I had to do to be guilty of attempting to harm the officers was trying to get away driving. And I think that was the most prejudicial thing in the instruction was that.” (App. p. 328, lines 17-22). Trial counsel did not recall objecting to the example. (App. p. 369, lines 9-14). When asked about the burglary/getaway driver example trial counsel testified that he believed the jury would have made the distinction. (App. p. 378, line 25 – p. 379, lines 1-2).

In the order of dismissal the PCR judge wrote, “Applicant alleges counsel was deficient for failing to object to the Solicitor giving an illustration of a burglary and a getaway car as an example of accomplice liability.” (App. p. 417). The PCR judge discussed the law in regard to comments made by a prosecutor and then wrote:

Applicant testified that counsel should have objected to the example being used by the Solicitor. Counsel testified he did not object to the example and did not feel the need to do so. This Court finds that counsel is given latitude in remarks made during closing argument and that the court corrected any potential error by charging on the law of accomplice liability. This Court also finds that even if counsel did err in failing to object, the error would have been harmless and would not have prejudiced Applicant. This Court finds that Applicant has failed to meet his burden and this allegation is dismissed.

(App. p. 418).

While the prosecutor provided examples of accomplice liability/ the hand of one is the hand of all in his closing argument, (App. p. 169, line 23 – p. 170, lines 1-11), the allegation during the

PCR hearing involved the **judge's** example provided during her jury instruction. In the motion to alter or amend pursuant to Rule 59(e), Petitioner wrote, "The PCR Courts order also states it was the solicitor (S. Knight) who used the example of the getaway car driver and the burglary defining Accomplice Liability when it was in fact the judge (D. Goodstein). Her example shifted the burden of proof to the applicant inferring that to be guilty of the murder attempt, only the evidence of Rivers' flight was necessary." (App. p. 422). The PCR judge denied the motion to alter or amend despite the factual error. The PCR judge erred.

The PCR judge should have corrected the factual error in the order, found trial counsel ineffective for failing to object to the example given by the judge and granted relief. As discussed above is issue one, the whole charge on accomplice liability/hand of one is the hand of all was erroneous because the facts did not support such a charge. Based on the fact that evidence showed that Petitioner was the driver, the example made the charge even more prejudicial.

A criminal defendant is guaranteed the right to effective assistance of counsel under the Sixth Amendment to the United States Constitution. U.S. Const. amend. VI; Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). Courts evaluate allegations of ineffective assistance of counsel using a two-pronged test. Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989) (citing Strickland, 466 U.S. at 668, 104 S.Ct. 2052). First, the applicant must demonstrate counsel's representation was deficient, which is measured by an objective standard of reasonableness. Strickland, 466 U.S. at 687–88, 104 S.Ct. 2052. "Under this prong, '[t]he proper measure of attorney performance remains simply reasonableness under prevailing professional norms.'" Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S.Ct. 2052). Second, the applicant must demonstrate he was prejudiced by counsel's performance in such a manner that, but for counsel's error, there is a reasonable

probability the result of the proceedings would have been different. Strickland, 466 U.S. at 694, 104 S.Ct. 2052. “A reasonable probability is a probability sufficient to undermine confidence in the outcome.” Id.

“Judges shall not charge juries in respect to matters of fact, but shall declare the law.” S.C. Const. art. V, § 21. See also Pantovich v. State, 427 S.C. 555, 562, 832 S.E.2d 596, 600 (2019) (“The modern trend, however, has cast doubt upon the validity of charges instructing juries on how to interpret and use evidence.”); State v. Cartwright, 425 S.C. 81, 93, 819 S.E.2d 756, 762 (2018) (stating “the trial court shall not provide a limiting instruction or otherwise comment to the jury on” suicide-attempt evidence because such a charge may be an improper charge on the facts). Under the facts of this case, the example given by the trial judge veered away from the law and became a charge on the facts. The charge additionally diluted the State’s burden of proof by omitting the requirement that, under the example given, the driver and the person who went into the house had to have had a pre-arranged plan to commit a burglary. Based on this charge the jury could have found liability based solely on Petitioner driving the car and failing to stop for police.

The PCR judge erred in failing to correct the factual error in the order of dismissal and refusing to find trial counsel ineffective for failing to object to the example given by the judge in her charge on accomplice liability. Petitioner was prejudiced by the deficient performance. The example allowed the jury to find Petitioner guilty of attempted murder solely for fleeing from the police and driving the car from which the co-defendant shot at police.

3. **The PCR judge erred in refusing to find trial counsel ineffective for failing to object to the trial judge's preliminary comment to the jury that a trial is a search for the truth to make sure that justice is done between the parties because this language diluted the State's burden of proof.**

In her preliminary comments to the jury the trial judge said, "While all of these things may be true at times, this trial is not for entertainment. It is a fundamental part, maybe the fundamental part, of our democracy, a search for the truth in an effort to be sure that justice is done between the parties before the Court. Searching for the truth and making sure that justice is done is often slow, deliberate, and repetitive, the opposite of what you may have seen on television or in the movies or read in books." (App. p. 49, lines 15-23). Trial counsel did not object to the comments.

Two days before the PCR hearing the PCR judge allowed Petitioner to verbally amend the PCR application to include the allegation that trial counsel was ineffective for failing to "... object to the trial judge's instructions at the beginning of the trial that the jury's duty is to quote render a true and just verdict." (App. p. 303, lines 18-22). During the PCR hearing trial counsel admitted that he was not aware that the judge's comments were objectionable. (App. p. 360, line 4 – p. 361, lines 1-8).

In the order of dismissal the PCR judge wrote:

Applicant alleges that counsel was deficient for failing to object to the trial judge's comments at the beginning of the trial that the jury should seek a true and just verdict. Counsel testified that he did not know that this was objectionable. This Court finds that any potential error in not objecting to the comment made by the trial judge was harmless and did not prejudice Applicant. The mention of a true and just verdict was made only one by the trial court and was not repeated. The trial court also included all of the standard language concerning the State's burden of proof in criminal cases in its colloquy to the jury. This Court finds that Applicant has failed to meet his burden in regards to this allegation and dismisses this allegation.

(App. pp. 8-10). The PCR judge erred.

State v. Daniels, 401 S.C. 251, 737 S.E.2d 473, (2012), was decided in October of 2012, before Petitioner's December 2012 trial. In Daniels, the judge instructed the jury, "Your verdict in this case is not to be based on sympathy, compassion, prejudice or some other emotion or other consideration that is not found in the evidence. This court is of the confirmed opinion that *whatever verdict you reach will represent truth and justice for all parties that are involved in this case.* (emphasis added)." 401 S.C. at 257, 737 S.E.2d at 476. The judge additionally instructed the jury, "You are not called to serve as jurors very often. And the proper performance of the duty requires each of you to reach the hithe [sic] of freeing your mind of all improper influences. You and I are *acting for the community* and that is why we see to it that this *trial is fair and the verdict is just.*" Daniels, 401 S.C. at 257–58, 737 S.E.2d at 476.

In regard to the "fair and just" language" the Court wrote:

Although the issue is not preserved, we instruct the trial judge to remove any suggestion from his general sessions charges that a criminal jury's duty is to return a verdict that is "just" or "fair" to all parties. Such a charge could effectively alter the jury's perception of the burden of proof, substituting justice and fairness for the presumption of innocence and the State's burden to prove the defendant's guilt beyond a reasonable doubt. Moreover, to a lay person, the "all parties involved" in a criminal case may well extend beyond the defendant and the State, and include the victim. These inaccurate and misleading charges risk depriving a criminal defendant of his right to a fair trial.

Daniels, 401 S.C. at 256, 737 S.E.2d at 475.

In her concurring opinion former Chief Justice Toal wrote:

As a final note, although no constitutional error occurred, the trial court's inappropriate statements in this case came close to jeopardizing the legitimacy of the trial. Judges and juries are critical actors in our judicial system. Jurors are sworn to declare the facts of the case as they are proved from the evidence placed before them. 50A C.J.S. *Juries* § 1 (2004). The very term "jury" connotes a deliberative body of persons. *Id.* A judge sits as a public officer, who presides over, conducts, and administers the law by virtue of the office, and does so cloaked in judicial authority. *Id.* Judges § 7 (2004). Judges and juries are not, as this trial judge put it, "in it together." While their functions may act as a complement to one another, it is erroneous to imply that they somehow work hand

in hand, and any blurring of their roles serves as an unnecessary and improper distraction.

