

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Hampton County

Honorable Frank R. Addy, Circuit Court Judge

GREGORY SANDERS, JR.,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-001527

APPENDIX

LARA M. CAUDY
Senior Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

DANIELLE E. DIXON
Assistant Attorney General
PO Box 11549
Columbia, SC 29211
(803) 734-3737

ATTORNEY FOR PETITIONER

I. MCDUFFIE STONE, III
Solicitor, Thirteenth Judicial Circuit
102 Ribaut Road
Beaufort, SC 29902
(843) 779-8477

ATTORNEYS FOR RESPONDENT

VOLUME II OF II
PAGES 501-992

RECEIVED
Mar 16 2026
S.C. SUPREME COURT

INDEX

INDEX	i
TRIAL TRANSCRIPT DATED MAY 7-9, 2018	1
FINAL BRIEF OF APPELLANT	726
FINAL BRIEF OF RESPONDENT	760
<u>THE STATE V. GREGORY SANDERS</u> , OP. NO. 2022-UP-298 (S.C. CT. APP. FILED JULY 13, 2022)	792
PETITION FOR REHEARING.....	804
ORDER DENYING REHEARING.....	816
PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS	818
RETURN TO PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS ..	839
REPLY TO RETURN TO PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS	856
ORDER DENYING CERTIORARI.....	869
REMITTITUR	870
APPLICATION FOR POST-CONVICTION RELIEF FILED JULY 28, 2023	872
APPLICATION FOR POST-CONVICTION RELIEF FILED OCTOBER 2, 2023	879
RETURN.....	886
RETURN AND MOTION TO MERGE.....	895
ORDER MERGING APPLICATIONS FOR POST-CONVICTION RELIEF.....	900
AMENDED APPLICATION FOR POST-CONVICTION RELIEF	902
POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED APRIL 14, 2025	905
APPLICANT’S EXHIBIT #1 (WITNESS LIST).....	964
APPLICANT’S EXHIBIT #2 (TEXT MESSAGES)	966

APPLICANT’S EXHIBIT #3 (PAPER FROM APPLICANT)	968
APPLICANT’S EXHIBIT #4 (SENTENCE SHEET)	969
FORM 4	970
ORDER OF DISMISSAL	974
INDICTMENTS	987
SENTENCE SHEETS	991

5-8-18 STATE V SANDERS

SARA GOODMAN - DX - HOLLEN

1 is there. And so, in this instance, there was no DNA
2 there, but only tests for human DNA, so that's why we
3 reported in that manner.

4 Q. Okay. Gotcha. So it could have been another
5 animal?

6 A. It's possible.

7 Q. All right. What about Item 6.2?

8 A. That was a swab from scraping the underarms and
9 collar of the polo shirt.

10 Q. And what was your finding there?

11 A. The DNA profile is a mixture of at least two
12 individuals. The partial DNA profile of the major
13 contributor matches the DNA profile of Gregory Sanders.
14 The probability of randomly selecting an unrelated
15 individual having a DNA profile matching the major
16 contributor to this mixture is approximately one in
17 nineteen sextillion. This item is not eligible for
18 entry into the combined DNA index system, and due to the
19 inability to calculate a statistic, no further
20 interpretation will be offered regarding the minor
21 contributors.

22 Q. Okay. But you were able to determine that at least
23 a portion of that DNA, as far as you can say, was
24 contributed by the defendant, Gregory Sanders?

25 A. Correct.

5-8-18 STATE V SANDERS

SARA GOODMAN - DX - HOLLEN

1 Q. Okay. What about Item -- you know what? You've
2 got Item 12.

3 A. Um-hmm.

4 Q. What is that?

5 A. There -- it's the left-hand fingernail clippings
6 from Tyhira Harrington.

7 Q. And did you get any DNA out of those?

8 A. It was a mixture of two individuals, and the major
9 -- the DNA profile of the major contributor was
10 consistent with the DNA profile of Tyhira Harrington.

11 Q. So her DNA was under her fingernails?

12 A. Um-hmm.

13 Q. Okay.

14 COURT REPORTER: I'm sorry. Was that yes or no?

15 A. Correct, yes.

16 Q. All right. What about Item 13? What is that?

17 A. That was the right-hand fingernail clippings from
18 Tyhira Harrington.

19 Q. And what was your finding?

20 A. The DNA profile was a mixture of at least three
21 individuals. The partial DNA profile, the major
22 contributor is consistent with the DNA profile of Tyhira
23 Harrington.

24 Q. Go ahead. I'm sorry.

25 A. Due to the inability to calculate a statistic, no

5-8-18 STATE V SANDERS

SARA GOODMAN - DX - HOLLEN

1 further interpretation will be offered regarding the
2 minor contributors. And then, the YSTR profile is a
3 mixture of at least two male individuals. The partial
4 YSTR profile of the major contributor is from
5 Unidentified Male Individual A; and the partial YSTR
6 profile of the minor contributor was from Unidentified
7 Male Individual B.

8 Q. Okay. Let me ask you about that. So there are two
9 unidentified males' DNA under her fingernails?

10 A. Correct.

11 Q. Were you able to compare that to the standard
12 buccal swab from Gregory Sanders?

13 A. Yes, I was.

14 Q. And are Unidentified Male A or B consistent with
15 Mr. Sanders?

16 A. No.

17 Q. What about Item 17.2?

18 A. That was a swab from scraping the underarms and
19 collar of a tee-shirt.

20 Q. And what was your finding there?

21 A. The DNA profile is a mixture of at least four
22 individuals, and due to the inability to calculate a
23 statistic, no further interpretation will be offered.
24 The YSTR profile is a mixture of at least two male
25 individuals. The YSTR profile of the major contributor

5-8-18 STATE V SANDERS

SARA GOODMAN - DX - HOLLEN

1 matches the YSTR profile of Gregory Sanders.

2 Q. Gotcha.

3 A. The probability of randomly selecting an unrelated
4 male individual having a YSTR profile matching the major
5 contributor is approximately one in eleven thousand.

6 Paternal male relatives of Gregory Sanders may not be
7 excluded as the male -- or excuse me -- as the major
8 contributor of this YSTR profile. And the partial YSTR
9 profile of the major -- or minor contributor is from
10 Unidentified Male Individual C.

11 Q. Got it. So the YSTR profile matches someone in the
12 paternal line of Mr. Sanders? Is that what you're
13 saying?

14 A. Correct.

15 Q. Okay. And finally, Item 18. Can you tell us what
16 that is?

17 A. Yes. That was swabs from the head stamps of Items
18 1 and 2, cartridge cases.

19 Q. And what is -- what was your finding?

20 A. No DNA profile was developed.

21 Q. As far as the shell casings, is it an uncommon
22 occurrence for you to not find DNA on them?

23 A. It is not.

24 Q. Do you have any idea of the statistic or how often
25 you're able to get DNA off of shell casings?

5-8-18 STATE V SANDERS

SARA GOODMAN - DX - HOLLEN

1 A. I don't have a statistic.

2 Q. Is it common?

3 A. It's common to not develop DNA profiles from them.

4 Q. So is there anything about shell casings that would
5 specifically cause them to not be conducive to DNA?

6 A. One main factor is that when they are fired from a
7 gun, they generally undergo heat from being fired from
8 the gun. So that can play a factor in -- in decomposing
9 the DNA.

10 Q. Okay. What about just as far as DNA in general,
11 are there any environmental factors that can make it
12 more likely or less likely to find DNA on an object?

13 A. Yes, there are many environmental factors.

14 Q. Can you just give us a couple.

15 A. Some of them can include -- heat is -- degrades
16 DNA; water can wash it away; the storage conditions of
17 the item.

18 Q. So is it possible for someone to touch or handle an
19 object and not leave DNA behind?

20 A. It is possible.

21 Q. Again, there are -- what are some of the factors
22 that might contribute to that?

23 A. Some of the factors are how much DNA a person sheds
24 normally. There's a difference that some people shed a
25 lot of DNA, some people don't. If they're sweating or

5-8-18 STATE V SANDERS

SARA GOODMAN - CX - PLEXICO

1 have other body fluids from when they touch something
2 that would leave behind more DNA than just skin cells.

3 Q. Okay.

4 MR. HOLLEN: Court's indulgence. I don't have
5 anything further, Ms. Goodman. Please answer any of Mr.
6 Plexico's questions.

7 THE COURT: Mr. Plexico?

8 MR. PLEXICO: Okay.

9 SARA GOODMAN

10 CROSS-EXAMINATION BY MR. PLEXICO:

11 Q. Okay. So, we don't know how long the DNA that you
12 matched to Gregory Sanders and the polo shirt, in 6.2,
13 we don't know how long it's been on the shirt, correct?

14 A. No, I do not.

15 Q. All right. You said there were -- on the
16 fingernail clippings of Tyhira Harrington, you say at
17 least two individuals in the left hand? Is that
18 correct? And at least three on the right hand?

19 A. There was two unidentified male individuals from
20 the right hand. From the left hand, I did not have a
21 profile suitable for comparison.

22 Q. Well, when you say at least three individuals from
23 the right hand, does that indicate that there could be
24 more?

25 A. Yes.

5-8-18 STATE V SANDERS

SARA GOODMAN - CX - PLEXICO

1 Q. You just didn't detect it? I'm asking.

2 A. That's okay. So the DNA profiles that were
3 developed, that were unidentified male individuals are
4 from the YSTR profile, so that's only detecting their
5 DNA. So there is a third person there, but I can't
6 testify to whether it's another male or not.

7 Q. Okay. All right. And 17.2.

8 A. Um-hmm.

9 Q. The tee-shirt? You gave a statistic of one in
10 eleven thousand?

11 A. Yes.

12 Q. Are there approximately five million people in
13 South Carolina?

14 A. Approximately.

15 Q. Would you dispute, if I told you on my calculator I
16 divided -- well, I had -- I divided five million by
17 eleven thousand, and I got 454.55?

18 A. That could be correct. I'm not sure.

19 Q. Does that sound approximately correct?

20 A. I wouldn't know without calculating it.

21 Q. Would you like my calculator? I'll be glad to --

22 MR. PLEXICO: May I approach?

23 THE COURT: You may.

24 BY MR. PLEXICO:

25 Q. I cleared it for you, ma'am.

5-8-18 STATE V SANDERS

SARA GOODMAN - CX - PLEXICO

1 A. Do you want me to divide the world population by
2 eleven thousand?

3 Q. No, just the population of South Carolina, five
4 million. That'll be easy for us.

5 A. Yes, it's around 500.

6 Q. Okay. So that --

7 MR. PLEXICO: May I approach?

8 BY MR. PLEXICO:

9 A. Yes.

10 Q. All right. Thank you. All right. So there are
11 about 500 people that match that, as far as in -- just
12 in South Carolina, you could be expected to find?

13 A. Not necessarily. It just means the statistic is
14 the probability of randomly selecting an unrelated male
15 individual. So unrelated to this individual having the
16 exact same YSTR profile as the major contributor is one-
17 in-eleven-thousand chance.

18 Q. Okay. But if you had give -- a cap of five million
19 people, though, wouldn't it be about 500, or 454?

20 A. It doesn't necessarily mean that there's 500 other
21 people that have this DNA profile. It just means that
22 --

23 Q. Does it --

24 THE COURT: Let her answer. Let her finish. Go
25 ahead.

5-8-18 STATE V SANDERS

SARA GOODMAN - CX - PLEXICO

1 BY MR. PLEXICO:

2 A. So our -- our statistics we calculate based off of
3 databases that have a, I guess, a representative of the
4 population. So it doesn't -- it -- we haven't tested
5 every person in the population, but our databases have
6 been shown to be representative of every individual in
7 the population.

8 Q. So it would be fair -- you could expect to find, if
9 you tested all five million, approximately 450 that
10 match that profile?

11 A. I can't testify to how many would come back.

12 Q. Okay. So the statistic is valid for what?

13 A. It's giving a weight to the match of this profile,
14 and giving the probability that you would find that
15 exact same profile on another individual. So it's
16 possible that you would see it again, but I can't tell
17 you how many times in the population you would see that
18 profile.

19 Q. Does the statistic tell me I could expect to see it
20 once every eleven thousand people?

21 A. Based --

22 Q. Is that what it means?

23 A. Based off of -- yes. Once in every eleven thousand
24 of the database that we have.

25 Q. And do you believe the database is representative

1 of the -- of the population?

2 A. Yes.

3 MR. PLEXICO: Just Court's indulgence.

4 BY MR. PLEXICO:

5 Q. And again, on 17.2, we just know that there's --
6 that one in eleven thousand statistic that you got, we
7 don't know when the DNA got them?

8 A. Correct.

9 MR. PLEXICO: I don't have anything further.

10 THE COURT: Okay.

11 MR. HOLLEN: Nothing further from the State.

12 THE COURT: Any objection to Ms. Goodman being
13 excused?

14 MR. HOLLEN: We would ask she be excused.

15 THE COURT: Ms. Goodman, you are excused. Thank
16 you. Do you have another short witness, or?

17 SOLICITOR LEGETTE: I have another witness, your
18 Honor. Not sure how short, but.

19 THE COURT: Okay. Well, we are leaving in about
20 fifteen or twenty minutes, so can we get that witness up
21 and down?

22 SOLICITOR LEGETTE: We will do our best.

23 THE COURT: Okay.

24 SOLICITOR LEGETTE: I'll do it, your Honor.

25 THE COURT: Is it a lay witness, or someone that

5-8-18 STATE V SANDERS

PAUL GREER - DX - PAUL GREEN

1 came from Columbia?

2 SOLICITOR LEGETTE: He's a Columbia witness.

3 THE COURT: You can go ahead and put him up. Thank
4 you.

5 SOLICITOR LEGETTE: Yes, ma'am. Paul Greer.

6 THE COURT: Do you want to come talk with me about
7 scheduling a little bit later?

8 SOLICITOR LEGETTE: Yes, your Honor.

9 THE COURT: You can come, too, Mr. Plexico.

10 OFF-THE-RECORD BENCH CONFERENCE, OUT OF
11 HEARING OF JURORS. PRESENT: THE COURT,
12 MS. LEGETTE, MR. PLEXICO.

13 END BENCH CONFERENCE.

14 MADAM CLERK: Left hand on the *Bible*, and raise your
15 right hand. Do you swear or affirm to tell the truth,
16 the whole truth, and nothing but the truth, so help you
17 God?

18 PAUL GREER: I do.

19 MADAM CLERK: Have a seat.

20 PAUL GREER

21 DIRECT EXAMINATION BY SOLICITOR LEGETTE:

22 Q. Good afternoon.

23 A. Good afternoon.

24 Q. Sir, where do you work?

25 A. I work in the Firearms Department, Forensics

5-8-18 STATE V SANDERS

PAUL GREER - DX - PAUL GREEN

1 Services Laboratory at SLED.

2 Q. And what do you do at SLED?

3 A. I'm a firearms examiner in the Forensic Services
4 Laboratory.

5 Q. Okay. And tell us about your educational
6 background and training as it applies to working in the
7 Firearms Department at SLED.

8 A. I received a bachelor's of science in biological
9 sciences from the University of South Carolina

10 A. Upon starting at SLED, I also completed the Class
11 III Law Enforcement Certification that's hosted by the
12 South Carolina Criminal Justice Academy. I've also
13 completed the SLED in-house course of instruction for
14 firearms identification. This is an extensive three-
15 year program, or apprenticeship-style program, where I
16 trained under the supervision of other court-qualified
17 examiners. During this time I completed many multiple
18 written and practical examinations, as well as many
19 microscopic examinations; assist the examiners prep
20 cases; toured things such as manufacturing facilities.

21 At the conclusion of my training, I successfully
22 completed a comprehensive multi-part exam that included
23 case work. I was then deemed competent to complete case
24 work. I've also attended conferences such as the AFTE
25 conference, which is the Association of Firearm Toolmark

5-8-18 STATE V SANDERS

PAUL GREER - VOIR DIRE - PLEXICO

1 Examiners. I've completed courses such as the Glock
2 Amorer Certification Course, and the Highpoint
3 Familiarization Course.

4 Q. So, in your career, how many, I guess, trainings
5 would you say that you have completed?

6 A. Multiple. It's a three-year program where I take
7 tests, essay, terms test, and many practical
8 examinations throughout those three years.

9 Q. And have you ever been qualified to testify as an
10 expert in the area of firearms identification and/or
11 toolmarks?

12 A. No, ma'am, I have not, not in firearms
13 identification.

14 SOLICITOR LEGETTE: At this time, your Honor, I
15 would offer Mr. Greer as an expert in the area of
16 firearms identification.

17 THE COURT: Mr. Plexico, any voir dire?

18 MR. PLEXICO: Yes, briefly, your Honor.

19 PAUL GREER, VOIR DIRE

20 BY MR. PLEXICO:

21 Q. All right. On your -- I'm looking at your resume.

22 A. My statement of qualifications, or?

23 Q. Yes.

24 A. Yes, sir.

25 Q. Okay. All right. It says that you're -- it says

5-8-18 STATE V SANDERS

PAUL GREER - VOIR DIRE - PLEXICO

1 Firearms and Toolmark Identification Course Instruction,
2 March 14, 2014 through the present?

3 A. Yes, sir.

4 Q. But you -- so you have not passed it?

5 A. I am still in training for toolmarking
6 identification. I successfully completed the firearms
7 identification portion of the training.

8 Q. Okay. All right. And to compare the toolmarks
9 that are on cartridges requires toolmark competence. Is
10 that correct? And certification?

11 A. Yes, sir. The toolmark course of instruction there
12 is just specifically referring more to the tools such as
13 a screwdriver or a crowbar, in that aspect.

14 Q. A firearm is a tool that strikes a cartridge that
15 ejects ammunition.

16 A. Yes, sir. The firearm will access the tool to mark
17 the ammunition.

18 Q. Do you not identify similarity in cartridges
19 through toolmarks?

20 A. Yes, sir, in the aspect. As the firearm working as
21 the tool, I do.

22 Q. And that is of critical importance in saying that
23 two different cartridges were fired from the same
24 firearm, correct?

25 A. I have successfully completed all of the practicals

5-8-18 STATE V SANDERSPAUL GREER - VOIR DIRE - PLEXICO

1 and examinations working with the firearm as the tool
2 for identification process.

3 Q. For firearm identification?

4 A. For firearms identification, yes, sir.

5 Q. Not for toolmarks, correct?

6 A. Not of the tool being something like a hammer that
7 we would associate as being a tool, or a crowbar to
8 break into a safe. I have not completed that portion of
9 the training.

10 Q. Okay. All right. So you -- you have not completed
11 your SLED training in -- all right. I'm talking about
12 items striking items. So the knowledge that you could
13 have about all items, you don't have because you're not
14 qualified yet, correct?

15 A. I have completed my training regarding the tool
16 being the firearm striking the cartridge case to -- to
17 make those marks. I have successfully completed that
18 portion of my training, yes.

19 Q. Okay. All right. And who certified you as
20 completing that -- do you have a certifi -- that
21 certification with you?

22 A. I was trained by court-qualified examiners within
23 our department.

24 Q. But you say that you're still receiving the
25 instruction, correct?

5-8-18 STATE V SANDERS

PAUL GREER - VOIR DIRE - PLEXICO

1 A. Just for the toolmark portion.

2 Q. So you have Triple A driver improvement program on
3 your -- on your list of qualifications?

4 A. Yes, sir. That is a course that SLED requires all
5 of the employees and agents to complete as a part of
6 their employment process to work with SLED.

7 Q. So you have a tour of the South Carolina Military
8 Museum Firearms Collection in 2017 on your resume?

9 A. Yes, sir.

10 Q. You have another AAA driving training four-hour
11 class on your resume as a firearms expert?

12 A. Again, that's a requirement by SLED.

13 Q. You were trained how to give courtroom testimony in
14 2017? Is that on your resume? Courtroom testimony by
15 Marc Trahan at CSI Academy of Florida?

16 A. Yes, sir. That's a course I attended.

17 Q. You have Mental Illness and Officers Response in
18 2017?

19 A. Yes, sir. Another requirement by the South
20 Carolina Law Enforcement Division and the Criminal
21 Justice Academy.

22 MR. PLEXICO: I don't have anything further, Judge.

23 SOLICITOR LEGETTE: Your Honor, we're only offering
24 him as an expert in the area of firearms identification,
25 not toolmarks.

5-8-18 STATE V SANDERS

PAUL GREER - VOIR DIRE - PLEXICO

1 THE COURT: Okay. And just so I'm clear, have you
2 ever been qualified in state or federal court before
3 today in firearms identification?

4 PAUL GREER: No, your Honor, I have not.

5 THE COURT: Okay. And how many times have you --
6 have you ever not been found qualified?

7 PAUL GREER: No, ma'am. This is my first time in
8 court.

9 THE COURT: This is your first time in court.
10 Okay.

11 PAUL GREER: Yes, ma'am.

12 THE COURT: All right. Well, Special Agent Greer,
13 I'm going to go ahead and qualify you as a expert in
14 this case in the area of firearms identification. That
15 allows you to give your opinion and the reasons for your
16 opinion, and as compared to other evidence, for the jury
17 to use, ladies and gentlemen. You can accept it or
18 reject it, again, like any other expert witness in this
19 case. Okay? Thank you.

20 SOLICITOR LEGETTE: Thank you, your Honor.

21 BY SOLICITOR LEGETTE:

22 Q. Briefly, Agent Greer.

23 A. Yes, ma'am.

24 Q. What is firearms identification?

25 A. Firearms identification is a discipline in forensic

5-8-18 STATE V SANDERSPAUL GREER - VOIR DIRE - PLEXICO

1 science where our main objective is to try to examine
2 the fire ammunition components, whether that be the
3 cartridge case or a bullet, in order to link it back to
4 a specific firearm in which it may have been fired.

5 Q. And what makes the identifications possible?

6 A. The cartridge case or bullet, those firing
7 ammunition components are marked as they are being fired
8 in the gun, where they're traveling down the barrel of
9 that gun, or down the breach face. And we're looking at
10 those tiny little scratches that are left as they are --
11 are fired through that firearm.

12 Q. And did you receive any evidence in the case that's
13 before the Court today?

14 A. Yes, ma'am, I have.

15 Q. What items of evidence did you receive?

16 A. I received two fired .9 millimeter Luger-caliber
17 cartridge cases, one pistol with a magazine and unfired
18 cartridges, and one fired bullet.

19 Q. And from whom did you receive the evidence, and
20 what was its condition when you received it?

21 A. I received the evidence from Chad Smith, and they
22 were all in sealed containers.

23 Q. I hand you now what's been previously marked for
24 identification and entered into evidence as State's
25 Exhibit Number 23 and Number 44. Take a moment and tell

5-8-18 STATE V SANDERS

PAUL GREER - VOIR DIRE - PLEXICO

1 me if you recognize these.

2 A. Okay.

3 SOLICITOR LEGETTE: May I approach, your Honor?

4 THE COURT: You may.

5 BY SOLICITOR LEGETTE:

6 A. I recognize these.

7 Q. And what are State's 44 and 23?

8 A. 44 is a pistol, and that is a Taurus -- Taurus PT
9 111 Millennium Probe pistol, with a magazine and unfired
10 cartridges. And I was -- State's Exhibit 23 is the two
11 fired .9 millimeter Luger-caliber cartridge cases.

12 Q. I hand you now what's been previously marked as
13 State's Exhibit Number 66, for purposes of
14 identification. Take a moment and tell me if you
15 recognize State's 66.

16 SOLICITOR LEGETTE: May I approach?

17 THE COURT: You may.

18 BY SOLICITOR LEGETTE:

19 A. I recognize this.

20 Q. And what is State's 66?

21 A. That's one fired bullet.

22 Q. And did you receive that item?

23 A. Yes, ma'am.

24 Q. Okay. Now, have any of those items been changed or
25 altered in any way?

5-8-18 STATE V SANDERSPAUL GREER - VOIR DIRE - PLEXICO

1 A. No, ma'am. They are still in the sealed containers
2 in which I returned them.

3 Q. Now, please tell us in detail what examinations you
4 made of State's Number 44 and 23 and 66.

5 A. Yes, ma'am. Upon receiving the evidence, I would
6 have documented what I received through photography. I
7 would have opened all the containers, making sure to
8 document all of the containers and packaging on
9 departmental worksheets. I would also have taken any
10 notes of the evidence, trying to pay attention to any
11 trace material that may be there, or anything that may
12 be of interest. After documenting the evidence, I would
13 have checked the firearm to make sure that it was safe
14 to test-fire. I'm looking for any kind of safety issues
15 that may be there, and just making sure it was just safe
16 for me to shoot test-firing it.

17 I test-fired the firearm in our bullet recovery
18 tank. That is a two-story vertical tank that we have in
19 our laboratory that is filled with water. I test-fired
20 into the tank and retrieved my bullets and my cartridge
21 cases. I then looked at those test specimens on a
22 comparison microscope. The comparison microscope is
23 just basically two microscopes that are joined together
24 through an ocular bridge. So it allows me to look at
25 two separate items at one time, so I can manipulate

5-8-18 STATE V SANDERSPAUL GREER - VOIR DIRE - PLEXICO

1 those on those stages and look at all the
2 characteristics of those two items that I -- I'm trying
3 to see.

4 After that, I would compare those test specimens to
5 the two cartridge cases that I have in the case, as well
6 as the bullet, to look for any similarities. Then I
7 would note my conclusions on those departmental
8 worksheets. An examiner would come in behind me after
9 I've come to those conclusions and microed those
10 results, and the report would have been sent through the
11 technical and administrative reviews at that point.

12 Q. And what were your conclusions with regard to
13 State's 44, 23, and 66?

14 A. My conclusions were, State's 23, the two fired
15 cartridge cases, were fired by the State's Exhibits 44
16 pistol; and the State's Exhibit 66 bullet was fired by
17 the State's Exhibit 44 pistol.

18 Q. So the shell casings were fired by the gun that you
19 have?

20 A. Yes, ma'am, that's correct.

21 Q. And the bullet from the autopsy was fired by the
22 gun that you have?

23 A. Yes, ma'am.

24 SOLICITOR LEGETTE: I have no further questions.
25 Thank you. Answer any questions Mr. Plexico has.

5-8-18 STATE V SANDERS

PAUL GREER - CX - PLEXICO

1 PAUL GREER

2 CROSS-EXAMINATION BY MR. PLEXICO:

3 Q. Do you have your worksheets with you?

4 A. I do have a copy.

5 Q. Could I see your worksheets.

6 MR. PLEXICO: May I approach the witness?

7 THE COURT: You may.

8 BY MR. PLEXICO:

9 Q. What was the black piece of rubber you found inside
10 of Item 2?

11 A. That was just a piece of black rubber material that
12 was inside the cartridge case. It did not seem,
13 necessarily, to me -- or it was not vital to my
14 examination; and an investigator was contacted, and I
15 was informed that it should not be collected.

16 Q. You did not collect the rubber out of the
17 cartridge?

18 A. No, sir, I did not. I was informed by the
19 submitting agency that it did not need to be collected.

20 Q. Were there any marks on Item 2 that could explain
21 how a piece of rubber -- is rubber common in a bullet?

22 A. Not to find it in the cartridge case, but I don't
23 know what happened at the scene that the rubber could
24 have gotten there.

25 Q. Was the cartridge run over at any time?

5-8-18 STATE V SANDERS

PAUL GREER - CX - PLEXICO

1 A. The cartridge was -- may I refer to my notes?

2 Q. Sure. Just a moment. There you go.

3 A. Item 2 was damaged. I don't know if it was run
4 over or not, but it was damaged as I received it.

5 Q. Did you see where it's much shorter than the other
6 one? It looks like it's something unusual that happened
7 to it? I don't know if you have it. Is it there beside
8 you?

9 A. Yes, sir.

10 MR. PLEXICO: May I approach and get that, Judge?

11 THE COURT: You can hand it to him, please.

12 MR. PLEXICO: Thank you.

13 BY MR. PLEXICO:

14 Q. That does appear to be misshapen and a piece
15 missing, correct?

16 A. Yes, sir.

17 Q. All right. And you didn't note that -- did you
18 note that in the little report that you sent out?

19 A. The damage was not noted, but it was noted on my
20 worksheet that there was some tearing of the casing out
21 to the cartridge.

22 Q. Did you, on these two pages that you sent out, did
23 you notice there was some kind of -- did you note there
24 was rubber in it, and inform the Solicitor's Office of
25 that?

5-8-18 STATE V SANDERS

PAUL GREER - CX - PLEXICO

1 A. No, sir. I had contacted the submitting agency to
2 see if that should be collected, as it was not vital to
3 my examination in the firearms department.

4 Q. Okay. And I noticed in your notes that you said
5 that the actual bullet that you examined was misshapen.
6 Is that correct?

7 A. Yes, sir.

8 Q. Is the bullet actually fired into the two-story
9 tank mis-shapen when you get it out?

10 A. It depends.

11 Q. It's fired into water.

12 A. It's fired into water. That bullet could hit the
13 bottom of the tank. It could hit something at the
14 bottom, and -- and could be mis-shapen.

15 Q. Did you note that in your notes this time?

16 A. In my test specimens?

17 Q. Yes.

18 A. That is not documented.

19 Q. Okay. And these are made out of lead, correct?

20 A. I'm sorry, sir?

21 Q. These are made out of lead? Lead? Bullets made
22 out of lead?

23 A. Yes. Yes, sir, that could be part of the
24 construction.

25 Q. So, if they hit a bone or something, they're

5-8-18 STATE V SANDERS

PAUL GREER - CX - PLEXICO

1 easily, grossly mis-shapen? Is that correct?

2 A. It depends. It just depends on how that bullet
3 travels through the body. These -- the bullet that I
4 received actually had a copper jacket, so it was not
5 just a lead bullet.

6 Q. Okay.

7 COURT REPORTER: It's not just a what bullet?
8 Lead?

9 A. A lead bullet. Yes, ma'am.

10 Q. All right. All right. So how many -- how many did
11 you -- do you have a -- you said you had a -- you looked
12 at it as -- at the -- at the double microscope where it
13 made it one picture?

14 A. Yes, sir. We're able to look at two different
15 items at one time on the comparison microscope.

16 Q. Did you click a picture of that?

17 A. I do document what I see through the microscope
18 sometimes through photography.

19 Q. Okay. Did you in this case?

20 A. I did.

21 Q. You did not?

22 A. I did document that.

23 Q. Okay. Do you have that?

24 A. I have just the thumbnails as part of my case file.

25 Q. Thumbnails?

5-8-18 STATE V SANDERS

PAUL GREER - CX - PLEXICO

1 A. The smaller pictures, yes, sir.

2 Q. Could I see them?

3 MR. PLEXICO: May I approach?

4 THE COURT: You may.

5 BY MR. PLEXICO:

6 Q. These?

7 A. Yes, sir.

8 Q. Don't these look, actually, quite different?

9 A. Those are different areas on those cartridge cases.

10 Q. And don't these look quite different?

11 A. Yes. Those are different areas on the cartridge
12 cases that I'm photographing.

13 Q. Okay.

14 A. As well as different items.

15 Q. Isn't it true they don't have any on here that look
16 the same?

17 A. Those are photographs of different areas that I was
18 comparing, that I was able to make the identification
19 on.

20 Q. Thank you. You don't have any there that look the
21 same. Is that correct? That was the question.

22 A. I have documented what I saw on the cartridge
23 cases, and those areas are different on each cartridge
24 case. The areas that I did find agreement are
25 documented.