Judicial instructions to the jury in a criminal case that “whatever verdict you reach will represent truth and **justice for all parties**,” that “we must see to it that the trial is fair and the verdict is just” and that you and I are “in it together,” may seem at first blush to be simply harmless phrases intended to put the jury at ease and portray the judge as a “regular guy.” However, the constitutional framework governing criminal trials is a highly technical body of law developed by the United States Supreme Court and by state courts operating under the Supreme Court's guidance. It is inappropriate to jeopardize the constitutionality of a trial by instructing the jury in this way.

It is critical that jurors understand the proper application of the reasonable doubt standard. That standard does not charge the jury with ensuring justice for all of the parties. Justice Pleicones correctly notes that this language could result in jurors substituting concepts of justice or fairness for the State's constitutional duty to prove guilt beyond a reasonable doubt. Thus, I join the Justice Pleicones's admonition to the trial court to restrict his jury instructions to matters of law, and refrain from issuing instructions which run the risk of depriving defendants of their right to a fair trial.

Daniels, 401 S.C. at 263–64, 737 S.E.2d at 479–80. (emphasis added).

In State v. Needs, 333 S.C. 134, 508 S.E.2d 857 (1998), the judge, while instructing the jury on circumstantial evidence, told the jury, “[a] reasonable doubt is a doubt which makes an honest, sincere, conscientious juror *in search of the truth* in the case hesitate to act. Proof beyond a reasonable doubt must, therefore, be proof of such a convincing character that a reasonable on would not hesitate to rely and to act upon it in the most important of his or her own affairs.” 333 S.C. at 152, 508 S.E.2d at 866. While finding the error harmless, the Court wrote:

We again take this opportunity to strongly urge the trial courts to avoid using any “seek” language, or any of the other offending terms described above, when charging jurors on either reasonable doubt or circumstantial evidence. Such language is unnecessary and runs the risk of unconstitutionally shifting the burden of proof to a defendant. We have identified two appropriate ways to define reasonable doubt and two appropriate ways to charge circumstantial evidence. Trial courts should rarely find it necessary to deviate from those approved charges.

Needs, 333 S.C. at 155–56, 508 S.E.2d at 867–68 (n. #12, #13 omitted).

In State v. Aleksey, 343 S.C. 20, 26 538 S.E.2d 248, 251 (2000), the trial judge, while instructing the jury on determining the credibility of witnesses, told the jury:

Obviously you do not determine the truth or falsity of a matter by counting up the number of witnesses who may have testified on one side or the other.

Ladies and gentlemen, throughout this entire process, you have but one single objective, and that is to seek the truth, to seek the truth regardless of from what source that truth may be derived.

Now, all of these things, ladies and gentlemen, you will consider, bearing in mind that you must give the defendant the benefit of every reasonable doubt.

As in Needs, the Court in Aleksey warned about instructing the jury to seek the truth writing, “Jury instructions on reasonable doubt which charge the jury to “seek the truth” are disfavored because they “[run] the risk of unconstitutionally shifting the burden of proof to a defendant.” State v. Needs, 333 S.C. 134, 155, 508 S.E.2d 857, 867–68 (1998).” Aleksey, 343 S.C. at 26–27, 538 S.E.2d at 251. The Court in Aleksey found the “seek” language did not warrant reversal because it did not appear in the reasonable doubt or circumstantial evidence charge. “While we have urged trial courts to avoid using any “seek” language when charging jurors on either reasonable doubt or circumstantial evidence (see State v. Needs, 333 S.C. 134, 155, 508 S.E.2d 857, 867–68 (1998)), the “seek” language here did not appear in either the reasonable doubt or circumstantial evidence charges, but in the instructions on juror credibility. Both the reasonable doubt and circumstantial evidence charges were complete and proper.” Aleksey, 343 S.C. at 27, 538 S.E.2d at 251–52.

At the time of Petitioner’s trial in December of 2012, the trial judges had been instructed to avoid the “seek the truth” and “fair and just” language in jury charges. Despite the warnings in Daniels, Needs and Aleksey, the trial judge in the present case used the disfavored “seek the

truth” and “justice between the parties” language in her preliminary comments to the jury. After Petitioner’s trial in 2012, the South Carolina Appellate Courts continued to instruct trial judges to avoid the “seek the truth” language in jury charges. In State v. Beaty, 423 S.C. 26, 34, 813 S.E.2d 502, 506 (2018), the South Carolina Supreme Court wrote:

However, we agree with Appellant that a trial judge should refrain from informing the jury, whether through comments or through a charge on the law, that its role is to search for the truth, or to find the true facts, or to render a just verdict. These phrases could be understood to place an obligation on the jury, independent of the burden of proof, to determine the circumstances surrounding the alleged crime and from those facts alone render the verdict the jury believes best serves its perception of justice. “We instruct trial judges to avoid these terms and any others that may divert the jury from its obligation in a criminal case to determine whether the State has proven the defendant's guilt beyond a reasonable doubt.

(n.#2 omitted) *cf.* State v. Daniels, 401 S.C. 251, 737 S.E.2d 473 (2012) (instructing discontinuance of charge that jury's duty is to return a verdict that is just and fair to all parties). In Beaty the Court found error in the Judge’s preliminary comments to the jury that a trial is a search for the truth as well as comments about “find true facts” and a “true and “just verdict.” The Court, however, found the error did not warrant reversal because, “the remarks were not linked to either the reasonable doubt or circumstantial evidence charge as was condemned in Aleksey.” Beaty, 423 S.C. at 34, 813 S.E.2d at 506.

In State v. Patterson, 425 S.C. 500, 511, 823 S.E.2d 217, 223–24 (Ct. App. 2019), the South Carolina Court of Appeals wrote:

Our supreme court has consistently cautioned against using language that suggests the object of a trial is to find “the truth.” See State v. Beaty, 423 S.C. 26, 34, 813 S.E.2d 502, 506 (2018) (“These phrases could be understood to place an obligation on the jury, independent of the burden of proof, to determine the circumstances surrounding the alleged crime and from those facts alone render the verdict the jury believes best serves its perception of justice.”); State v. Daniels, 401 S.C. 251, 256, 737 S.E.2d 473, 475 (2012) (holding while it was improper for the trial court to charge the jury “that a criminal jury's duty is to return a verdict

that is ‘just’ or ‘fair’ to all parties,” the issue was unpreserved); State v. Aleksey, 343 S.C. 20, 28 n.2, 538 S.E.2d 248, 252 n.2 (2000) (“Although settled law disfavors instructing jurors to seek the truth in some contexts because it might be misleading as to the burden of proof, we decline to hold any mention of ‘the truth’ in jury charges is unconstitutional.”); State v. Needs, 333 S.C. 134, 155, 508 S.E.2d 857, 867-68 (1998) (noting jury instructions on reasonable doubt which charge the jury to “seek the truth” are disfavored because they “[run] the risk of unconstitutionally shifting the burden of proof to a defendant”). Accordingly, we believe the trial court erred in making such statements in its comments to the jury, and we take the opportunity to reiterate our supreme court's instructions that trial courts should “avoid these terms and any others that may divert the jury from its obligation in a criminal case to determine whether the State has proven the defendant's guilt beyond a reasonable doubt.” Beaty, 423 S.C. at 34, 813 S.E.2d at 506.

In Patterson the Court of Appeals found that the trial judge’s opening remarks to the jury that a trial is a search for the truth were error but found that the error did not warrant reversal because the improper comments came at the beginning of trial “rather than during the charge on the State's burden of proof at the end, which, we believe, is when such a statement would have the most prejudicial effect. See Daniels, 401 S.C. at 256, 737 S.E.2d at 475 (‘Such a charge could effectively alter the jury's perception of the burden of proof, substituting justice and fairness for the presumption of innocence and the State's burden to prove the defendant's guilt beyond a reasonable doubt.’).” Patterson, 425 S.C. at 512, 823 S.E.2d at 224.

At the time of Petitioner’s trial the “seek the truth” and “justice between the parties” language was discouraged. After Petitioner’s trial the South Carolina appellate courts found error in the use of this language, even in preliminary instructions to the jury. Trial counsel was ineffective in failing to object to the improper comments. Petitioner was prejudiced by the deficient performance.