5-8-18 STATE V SANDERS

PAUL GREER - CX - PLEXICO

1 Q. So the pictures comparing the two are pointless,
2 because they don't match. Is that correct?

3 A. No, sir.

4 Q. You just -- you just said they didn't match. I've
5 asked you about the pictures of the two cartridges of
6 the cases side-by-side now, and you said they didn't
7 match.

8 A. Those are different areas that I documented.

9 Q. So you didn't document the stuff that was
10 important. Is that correct?

11 A. No, sir.

12 Q. That's wrong? That's correct, isn't it?

13 A. The areas that I documented on the cartridge cases,
14 I took those images of. When I took those pictures, I
15 would look for that same area on the other item. I also
16 would find other areas of similarities, so that's why
17 the pictures may appear different.

18 Q. So it's whole -- wholly on your opinion, correct?

19 A. It's my opinion.

20 Q. Your professional opinion, correct?

21 A. Yes, sir.

22 MR. PLEXICO: I don't have anything further.

23 SOLICITOR LEGETTE: Briefly, your Honor.

24 THE COURT: Yes.

25 PAUL GREER

5-8-18 STATE V SANDERS

PAUL GREER - RDX - LEGETTE

1 RE-DIRECT EXAMINATION BY SOLICITOR LEGETTE:

2 Q. Agent Greer?

3 A. Yes, ma'am.

4 Q. Does SLED have a peer review process?

5 A. Yes, ma'am. We have a one hundred percent micro
6 verification review process.

7 MR. PLEXICO: Your Honor, I object to any hearsay
8 about any -- any peer review. That would be what
9 somebody else says.

10 THE COURT: Overruled. You can ask it.

11 BY SOLICITOR LEGETTE:

12 Q. Do you have a peer review process, Agent Greer?

13 A. Yes, ma'am. We have a 100 percent micro-
14 verification process in which another examiner will
15 reach the conclusion and agree with my results, as well
16 as that process which carries on into the technical and
17 administrative review of the case.

18 Q. And is your peer review done by an agent who is
19 more seasoned?

20 A. Yes, ma'am. It's a court-qualified examiner.

21 Q. Who's already been qualified in court.

22 A. That has been qualified in court, and signed off
23 for firearm and toolmark examination.

24 Q. And before your report can be issued, must they
25 agree with your opinions?

5-9-18 STATE V SANDERS

PAUL GREER - RCX - PLEXICO

1 A. Yes, ma'am, they must.

2 Q. If they don't agree, what happens?

3 A. If they don't agree with my opinions, then the
4 micro review process will be taken to the supervisor to
5 see what may be the disagreement, and it will be
6 situated and handled from there.

7 Q. And was there agreement in this particular case?

8 A. There was agreement.

9 Q. And you issued a report?

10 A. Yes, ma'am, I issued the report.

11 Q. Your findings were that the gun fired the bullet
12 and the shell casings?

13 A. That is correct.

14 SOLICITOR LEGETTE: Thank you. Nothing further.

15 THE COURT: Go ahead.

16 PAUL GREER

17 RE-CROSS-EXAMINATION BY MR. PLEXICO:

18 Q. And the vast majority of the time, you all -- you
19 all agree with each other, right?

20 A. No, sir, that's -- it -- it depends.

21 Q. Okay. All right. When you have your review
22 process, do you mean thirty percent of the time, your --
23 another person says that -- that you're incorrect, or
24 seventy percent of the time you're incorrect; or do you
25 -- do they usually say that you're correct?

5-9-18 STATE V SANDERS

PAUL GREER - RCX - PLEXICO

1 A. They form their own opinions without -- without
2 reading my results, and they arrive at those conclusions
3 on their own.

4 Q. Do they -- in other words, they agree -- are you in
5 a -- are you all in agreement the vast majority of the
6 time?

7 A. If there's a --

8 Q. Conclusions in agreement the vast majority of the
9 time, so.

10 A. In this case, my reviewer did agree with my
11 conclusions. If there was a disagreement, it would have
12 gone to the supervisor to see what the issue may be with
13 the results and why there is a disagreement.

14 Q. Okay. All right. Now, would you answer my
15 question?

16 THE COURT: Okay. There is not a question in that.

17 MR. PLEXICO: Okay.

18 THE COURT: He did answer your question, Mr.
19 Plexico, if there is a question.

20 BY MR. PLEXICO:

21 Q. The vast majority of the time, are your conclusions
22 in agreement?

23 A. In my experience, I -- there has been agreement.

24 Q. But your experience is extremely limited, correct?

25 A. I have been employed and been trained for three

5-8-18 STATE V SANDERS

BY THE COURT

1 years, and it was signed off recently. So I have looked
2 at many microscopic comparisons and examinations during
3 that time.

4 MR. PLEXICO: I don't have anything further.

5 BY THE COURT:

6 THE COURT: Anything further?

7 SOLICITOR LEGETTE: No, your Honor.

8 THE COURT: All right. All right. We're going to
9 break. If you don't mind, stay right where you are, and
10 let the jury go for the day.

11 A. Yes, ma'am.

12 THE COURT: Ladies and gentlemen of the jury, we
13 are going to finish up tomorrow. I'd like to start
14 again at 9:30. Is everybody okay with that? We are
15 going to bring in lunch. We anticipate wrapping up this
16 case. We're going hear the closing arguments from the
17 lawyers. I'm going to charge you on the law.

18 Most importantly, do not discuss this case with
19 anyone. Do not do any independent research on anything
20 you heard here. Go home, get a good night's sleep,
21 ladies and gentlemen. 9:30.

22 And whoever had car trouble today, if you're
23 working on the same car and you have issues, talk to the
24 bailiffs. I'll make sure you get picked up and taken
25 care of. Okay?

5-9-18 STATE V SANDERS

BY THE COURT

1 You all right? You all have been great today.

2 Thank you so much. You are excused.

3 JURORS LEAVE COURTROOM 4:45 P.M.

4 THE COURT: All right. Anything further for the
5 evening?

6 SOLICITOR LEGETTE: No, your Honor.

7 THE COURT: All right. No? Any objection? I am
8 going to talk to him very quickly, if you don't mind.

9 MR. PLEXICO: Go right ahead, Judge.

10 THE COURT: I'm not giving advice to this case.
11 All right. All right.

12 SOLICITOR LEGETTE: Thank you, your Honor.

13 END DAY TWO, TUESDAY, MAY 8,
14 2018, 4:45 P.M.

15 BEGIN DAY THREE, WEDNESDAY,
16 MAY 9, 2018, 9:50 A.M.

17 BY THE COURT:

18 BAILIFF: All rise. Court will come to order.

19 THE COURT: Please be seated. Good morning.

20 RESPONSES.

21 THE COURT: Good morning. All right. I know we
22 need to take up the photographs. I think I already
23 ruled on as far as the two photographs of the victim's
24 head. I told the Solicitor that she needed to choose
25 one or the other.

5-9-18 STATE V SANDERS

BY THE COURT

1 SOLICITOR LEGETTE: Yes.

2 THE COURT: Because it was the same photo. One was
3 just closer up. And as far as the body, I heard your
4 arguments yesterday. This is a self-defense case, and I
5 think and agree with the Solicitor that the photograph
6 of her laying there shows her size. I know you can
7 testify as to weight and height, but being able to see
8 it makes a difference. And so, I'm going to allow that
9 photograph. Obviously, we cannot see her face, it's
10 turned the other way. And additionally, there are
11 blacked-out portions of, you know, where it would show
12 her -- portions of her body. So I think it's
13 appropriate the way it's been done, and I appreciate
14 that, Solicitor. And subject to your objection, Mr.
15 Plexico.

16 You also need to put something else on the record,
17 Mr. Plexico, is my understanding.

18 MR. PLEXICO: Yes, your Honor. She -- the
19 Solicitor's Office, Solicitor in this case questioned
20 about the ownership of the gun, who was the owner of the
21 gun. The owner of the gun is not relevant in this case.
22 There's been stipulations and agreements made at the
23 beginning of the trial that they would not try to argue
24 that my client was in -- he was unlawfully in possession
25 of a firearm, and not impugned, or bring in any of the

5-9-18 STATE V SANDERS

BY THE COURT

1 criminal records out, according to the ruling. There
2 were a number of 404 issues that she was going to bring
3 up, yet that seemed to impugn his character by saying he
4 was not the rightful owner of the gun. So I cleared
5 that up as best I could on cross-examination, but that
6 was my objection at the beginning. I don't think she
7 should've been allowed to ask that.

8 THE COURT: All right. Solicitor, do you want to
9 respond?

10 SOLICITOR LEGETTE: Yes, your Honor. I disagree
11 with Mr. Plexico. Number one, I believe the agreement
12 was that we would not say that he could not lawfully
13 possess a gun. That was our agreement --

14 THE COURT: That was my understanding of what was
15 presented to me at the beginning of the trial of this
16 case.

17 SOLICITOR LEGETTE: Yes, ma'am. Yes, ma'am. And
18 additionally, Mr. Plexico, in his opening argument,
19 opened the door about the *Second Amendment* and the right
20 to bear arms. And so, we did not seek to go back on our
21 word or renege on what we had agreed to with regards to
22 the ATF trace; simply to ask that the officer who the
23 gun belonged. But agreement, and my understanding of
24 the agreement was, we were not going to say that he
25 could not legally possess a handgun, which we did not

5-9-18 STATE V SANDERS

BY THE COURT

1 bring out any testimony that he could not legally
2 possess a handgun. So I would ask the Court to -- well,
3 I just disagree with Mr. Plexico, and I believe that it
4 is just an argument.

5 THE COURT: Okay. All right. Anything else, Mr.
6 Plexico, you need to put on the record?

7 MR. PLEXICO: I don't think we have anything else
8 to put on the record, Judge.

9 THE COURT: Anything else. And you have two
10 witnesses this morning? Am I correct, Solicitor?

11 SOLICITOR LEGETTE: Yes, your Honor.

12 THE COURT: Okay. Well, let's bring the jury out,
13 then.

14 JURORS ENTER COURTROOM 9:54 A.M.

15 THE COURT: Good morning, ladies and gentlemen.

16 RESPONSES FROM JURORS.

17 THE COURT: Good to see you all. As I told you
18 before, while we're waiting on this last juror, we're
19 just going to go ahead and wrap up the trial of this
20 case. My understanding is the State has two more
21 witnesses at this stage. Is that correct?

22 SOLICITOR LEGETTE: That's correct, your Honor.

23 THE COURT: All right. Thank you. Good morning.
24 All right. Solicitor, you can call your witness for
25 this morning, your first witness.

5-9-18 STATE V SANDERS

AGENT ILA SIMMONS - DX - LEGETTE

1 SOLICITOR LEGETTE: Thank you, your Honor. The
2 State calls Ms. Ila Simmons.

3 THE COURT: Come on forward, Special Agent Simmons.

4 MADAM CLERK: Good morning. Left hand on the
5 *Bible*, raise your right hand. Do you swear or affirm to
6 tell the truth, the whole truth, and nothing but the
7 truth, so help you God?

8 AGENT ILA SIMMONS: I do.

9 MADAM CLERK: Thank you. You may be seated.

10 AGENT ILA SIMMONS

11 DIRECT EXAMINATION BY SOLICITOR LEGETTE:

12 Q. Good morning, ma'am.

13 A. Good morning.

14 Q. Could you please state your first name and last
15 name, and spell your first name, please.

16 A. My name is Ila Simmons, and my first name is
17 spelled I/l/a.

18 Q. Thank you. Now, Ms. Simmons, or Agent Simmons,
19 where do you work?

20 A. At the South Carolina Law Enforcement Division,
21 also known as SLED, in the Forensic Services Trace
22 Evidence Department.

23 Q. Okay. How long have you worked for SLED?

24 A. Fifteen years.

25 Q. And you said earlier you worked in the Trace

5-9-18 STATE V SANDERS

AGENT ILA SIMMONS - DX - LEGETTE

1 Evidence Department. Can you tell us about the Trace
2 Evidence Department, what you do in the Trace Evidence
3 Department.

4 A. Trace Evidence encompasses several areas of
5 forensics. We analyze gunshot residue, gunpowder
6 residues, as well as comparing fibers, paints, glass,
7 and also analyzing post-blast explosives and arson.

8 Q. Now, please tell us about your educational
9 background and training as it relates to working in the
10 Trace Evidence Department at SLED.

11 A. I have a bachelor's of science degree in chemistry.
12 After completing that, I came to work at SLED, where I
13 went through a three-year intensive training program,
14 where I had to take written and practical examinations,
15 and pass them all with 100 percent efficiency, and then
16 I was deemed competent to analyze trace evidence cases.

17 Q. And after being deemed competent to analyze trace
18 evidence cases, have you ever been called by a court to
19 testify in the area of trace evidence?

20 A. Yes, ma'am, I have.

21 Q. And specifically, how many times?

22 A. Probably over 300 times.

23 Q. Have you ever been qualified to testify as an
24 expert in the area of gunpowder analysis?

25 A. Yes, ma'am.

5-9-18 STATE V SANDERS AGENT ILA SIMMONS - VOIR DIRE - PLEXICO

1 Q. How many times?

2 A. A hundred times, maybe.

3 Q. And what about the area of muzzle-to-distance --
4 I'm sorry -- muzzle-to-target distance? Have you ever
5 been qualified as an expert in that discipline?

6 A. Yes, ma'am. Probably around the same time, a
7 hundred times.

8 Q. Okay. So you've been qualified as an expert
9 hundreds of times?

10 A. Yes, ma'am.

11 SOLICITOR LEGETTE: At this time, your Honor, I
12 would offer Ms. Ila Simmons as an expert in the area of
13 trace evidence, along with muzzle-to-target distance and
14 gunpowder analysis.

15 MR. PLEXICO: May I, briefly?

16 THE COURT: Of course.

17 ILA SIMMONS, VOIR DIRE

18 BY MR. PLEXICO:

19 Q. I see your resume says that you are -- you're --
20 2000 to 2013, you're listed as a forensic scientist at
21 SLED. Is that correct?

22 A. Yes, sir.

23 Q. And then, in 2016 to present, you're listed as a
24 Forensic Tech 3.

25 A. Yes, sir, I am a forensic technician, yes, sir.

5-9-18 STATE V SANDERS AGENT ILA SIMMONS - VOIR DIRE - PLEXICO

1 Q. Okay. Was that a promotion?

2 A. No, sir. I went away because I had some medical
3 treatment that I had. I had cancer. And when I came
4 back, I just took a temporary position as a technician,
5 rather than coming back full-time, because of my medical
6 condition.

7 Q. Okay. I don't see any muzzle-to-target distance
8 specific training in the list of training courses that
9 you have.

10 A. It's also called gunpowder analysis.

11 Q. Would that be the GSR Analysis Symposium in 2007?

12 A. Yes, sir. In fact, that was where we all went,
13 where the FBI invited people from around the world to
14 come and set the standards, the ASTM standards. I was
15 on that symposium for analyzing gunshot residue. I
16 would actually help develop the standards that are now
17 practiced in gunshot residue analysis.

18 Q. I don't see anything in the eleven-years since that
19 you had specific training in that field.

20 A. I have just been continuing on. I have to take the
21 proficiency tests every year, and that makes us
22 proficient and competent in gunshot residue.

23 Q. So you're teaching yourself?

24 A. No. I've already completed the training that's
25 required of it. I did that in my first three years at

5-9-18 STATE V SANDERS

AGENT ILA SIMMONS - DX - LEGETTE

1 SLED.

2 Q. Are they testing you to see if you're maintaining
3 enough?

4 A. Yes, sir. They're testing us to ensure that we are
5 still proficient in the area of gunshot residue.

6 MR. PLEXICO: I do have an objection, your Honor.
7 I just don't think she's had training for the last
8 eleven years.

9 THE COURT: Okay. All right. Well, respectfully,
10 ladies and gentlemen, in this case Special Agent Simmons
11 is being qualified in -- as an expert witness in the
12 area of trace evidence and gunshot residue analysis.
13 That allows her to give her opinion and the reasons for
14 her opinion. Again, that's for you to use as you see
15 appropriate, and as compared to other evidence in the
16 case. Solicitor.

17 SOLICITOR LEGETTE: Thank you, your Honor.

18 CONTINUE DIRECT EXAMINATION

19 BY SOLICITOR LEGETTE:

20 Q. Now, Ms. Simmons, what is gunshot residue?

21 A. Gunshot residue is a mixture of chemicals that come
22 out of a gun when it's fired, and it can get on anything
23 in close proximity to the gun, including the skin of the
24 victim, or the hands of someone shooting the gun, or the
25 clothing of someone who is shooting a gun or sustains a

5-9-18 STATE V SANDERSAGENT ILA SIMMONS - DX - LEGETTE

1 gunshot wound.

2 Q. Now, how is gunshot residue collected?

3 A. It is collected on a piece of stick tape that has a
4 handle attached, and the sticky tape is dabbed over the
5 hands of the person or on the clothing of the person
6 that they suspect may have been in the presence of a gun
7 that was fired.

8 Q. What is the consistency of gunshot residue?

9 A. It has the consistency of flour.

10 Q. So like flour, can be easily removed. How easy is
11 it to remove gunshot residue?

12 A. It's very easy to remove gunshot residue. If you
13 wipe your hands, if you wash your hands, if someone were
14 to take a shower or begin sweating profusely, those
15 kinds of things can all remove gunshot residue.

16 Q. So now, given how easy it is to remove gunshot
17 residue, how long will gunshot residue remain on a
18 person who is alive, on their hands?

19 A. At the most, six hours.

20 Q. And what about a deceased person?

21 A. It will remain indefinitely on someone who's
22 deceased, because they're no longer making contact with
23 objects and no longer moving about, and their skin stops
24 absorbing materials, as well as they stop sweating.

25 Q. So how long will gunshot residue remain on an

1 inanimate object, like a car?

2 A. Indefinitely, until it's acted upon by outside
3 source. If the car's driven around, it can blow away,
4 or if the car's washed, it would be washed away.

5 Q. What about clothing?

6 A. The same. Same situation.

7 Q. So now, would your agency -- does your agency have
8 policy about the time length for which they will analyze
9 gunshot residue kits?

10 A. Yes, ma'am.

11 Q. And what is that policy?

12 A. On a living individual, we will not analyze gunshot
13 residue kits that are collected beyond six hours after a
14 shooting.

15 Q. So, if a person is not apprehended for a shooting
16 until nine hours after the shooting occurred, what would
17 your agency do with that GSR kit?

18 A. We wouldn't analyze that kit.

19 Q. So, in other words, no reason to actually submit
20 it?

21 A. That's right.

22 Q. Are the agencies around the state advised of your
23 policy regarding gunshot residue kit?

24 A. Yes.

25 Q. I'm sorry. Gunshot residue kits?

5-9-18 STATE V SANDERS

AGENT ILA SIMMONS - DX - LEGETTE

1 A. Yes, ma'am.

2 Q. Now, Ms. Simmons, did you receive evidence before
3 the Court today?

4 A. Yes, ma'am.

5 Q. What evidence did you receive?

6 A. I received several garments analyzed for the
7 presence of gunshot residue.

8 Q. Okay. In a moment, I'm going to hand you what has
9 been previously marked for identification and entered
10 into evidence as State's Number 42, State's Number 56,
11 State's Number 41, and State's Number 40. I want you to
12 take a moment and tell me if you recognize these
13 exhibits.

14 SOLICITOR LEGETTE: May I approach, your Honor?

15 THE COURT: You may.

16 BY SOLICITOR LEGETTE:

17 A. Yes, ma'am. I recognize all of these items.

18 Q. And what are State's 41, 40, 42, and 56?

19 A. I believe State's -- State -- State's Exhibit 40 is
20 a -- a pair of black Carter pants. State's Exhibit 41
21 is a blue shirt with white stripes, a polo-style shirt.
22 State's Exhibit 42 is a pair of black denim pants, like
23 jeans. And State's Exhibit 56 is a green tee-shirt.

24 Q. Okay. Thank you. And what was the condition of
25 State's 40, 41, 42, and 56 when you received them?

5-9-18 STATE V SANDERSAGENT ILA SIMMONS - DX - LEGETTE

1 A. They were all sealed in a container.

2 Q. Okay. Now, Agent Simmons, when you received
3 State's 40, 41, 42, and 56, did you make any analysis of
4 them? What did you do with them?

5 A. Yes, ma'am. I processed them for the presence of
6 gunshot residue.

7 Q. And I forgot to ask you, can you tell us from whom
8 you received State's 40, 41, 42, and 56?

9 A. I would have received them from our central login
10 person, probably Jackie Davis, I believe it may have
11 been, or one of the technicians that are in our login
12 department.

13 Q. And Agent Simmons, how are you able to recognize
14 State's 40, 41, 42, and 56?

15 A. They are each marked with our laboratory
16 identification number, my initials, the date that the
17 analysis was performed, and an identification number
18 that is specific to this case.

19 Q. And are State's Exhibits 40, 41, 42, and 56 in
20 substantially the same condition today as when you last
21 saw them?

22 A. Yes, ma'am.

23 Q. At this point, Agent Simmons, what did you do with
24 State's 40, 41, 42, and 56?

25 A. I processed them for the presence of gunshot

5-9-18 STATE V SANDERS

AGENT ILA SIMMONS - DX - LEGETTE

1 residue.

2 Q. And how did you do that?

3 A. I took one of the double-sided tape that I was
4 telling you about earlier, and I dabbed it over the
5 areas of the garment.

6 Q. And after you dabbed it over the areas of the
7 garment, did you create any evidence from -- or create
8 any, I guess, kits from States 40, 41, 42, and 56?

9 A. Yes, ma'am, I did.

10 Q. And did you come up with numbers or SLED item
11 numbers for those items?

12 A. Yes, I did.

13 Q. Now, in a moment, Agent Simmons, I will hand you
14 what has been previously marked for identification as
15 State's 57. Please take a moment and tell me if you
16 recognize State's 57.

17 SOLICITOR LEGETTE: May I approach?

18 THE COURT: You may.

19 BY SOLICITOR LEGETTE:

20 A. Yes, ma'am, I do.

21 Q. And what is State's 57?

22 A. These are the double-sided sticky tape that I took
23 from each garment that was submitted in this case; and
24 it's also marked with my initials, a laboratory number,
25 and the item numbers, and the date of analysis.

5-9-18 STATE V SANDERS

AGENT ILA SIMMONS - DX - LEGETTE

1 Q. Agent Simmons, is State's 57 in substantially the
2 same condition today as it when you previously saw it?

3 A. Yes, ma'am, it is.

4 Q. And how are you able to recognize it?

5 A. Because it has all of my -- it has a marking on it
6 with the laboratory number. It also has my initials,
7 the date, and it -- the item numbers of each.

8 Q. And you said it is in substantially the same
9 condition today as it is when you previously saw it,
10 correct?

11 A. Yes, ma'am.

12 Q. Has it been changed or altered in any way?

13 A. No, ma'am, not that I can see.

14 SOLICITOR LEGETTE: At this point, your Honor, I
15 would offer State's Exhibit 47 -- I'm sorry -- State's
16 Exhibit 57 for admission into evidence.

17 THE COURT: Any objection?

18 MR. PLEXICO: None, your Honor.

19 THE COURT: Without objection, it's in evidence.

20 SOLICITOR LEGETTE: Thank you.

21 ITEM IDENTIFIED AS SEVEN GSR KITS

22 MARKED STATE'S EXHIBIT NUMBER 57

23 ADMITTED AS EVIDENCE.

24 BY SOLICITOR LEGETTE:

25 Q. Agent Simmons, would you please tell us, after you

5-9-18 STATE V SANDERSAGENT ILA SIMMONS - DX - LEGETTE

1 took the particles from State's 40, 41, 42, and 56, and
2 created State's 57, were you able to do an analysis of
3 State's 57?

4 A. I was.

5 Q. Okay. What analysis -- what were your results?

6 A. I found one particle characteristic of gunshot
7 powder residue on each item, except for the item that
8 was the green tee-shirt that I mentioned, and then no
9 particles characteristic of gunshot residue were found.

10 Q. Now, to find a particle of GSR on an item, so
11 you're saying on State's 40, which I believe you
12 testified earlier, State's 40 is the black trousers, and
13 State's Number 41 are the black denim jeans, and State's
14 42, the blue polo shirt with light stripes. As it
15 relates to those items where you found GSR, what does
16 that mean?

17 A. It means that that item could have come in contact
18 with something that had gunshot residue on it, or could
19 have been near a gun when a gun was discharged.

20 Q. As part of this case, Agent Simmons, what else did
21 you do for your review of this case before the Court
22 today?

23 A. I have also reviewed the autopsy report, and then,
24 the autopsy photos.

25 Q. And what part of your expertise does that relate

1 to?

2 A. To the gunpowder analysis.

3 Q. Can you tell us, from reviewing the autopsy report
4 in this case and the photo, what were you able to
5 determine from -- about the victim, if anything?

6 A. I looked at a photo of the victim's gunshot wound,
7 and around the wound are -- were small burns, and what
8 that is called is stippling. And what happens is, when
9 a gun is held close to the skin and is discharged, the
10 gunpowder comes out so fast and so hot that it actually
11 burns the skin, leaving small dots and small marks
12 called stippling.

13 Q. And as part of the stippling, what would you expect
14 to find -- if you find stippling on a victim, what would
15 that tell you about the rest of the gunpowder, if
16 anything?

17 A. That most of it would have gone into the wound, the
18 gunpowder, as well as most of the gunshot residue as
19 well, the gun primer part.

20 Q. And would that leave -- what would that mean about
21 anything else coming in contact with the actual gunshot
22 residue?

23 A. It would greatly reduce the possibility that
24 something else could have come in contact with gunshot
25 residue, because most of it would have been in the wound

5-9-19 STATE V SANDERS

AGENT ILA SIMMONS - CX - PLEXICO

1 of the victim.

2 Q. Does it also tell you anything about distance?

3 A. It indicates that the gun was very close to the
4 skin of the victim.

5 SOLICITOR LEGETTE: Begging the Court's indulgence.

6 Thank you, Agent Simmons. I have no further
7 questions. Please answer any questions Mr. Plexico has.

8 AGENT ILA SIMMONS

9 CROSS-EXAMINATION BY MR. PLEXICO:

10 Q. Okay. All right. Now, you're not saying this was
11 a -- was a direct contact shot, correct?

12 A. No, sir.

13 Q. All right. So we're talking up to a number of feet
14 away, correct?

15 A. Probably within inches, just because the stippling
16 doesn't go much farther than inches away.

17 Q. What's -- what is -- well, it's about a four-inch
18 spread?

19 A. It's --

20 Q. Two on either side?

21 A. It's probably going to be within about two inches,
22 one to two inches, or closer to the skin, yes, sir.

23 Q. Okay. All right. So, but that could be up to a
24 foot or two feet?

25 A. No, sir. It's going to be within one or two

5-9-19 STATE V SANDERS

AGENT ILA SIMMONS - CX - PLEXICO

1 inches, the muzzle of the gun, would have been within
2 one or two inches of the skin.

3 Q. So, in your professional opinion, if somebody said
4 they were standing three feet away, that wouldn't be
5 possible?

6 A. If the person was standing three feet away, it
7 would depend on how far they had the gun extended,
8 because my test would be from the end of the gun to the
9 skin of the victim. So, if someone's arms is this long,
10 you know, then you have to take into the account how
11 long their arm is. Their body would be three feet away,
12 but their arm could be very close. What I'm saying is
13 that the gun had to have been within about two inches of
14 the skin.

15 Q. Okay.

16 MR. PLEXICO: May I approach?

17 THE COURT: You may.

18 BY MR. PLEXICO:

19 Q. Let me give you a demonstration. If somebody's
20 standing here, okay, and the hand's out, and the victim
21 is standing here, could you expect the same results?

22 A. If some -- if --

23 Q. In your professional opinion?

24 A. If the muzzle of the gun was about right here?

25 Q. They're here.

5-9-19 STATE V SANDERS

AGENT ILA SIMMONS - CX - PLEXICO

1 A. Um-hmm.

2 Q. Okay?

3 A. Yes, sir.

4 Q. All right.

5 A. No, sir, I would not expect the same physical
6 characteristics.

7 Q. And they were standing here?

8 A. Yes.

9 Q. That wouldn't be --

10 A. No, sir, that would not be consistent with that.

11 Q. So, but your science is not infallible, is it?

12 A. The science is infallible. Sometimes the
13 interpretations aren't.

14 Q. Okay. So you could be wrong?

15 A. From what I've seen in the experience of over a
16 hundred cases, probably 200 cases that I've analyzed,
17 it's within inches of when a gun is discharged and
18 stippling is present on the skin of the victim.

19 Q. It's clearly not in contact.

20 A. It doesn't appear to be, no, sir. Not a hard
21 contact. A hard contact one would be if the gun was
22 pressed directly into the skin as far as they could
23 press it in.

24 MR. PLEXICO: I don't have anything further, Judge.

25 THE COURT: Ms. Legette, anything further?

5-9-18 STATE V SANDERS

ELLEN RIEMER - DX - LEGETTE

1 SOLICITOR LEGETTE: Nothing, your Honor.

2 THE COURT: Any objection to Special Agent Simmons
3 being excused?

4 SOLICITOR LEGETTE: No, your Honor. We ask that
5 she be excused.

6 THE COURT: You are excused. Thank you. Call your
7 next witness.

8 SOLICITOR LEGETTE: State calls Dr. Ellen Riemer.

9 MADAM CLERK: Left hand on the *Bible*, raise your
10 right hand. Do you solemnly swear or affirm to tell the
11 truth, the whole truth, and nothing but the truth, so
12 help you God?

13 ELLEN RIEMER, M.D.: I do.

14 MADAM CLERK: Please be seated.

15 ELLEN RIEMER, M.D.: Okay.

16 ELLEN RIEMER, M.D.

17 DIRECT EXAMINATION BY SOLICITOR LEGETTE:

18 Q. Good morning.

19 A. Good morning.

20 Q. Dr. Riemer, could you please say your first and
21 last name, and spell your last name.

22 A. Yes. My name is Dr. Ellen Riemer, R/i/e/m/e/r.

23 Q. Thank you, Dr. Riemer. Dr. Riemer, where do you
24 work?

25 A. I work at the Medical University of South Carolina,

5-9-18 STATE V SANDERS

ELLEN RIEMER - DX - LEGETTE

1 where I'm a forensic pathologist.

2 Q. Now, what is a forensic pathologist?

3 A. A forensic pathologist is a physician, a medical
4 doctor, who specializes in determining cause and manner
5 of death by performing autopsies on deceased
6 individuals.

7 Q. And are you a licensed medical doctor in South
8 Carolina?

9 A. Yes.

10 Q. Now, how long have you been licensed in South
11 Carolina, or in general?

12 A. Yeah. Since February of 2009.

13 Q. And please tell us about your educational
14 background and experience as it relates to being a
15 forensic pathologist.

16 A. So I got my doctor of medicine, M.D. degree, in
17 1997. And then, I did a pathology, general pathology
18 residency, which is a training program, and I did that
19 at Columbia Presbyterian Medical Center in New York City
20 between 1997 and 2001. Following that, I did a sub-
21 specialty fellowship year of training in forensic
22 pathology at the Office of the Chief Medical Examiner of
23 the State of Maryland. That was in Baltimore. That was
24 from 2001 to 2002. And then, I did an additional year
25 of sub-specialty training in cardiovascular and

1 pulmonary pathology at Johns Hopkins Hospital. And
2 then, I took a faculty position at Wake Forest School of
3 Medicine, where I was -- as a forensic pathologist. I
4 worked there for six years before moving to Charleston.