A criminal defendant is guaranteed the right to effective assistance of counsel under the Sixth Amendment to the United States Constitution. U.S. Const. amend. VI; Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). Courts evaluate allegations

of ineffective assistance of counsel using a two-pronged test. Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989) (citing Strickland, 466 U.S. at 668, 104 S.Ct. 2052). First, the applicant must demonstrate counsel's representation was deficient, which is measured by an objective standard of reasonableness. Strickland, 466 U.S. at 687–88, 104 S.Ct. 2052. “Under this prong, ‘[t]he proper measure of attorney performance remains simply reasonableness under prevailing professional norms.’” Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S.Ct. 2052). Second, the applicant must demonstrate he was prejudiced by counsel's performance in such a manner that, but for counsel's error, there is a reasonable probability the result of the proceedings would have been different. Strickland, 466 U.S. at 694, 104 S.Ct. 2052. “A reasonable probability is a probability sufficient to undermine confidence in the outcome.” Id.

The PCR judge erred in finding that trial counsel’s failure to object to the judge’s improper preliminary comments to the jury was harmless. Petitioner was prejudiced by the deficient performance. The comments further diluted the State’s burden of proof.

CONCLUSION

Based on the above arguments, this Court should grant the petition for writ of certiorari to allow further briefing on the issues.

s/ Kathrine H. Hudgins
Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR PETITIONER

This 22nd day of February, 2021.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Colleton County

Honorable William H. Seals, Circuit Court Judge

MAURIO D. RIVERS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

CERTIFICATE OF SERVICE

Pursuant to the Supreme Court's Order "RE: Operation of the Appellate Courts During the Coronavirus Emergency," dated March 20, 2020, the undersigned hereby certifies a true copy of the Petition for Writ of Certiorari and a copy of the Appendix in the above referenced case have been served upon Benjamin Limbaugh, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and a copy of the Petition for Writ of Certiorari and a copy of the Appendix have been served on Maurio D. Rivers, #232669, at Lee Correctional Institution, 990 Wisacky Hwy., Bishopville, SC 29010, this 22nd day of February, 2021.

s/ Kathrine H. Hudgins
Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR PETITIONER

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Colleton County
The Honorable Diane S. Goodstein, Trial Judge
The Honorable William H. Seals Jr., Post-Conviction Relief Judge

Appellate Case No. 2020-001106

MAURIO RIVERS,

Petitioner

v.

STATE OF SOUTH CAROLINA,

Respondent

RETURN TO PETITION FOR WRIT OF CERTIORARI

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RESPONDENT'S STATEMENT OF ISSUES

I.

Did the post-conviction relief judge properly deny relief for the allegation that trial counsel was ineffective for failing to object to the trial judge's instruction on "the hand of one is the hand of all" theory of accomplice liability when the evidence presented demonstrated Petitioner and Codefendant combined together to accomplish an illegal purpose?

II.

Did the post-conviction relief judge properly deny relief for the allegation that trial counsel was ineffective for failing to object to the example given by the trial judge to jury of accomplice liability when the example was not an improper comment on the facts, and even if it were, when it was uncontroverted that Petitioner was the driver of the vehicle?

III.

Did the post-conviction relief judge properly deny relief for the allegation that trial counsel was ineffective for not objecting to the trial judge's opening remark that a trial is a search for the truth when the remark did not prejudice Petitioner and did not affect the outcome of his trial?

STATEMENT OF THE CASE

Petitioner, Mauro Rivers is presently confined in the South Carolina Department of Corrections following his conviction at trial in Colleton County. On July 12, 2011, Deputy Justin Eaches of the Dorchester County Sheriff's Office attempted to stop a black Acura vehicle on Interstate 95 for failure to use a turn signal when changing lanes. (App. 63-64). Eaches identified Petitioner as the driver of the vehicle. (App. 64). Eaches attempted to get the vehicle to pull over, but the vehicle accelerated to speeds over 100 miles per hour. (App. 67). Eaches began to follow the vehicle and also enlisted the help of Lieutenant Joe Burnett of the Dorchester County Sheriff's Office to assist with the chase. (App. 68). The chase extended into Colleton County. (App. 67). Burnett's vehicle eventually hit Petitioner's vehicle which caused Petitioner's vehicle to flip over and crash. (App. 84). Petitioner and his passenger, Bronson Shelley (Codefendant), both fled from the crash scene. (App. 70, 73). Prior to the crash, Burnette testified he heard gunshots and saw the passenger shooting at him. (App. 85, 87). After the crash, Burnette heard another gunshot and observed damage from a gunshot on his windshield. (App. 87). After Petitioner and his passenger fled the scene, Burnette released his K-9 unit which apprehended Petitioner. (App. 86). Burnett later discovered that two bullets hit his vehicle (App. 89). Law enforcement did not fire any shots during the chase. (App. 92).

Law enforcement recovered three guns from the scene of the crash. The first gun was a .38 special with five spent shell casings found inside the weapon. (App. 106-08). Another gun was found with the "slide back" meaning that all eight rounds had been fired from the weapon. (App. 109). A third weapon, a Colt .45 caliber pistol, was found in the cars glove compartment. (App. 111). Four bullet holes were located on the windshield of the Acura extending from the driver's side to the passenger's side. (App. 124-27).

During its August 2011 term, the Colleton County Grand Jury indicted Petitioner for two counts of attempted murder and one count of possession of a weapon during the commission of a violent crime. (2011-GS-15-549, 550, 551). He was represented on these charges by John D. Bryan, Esquire. Assistant Solicitor Steven Knight of the Fourteenth Circuit Solicitor's Office prosecuted the case.

On December 13, 2012, Petitioner was convicted of a single count of attempted murder (2011-GS-15-549) by a jury in the Colleton County Court of General Sessions before the Honorable Dianne S. Goodstein. Judge Goodstein sentenced Petitioner to a term of thirty years' imprisonment. (App. 228).

Petitioner filed a notice of appeal challenging his conviction and sentence on December 17, 2012. Petitioner was represented in his appeal by Carmen V. Ganjehsani, Esquire. An oral argument was held by the South Carolina Court of Appeals on November 5, 2014. On December 3, 2014, the Court of Appeals affirmed Petitioner's conviction in an unpublished opinion. Op. No. 2014-UP-441 (S.C. Ct. App. filed December 3, 2014) (App. 269-70). Petitioner filed a petition for rehearing which was denied by the Court of Appeals on April 16, 2015. (App. 312-13). Petitioner submitted a petition for writ of certiorari to the South Carolina Supreme Court on April 27, 2015. Certiorari was denied on November 19, 2015 and the remittitur was issued on December 7, 2015. (App. 313).

On June 1, 2016, Petitioner filed a *pro se* application for post-conviction relief alleging three grounds of relief. (2016-CP-15-647)(App. 271-84). Petitioner alleged that trial counsel was ineffective for: (1) failing to object to the jury instruction charging "the hand of one is the hand of all", (2) failing to move for a directed verdict, and (3) failing to object to an example given by the trial judge of the hand of one is the hand of all. (App. 278). Respondent served its return to

the application and requested an evidentiary hearing on the application on April 17, 2017. (App. 285-90).

On November 15, 2017, Petitioner moved to relieve PCR counsel and filed an amended PCR application. (App. 293-98). An evidentiary hearing was convened on April 3, 2017, before the Honorable William H. Seals, Jr. Petitioner was present alongside counsel Leslie T. Sarji, Esquire. Respondent was represented by Assistant Attorney General Benjamin Limbaugh of the South Carolina Attorney General's Office. Petitioner testified on his own behalf and presented testimony from trial counsel. At the conclusion of the evidentiary hearing, Judge Seals took the Petitioner's claim under advisement. (App. 392).

On December 21, 2019, Judge Seals issued a written order denying the application in full. (App. 411-20). Petitioner filed a motion to alter or amend judgement pursuant to Rule 59(e) SCRCF. (App. 421-23). Judge Seals denied the motion on July 23, 2020. (App. 425-26). Petitioner filed his notice of appeal to this Court on August 7, 2020.

STANDARD OF REVIEW

The standard of review for post-conviction relief matters depends on the specific issues before the appellate court. Smalls v. State, 422 S.C. 174, 180, 810 S.E.2d 836, 839 (2018). When reviewing factual findings, the appellate courts defer to the post-conviction relief court's factual findings and will uphold them if there is probative evidence in the record to support them. Buckson v. State, 423 S.C. 313, 320, 815 S.E.2d 436, 440 (2018); Smalls, 422 S.C. at 180-81, 810 S.E.2d at 839-40 (citing Sellner v. State, 416 S.C. 606, 610, 787 S.E.2d 525, 527 (2016); Jordan v. State, 406 S.C. 443, 448, 752 S.E.2d 538, 540 (2013)). However, pure questions of law will be reviewed *de novo* without deference to the lower court. Smalls, 422 S.C. at 180-81, 810 S.E.2d at 839-40. Appellate courts will reverse the decision of the post-conviction relief court when it is controlled by an error of law. Goins v. State, 397 S.C. 568, 573, 726 S.E.2d 1, 3 (2012).

ARGUMENT

I.

The post-conviction relief judge properly denied relief for the allegation that trial counsel was ineffective for failing to object to the trial judge's instruction on the hand of one is the hand of all theory of accomplice liability because the evidence presented demonstrated Petitioner and Codefendant combined together to accomplish an illegal purpose.

Petitioner claims the post-conviction relief court erred by refusing to find trial counsel ineffective for requesting and then failing to object to the trial judge's instruction to the jury on the hand of one is the hand of all theory of accomplice liability. Specifically, Petitioner contends the charge was improper because the State failed to prove there was a prior agreement or arrangement between Petitioner and his codefendant to attempt to kill Lt. Burnette. Petitioner's argument fails for two reasons. First, the State was not required to prove Petitioner and his codefendant had a prior agreement or arrangement to commit attempted murder in order to receive an instruction on accomplice liability. Second, there was evidence in the record to establish Petitioner and Codefendant combined together to accomplish an illegal purpose. Therefore, Petitioner and Codefendant were each criminally liable for everything done by their confederate incidental to the execution of the common design and purpose. Accordingly, the trial judge properly instructed the jury on the hand of one is the hand of all, and trial counsel was not deficient in failing to object to the jury instruction.

Petitioner, like all other defendants, has a right to the assistance of effective counsel as provided by the Sixth Amendment to the United States Constitution. U.S. Const. amend. VI; Strickland v. Washington, 466 U.S. 668 (1984); Lomax v. State, 379 S.C. 93, 665 S.E.2d 164 (2008). Petitioner has the burden of proving the allegations in his post-conviction relief action, and when alleging that trial counsel was constitutionally ineffective, he must prove that

“counsel’s conduct so undermined the proper functioning of the adversarial process that it cannot be relied upon as having produced a just result.” Strickland, 466 U.S. at 686

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland. First, Petitioner must prove that counsel’s performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney’s performance by its “reasonableness under prevailing professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Id. (citing Strickland, 466 U.S. at 690). Petitioner must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel’s deficient performance must have prejudiced Petitioner 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.

Moreover, Strickland does not require a finding of ineffectiveness merely for deviation from some rigid rule of representation. Rather, Strickland requires the post-conviction relief applicant to prove “counsel made errors so serious that counsel was not functioning as the ‘counsel’ guaranteed the defendant by the Sixth Amendment.” Id. at 697. Therefore, the function of the post-conviction relief court is to determine if “in light of all the circumstances, the identified acts or omissions were outside the wide range of professional competent assistance” required of a criminal defense attorney.” Id. at 690.

Moreover, “counsel’s performance is accorded a favorable presumption, and a reviewing court proceeds from the rebuttable presumption that counsel ‘rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.’” Strickland, 466 U.S. at 690. There is a strong presumption that counsel’s decisions are based on tactical strategy rather than neglect. Yarborough v. Gentry, 540 U.S. 1, 8 (2003) (quoting Massaro v. United States, 538 U.S. 500, 505 (2003)). “Accordingly, when counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel.” Smith v. State, 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010) (citing Caprood v. State, 338 S.C. 103, 110, 525 S.E.2d 514, 517 (2000)).

“Under accomplice liability theory, ‘a person must personally commit the crime or be present at the scene of the crime and intentionally, or through a common design, aid, abet, or assist in the commission of that crime through some overt act.’” State v. Langley, 334 S.C. 643, 648-49, 515 S.E.2d 98, 101 (1999) (quoting State v. Austin, 299 S.C. 456, 459, 385 S.E.2d 830, 832 (1989)). “Under the hand of one is the hand of all theory, one who joins with another to accomplish an illegal purpose is liable criminally for everything done by his confederate incidental to the execution of the common design and purpose.” State v. Condrey, 349 S.C. 184, 194, 562 S.E.2d 320, 324 (Ct. App. 2002). “A defendant may be convicted on a theory of accomplice liability pursuant to an indictment charging him only with the principal offense.” Id. At 194, 562 S.E.2d at 325. “In order to establish the parties agreed to achieve an illegal purpose, thereby establishing presence by pre-arrangement, the State need not prove a formal expressed agreement, but rather can prove the same by circumstantial evidence and the conduct of the parties.” State v. Gibson, 390 S.C. 347, 354, 701 S.E.2d 766, 770 (Ct. App. 2010).

Here, Petitioner complains that trial counsel was deficient for requesting and failing to

object to the trial judge's instruction on accomplice liability. Petitioner claims trial counsel was deficient for not requesting the charge because there was no evidence in the record to support the charge. However, the State was not required to produce evidence of a formal expressed agreement between Petitioner and Codefendant. The State was merely required to prove Petitioner and Codefendant were acting in concert through circumstantial evidence. Here, there was abundant evidence Petitioner and Codefendant acted in concert to accomplish the illegal purpose of failing to stop for a blue light. The State presented evidence that Petitioner was the driver of a vehicle that accelerated to speeds over 100 miles per hour while fleeing from two law enforcement vehicles. (App. 64, 67). The chase extended over two counties and did not end until law enforcement forced Petitioner's vehicle to crash. (App. 67, 84). Lt. Burnett only witnessed Codefendant shooting at him, but the State also presented evidence that three firearms were found in and around Petitioner's vehicle and that four bullet holes were located inside the vehicle's windshield extending from the driver's side to the passenger's side. (App. 85, 87, 106-08, 124-27). Two of the firearms found had fired all of their ammunition. (App. 106-109). Additionally, after the crash, Petitioner and Codefendant each fled the scene. (App. 86). Therefore, there was sufficient evidence produced to show Petitioner and Codefendant acted with a common design to elude law enforcement and ultimately to attempt to kill Lt. Burnett. Accordingly, even if trial counsel were deficient in submitting a jury instruction on "the hand of one is the hand of all" or in failing to object to the instruction, Petitioner was not prejudiced by this failure because the evidence presented at trial warranted such an instruction. This Court should deny certiorari.

II.

The post-conviction relief judge properly denied relief for the allegation that trial counsel was ineffective for failing to object to the example given by the trial judge to jury of accomplice liability because the example was not an improper comment on the facts, and even if it were, it was uncontroverted that Petitioner was the driver of the vehicle.

Petitioner additionally argues the post-conviction relief court erred by refusing to find trial counsel ineffective for failing to object to the example given by the trial judge of accomplice liability. Petitioner asserts the example of a getaway driver participating in a burglary was an improper comment on the facts that diluted the State's burden of proof. Petitioner's argument fails for two reasons. First, the trial judge's example was not an improper comment on the facts. Second, even if the trial judge had commented on the facts, it was undisputed that Petitioner was the driver of the vehicle. Therefore, Petitioner did not suffer any prejudice from trial counsel's failure to object to the trial judge commenting on uncontroverted facts.

The South Carolina Constitution provides that "judges shall not charge juries in respect to matters of fact, but shall declare the law." S.C. Const. art. V, § 21. "[I]t is generally held that in the course of the trial of a criminal case, the trial judge must refrain from all comment which tends to indicate his opinion as to the weight or sufficiency of the evidence, the credibility of the witnesses, the guilt of the accused, or as to the controverted facts." State v. Pruitt, 187 S.C. 58, 61, 196 S.E. 371, 373 (1918). "However, where the facts stated in a charge are not in dispute, the instruction is not erroneous." State v. Norris, 270 S.C. 552, 553, 243 S.E.2d 440, 440 (1978). "Even if a charge is erroneous, prejudice must be shown to require reversal." Litchfield Co. of South Carolina, Inc. v. Sur-Tech, Inc., 289 S.C. 247, 253, 345 S.E.2d 765, 768 (Ct. App. 1986).

Here, Petitioner claims the example of a getaway driver participating in a burglary provided by the trial judge to illustrate accomplice liability was an improper comment on the facts. Notably, the only similarity between the trial judge's example and the facts of Petitioner's case is the use of a car. The mere fact the trial judge used an example that also involved the use of a car, does not render her example a constitutionally improper comment on the facts. Other than the common denominator of a getaway driver and Petitioner's both using a car, there is no similarity between a burglary and shooting at a police officer. Indeed, trial counsel testified he believed the jury was capable of making such a simple distinction. (App. 378-79). Therefore, trial counsel was not deficient in failing to object to the trial judge's example.