5 Q. So, Dr. Riemer, in all of your experience, how long
6 have you been a medical doctor?

7 A. It's been over twenty years.

8 Q. Okay. And I think I asked you earlier about the
9 duties of a forensic pathologist?

10 A. Yes. So the duties of a forensic pathologist are
11 to perform complete autopsies, and make sure to examine
12 a body in totality. That's any kind of injury or
13 natural disease, and any findings whatsoever. After
14 performing the autopsy, which is a specialized surgical-
15 type procedure, and then interpreting any results that
16 -- that I find, any findings, and to make a
17 determination, to the best of my ability, on the cause
18 and manner of death.

19 Q. And Dr. Riemer, what is pathology?

20 A. Yes.

21 Q. What does pathology involve?

22 A. Okay. So pathology is actually a specialty of the
23 field of medical practice. So it's -- pathology is kind
24 of a general -- it's a general -- it's a field sort of
25 like cardiology, pathology, surgery, all these different

5-9-18 STATE V SANDERS

ELLEN RIEMER - DX - LEGETTE

1 areas of medicine that's a -- that a physician can focus
2 on. No one person can do everything, so pathology is
3 focused on making diagnoses. So, you know, identifying
4 disease based on evaluation of tissue and fluids. And
5 forensic pathology is even a smaller sub-specialty of
6 pathology. So every forensic pathologist already is a
7 pathologist. And forensic pathology is -- is
8 specialized in examining injuries, not just disease. So
9 disease, plus injuries.

10 Q. Thank you. Dr. Riemer, are you a member of any
11 specialized boards?

12 A. Yeah. Well, I'm board-certified in -- by the
13 American Board of Pathology, which is the organization
14 that determines your qualifications to perform pathology
15 services at a very high level.

16 Q. And is that beyond of over basic -- a basic license
17 to practice medicine?

18 A. Yeah. So a license to practice medicine is
19 administered by the state, but board certification is
20 the pathology specialty board that has -- that, you
21 know, I have to take lots of exams to prove that I have
22 had a very high level of understanding of pathology.
23 So, you know, anytime you go to the doctor, you want to
24 find out, make sure they are board-certified in whatever
25 field that they -- they practice. Like, if you go to a

5-9-18 STATE V SANDERS

ELLEN RIEMER - DX - LEGETTE

1 dermatologist, you want to make sure that they're board-
2 certified in dermatology. So I'm board certified in
3 pathology and forensic pathology.

4 Q. Thank you. Dr. Riemer, in your career, how many
5 autopsies would you say you've performed?

6 A. Well, I haven't kept exact track. I'm over 4,000
7 by this point, so probably 4,100 or something.

8 Q. Thank you.

9 SOLICITOR LEGETTE: At this time, your Honor -- I'm
10 sorry.

11 BY SOLICITOR LEGETTE:

12 Q. And Dr. Riemer, have you ever had occasion in your
13 practice as a forensic pathologist to perform autopsies
14 on bodies where the cause of death was a gunshot wound
15 to the head?

16 A. Yes, unfortunately, many times.

17 SOLICITOR LEGETTE: At this time, your Honor, I
18 would offer Dr. Riemer as an expert in the field of
19 forensic pathology.

20 THE COURT: Okay. Any objection?

21 MR. PLEXICO: No objections, your Honor.

22 THE COURT: Ladies and gentlemen, in this case, Dr.
23 Riemer is being qualified in the area of forensic
24 pathology as an expert, and she is allowed to give her
25 opinion and the reasons for her opinion. And again,

5-9-18 STATE V SANDERSELLEN RIEMER - DX - LEGETTE

1 that's for you to use as you see appropriate as compared
2 to other evidence in the case.

3 SOLICITOR LEGETTE: Thank you, your Honor.

4 BY SOLICITOR LEGETTE:

5 Q. Dr. Riemer, can you please educate us. How many
6 manners of death are there?

7 A. Okay. Well, I'll tell you there's natural. Okay?
8 So, if somebody dies of cancer or a heart attack, that's
9 a natural cause of death. Okay. Then, there's
10 homicide, which is death at the hands of another person.
11 Okay. Then, there's suicide, which is death at your own
12 hands. Then, there's accident. So, if like, a brick
13 falls and it hits you in the head and you die, that
14 would be an accident. There's lots of different ways
15 you can die of an accident. There're an accidental drug
16 overdoes. An accidental drug overdose. All sorts of
17 things can, you know, sort of -- it's kind of logical.
18 An accident, motor vehicle crash. You know, some kind
19 of work injury that causes some kind of damage to your
20 body. And then that's -- so that's four.

21 And then, the final category is undetermined. So
22 there are some cases where, even after complete autopsy
23 and, you know, all sorts of investigations on what's in
24 the blood, and examining tissues under the microscope,
25 where a cause of death could not be determined, and

5-9-18 STATE V SANDERS

ELLEN RIEMER - DX - LEGETTE

1 those are classified as undetermined.

2 Q. Thank you. Dr. Riemer, were you working for the
3 Medical University of South Carolina in May of 2016?

4 A. Yes.

5 Q. And during the month of May, did you perform one or
6 more autopsies?

7 A. Yes.

8 Q. And specifically, on or about May 10, did you
9 perform an autopsy on the body of Tyhira Harrington?

10 A. Yes.

11 SOLICITOR LEGETTE: Begging the Court's indulgence.

12 BY SOLICITOR LEGETTE:

13 Q. I show you now what has been previously marked as
14 State's Exhibit Number 58. Please take a moment and
15 tell me if you recognize State's 58.

16 SOLICITOR LEGETTE: May I approach, your Honor?

17 THE COURT: You may.

18 BY SOLICITOR LEGETTE:

19 A. Yes. That's a photograph that I took at the
20 autopsy of the gunshot wound to the head of Ms.
21 Harrington.

22 Q. And Dr. Riemer, is State's Number -- I think it's
23 Number 56? 58?

24 COURT REPORTER: 58.

25 Q. 58. Is State's 58 a fair and accurate reflection

5-9-18 STATE V SANDERS

ELLEN RIEMER - DX - LEGETTE

1 of the injury and person of Tyhira Harrington that you
2 took on or about May 10, 2016?

3 A. Yes.

4 SOLICITOR LEGETTE: At this point, your Honor, I
5 would offer State's 58 for admission into evidence.

6 THE COURT: Okay. Subject to prior objection, it's
7 in evidence.

8 SOLICITOR LEGETTE: Thank you, your Honor.

9 ITEM IDENTIFIED AS AUTOPSY PHOTOGRAPH

10 MARKED STATE'S EXHIBIT NUMBER 58

11 ADMITTED AS EVIDENCE.

12 BY SOLICITOR LEGETTE:

13 Q. Now, Dr. Riemer, when did you first see the person
14 of Ms. Harrington?

15 A. On the morning of -- I'm going to have to refer to
16 my notes.

17 Q. That's fine.

18 A. All right. May 10, I conducted the autopsy at
19 11:30 a.m.

20 Q. And approximately how long did the autopsy last, or
21 do they -- is there a time period for autopsy would
22 typically last, or?

23 A. Well, if there is -- depending on the complexity
24 and how many findings there are. She was a healthy
25 young woman, so there weren't a lot of, you know,

5-9-18 STATE V SANDERS

ELLEN RIEMER - DX - LEGETTE

1 findings, other than the gunshot wound to the head. But
2 during the course of autopsy, I get an Xray, so I have
3 to wait for the X-ray technician to come. I don't
4 remember exactly how long this autopsy took, but
5 probably in the range of three hours.

6 Q. And based on that particular autopsy, within the
7 bounds of reasonable medical certainty, were you able to
8 form an expert opinion as to the cause of death of Ms.
9 Harrington?

10 A. Yes.

11 Q. And what is that opinion?

12 A. Gunshot wound to head.

13 Q. And what is the manner of death?

14 A. Homicide.

15 Q. Dr. Riemer, did you also, along with taking
16 photographs and pictures, were you able to recover any
17 evidence from the body?

18 A. Yes. So an important part of an autopsy on a
19 gunshot wound victim is to make sure that I recover any
20 projectile that may remain in the body. So, in this
21 case, the entrance gunshot wound was on the left eye
22 area, the left eyebrow, eyelid. And after it went
23 through the -- kind of high left eye and through the
24 brain, and ended up in the right temporalis muscle. So
25 it didn't actually exit the head. And it was -- the

5-9-18 STATE V SANDERS

ELLEN RIEMER - DX - LEGETTE

1 right temporalis muscle is the -- when you chew, you can
2 sort of feel muscle, like on the -- on the side of the
3 head. And so, it was underneath the skin in that
4 muscle. So I recovered the bullet at the autopsy.

5 Q. And did you also recover any other items from the
6 victim's body, such as bodily fluids, or?

7 A. Yes. So on routine auto -- in routine examination,
8 any person who is shot, I recover fingernail clippings,
9 so I take fingernail clippings. I don't know if it's
10 going to be valuable or not, but it's just done
11 routinely. And also, I take blood and -- and put it on
12 a blood stock card, which is not something that I need
13 for my investigation, but it's -- it's helpful for, you
14 know, it's just done as a standard practice, really.

15 Q. Dr. Riemer, in a moment I will hand you what's been
16 previously marked for identification as State's 66,
17 along with what's been previously marked and entered
18 into evidence as State's 54 and State's 55. I want you
19 to take a moment and tell me if you recognize these
20 exhibits.

21 SOLICITOR LEGETTE: May I approach?

22 THE COURT: You may.

23 BY SOLICITOR LEGETTE:

24 A. Okay. So these are envelopes that I've labeled at
25 the autopsy. They have Tyhira Harrington's -- these are

1 the autopsy labels. So, and have her autopsy number.
2 So everybody who comes to autopsy has a separate number,
3 so we don't -- because a lot of times people say names,
4 and we need to, you know, have some kind of, you know,
5 orderly way of identifying, you know, who the autopsy is
6 on.

7 Okay. So this is the projectile that I recovered
8 in the right temporalis muscle on the right side of the
9 head at the autopsy of Ms. Harrington, and it's labeled
10 as such. And then, this -- these two bags contained
11 fingernail clippings that I took at the autopsy. And
12 this is an envelope that contains the blood stock card
13 from the autopsy.

14 Q. And Dr. Riemer, are State's 66, 54, and 56 all in
15 fairly, substantially in the same condition today as
16 when you took them at the autopsy?

17 A. Yeah. The envelopes are exactly the same.

18 Q. And as for State's 66, has it been changed or
19 altered in any way?

20 A. Not that I can see.

21 SOLICITOR LEGETTE: At this time, your Honor, I
22 would offer State's 66 for admission into evidence.

23 THE COURT: Objections?

24 MR. PLEXICO: I have no objections, your Honor.

25 THE COURT: Without objection, it's in evidence.

5-9-18 STATE V SANDERS

ELLEN RIEMER - DX - LEGETTE

1 ITEM IDENTIFIED AS ONE SPENT BULLET
2 MARKED STATE'S EXHIBIT NUMBER 66
3 ADMITTED AS EVIDENCE.

4 BY SOLICITOR LEGETTE:

5 Q. Dr. Riemer, you also indicated that you documented
6 photographs of the victim, Ms. Tyhira Harrington, along
7 with Xrays.

8 A. Yes.

9 Q. Were you also able to do any diagrams?

10 A. Yes. So part of -- at the autopsy, it's useful for
11 me to make diagrams of the body. It's kind of a
12 standard practice of the autopsy of any body. So not
13 just taking photographs, but marking on body diagrams
14 where there may be abnormalities or, you know, trying to
15 depict. This is kind -- you know, before we had
16 photographs, or, you know, on the autopsies we've done a
17 long time ago, and everybody had to draw things. So
18 it's still helpful to have a diagram, and I make -- I
19 mark everything on the diagram.

20 Q. And Dr. Riemer, I'm going to hand you now what's
21 been previously marked for identification State's 61,
22 62, 64, 65, 70, and 71. Please take a moment and tell
23 if you recognize these exhibits.

24 SOLICITOR LEGETTE: May I approach?

25 THE COURT: You may.

1 SOLICITOR LEGETTE: Thank you.

2 BY SOLICITOR LEGETTE:

3 A. So, after I recovered the projectile from the right
4 side of the head, I take a picture of it. So this --
5 this photograph --

6 Q. Don't hold it up yet. Let's just identify it
7 first.

8 A. Yes. It's a picture of the projectile that I
9 recovered at the autopsy.

10 Q. Okay. Yes, ma'am.

11 A. Okay. And this is a photograph -- so, in addition
12 to taking a picture of injuries and -- or bullets I
13 recover, I take overall photographs of the deceased, and
14 identification shots are just basically, you know, what
15 their body looks like before I start the autopsy. And
16 so, this photograph is Ms. Harrington's body lying on
17 the autopsy table, before any -- I've started, you know,
18 cutting anything.

19 And then, these are -- these two Xrays are done.
20 Usually, I take -- I saw, you know, there was a gunshot
21 wound to the head, so, and I didn't see an exit wound,
22 so I knew there was going to be a bullet in there. So,
23 in order to -- I locate the -- where the approximate
24 location of the bullet is. If I just did a plain front-
25 to-back Xray, you know, I can see that it would be on

5-9-18 STATE V SANDERS

ELLEN RIEMER - DX - LEGETTE

1 the right -- right side of the head, which is what this
2 is. But this isn't lateral, so we have an A.P. Xray and
3 a lateral Xray that shows me where I would be able to
4 find the bullet. And then, that's basically helpful.
5 It's basically kind of like a GPS of finding the bullet.
6 So it's not absolutely essential, but it's a helpful
7 guide to find the bullet in the body. Okay.

8 And then, these two pieces of paper are body --
9 this -- this is a body diagram that I do on every
10 autopsy that I've ever performed, where I mark things on
11 the body that I see. So I -- I included tattoos that I
12 saw, and then some scars that she had, and an
13 identification tag. I marked like, that was on the
14 right toe. So I know, you know, how -- how -- how --
15 things I saw on the body. And then, I can incorporate
16 those things into an autopsy report that I have to
17 produce.

18 And then, finally, because this was a -- I saw a
19 gunshot wound to the head, which was the most
20 significant finding in this case, there's all sorts of
21 extra diagrams at my disposal, and this is a diagram of
22 the head, where I was able to approximate the location
23 of the entrance wound and -- and put down around, you
24 know, the path that it went through.

25 Q. Thank you, Dr. Riemer. And Dr. Riemer, are State's

5-9-18 STATE V SANDERS

ELLEN RIEMER - DX - LEGETTE

1 Exhibits Number 64, 65, 70, 71 -- I may have missed one
2 -- are they all fair and accurate reflections of the
3 photographs that you took, and diagrams and Xrays that
4 you took on that morning of May 10, 2016?

5 A. Yes.

6 SOLICITOR LEGETTE: At this time, your Honor, I
7 would offer -- I'm sure I'm missing one -- State's 64,
8 65, 70, 71 -- may I approach?

9 THE COURT: You may.

10 SOLICITOR LEGETTE: Okay. So it's State's 70, 71,
11 65, 64, 62, and 61 for admission into evidence.

12 THE COURT: Any objection?

13 MR. PLEXICO: Subject to my prior.

14 THE COURT: Subject to your prior objections,
15 they're in evidence.

16 SOLICITOR LEGETTE: Thank you, your Honor.

17 ITEM IDENTIFIED AS PHOTOGRAPH

18 MARKED STATE'S EXHIBIT NUMBER 61

19 ADMITTED AS EVIDENCE.

20 ITEM IDENTIFIED AS PHOTOGRAPH

21 MARKED STATE'S EXHIBIT NUMBER 62

22 ADMITTED AS EVIDENCE.

23 ITEM IDENTIFIED AS PHOTOGRAPH

24 OF HEAD XRAY

25 MARKED STATE'S EXHIBIT NUMBER 64

5-9-18 STATE V SANDERS

ELLEN RIEMER - DX - LEGETTE

1 ADMITTED AS EVIDENCE.
2 ITEM IDENTIFIED AS PHOTOGRAPH
3 LATERAL XRAY
4 MARKED STATE'S EXHIBIT NUMBER 65
5 ADMITTED AS EVIDENCE.
6 ITEM IDENTIFIED AS AUTOPSY DIAGRAM
7 MARKED STATE'S EXHIBIT NUMBER 70
8 ADMITTED AS EVIDENCE.
9 ITEM IDENTIFIED AS AUTOPSY
10 DIAGRAM OF HEAD
11 MARKED STATE'S EXHIBIT NUMBER 71
12 ADMITTED AS EVIDENCE.