However, even if the example provided by the trial judge was an improper comment on the facts, trial counsel's failure to object to the example did not prejudice Petitioner because it was uncontroverted that Petitioner was the driver. As argued above, the only similarity between the example given and the facts of Petitioner's case was the use of a car. Petitioner never contested the fact that he drove the car that fled from police. Petitioner merely contested that he was the shooter. During his closing argument at trial, trial counsel declared: "There's no doubt who was the passenger. Eaches was the first. He said [Codefendant] was the passenger. Mr. Burnette said [Codefendant] was the passenger, and Mr. Burnette said he saw the passenger shooting at him." (App. 175, lines 20-25). In his testimony at the PCR hearing, Petitioner admitted he was the driver but denied he ever shot at police or knew anything about a gun. (App. 324-25). Therefore, Petitioner could not possibly suffer any prejudice from the trial judge commenting on a fact that Petitioner readily agreed was true; namely that he was the driver. Contrary to Petitioner's assertion, he was not convicted simply because he was the driver of a car fleeing from the police. Rather, the State explicitly argued that Petitioner also fired a weapon at

Lt. Burnette after his vehicle crashed. (App. 172). The trial judge's example did not comment on whether Petitioner possessed or fired a weapon. Therefore, Petitioner was not prejudiced by the example. This Court should deny certiorari.

III.

The post-conviction relief judge properly denied relief for the allegation that trial counsel was ineffective for not objecting to the trial judge's opening remark that a trial is a search for the truth because the remark did not prejudice Petitioner and did not affect the outcome of his trial.

Finally, Petitioner argues the post-conviction relief court erred in refusing to find trial counsel ineffective for failing to object to the trial judge's preliminary remarks that a trial was a search for the truth. Petitioner contends this comment diluted the State's burden of proof. On the contrary, Petitioner was not prejudiced by the search for the truth language in this case because the language did not affect the outcome of Petitioner's trial. The trial judge only used the aforementioned phrase one time at the beginning of Petitioner's trial. Furthermore, the trial judge gave the jury a thorough and accurate instruction on reasonable doubt and the presumption of innocence in her closing instructions. Therefore, counsel's failure to object to the isolated comment did not prejudice Petitioner.

"[A] trial judge should refrain from informing the jury, whether through comments or through a charge on the law, that its role is to search for the truth, or to find the true facts, or to render a just verdict." State v. Beaty, 423 S.C. 26, 34, 813 S.E.2d 502, 506 (2018). "We instruct trial judges to avoid these terms and any others that may divert the jury from its obligation in a criminal case to determine whether the State has proven the defendant's guilt beyond a reasonable doubt." Id. When search for the truth language comes at the beginning of a trial rather than during the charge on the State's burden of proof at the end of a trial, the language is less prejudicial. State v. Patterson, 425 S.C. 500, 512, 823 S.E.2d 217, 224 (Ct. App. 2019).

Here, like in Patterson, the language Petitioner complains of came at the beginning of the trial and not at the end where it would be more prejudicial. Additionally, the trial judge dampened any prejudicial effect from her opening remarks with her thorough and accurate instruction on reasonable doubt and the presumption of innocence at the end of trial. (App. 184-85). While trial counsel acknowledged he did not know the trial judge's remarks were objectionable, even if he were deficient in not objecting to the remarks, his failure did not prejudice Petitioner because the isolated remark did not affect the outcome of Petitioner's trial. (App. 360). While our State's appellate courts have consistently cautioned trial judges against using such language, no court has previously found such language to be reversible error. Notably, in each of the cases cited by Petitioner to support his argument, this Court found the trial judge's remarks were not reversible error. See State v. Alesky, 343 S.C. 20, 538 S.E.2d 248 (2000); State v. Needs, 333 S.C. 134, 508 S.E.2d 857 (1998); State v. Daniels, 401 S.C. 251, 737 S.E.2d 473 (2012). This Court should likewise find the trial judge's isolated remark did not prejudice Petitioner and trial counsel was not ineffective for failing to object to the remark. This Court should deny certiorari.

CONCLUSION

Because the post-conviction relief court properly determined Petitioner failed to establish any constitutional deprivations, this Court should deny certiorari. Should this Court grant certiorari, Respondent requests the opportunity to fully brief the issues raised.

Respectfully submitted,

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June 10, 2021

STATE OF SOUTH CAROLINA
In the Supreme Court

CERTIORARI TO COLLETON COUNTY
Court of Common Pleas
The Honorable Diane S. Goodstein, Trial Judge
The honorable William H. Seals Jr., Post-Conviction Relief Judge

Appellate Case No. 2020-001106

Maurio Rivers,

Petitioner,

v.

State of South Carolina,

Respondent.

PROOF OF SERVICE

Pursuant to the Supreme Court's Order "RE: Operation of the Appellate Courts During the Coronavirus Emergency," dated March 20, 2020, the undersigned hereby certifies a true copy of the Return to Petition for Writ of Certiorari has been served upon opposing counsel by sending to opposing counsel's primary e-mail address as listed in the Attorney Information System (AIS):

Kathrine H. Hudgins, Esquire
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This 10th day of June, 2020.



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STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Colleton County

Honorable William H. Seals, Circuit Court Judge

MAURIO D. RIVERS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2020-001106

REPLY TO RETURN TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Did the PCR judge err in refusing to find trial counsel ineffective for failing to object to the trial judge's instruction to the jury on accomplice liability/hand of one is the hand of all when the State failed to show a pre-arranged common design or purpose between the co-defendant and Petitioner to attempt to kill the police officer who was chasing the vehicle driven by Petitioner?
2. Did the PCR judge err in refusing to find trial counsel ineffective for failing to object to the example given by the judge to the jury of accomplice liability because, under the facts of this case, the example was an improper comment on the facts that diluted the State's burden of proof?
3. Did the PCR judge err in refusing to find trial counsel ineffective for failing to object to the trial judge's preliminary comment to the jury that a trial is a search for the truth to make sure that justice is done between the parties because this language diluted the State's burden of proof?

ARGUMENTS IN REPLY

1. **The PCR judge erred in refusing to find trial counsel ineffective for failing to object to the trial judge's instruction to the jury on accomplice liability/the hand of one is the hand of all when the State failed to show a pre-arranged common design or purpose between the co-defendant and Petitioner to attempt to kill the police officer who was chasing the vehicle driven by Petitioner.**

The evidence does not support a jury instruction on accomplice liability, the hand of one is the hand of all. The State's evidence at trial showed that Petitioner was the driver of black car that a deputy tried to stop for failing to use a turn signal. (App. p. 63, line 10 – p. 64, lines 1-25). Petitioner failed to stop and a high-speed chase ensued. There were two sets of shots fired at the officer at different times. As to the first set of shots, during the chase the passenger, co-defendant Bronson Shelley, fired a gun at an officer who was pursuing them. (App. p. p. 92, line. 19 – p. 93, lines 1. 7; p. 96, line 22 – p. 97, lines 1-7). Respondent argues that, "Here there was abundant evidence Petitioner and Codefendant acted in concert to accomplish the illegal purpose of failing to stop for a blue light." (Return to Petition for Writ of Certiorari p. 8). The State presented no evidence, however, that the passenger acted in concert with the driver to fail to stop for a blue light. Additionally, the State presented no evidence that the driver acted in concert with the passenger in shooting at the officers. Petitioner 's act of not stopping for the officer is not sufficient to establish that he acted in concert with the passenger to attempt to murder the officer. At this point the unequivocal evidence established that Petitioner, as driver, failed to stop for a blue light and the co-defendant, as the passenger, shot at the officer.

In State v. Washington, 431 S.C. 394, 407, 848 S.E.2d 779, 786 (2020), the South Carolina Supreme Court wrote, "For an accomplice liability instruction to be warranted, the evidence must be 'equivocal on some integral fact and the jury [must have] been presented with evidence upon which it could rely to find the existence or nonexistence of that fact.' Barber v.

State, 393 S.C. 232, 236, 712 S.E.2d 436, 439 (2011).” In Wilds v. State, 407 S.C. 432, 438–39, 756 S.E.2d 387, 390 (Ct. App. 2014), the South Carolina Court of Appeals wrote:

Our supreme court has noted that “[l]ike a lesser-included offense, an alternate theory of liability may only be charged when the evidence is equivocal on some integral fact and the jury has been presented with evidence upon which it could rely to find the existence or nonexistence of that fact.” Barber v. State, 393 S.C. 232, 236, 712 S.E.2d 436, 439 (2011). In Barber, as in the instant case, four men committed an armed robbery, and, during the robbery, one of the men shot two of the victims. Id. at 234–35, 712 S.E.2d at 437–38. Three of the robbers pled guilty and all testified at Barber's trial that Barber shot the two victims during the robbery. Id. at 235, 712 S.E.2d at 438. On appeal, Barber argued the evidence at trial did not support a jury charge on accomplice liability. Id. at 438. Our supreme court noted “[t]o support an accomplice liability charge in this case, the question is whether there is any evidence that another co-conspirator was the shooter and Barber was acting with him when the robbery took place.” Id. at 237, 712 S.E.2d at 439. Under this test, the court ultimately found the trial court did not err in instructing the jury on accomplice liability because “the sum of the evidence presented at trial, both by the State and defense, was equivocal as to who was the shooter.” Id. at 236, 712 S.E.2d at 439. In making this finding, the supreme court relied upon evidence presented at trial indicating three of the robbers were armed, two with .380 handguns, which was the type of weapon forensic experts testified fired all the shots during the robbery. Id. at 237, 712 S.E.2d at 439.

In Washington the Court found the trial judge erred in giving an accomplice liability charge when there was no evidence that Washington's accomplice was the shooter. In Wilds the Court of Appeals held, “Accordingly, because no evidence in the instant case indicated anyone other than Wilds was the shooter, we find the PCR court correctly determined the trial court erred in charging the jury on accomplice liability.” 407 S.C. at 440, 756 S.E.2d at 391. The accomplice liability instruction in the present case is inapplicable to the first set of shots because the evidence unequivocally established that the passenger was the shooter and there was no evidence that Petitioner, as the driver, acted in concert with the passenger to attempt to murder the officer. Fleeing from the police is not circumstantial evidence that Petitioner joined the passenger or pre-arranged with the passenger to attempt to murder the officer.

The black car was eventually struck by the patrol car and as the car traveled backwards out of control before flipping over, a second set of shots was fired from the black car. (App. p. 97, line 8 – p. 98, lines 1-20). The officer was unable to identify who fired the second set of shots. After the black car wrecked both Petitioner and the co-defendant fled. Three guns were found at wreck scene. One gun, a .38 special, was found on the ground after the car was rolled upright. (App. p. 105, line 21 – p. 106, lines 1-18, p. 107, line 19 – p. 108, lines 1-4). Another gun, a Bursa Firestone .380, was found lying in plain view while the car was still upside down. (App. p. 109, lines 1-4; p. 133, lines). This gun was found with the slide back indicating all bullets had been fired from the weapon. (App. p. 109, lines 1-20; p. 133, lines 11-16). A third gun, a Colt .45, was found inside the glove box of the black car. (App. p. 111, line 11 – p. 112, lines 1-3). The jury found Petitioner guilty of the attempted murder of the officer but found Petitioner not guilty of the associated weapon charge.

With regard to the second set of shots, it is unclear who fired these shots. The accomplice liability instruction, however, is also inapplicable to the second set of shots because there was no evidence that Petitioner acted in concert with the passenger to attempt to murder the officer. The three guns found at the wrecked car and the fact that both Petitioner and the co-defendant passenger fled the scene does not establish that Petitioner joined with the co-defendant to attempt to murder the officer.

“‘Under the ‘hand of one is the hand of all’ theory, one who joins with another to accomplish an illegal purpose is liable criminally for everything done by his confederate incidental to the execution of the common design and purpose.’ Mattison, 388 S.C. at 479, 697 S.E.2d at 584. To support an accomplice liability charge in this case, the question is whether there is any evidence that another co-conspirator was the shooter and Barber was acting with him

when the robbery took place. See State v. Dickman, 341 S.C. 293, 295–96, 534 S.E.2d 268, 269 (2000).” Barber v. State, 393 S.C. 232, 236–37, 712 S.E.2d 436, 439 (2011). Even if Petitioner, as the driver with control of the car, and the passenger could have joined together and had some common design to flee from the police, as argued by Respondent, the shooting is not incidental to any assumed plan to evade law enforcement. If Petitioner shot the second set of shots, a theory the jury rejected by finding him not guilty of the weapon charge, he shot alone and was not acting in concert with the passenger. If the passenger shot the second set of shots, he acted alone. Under the facts of this case the judge erred in charging the jury with accomplice liability, hand of one is the hand of all.

State v. Langley, 334 S.C. 643, 515 S.E.2d 98 (1999), cited by Respondent, involved the improper admission of testimony and the improper admission of a photograph not an improper instruction on the hand of one is the hand of all, accomplice liability. In determining that the error was not harmless, the South Carolina Supreme Court differentiated between the “hand of one, the hand of all theory” and accomplice liability writing:

A jury could have found appellant guilty of victim's murder under several theories presented by the State. First, appellant would be guilty of murder if he actually shot victim. Second, under the “hand of one, the hand of all theory,” appellant would be guilty of murder if he aided Derrick. Under this theory, one who joins with another to accomplish an illegal purpose is liable criminally for everything done by his confederate incidental to the execution of the common design and purpose. To admit evidence under this theory, the existence of the common design and the participation of the accused against whom the evidence is offered should first be shown. State v. Woomer, 276 S.C. 258, 277 S.E.2d 696 (1981). Third, appellant would be guilty of murder if the jury found he was an accomplice. Under accomplice liability theory, “a person must personally commit the crime or be present at the scene of the crime and intentionally, or through a common design, aid, abet, or assist in the commission of that crime through some overt act.” State v. Austin, 299 S.C. 456, 459, 385 S.E.2d 830, 832 (1989); *see also* State v. Leonard, 292 S.C. 133, 355 S.E.2d 270 (1987) (to be liable as an aider or abetter, the participant must be chargeable with knowledge of the principal's criminal conduct; mere presence at the scene is not sufficient to establish guilt as an aider or abetter).

Langley, 334 S.C. at 648–49, 515 S.E.2d at 100–01.

The Langley case involved a turf war between two groups of drug dealers, the Charleston boys and the New York boys. Two of the New York boys, Langley and Derrick left the drug house together, confronted the deceased, a friend of the Charleston boys, and either Langley or Derrick fatally shot him. In Langley there was a question about who actually shot and evidence that Langley and Derrick acted together. In contrast, in the present case there is no evidence, direct or circumstantial, that Petitioner acted with the passenger in attempting to murder the officer. Petitioner was fleeing from the police. The passenger was shooting at the police.

In State v. Condrey, 349 S.C. 184, 562 S.E.2d 320 (Ct.App. 2002), the South Carolina Court of Appeals found that the trial judge properly charged the “hand of one is the hand of all” doctrine to the jury because there was evidence that Condrey and West were acting pursuant to a plan to steal shoes. In contrast, in the present case the State failed to present any evidence that Petitioner and the passenger were acting pursuant to a plan to attempt to murder the officer. In State v. Gibson, 390 S.C. 347, 701 S.E.2d 766 (Ct. App. 2010), the South Carolina Court of Appeals found that the trial judge properly denied the motion for directed verdict because there was evidence that Adams Gibson, the defendant, and his brother acted in concert to assault the group from Winnsboro. The Court of Appeals wrote:

In this case, the State does not contend Adams fired the fatal shot. Rather, the State simply maintains there is sufficient circumstantial evidence that Adams agreed to, and did, act in concert with Jacques to assault the Winnsboro group; thus, sufficient evidence of Adams's guilt existed to submit the issue to the jury under the hand of one is the hand of all theory. In order to demonstrate that Adams and Jacques intended to join together in a common design to achieve an illegal purpose, the State maintains: (1) Adams called Jacques to the scene; (2) when Jacques arrived he went inside the bar and Adams pointed out the group of Winnsboro men, rather than leaving straight away; (3) Williams testified Adams approached Jacques's white sedan in the parking lot and retrieved a gun moments

before the shooting; and (4) although separately, the two men fled the scene after the shooting.

Gibson, 390 S.C. at 354–55, 701 S.E.2d at 770. In the present case the State failed to present evidence that Petitioner acted in concert with the passenger to attempt to murder the officer.

Trial counsel was ineffective for requesting and then not objecting to the jury instruction on accomplice liability, hand of one is the hand of all. Petitioner was prejudiced by the deficient performance. The jury appears to have struggled with the instruction, requesting a re-charge on accomplice liability. (App. p. 209, line 23 – p. 210, 211, 212, 213, lines 1-11). The jury found Petitioner not guilty of the weapon charge which reflects that the jury did not believe that Petitioner was the shooter. The jury appears to have found Petitioner guilty based solely on a theory of accomplice liability, a theory that did not apply under the facts of this case. There is no evidence that Petitioner joined with the co-defendant to attempt to murder the officer. There is a reasonable probability that, but for the accomplice liability charge, the outcome of the trial would have been different. The PCR judge erred in refusing to grant relief based on trial counsel's deficient performance.