13 BY SOLICITOR LEGETTE:

14 Q. And Dr. Riemer, at this time I would like to have
15 you step down a bit, or come down.

16 SOLICITOR LEGETTE: Could I get a microphone,
17 please, Madam Clerk.

18 BY SOLICITOR LEGETTE:

19 Q. So you can look at the actual screen to our left --
20 to your left, and to go over your exhibits.

21 A. Okay. So that's the photograph that I took of the
22 entrance gunshot wound. And you can see it's on the
23 left side of the eyelid, below the left eyebrow.

24 Q. And Dr. Riemer, during your autopsy, were you able
25 to document beyond just the entrance wound on the face

5-9-18 STATE V SANDERS

ELLEN RIEMER - DX - LEGETTE

1 of Ms. Harrington? Were you able to document any other
2 injuries in this area?

3 A. Yeah, okay. So you can see, if you look closely,
4 there's -- it looks like there's a bunch of lead gaps or
5 scrapes, you know, flat-like scrapes surround -- that
6 are surrounding the actual entrance defect, and that's
7 called gunpowder stippling. So, when a bullet is fired
8 out of the barrel of a gun, there's gunpowder that's
9 ejected from the barrel of the gun, along with the
10 bullet. Now, the bullet has the potential to travel a
11 great distance, but the gunpowder can travel a short
12 distance. So, when -- and when gunpowder hits the skin,
13 it kind of causes these -- this stippling pattern. So I
14 can tell that this was not far away. It was fairly
15 close range.

16 Q. All right. And when you say fairly close range,
17 within how many -- within how many --

18 A. Yeah. Now, that's -- I can't tell exactly, because
19 every gun is a little bit different. But stippling like
20 this could be anywhere from, you know, three or four
21 inches away, to potentially a couple of feet away. But
22 you know, to -- it's somewhere in that range, but it's
23 -- we're not talking like four or five feet away.

24 Q. Thank you. And Dr. Riemer, now I want to turn your
25 attention to State's Number 61. What is State's 61?

5-9-18 STATE V SANDERSELLEN RIEMER - DX - LEGETTE

1 A. So that is the deformed jacketed projectile that I
2 recovered from the right temporalis muscle, which is the
3 muscle, you know, on the right side of the head.

4 Q. Now, State's Exhibit Number 62. What are we seeing
5 here?

6 A. Okay. So this is Ms. Harrington's body, you know,
7 as I'm commencing the autopsy. So I start with an
8 external exam, and take a photograph of the body before
9 I begin.

10 Q. And are you able to tell us how much she weighed?

11 A. Yes. She weighed a 106 pounds.

12 Q. Were you also able to determine how tall or how
13 long she was?

14 A. Yeah. I have it in my report.

15 Q. We'll talk about it later.

16 A. But, yeah, I don't recall.

17 Q. Okay. All right. Very good. And now, we move to
18 State's Number 64.

19 A. Okay. So this is an Xray of the head. I saw an
20 entrance gunshot wound, but I didn't have an exit wound.
21 So I would try -- and I would do the Xray anyway.
22 Sometimes a piece of bullet breaks off and is left
23 behind, even though there is an exit. But in this case,
24 this is an Xray of her head, and we can see the L. You
25 see there is an L there, so on the side of the black

5-9-18 STATE V SANDERS

ELLEN RIEMER - DX - LEGETTE

1 area. But that indicates that that's on the -- that is
2 the left side of the head, so there's the bullet on the
3 right side of the head. So that's what I can tell. And
4 I can see it's outside of the skull. And so, it's not
5 actually in the skull, but it's, you know, it's in soft
6 tissue, you know, but it's in -- on top of the -- on top
7 of the skull on the right side.

8 Q. And now, to State's Number 65.

9 A. Okay. So this is the lateral Xray. So, instead of
10 taking front to back, it's looking at -- the X-ray image
11 is from the side. And you can see it's kind of, you
12 know, right in the middle. The other -- the other image
13 showed it was on the right side, but it didn't tell me
14 where, whether it's closer to the front or the back of
15 the head. So, in this, I can see it's probably going to
16 be, you know, not far away from the middle of the right
17 side of the head.

18 Q. Dr. Riemer, you can take your seat. And we want to
19 talk about -- well, I actually want to -- one second.

20 Dr. Riemer, did the bullet actually go -- what was the
21 traveling of the bullet, or can you talk about it?

22 A. Oh, trajectory?

23 Q. Yes, ma'am.

24 A. Yes. Okay. So there's always a -- you know, we
25 talk about things going through space. It always has

5-9-18 STATE V SANDERS

ELLEN RIEMER - DX - LEGETTE

1 three dimensions. So, in this case, it was -- the
2 obvious direction is from left to right. Okay? So it
3 started at the left side, and it's always relative to
4 the person's body, not your looking at it. So you know,
5 it was from her left to her right. And then, also,
6 there was also it was slightly upward a little bit. So
7 where it's -- went -- went in on the left eyelid, it
8 terminated slightly above that location, and it was also
9 slightly front to back. So those are the three
10 directions that -- and it's the most prominent direction
11 in this case was left to right.

12 Q. So, in State's Number -- I believe this is on the
13 screen, this is State's Number 64 on the screen, on the
14 -- it looks like on the right-hand side you found the
15 bullet?

16 A. Yes. Yes.

17 Q. So that it traveled from left to right?

18 A. Left to right.

19 Q. Okay. Thank you, Dr. Riemer. Please have a seat
20 back on the witness stand.

21 Dr. Riemer, I asked you earlier regarding, I guess,
22 the height and weight of the victim. Are you able to
23 tell us how much she weighed, as well as her height?

24 A. Yes. So before the autopsy begins, we have a
25 scale. So weigh the body. And then, we take a -- a

1 tape measure, and measure her from the base of her foot
2 to the top of her head. And I measured that she's --
3 well, she weighed 105 pounds, and she was sixty-six and
4 a half inches, so five-six and a half.

5 Q. All right. And Dr. Riemer, did you also do any
6 toxicology on the victim in this case?

7 A. Yes. That's always done. So on every autopsy, no
8 matter how somebody dies, or if it's natural or homicide
9 or suicide, anything, I take samples of blood from the
10 body at autopsy, and I send them to a toxicology lab
11 that performs toxicology testing.

12 Q. Dr. Riemer, I'm going to briefly -- I'm sorry, what
13 was --

14 A. Yeah.

15 Q. -- the result of the toxicology?

16 A. So, when I got the results back, and in this case
17 she had ethanol and a B.A., like a blood alcohol
18 concentration of 0.132. And she also had some nicotine
19 and codeine.

20 Q. Okay. And so, basically just alcohol was in her
21 system?

22 A. Alcohol. Yes, alcohol.

23 Q. Okay. All right. Dr. Riemer, we're now going to
24 -- you indicated earlier about your exhibits that you
25 actually -- the, I guess, diagrams that you created in

5-9-18 STATE V SANDERS

ELLEN RIEMER - DX - LEGETTE

1 this case. I want to direct your attention -- I'm going
2 to get the screen over here.

3 SOLICITOR LEGETTE: We just need the T.V., Madam
4 Clerk.

5 BY SOLICITOR LEGETTE:

6 A. Is there something there? I can't see it.

7 Q. It's coming up. Can you see it?

8 A. I'll have to step down.

9 Q. Yes, ma'am. All right, Dr. Riemer, here's your
10 microphone.

11 A. Okay.

12 Q. Please tell us what we're seeing in -- this is
13 State's Exhibit Number 70.

14 A. Okay.

15 Q. Do you see it?

16 A. Yes. So this is my body diagram, and you can see
17 that there's -- at the top of the diagram, there are
18 some numbers.

19 Q. Yes, ma'am.

20 A. Yeah, and you know, her eye color and her weight.
21 You see 105 pounds, sixty-six and a half; and then the
22 temperature, if she was warm or cold; her hair. And
23 then, I marked things on the body where I noticed them.
24 So I had a gunshot wound just actually -- it was -- you
25 can see there's a line to the left -- left eye. And

5-9-18 STATE V SANDERS

ELLEN RIEMER - DX - LEGETTE

1 then, I actually had another diagram that showed it
2 more, you know, in more detail.

3 Q. This is State's 71, are you referring to?

4 A. Yes.

5 Q. Okay.

6 A. Okay. So yeah. If you move that up, you can see.
7 Right. So I depicted the -- where the entrance wound
8 was on the left eyelid area, and I drew dots around it
9 to indicate that there was gunpowder stippling. And
10 also, I have -- you see those numbers, four and a half,
11 four and -- looks like four and an eighth, which on the
12 top of the head; and three and three-quarter inches to
13 the left -- to the right of mid-line. So that's the
14 actual location where I recovered the bullet, and I
15 wrote bullet under -- I didn't actually write skin, but
16 I wrote S.K. because -- I know that's small, my
17 shorthand.

18 Q. All right. Thank you, Dr. Riemer. You can take a
19 seat back on the witness stand, and I'll get this
20 microphone.

21 Now, Dr. Riemer, you indicated she had a gunshot
22 wound to the head. And how long would it have taken her
23 to, I guess, transpire or die?

24 A. To expire, you mean?

25 Q. Yes, ma'am, to expire.

5-9-18 STATE V SANDERS

ELLEN RIEMER - DX - LEGETTE

1 A. Very quickly. This was a non-survivable gunshot
2 wound, and the injury to the brain was very severe, and
3 she would have died immediately.

4 Q. Dr. Riemer, are you able to demonstrate to the jury
5 how the bullet -- or the trajectory of the bullet as it
6 would have cut across the path of her brain?

7 A. Yes.

8 SOLICITOR LEGETTE: May I approach the witness,
9 your Honor?

10 THE COURT: You may.

11 BY SOLICITOR LEGETTE:

12 A. Okay. So every -- you know, the bullet, you know,
13 I have an entrance wound. And then, in this case, there
14 wasn't actually an exit wound, because the bullet
15 terminated below the skin. But along it's path, from
16 where it started to where it ended, it went through the
17 base of the skull, which is -- so we have our brain, and
18 then we have all our facial structures. And the base of
19 the skull is actually -- bones, the base, the bone that
20 holds up the brain. Okay. And so, if I was going to --
21 I don't know if I'm going to get this all the way
22 through. Yeah, that's about right. So it's kind of --
23 you can see it's -- it's really going from left to
24 right, and then the bullet was -- was underneath the
25 skin, in this location.

5-9-18 STATE V SANDERS

ELLEN RIEMER - CX - PLEXICO

1 Q. Thank you. And Dr. Riemer, I know you've already
2 said it, but within a reasonable medical certainty, what
3 was the cause of death in this case?

4 A. Gunshot wound to head.

5 Q. And what was the manner of death?

6 A. Homicide.

7 SOLICITOR LEGETTE: Dr. Riemer, I have no further
8 questions. Please answer any questions from Mr.
9 Plexico. And I'll get this back from you.

10 THE COURT: Mr. Plexico?

11 ELLEN RIEMER, M.D.

12 CROSS-EXAMINATION BY MR. PLEXICO:

13 Q. So now, homicide is a medical term, correct?

14 A. Yes.

15 Q. Murder is a legal term, correct?

16 A. That's correct.

17 Q. All right. Now, so, if --

18 MR. PLEXICO: May I approach the witness, your
19 Honor?

20 THE COURT: You may.

21 BY MR. PLEXICO:

22 Q. So you have this type of wound, and forgive me, but
23 if a person sitting in that chair was pointing a weapon
24 at a person, say, standing here, correct?

25 A. Yes.

5-9-18 STATE V SANDERS

ELLEN RIEMER - CX - PLEXICO

1 Q. All right. And this person turned their head,
2 could they get that type of wound from someone sitting
3 or standing at that position?

4 A. Yes.

5 Q. Okay. So they could just turn their head and not
6 their body.

7 A. That's correct.

8 Q. And get the same wound.

9 A. Yes.

10 Q. Okay.

11 MR. PLEXICO: I don't have anything further.

12 THE COURT: Solicitor?

13 SOLICITOR LEGETTE: Nothing further, your Honor.

14 THE COURT: All right. Any objection to Dr. Riemer
15 being excused from anyone?

16 SOLICITOR LEGETTE: No, your Honor.

17 MR. PLEXICO: No, your Honor. Thank you.

18 THE COURT: All right. Dr. Riemer, you're excused.
19 Thank you.

20 DOCTOR ELLEN RIEMER: Thank you.

21 THE COURT: All right. Solicitor, anything else?

22 SOLICITOR LEGETTE: Your Honor, at this time the
23 State rests.

24 STATE RESTS:

25 MOTIONS AND RULING:

5-9-18 STATE V SANDERS

MOTIONS AND RULING

1 THE COURT: Ladies and gentlemen, at this time, the
2 State has rested their case. There's a matter of law I
3 need to take up with the attorneys. I'm going to send
4 you back to your jury room. Again, do not discuss this
5 case. It wouldn't be appropriate to do so. We'll be
6 right back with you all. Okay? Thank you.

7 JURORS LEAVE COURTROOM 10:46 A.M.

8 THE COURT: All right. Any motions?

9 MR. PLEXICO: Yes, your Honor. I'm moving for a
10 directed verdict on the murder charge, your Honor. From
11 the State's evidence, your Honor, what the State has
12 actually shown, in my opinion, is that -- that there was
13 absolutely no malice here on the part of my client.
14 Whatever the problem was, my client had made attempts to
15 resolve any prior problems. The individuals came up;
16 accosted my client; and clearly, that takes away any
17 malice that could be inferred or actual on the part of
18 my client; and I'd move to dismiss Indictment 1625-178
19 for murder; and then, automatically, the -- or motion
20 for directed verdict of not guilty. And I believe that
21 would entitle my client on the 1625-177, the possession
22 of a weapon during the commission of a violent crime, to
23 a directed verdict of not guilty on that, also your
24 Honor.

25 THE COURT: Solicitor?

5-9-18 STATE V SANDERS

MOTIONS AND RULING

1 SOLICITOR LEGETTE: Thank you, your Honor. I
2 respectfully disagree. I would ask the Court to deny
3 Mr. Plexico's motion. The State's evidence in this case
4 shows malice, not only the information that Mr. Sanders
5 told to Marilyn Garvin on May 7th, where he indicated
6 she should buy a black dress because he intended to kill
7 her daughter. That shows malice aforethought express.
8 He also made that same comment to -- or in front of Mr.
9 Samson Williams. We have two witnesses testifying about
10 that.

11 Additionally, your Honor, during the exchange
12 itself with regards to May 10th, your Honor, Mr. Sanders
13 used a deadly weapon during this incident, your Honor.
14 A weapon is an inference of implied malice and the use
15 of reckless disregard for human life.

16 THE COURT: Not in self-defense, it's not.

17 SOLICITOR LEGETTE: Well, your Honor, the State
18 would argue, of course, the Court cannot give a charge
19 for that, but the State would argue that there is an
20 inference of malice because of the use of a deadly
21 weapon. I know the Court cannot charge, but the State
22 is, I believe, entitled to argue.