2. The PCR judge erred in refusing to find trial counsel ineffective for failing to object to the example given by the judge to the jury of accomplice liability because, under the facts of this case, the example was an improper comment on the facts that diluted the State's burden of proof.

During the erroneous instruction on accomplice liability, hand of one is the hand of all the trial judge gave the following example:

For example, ladies and gentlemen, two people can be responsible and can be guilty of burglary if one – only one person went into the house and one person was the lookout and driving the car or the getaway car and the lookout but only one person actually went into the house at night. Ladies and gentlemen, although only one person went into the house, both people are guilty of burglary in the first degree because they acted together in concert to commit a burglary.

(App. p. 193, line 25 – p. 124, lines 1-8). In both the original PCR application and the amended application Petitioner alleged that trial counsel was ineffective for failing to object to the example given by the trial judge. (App. pp. 283-284; p. 295). The issue was addressed during the PCR hearing. (App. p. 328; p. 369; pp. 378-379). In the order of dismissal the PCR judge mistakenly referred to the example as being given by the prosecutor. (App. p. 418). The mistake was brought to the attention of the PCR judge in the Rule 59(e) motion. (App. p. 422). The PCR judge denied the motion to alter or amend despite the factual error. (App. pp. 425-426).

Respondent does not address the factual error in the order of dismissal. Respondent argues that the judge's example was not an improper comment on the facts and even if it is, Petitioner was not prejudiced by the error because it is undisputed that Petitioner was the driver of the car. (Return to Petition for Writ of Certiorari p. 9). The example constitutes an improper comment on the facts because Petitioner was the driver. While it is undisputed that Petitioner was the driver, his role in the attempted murder as the driver is disputed. Based on the example given by the judge, the jury could have found liability for the attempted murder based solely on Petitioner driving the car and failing to stop for police. The example further complicated the error in the erroneous instruction.

Respondent's reliance on State v. Norris, 270 S.C. 552, 243 S.E.2d 440 (1978), is misplaced. In Norris the South Carolina Supreme Court wrote:

In his instructions on assault and battery of a high and aggravated nature, the judge noted several of the facts in the case such as the disparate weights and ages of the appellant and the victim. Appellant asserts this violated Article V, Section 17 of the South Carolina Constitution which prohibits a judge from charging juries on matters of fact. We disagree.

The constitutional provision was designed to preserve inviolate the jury's fact finding function. All questions of fact are to be decided exclusively by the jury, uninfluenced by any expressions of opinion by the judge. State v. White, 15 S.C.

381 (1881); State v. Pruitt, 187 S.C. 58, 196 S.E. 371 (1938); State v. Thorne, 237 S.C. 248, 116 S.E.2d 854 (1960).

However, where the facts stated in a charge are not in dispute, the instruction is not erroneous. Turner v. Lyles, 68 S.C. 392, 48 S.E. 301 (1904); Riser v. Southern Ry., 67 S.C. 419, 46 S.E. 47 (1903).

The weights and ages of the appellant and the victim were not questions of fact for the jury. Appellant admitted his age and weight on cross-examination. Accordingly, we affirm, concluding the trial judge's reference to undisputed facts did not violate Article V, Section 17 of the South Carolina Constitution.

270 S.C. at 552–53, 243 S.E.2d at 440. In contrast, in the present case Petitioner never admitted to being a getaway driver. Petitioner was fleeing from the police when the passenger in his car started shooting. Petitioner's role in the attempted murder as a driver was in dispute. There was no evidence of a pre-arranged plan to attempt to murder the officer. The improper example made the erroneous instruction on accomplice liability, hand of one is the hand of all even more prejudicial.

3. The PCR judge erred in refusing to find trial counsel ineffective for failing to object to the trial judge's preliminary comment to the jury that a trial is a search for the truth to make sure that justice is done between the parties because this language diluted the State's burden of proof.

In her preliminary comments to the jury the trial judge said, "While all of these things may be true at times, this trial is not for entertainment. It is a fundamental part, maybe the fundamental part, of our democracy, a search for the truth in an effort to be sure that justice is done between the parties before the Court. Searching for the truth and making sure that justice is done is often slow, deliberate, and repetitive, the opposite of what you may have seen on television or in the movies or read in books." (App. p. 49, lines 15-23). Trial counsel did not object to the comments.

Trial counsel was ineffective for failing to object to the search for the truth language. Respondent argues that, “On the contrary, Petitioner was not prejudiced by the search for the truth language in this case because the language did not affect the outcome of the Petitioner’s trial.” (Return to Petition for Writ of Certiorari p. 11). The preliminary comments diluted the State’s burden of proof beyond a reasonable doubt, especially when viewed with the erroneous jury instruction on accomplice liability, hand of one is the hand of all.

Due Process protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime. In re Winship, 397 U.S. 358, 364, 90 S. Ct. 1068, 1073, 25 L. Ed. 2d 368 (1970). The Due Process Clause of the Fourteenth Amendment “safeguard[s] against dilution of the principle that guilt is to be established by probative evidence and beyond a reasonable doubt.” Taylor v. Kentucky, 436 U.S. 478, 98 S.Ct. 1930, 1935, 56 L.Ed.2d 468 (1978). The preliminary comments to the jury that a trial is a search for the truth combined with the erroneous jury instruction on accomplice liability, hand of one is the hand of all unconstitutionally diluted the State’s burden of proof beyond a reasonable doubt. A constitutionally deficient reasonable doubt instruction cannot be harmless error. Sullivan v. Louisiana, 508 U.S. 275, 113 S.Ct. 2078 (1993).

CONCLUSION

Based on the above arguments, this Court should grant the petition for writ of certiorari to allow further briefing on the issues.

s/ Kathrine H. Hudgins
Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR PETITIONER

This 21st day of June, 2021.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Colleton County

Honorable William H. Seals, Circuit Court Judge

MAURIO D. RIVERS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2020-001106

CERTIFICATE OF SERVICE

Pursuant to the Supreme Court's Order "RE: Operation of the Appellate Courts During the Coronavirus Emergency," dated March 20, 2020, the undersigned hereby certifies a true copy of the Reply to Return to Petition for Writ of Certiorari in the above referenced case has been served upon Scott Matthews, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and Maurio D. Rivers, #232669, at Lee Correctional Institution, 990 Wisacky Hwy., Bishopville, SC 29010, this 21st day of June, 2021.

s/ Kathrine H. Hudgins
Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR PETITIONER

The South Carolina Court of Appeals

Maurio D. Rivers, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2020-001106

ORDER

This matter is before the court on a petition for a writ of certiorari. Based on the vote of the panel, the petition for a writ of certiorari is granted as to Petitioner's Question 2 but denied as to Questions 1 and 3. The parties shall proceed to serve and file the appendix and briefs as provided by Rule 243(j), SCACR.

FOR THE COURT
BY  *Catherine Hannissai, deputy*
CLERK

Columbia, South Carolina

cc:

Kathrine Haggard Hudgins, Esquire
Donald J. Zelenka, Esquire
The Honorable William H. Seals, Jr.

FILED
Nov 28 2023

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Colleton County

Honorable William H. Seals, Circuit Court Judge

MAURIO D. RIVERS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2020-001106

BRIEF OF PETITIONER

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ISSUE PRESENTED

Did the PCR judge err in refusing to find trial counsel ineffective for failing to object to the example given by the judge to the jury of accomplice liability because, under the facts of this case, the example was an improper comment on the facts that diluted the State's burden of proof?

STATEMENT

In August of 2011, the Colleton County Grand Jury indicted Petitioner, Maurio Daetrel Rivers, for two counts of attempted murder and one count of possession of a weapon during the commission of a violent crime, indictments #2011-GS-15-00549, 00550, 00551. (App. pp. 230-231). On December 12, 2012, Petitioner proceeded to jury trial before the Honorable Diane S. Goodstein. John D. Bryan represented Petitioner at trial. Steven Knight prosecuted the case. The jury found Petitioner not guilty of one count of attempted murder and not guilty of the weapon charge. The jury found Petitioner guilty of one count of attempted murder. Judge Goodstein sentenced Petitioner to thirty (30) years. (App. p. 232). A timely notice of intent to appeal was filed and the direct appeal perfected. A three-judge panel of the South Carolina Court of Appeals heard argument in the case on November 5, 2014, and on December 3, 2014, affirmed the conviction in an unpublished opinion. State v. Rivers, Op. No. 2014-UP-441 (S.C. Ct. App. Filed December 3, 2014). (App. pp. 269-270). Petitioner filed a petition for rehearing and filed a motion to relieve counsel and proceed *pro se*. The Court of Appeals granted the motion to relieve counsel and on April 16, 2015, denied the petition for rehearing. Petitioner then filed a petition for writ of certiorari with the South Carolina Supreme Court that was denied on November 19, 2015.