23 Additionally, your Honor, the information that Mr.
24 Sanders spoke to Randy White that night, where he did
25 not want to be a witness to this. He told him --

5-9-18 STATE V SANDERS

MOTIONS AND RULING

1 THE COURT: Or he said -- or he said, you do not
2 want to be a witness to this. Is that correct?

3 SOLICITOR LEGETTE: That's correct.

4 THE COURT: That's what I remember hearing.

5 SOLICITOR LEGETTE: Yes.

6 THE COURT: The testimony from Randy White,
7 correct?

8 SOLICITOR LEGETTE: Yes, you do not want to be a
9 witness to this, yes.

10 THE COURT: Okay.

11 SOLICITOR LEGETTE: Your Honor, we believe that
12 shows intent. That shows malice that Mr. Sanders was
13 not in fear of his safety; that he was intent he was
14 intent on doing wrong; he was intent on doing harm; he
15 was -- had a reckless disregard for human life. His
16 intention was to kill her, and that's what he did, your
17 Honor. The testimony we've had shows this Court that
18 there was no self-defense, we believe. However, we do
19 believe that we have proved our case beyond, at least,
20 in this stage, your Honor, we believe we have proved the
21 case. It passed the directed verdict stage, because the
22 Court is concerned with the existence of evidence and
23 not its weight.

24 MR. PLEXICO: I have one additional ground.

25 THE COURT: Of course, sir.

5-9-18 STATE V SANDERS

MOTIONS AND RULING

1 MR. PLEXICO: I believe that since it is not
2 murder, it should not go to the jury as no more than
3 manslaughter now. If your Honor -- if I'm right, --

4 THE COURT: Okay. We'll talk about that, as far as
5 the jury charge is concerned, in just a minute. But I
6 can tell you, based on the evidence that I've heard in
7 the trial of this case, I do think it's a jury issue
8 whether or not this was murder, whether or not malice
9 exists, which I think is the real issue in this case,
10 potentially, and whether or not the State has disproved
11 self-defense as an affirmative defense in this case. So
12 I think, respectfully, it is a jury issue. This is very
13 much a fact-driven case, so I think it's appropriate to
14 send it to them.

15 Let's talk, Mr. Plexico, about any lesser-included
16 charge of voluntary manslaughter.

17 MR. PLEXICO: We didn't get the directed verdict.
18 We would oppose the charging of the jury of
19 manslaughter, Judge.

20 THE COURT: Okay. So you just want me to charge
21 murder and possession of a weapon, correct?

22 MR. PLEXICO: Yes.

23 THE COURT: Okay.

24 MR. PLEXICO: A charge is out of the question.

25 THE COURT: All right. I just want to make sure

1 for the record that's what you're asking for.

2 MR. PLEXICO: Yes, ma'am.

3 THE COURT: State's in agreement. Is that correct?

4 SOLICITOR LEGETTE: That's correct, your Honor.

5 THE COURT: Okay.

6 SOLICITOR LEGETTE: One more thing, your Honor.

7 I'm sorry. I didn't breach the weapons charge, but we
8 do believe he was in possession of a weapon because of
9 the location proximity to him.

10 THE COURT: Clearly. Okay.

11 SOLICITOR LEGETTE: Thank you, your Honor.

12 THE COURT: Okay. All right. Did we talk about --
13 and I think we, and clearly, I ruled on what I would
14 allow you to ask Mr. Sanders in regards to his previous
15 record. Now is the time, I think, Mr. Plexico, for us
16 to go through his rights and whether or not he wishes to
17 testify. As far as other than my ruling, where I said
18 that we weren't going to get in, because it was too
19 remote in time, any of the past. Correct me if I'm
20 wrong. They were burglaries and grand larcenies, Mr.
21 Plexico? Am I correct on that?

22 MR. PLEXICO: Yes. And I believe I also had a
23 motion to, and it was granted, my understanding was it
24 was of anything coming in. There's also a threatening
25 the life of a public official.

5-9-18 STATE V SANDERS

MOTIONS AND RULING

1 THE COURT: Because it had absolutely nothing to do
2 with this case, and it had nothing to do -- correct me
3 if I'm wrong. Who was it that he was charged with
4 threatening a public official? Who was it?

5 SOLICITOR LEGETTE: It was a sheriff's deputy.

6 THE COURT: Okay.

7 SOLICITOR LEGETTE: And I believe his name was
8 Doug, Douglas Byrd.

9 THE COURT: Okay.

10 SOLICITOR LEGETTE: And there were three strong-
11 armed robberies, not grand larcenies.

12 THE COURT: Thank you.

13 SOLICITOR LEGETTE: Yes, ma'am.

14 THE COURT: And burglaries, three burglaries, too,
15 correct?

16 SOLICITOR LEGETTE: I believe there --

17 THE COURT: Two burglaries?

18 SOLICITOR LEGETTE: Two burglaries and three
19 strong-armed robberies.

20 THE COURT: I thought it was three and three.

21 SOLICITOR LEGETTE: It may be three and three, your
22 Honor. I apologize.

23 THE COURT: Okay. So my question is this. So
24 having, based on those rulings, if he took the stand, is
25 there anything else that you can use to cross-examine

5-9-18 STATE V SANDERS

DEFENDANT'S RIGHTS

1 him as far as prior record?

2 SOLICITOR LEGETTE: No, your Honor.

3 THE COURT: Okay. That's what I needed to know.
4 All right.

5 DEFENDANT'S RIGHTS:

6 THE COURT: Mr. Sanders and Mr. Plexico, is now an
7 appropriate time for me to go through his rights, Mr.
8 Plexico, is that fine?

9 MR. PLEXICO: Yes, your Honor.

10 THE COURT: Mr. Sanders, I'm going to need you to
11 stand and raise your right hand, sir. Do you swear or
12 affirm the testimony you give will be the truth, so help
13 you God?

14 DEFENDANT SANDERS: Yes, ma'am.

15 THE COURT: Thank you, sir. You can put your hand
16 down. I'm just going to ask you to speak up loud enough
17 so I can hear you and my court reporter can hear you.
18 Okay?

19 Sir, it's come to that time in the trial where you
20 are permitted to put up your defense if you choose to.
21 What you need to understand, though, sir, is based on
22 the *Fifth Amendment* to the *Constitution to the United*
23 *States*, you are never required to be a witness against
24 yourself. Sir, if you choose not to testify in the
25 trial of this case, I am going to tell the jury in my

5-9-18 STATE V SANDERS

DEFENDANT'S RIGHTS

1 jury charge that the fact that you didn't testify can't
2 even be discussed in the jury room, because again, you
3 are presumed innocent. The burden is on the State to
4 prove your guilt as to these charges beyond a reasonable
5 doubt.

6 However, sir, I need you to also understand that
7 you have the right to testify if you wish to in your own
8 defense. However, if you do decide to take the stand
9 and testify in this case, you are going to be subject to
10 cross-examination by the State as to anything that I
11 deem relevant in this case. In other words, just like
12 the other witnesses that you saw up here, you are going
13 to be asked questions about this incident and anything
14 surrounding this incident, again, that I deem relevant.
15 Do you understand all that, sir?

16 DEFENDANT SANDERS: Yes, ma'am.

17 THE COURT: And sir, I want you to also understand
18 that while I expect you to talk to Mr. Plexico in
19 reference to whether or not he thinks you should testify
20 or you think he should testify, this is a personal
21 decision that you and only you can make. Do you
22 understand that?

23 DEFENDANT SANDERS: Yes, ma'am.

24 THE COURT: All right, sir. And at this time, sir,
25 have you had enough opportunity to talk with Mr. Plexico

5-9-18 STATE V SANDERS

DEFENDANT'S RIGHTS

1 as to whether or not you wish to testify in this case?

2 DEFENDANT SANDERS: Yes, ma'am.

3 THE COURT: Sir, do you want to testify?

4 DEFENDANT SANDERS: Yes, ma'am.

5 THE COURT: All right. And is that your decision,
6 sir?

7 DEFENDANT SANDERS: Yes, ma'am.

8 THE COURT: All right. Mr. Plexico, you feel
9 you've had enough time to talk with your client as to
10 whether or not he needs to testify?

11 MR. PLEXICO: Yes, your Honor.

12 THE COURT: And he understands his rights? Is that
13 correct, sir?

14 MR. PLEXICO: Yes, your Honor.

15 THE COURT: Okay.

16 MR. PLEXICO: I would just -- could we have a few
17 minutes. Just a five-minute break or something.

18 THE COURT: Sure. We're going to take a five-
19 minute break, absolutely.

20 MR. PLEXICO: Thank you.

21 THE COURT: Okay? Okay. All right. We're going
22 to take a five-minute break, then. Ladies and
23 gentlemen, actually, let's take ten minutes. At 11:00
24 o'clock we'll all be back here. You can then put on
25 your client. Do you have any other witnesses besides

5-9-18 STATE V SANDERS

DEFENDANT'S RIGHTS

1 your client?

2 MR. PLEXICO: Judge, I've got one subpoenaed, but
3 probably it's just going to be one.

4 THE COURT: Okay.

5 MR. PLEXICO: I haven't released the other.

6 THE COURT: Okay. All right. Let's take ten
7 minutes, and we'll be back. Okay?

8 SOLICITOR LEGETTE: Thank you.

9 OFF THE RECORD 11:55 A.M.

10 BACK ON THE RECORD 11:33 A.M.

11 BY THE COURT:

12 BAILIFF: All rise. Court will come to order.

13 THE COURT: Please be seated. All right. Mr.
14 Plexico, are you ready to go?

15 MR. PLEXICO: Yes, your Honor.

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

17 JURORS ENTER COURTROOM 11:34 A.M.

18 THE COURT: Welcome back, ladies and gentlemen.
19 Thank you for your patience. Mr. Plexico?

20 MR. PLEXICO: Defense calls Gregory Sanders.

21 THE COURT: Come on forward, Mr. Sanders.

22 MADAM CLERK: Left hand on the *Bible*, and raise
23 your right hand. Do you swear or affirm to tell the
24 truth, the whole truth, and nothing but the truth, so
25 help you God?

5-9-18 STATE V SANDERS

GREGORY SANDERS - DX - PLEXICO

1 DEFENDANT SANDERS: I do.

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

3 DEFENDANT GREGORY SANDERS

4 DIRECT EXAMINATION BY MR. PLEXICO:

5 Q. Okay, sir. Do you recall -- do you recall May 10,
6 2016?

7 A. Yes, sir.

8 Q. What kind of a day was it? Slide up here.

9 THE COURT: I think we got it.

10 COURT REPORTER: Got it?

11 THE COURT: Yes.

12 BY MR. PLEXICO:

13 Q. The court reporter needs to hear you. So you
14 recall May 10, 2016?

15 A. Yes, sir.

16 Q. Okay. What kind of a day was it for you?

17 A. Bad.

18 Q. All right. Did anything of significance happen to
19 you earlier in the day?

20 A. I was --

21 Q. Okay.

22 COURT REPORTER: I'm sorry?

23 A. Lynched.

24 Q. Slide it over. There you go. Now, is there
25 anything of note relative to why we're here today about

5-9-18 STATE V SANDERS

GREGORY SANDERS - DX - PLEXICO

1 the people who were involved in that, or any person
2 involved in that?

3 A. Yeah, they were the associates to Tyhira's baby's
4 father.

5 Q. Tyhira Harrington?

6 A. Baby father.

7 Q. They were?

8 A. Associates to them.

9 Q. Okay. They were their friends. All right.
10 Correct?

11 A. Yes, sir.

12 Q. Did that happen -- how many times did -- how many
13 times did the prior -- the fight happen earlier in the
14 day?

15 A. Twice.

16 Q. Okay. All right. Now, did you do anything to
17 Tyhira Harrington to upset her?

18 A. No, sir.

19 Q. Okay. All right. Did you say anything to Marilyn
20 Garvin about buying a black dress?

21 A. No, sir.

22 Q. Did you tell -- this is on May 7th. Did you say
23 anything like that to her?

24 A. No, sir.

25 Q. Did you say anything about killing her daughter on

5-9-18 STATE V SANDERS

GREGORY SANDERS - DX - PLEXICO

1 May 7th?

2 A. No, sir.

3 Q. Did you say anything about buying a black dress --

4 SOLICITOR LEGETTE: Your Honor, I believe he's
5 leading the witness.

6 THE COURT: Okay. These are yes or no questions.
7 You can ask the question.

8 BY MR. PLEXICO:

9 Q. Did you say anything about injuring her, too, if
10 so, what? At any time.

11 A. No, sir.

12 Q. To Marilyn?

13 A. No, sir.

14 Q. All right. As a result of those fights, what was
15 -- those attacks on you, what happened to you
16 physically?

17 A. I had injuries, like, both my elbows, both my
18 knees, and my back.

19 Q. Okay. All right. Anywhere else?

20 A. No.

21 Q. All right. Now, did you hear from Tyhira
22 Harrington later in the day?

23 A. Yes, sir.

24 Q. All right. As a result of that, what did you do?

25 A. I was talking to her, explaining myself about

5-9-18 STATE V SANDERS

GREGORY SANDERS - DX - PLEXICO

1 whatever rumor she was hearing, and about this incident
2 that happened earlier.

3 Q. Okay. All right. Where were you at talking to
4 her?

5 A. Her apartment.

6 Q. Okay. Did you go there? What was your purpose in
7 going there?

8 A. To clear my name.

9 Q. Okay. Because, had you done anything?

10 A. No.

11 Q. All right. And you were -- what were you -- were
12 trying to -- were you trying to stop these activities?

13 A. Yes, sir.

14 Q. Okay. All right. What happened while you were
15 over there? How did it start off?

16 A. I mean, we started off talking regular; and then
17 she asked me something else; then she punched me. Then,
18 that's when Daisy --

19 Q. Where did she punch you?

20 A. In my eye. Then Daisy, Yhantyse Priester, Daisy;
21 and Kywana Bradley and Tyhira Harrington jumped me
22 inside the apartment. Lynched me inside the apartment.

23 Q. What happened then?

24 A. Fought my way to the door and left.

25 Q. Okay. All right. So now, you were injured in

5-9-18 STATE V SANDERS

GREGORY SANDERS - DX - PLEXICO

1 regard -- all right. What happened to your eye as a
2 result of them hitting you in the -- of Tyhira
3 Harrington hitting you in the eye?

4 A. It was swollen.

5 MR. PLEXICO: May I approach the witness?

6 THE COURT: You may.

7 BY MR. PLEXICO:

8 Q. Do you recognize these?

9 A. Yes, sir.

10 Q. And what significance are they?

11 A. Those are my injuries.

12 Q. All right.

13 MR. PLEXICO: I would move these in as a Defense
14 exhibit, your Honor.

15 THE COURT: Okay. That's 1?

16 ITEM IDENTIFIED AS PHOTOGRAPH

17 MARKED DEFENDANT'S EXHIBIT NUMBER 1

18 ADMITTED AS EVIDENCE.

19 BY MR. PLEXICO:

20 Q. All right. What did you do to instigate any of
21 these attacks?

22 A. Nothing.

23 Q. Okay. All right. Now, would Marilyn Garvin have
24 any reason to tell anybody that -- that -- that Tyhira
25 had taken you to Allendale to get set up? If so, what?

5-9-18 STATE V SANDERS

GREGORY SANDERS - DX - PLEXICO

1 A. If there was a reason, I wouldn't know what it was.

2 Q. Did that ever happen?

3 A. No.

4 Q. Have you ever been to Allendale with Tyhira
5 Harrington?

6 A. No.

7 Q. When's the last time you were even in Allendale
8 County?

9 A. Over eight years.

10 Q. Do you have any idea what that was all about?

11 A. No, sir.

12 Q. Okay. Are you any kind of gang member?

13 A. No, sir.

14 Q. Now, do you know Javasha Forrester?

15 A. Yes, sir.

16 Q. How do you know her?

17 A. That's my girl.

18 Q. For how long?

19 A. Little over seven years.

20 Q. Okay. All right. Is there anything special about
21 her?

22 A. Like special education, like, he was in her
23 resource classes when she went to school.

24 Q. Okay. And how does that affect her -- her skills?
25 Self-expression skills.

5-9-18 STATE V SANDERS

GREGORY SANDERS - DX - PLEXICO

1 A. I mean, she can understand to a certain extent, but
2 if you use, like, kind of like big words or whatever or
3 whatever, she not going to understand what you're trying
4 to say to her.