On June 1, 2016, Petitioner filed an application for post-conviction relief [PCR]. (App. pp. 271-284). The State filed a return on April 17, 2017. (App. pp. 285 - 290). On November 15, 2017, Petitioner filed a motion to relieve PCR counsel and an amended PCR application. (App. pp. 291-298). An evidentiary hearing was held on April 1, 2019, and April 3, 2019, before the Honorable William H. Seals, Jr.. Leslie T. Sarji represented Petitioner at the PCR hearing. Benjamin Limbaugh represented the State. In a written order signed December 21, 2019, Judge

Seals denied relief and dismissed the application. (App. pp. 411-420). On January 10, 2020, Petitioner filed a motion to alter or amend pursuant to Rule 59(e) SCRCR. (App. pp. 421-424). Judge Seals denied the motion on July 23, 2020. (App. pp. 425-426). A timely notice of intent to appeal was filed on August 7, 2020.

On February 22, 2021, the petition for writ of certiorari was filed with the South Carolina Supreme Court. The return was filed on June 10, 2021. The reply brief was filed on June 21, 2021. On June 29, 2021, pursuant to Rule 243(1), SCACR, the South Carolina Supreme Court transferred the case to the South Carolina Court of Appeals. On November 28, 2023, the South Carolina Court of Appeals denied the petition for writ of certiorari as to questions one and three but granted the petition for writ of certiorari as to question two and ordered briefing as provided by Rule 243(j), SCACR. This brief of petitioner follows.

STANDARD OF REVIEW

“Our standard of review in PCR cases depends on the specific issue before us. We defer to a PCR court's findings of fact and will uphold them if there is evidence in the record to support them. Sellner v. State, 416 S.C. 606, 610, 787 S.E.2d 525, 527 (2016) (citing Jordan v. State, 406 S.C. 443, 448, 752 S.E.2d 538, 540 (2013)). We review questions of law de novo, with no deference to trial courts. Sellner, 416 S.C. at 610, 787 S.E.2d at 527 (citing Jamison v. State, 410 S.C. 456, 465, 765 S.E.2d 123, 127 (2014)).” Smalls v. State, 422 S.C. 174, 180–81, 810 S.E.2d 836, 839–40 (2018).

ARGUMENT

The PCR judge erred in refusing to find trial counsel ineffective for failing to object to the example given by the judge to the jury of accomplice liability because, under the facts of this case, the example was an improper comment on the facts that diluted the State's burden of proof.

Facts

The jury found Petitioner guilty of the attempted murder of Lieutenant Joseph Burnette with the Dorchester County Sheriff's Office. On July 12, 2011, at 7:00 PM Deputy Justin Eaches with the Dorchester County Sheriff's Office attempted to stop a black car on Interstate 95 for failure to use a turn signal. (App. p. 63, lines 10 – p. 64, lines 1-2). The deputy testified that he saw two black males in the car and he identified Petitioner as the driver. (App. p. 64, lines 13-25). A chase ensued and the deputy asked for assistance from Lt. Burnette. (App. p. 67, line 3 – p. 68, lines 1-9). Lt. Burnette took over the pursuit of the car because of the condition of Deputy Eaches' patrol car and the high rate of speed of the chase. (App. p. 68, lines 1-6). Lt. Burnette testified that he heard gunshots after the car exited the interstate onto Highway 61. (App. p. 87, lines 15-16). Lt. Burnette testified that these first set of shots were fired by the passenger. (App. p. 85, lines 4-7). Lt. Burnette confirmed that the passenger, Bronson Shelley, stuck his head out of the sunroof, looked at the officer and shot at him. (App. p. 92, line. 19 – p. 93, lines 1. 7; p. 96, line 22 – p. 97, lines 1-7).

The black car was eventually struck by Lt. Burnette's patrol vehicle. (App. p. 84, lines 13-15). According to Lt. Burnette, as the black car was traveling backwards out of control before flipping over, he heard a second set of what he later determined to be gunshots. (App. p. 97, line 8 – p. 98, lines 1-20). Lt. Burnette testified that while there were two different sets of shootings, he only saw one person, the passenger and co-defendant, Bronson Shelley, shoot during the first set. (App. p. 97, lines. 4-15). Lt. Burnette did not testify as to who was shooting the second time. According to Lt. Burnette, both the driver and passenger fled from the vehicle after it wrecked. (App. p. 85,

lines. 19-24. Lt. Burnette released his K-9 and Petitioner was apprehended¹. (App. p. 85, line 12 – p. 86, lines 1- 11). Deputy Eaches assisted in the apprehension of the passenger, Bronson Shelley. Shelley had a holster in his pocket when he was apprehended. (App. p. 73, lines 4 – 17).

There were three guns recovered from the wreck scene. One gun, a .38 special, was found on the ground after the car was rolled upright. (App. p. 105, line 21 – p. 106, lines 1-18, p. 107, line 19 – p. 108, lines 1-4). Another gun, a Bursa Firestone .380, was found lying in plain view while the car was still upside down. (App. p. 109, lines 1-4; p. 133, lines). This gun was found with the slide back indicating all bullets had been fired from the weapon. (App. p. 109, lines 1-20; p. 133, lines 11-16). A third gun, a Colt .45, was found inside the glove box of the black car. (App. p. 111, line 11 – p. 112, lines 1-3).

Five shell casings were recovered on Highway 61. (App. p. 116, line 11- p. 117, lines 1-4). These casings matched the Bursa Firestone .380. (App. p. 145, lines 11-12). Bullet fragments were collected at the scene of the wreck. (App. p. 116, lines 19-23; p. 117, lines 6-11). One of the fragments was fired by the .38 special. (App. p. 146, lines 2-3). There were four holes in the windshield of the black car where shots had been fired outward. (Tr. p. 124, line 1 – p. 127, line 1; p. 129, lines 11-12).

Petitioner was charged with the attempted murder of both Lt. Burnette and Deputy Eaches and charged with possession of a weapon during the commission of a violent offense. The jury found Petitioner not guilty of the attempted murder of Deputy Eaches and not guilty of the weapon charge. The indictment for the attempted murder of Lt. Burnette reads, “That in Colleton County, South Carolina, on or about July 12, 2011, the defendant, Maurio Daetrel Rivers, with malice

¹ Petitioner testified at the PCR hearing that he filed a federal civil suit against the officers for allowing the dog to continue to bite him in the groin. (App. p. 333, line 23 – p. 334, lines 1-4). Petitioner testified that he received a settlement of ten thousand dollars (\$10,000). (App. p. 326, lines 15-25).

aforethought accompanied by a present ability to complete the act and the intent to kill, either express or implied, did attempt to kill the victim, Deputy J. Burnette with the Dorchester County Sheriff's Office, while on Augusta Highway, by shooting at the victim; in violation of S.C. Code of Laws Section 16-03-0029 of the South Carolina Code of Laws (1976), as amended." (App. p. 231). The indictment does not contain accomplice liability language.

In his closing argument the prosecutor discussed the principle of "the hand of one is the hand of all." (App. p. 169, line 20 - p. 170, lines 1-17). The prosecutor gave the examples of a get away driver and a look out as examples of the hand of one is the hand of all. (App. p. 169, line 25 - p. 170, lines 1-11). The prosecutor emphasized the high speed chase and fleeing from the car to show intent. (App. p. 170, line 18 - p. 171, lines 1-8). The prosecutor also argued that the second round of shots came from inside the car on the driver's side. (App. p. 172, lines 6-11).

Defense counsel argued that mere presence is not sufficient for accomplice liability. (App. p. 173, line 25 - p. 174, lines 1-13). Defense counsel also argued that it was impractical to believe that Petitioner, the driver, fired the second round of shots at the same time as he was trying to regain control of the car as it spun out of control and flipped over. (App. p. 176, line 13 - p. 177, lines 1-5). The jury found Petitioner not guilty of the weapon charge.

Discussion

During the instruction on accomplice liability/hand of one is the hand of all the trial judge gave the following example:

For example, ladies and gentlemen, two people can be responsible and can be guilty of burglary if one - only one person went into the house and one person was the lookout and driving the car or the getaway car and the lookout but only one person actually went into the house at night. Ladies and gentlemen, although only one person went into the house, both people are guilty of burglary in the first degree because they acted together in concert to commit a burglary.