5 Q. All right. What about her emotional development?

6 A. As far as --

7 Q. Excited? Does she get excited, easily
8 impressionable?

9 A. Not really.

10 Q. Okay. Describe her physically.

11 A. She's short and skinny.

12 Q. Okay. And, all right. Now, did you meet Javasha
13 Forrester after the incident at Tyhira Harrington's
14 apartment?

15 A. Yes, sir.

16 Q. Okay. All right. Now, at some time later, did you
17 leave with Javasha Forrester?

18 A. Yes, sir.

19 Q. And what time was that?

20 A. Probably like around a little -- like a late 12:00,
21 early 1:00 o'clock, somewhere up in there, in the
22 morning.

23 Q. Okay. All right. So where were you all going?

24 A. We was going home.

25 Q. All right. What was your mode of transportation?

5-9-18 STATE V SANDERS

GREGORY SANDERS - DX - PLEXICO

1 A. We was walking.

2 Q. Okay. Were you all doing anything, if so, what, to
3 bring notice to yourselves?

4 A. No, sir.

5 Q. Were you loud or anything?

6 A. No, sir.

7 Q. Okay. All right. So you were walking down the
8 street, is what you're saying.

9 A. Yes, sir.

10 Q. All right. Did you see a car that came to your
11 attention?

12 A. Yes, sir.

13 Q. And what did that car do?

14 A. It drove past us, slammed on the brakes, backed up,
15 put it on the road that we was on, and pulled up, pulled
16 near right here, like the apartment where we was at, in
17 the area where we was at. And he'd slammed on brakes,
18 and all four doors came open, and all four of them got
19 out.

20 Q. Okay. So they pulled how close up to you?

21 A. Like, the front of the hood of the car where the
22 corners taper at.

23 Q. Could you touch it?

24 A. Yeah, I could've touched it from a distance.

25 Q. What kind of emotional effect, how did that make

1 you feel to have somebody pull a car that close to you?

2 A. I was scared.

3 Q. Okay. All right. So they drove by on another
4 street?

5 A. On another street.

6 Q. You just testified to.

7 A. Yeah. The road's like this. Me and my girlfriend
8 on this road. They on this road.

9 Q. While walking down that way?

10 A. Yeah, we going this way; they going that way. And
11 he drive past, he slammed -- must have spotted us. He
12 slam on the brakes, back up, put up on our road, and
13 swerved over in front of us.

14 Q. Okay. So how many people got out of the car?

15 A. Four.

16 Q. Did they -- how did they -- did they get out one at
17 a time, or what?

18 A. They all four got out at the same time.

19 Q. They just piled out when the car stopped. Okay.
20 All right. What was said to you, by whom?

21 A. Well, Tyhira, when she come out the driver's side.
22 Like I say, they all got out at the same time.

23 Q. So who's driving?

24 A. Tyhira's driving.

25 Q. Okay. All right.

5-9-18 STATE V SANDERS

GREGORY SANDERS - DX - PLEXICO

1 A. When they -- when they -- she was the first one to
2 say anything, and she like, we about to fuck you all up.

3 Q. Excuse me? What did she say?

4 A. She said we about -- she said we about to fuck you
5 all up.

6 Q. You all, both of you?

7 A. Yeah.

8 Q. All right. And that was directed to who?

9 A. Both of us, me and my girlfriend.

10 Q. All right. And that would be Javasha.

11 A. Javasha Forrester.

12 Q. Okay. All right. What were the other -- all
13 right. What was your response to that?

14 A. I was backing up, and I put my girlfriend behind
15 me.

16 Q. Okay. So what was your purpose in putting her
17 behind you?

18 A. To protect her from whatever they was about to do.

19 Q. Okay. All right. Now, what happens when somebody
20 fucks you up? Forgive the language, but what happens
21 when somebody does that?

22 A. You going be injured, you going be hurt.

23 Q. Okay. And what was your fear?

24 A. Of me or her, especially her, being injured or
25 hurt.

5-9-18 STATE V SANDERS

GREGORY SANDERS - DX - PLEXICO

1 Q. Okay. And what do you think their intent was?

2 A. What they said they was going to do.

3 Q. Okay. All right. Where was Randy White in regards
4 to this?

5 A. Randy was right beside Tyhira.

6 Q. All right. Tyhira was moving in what direction in
7 relation to you?

8 A. Towards me and my girl.

9 Q. Did she say anything else that made you -- that put
10 fear in you?

11 A. Yeah. Like, she kept saying how she had wanted to
12 fight my girl -- girl, because she didn't want to fight,
13 but she said she want to fight me. Then, for some
14 reason, she was like, I ain't worried about nothing, I
15 got my iron in the seat.

16 Q. Okay. What did that indicate to you?

17 A. I think she's talking about a gun.

18 Q. All right. And where's Randy at?

19 A. Right beside her.

20 Q. And when she moved up towards you, what did Randy
21 do?

22 A. When she moved up, he moved up along with her.

23 Q. What were the -- was Marquis Alston there?

24 A. Yeah, he was like -- Marquis was right here, Randy
25 right here, Tyhira right here, and Daisy was like right

5-9-18 STATE V SANDERS

GREGORY SANDERS - DX - PLEXICO

1 here, like this.

2 Q. All right. What were your -- what were your
3 avenues of retreat?

4 A. There really wasn't none, because you got Marquis
5 on this -- right here on this corner; you got Randy
6 right here; you got Tyhira right here; you got Daisy
7 right there, and a building behind us.

8 Q. And what's in front of you that's big and --

9 A. The car.

10 Q. Okay. All right. So you didn't -- you didn't have
11 a way to go?

12 A. No, sir.

13 Q. And if you -- if you left, who would you have to
14 leave?

15 A. My girlfriend.

16 Q. Okay. And what were you fearing would happen to
17 her?

18 A. She was going to be injured or hurt.

19 Q. Okay. And how bad do you think that was going to
20 be?

21 A. Real bad. You got two dudes and two females. You
22 all saw the size of Daisy compared to her, and the
23 height of Tyhira compared to her, the size of Randy and
24 Marquis compared to her. So it was a no-win situation
25 with her.

1 Q. And what was going to happen to her?

2 A. She was going to get hurt.

3 Q. Okay. And how badly did you think she could be
4 hurt with those four people attacking her?

5 A. Seriously.

6 Q. Okay. And were you -- were you prepared to stop
7 that serious injury?

8 A. Yes, sir.

9 Q. Okay. All right. Now, what were you telling them
10 to do?

11 A. I been telling all of them to go home, leave us
12 alone and go home.

13 Q. Did you do anything to provoke this?

14 A. No, sir.

15 Q. Okay. All right. Now, what was their response to
16 you and Javasha as you backed up and said go home?

17 A. She was -- Tyhira was still running off at the
18 mouth. Randy was -- every time she moved up, Randy was
19 right beside her, moving up, also. And Marquis was
20 still at the corner of the car, but like kind of coming
21 up a little bit. Daisy was standing like, on the other
22 side of Tyhira, but just standing there. Then, like my
23 girlfriend, she was behind me. Tyhira kept walking back
24 over like this. So I'm like moving her out of -- out of
25 her way or whatever. And when I look up, Daisy came up

5-9-18 STATE V SANDERS

GREGORY SANDERS - DX - PLEXICO

1 a little bit more. And then, from there --

2 Q. So she keeps coming up. Marquis is by the car,
3 which has what in it, do you believe?

4 A. A gun.

5 Q. Okay. So how are you going to win this situation?
6 Did that look possible? How'd you feel?

7 A. I mean, I was scared.

8 COURT REPORTER: He did not answer your question,
9 *did that look possible*. You shook your head.

10 Q. Did that look like a situation there was any kind
11 of win in it?

12 A. No, sir.

13 Q. Okay. So was it a bad situation?

14 A. Yes, sir.

15 Q. Okay. And you were fearing serious injury?

16 A. Yes, sir.

17 Q. To yourself?

18 A. And my girlfriend.

19 Q. Okay. And how many of them is it on you?

20 A. There's four of them. There's two of us.

21 Q. Okay. All right. Is she any kind of little girl
22 to fight -- any kind of girl to fight in her physical
23 shape?

24 A. No. She's short and skinny, real skinny.

25 Q. Is that her nature? Javasha?

5-9-18 STATE V SANDERS

GREGORY SANDERS - DX - PLEXICO

1 A. What?

2 Q. Javasha's nature, a fighter?

3 A. No.

4 Q. Has she ever hit you in the eye?

5 A. No.

6 Q. Okay. All right.

7 A. She never hit me, period.

8 Q. Okay. All right. You all have a good
9 relationship?

10 A. Yes, sir.

11 Q. You love her?

12 A. Yes, sir.

13 Q. You wanted to protect her?

14 A. Yes, sir.

15 Q. And when they moved up and they got closer, and
16 they got about this distance, what happened?

17 A. I fired.

18 Q. And why did you fire?

19 A. So we going to be able to get away.

20 Q. What was their response? I know that -- that
21 Tyhira fell over. What was the response of the other
22 three at that time?

23 A. Daisy stood there. Randy ran. Marquis ducked down
24 behind the car.

25 Q. What did that give you and Javasha an opportunity

5-9-18 STATE V SANDERS

GREGORY SANDERS - DX - PLEXICO

1 to do?

2 A. Run.

3 Q. As a result of that -- of using the gun, were you
4 all able to get to safety?

5 A. Yes, sir.

6 Q. But they were -- they were all moving in on you?

7 A. Yes, sir.

8 SOLICITOR LEGETTE: Objection. That's leading,
9 your Honor.

10 THE COURT: Okay.

11 BY MR. PLEXICO:

12 Q. All right. Marquis Alston, did he walk off?

13 A. He ducked down behind the car.

14 Q. Okay. At any time during this, --

15 A. What you talking about? During -- before anything
16 happened or?

17 Q. Okay. All right. Now. So you're walking along,
18 that's your testimony.

19 A. Yes, sir.

20 Q. Minding your own business.

21 A. Yes, sir.

22 Q. And they come up --

23 SOLICITOR LEGETTE: Objection. Leading.

24 MR. PLEXICO: This is what he's testified to.

25 THE COURT: Don't lead him.

5-9-18 STATE V SANDERS

GREGORY SANDERS - DX - PLEXICO

1 BY MR. PLEXICO:

2 Q. All right. So do you know the reputation of Tyhira
3 Harrington and Kywana Bradley for violence?

4 A. Yeah, I -- I saw them drunk over here at a party
5 recent like, week -- week or two before the incident.

6 Q. Okay. All right. So is this gun and this shirt --
7 I don't see everything here -- the gun and the shirt
8 that's been talked about in the courthouse, is that --
9 in this case, is these things yours?

10 A. Yes, sir.

11 Q. Okay. All right. And there should be gunshot
12 residue on the clothing because you wrapped the gun in
13 the clothes, correct?

14 A. Yes, sir.

15 Q. And you fired the gun, correct?

16 A. Yes, sir.

17 Q. All right. Do you remember how many times you
18 fired the gun?

19 A. You mean that's one way -- two -- or looks like
20 probably one.

21 Q. Okay. What was your state of mind? What was going
22 through your mind?

23 A. To get away.

24 Q. Okay. How did you feel emotionally?

25 A. Emotionally, I was like, I -- I was scared.

5-9-18 STATE V SANDERS

GREGORY SANDERS - DX - PLEXICO

1 Q. Okay. Do you think there was any other way to
2 avoid a serious injury?

3 A. No, sir.

4 Q. Okay. You spent the night where?

5 A. At a house on Johnson Street.

6 Q. Okay. And the next morning, what did the police
7 have for you?

8 A. Arrest warrant.

9 Q. For?

10 A. Murder.

11 Q. They already had it when they saw you?

12 NO RESPONSE.

13 Q. And what I mean --

14 COURT REPORTER: Sorry. Yes, no?

15 A. Yes.

16 Q. What does that mean to you?

17 A. I was going to jail.

18 Q. And you repeatedly told them what? What did you
19 tell them?

20 A. Tell them to go home and leave us alone.

21 Q. Did they?

22 A. No.

23 Q. They continued to what?

24 A. To come towards us and keep on with whatever they
25 was trying -- trying to do.

5-9-18 STATE V SANDERS

GREGORY SANDERS - CX - LEGETTE

1 Q. You sure about they said about F you all?

2 A. Yes, sir.

3 Q. No doubt in your mind?

4 A. No doubt.

5 MR. PLEXICO: Answer any questions the Solicitor
6 has.

7 SOLICITOR LEGETTE: Thank you, your Honor.

8 DEFENDANT GREGORY SANDERS

9 CROSS-EXAMINATION BY SOLICITOR LEGETTE:

10 Q. Mr. Sanders.

11 A. Uh-huh.

12 Q. You said it was a bad day.

13 A. Yes, ma'am.

14 Q. What does it mean to be lynched?

15 A. To be assaulted by more than two or three people.

16 Q. Did you read that in a law book?

17 A. No, but I know that.

18 Q. Okay. How do you know that's what that means? You
19 ever lynch anybody?

20 A. No, ma'am.

21 Q. Now, Mr. Sanders, you know Randy White, don't you?

22 A. Yes, ma'am.

23 Q. How would you describe your relationship with Randy
24 White?

25 A. I see him, I speak.

5-9-18 STATE V SANDERS

GREGORY SANDERS - CX - LEGETTE

1 Q. You all cousins?

2 A. Yeah.

3 Q. You used to ride with him to McDonald's, up to
4 Hampton?

5 A. Yeah, once or twice. I would catch a ride from
6 Estill back to Hampton, or from Hampton back to Estill.
7 I was living in Hampton at the time.

8 Q. Okay. Is that how you met Javasha?

9 A. No, I've been with Javasha.

10 Q. You've been with Javasha.

11 A. During the time.

12 Q. Where is Javasha from?

13 A. Hampton.

14 Q. Hampton? Okay. So the City of Hampton?

15 A. Yes.

16 Q. All right. And so, you've been with Javasha.
17 Okay. So you and Randy, I guess you all were cool?

18 A. Yeah, we was all right. When I see him, I speak.

19 Q. Cousin?

20 A. He's a cousin of my cousin.

21 Q. All right. So he's not your cousin, he's a cousin
22 or your cousin?

23 A. Yes, ma'am. Like that.

24 Q. All right. Okay. So you all were cool that you
25 could get a ride with him, right?

5-9-18 STATE V SANDERS

GREGORY SANDERS - CX - LEGETTE

1 A. That was the year before.

2 Q. Year before. But you got a ride with him. He took
3 you to Hampton.

4 A. In the past.

5 Q. In the past. Okay. So you all were cool?

6 A. Um-hmm.

7 Q. All right.

8 COURT REPORTER: I'm sorry. That's a yes?

9 THE COURT: Thank you.

10 A. Yes.

11 Q. Okay. Now, you said about associates of Tyhira's
12 baby daddy. Who were the associates of Tyhira's baby
13 daddy?

14 A. I mean, I don't know them by name, but I know that
15 they was associates because he be with them. He be
16 around them.

17 Q. Isn't it true you used to hang out with him, too?

18 A. With who?

19 Q. Tyhira's baby daddy.

20 A. Baby father?

21 Q. Yeah.

22 A. No.

23 Q. Over at Tyhira's house?

24 A. No.

25 Q. Joe Frank. You all were friends?

5-9-18 STATE V SANDERS

GREGORY SANDERS - CX - LEGETTE

1 A. No. He -- he -- when I be there --

2 Q. Isn't it true?

3 A. No, ma'am. When I'm over there, he don't be over
4 there.

5 Q. He don't be over there. Oh.

6 A. No, ma'am.

7 Q. So you just come to Tyhira's house just to hang out
8 with Tyhira?

9 A. And whoever else be over there.

10 Q. And whoever else. Oh, and he was there?

11 A. Are you asking me would I not go over there?

12 Q. Would you hang out with him, too?

13 A. I mean, I had no problems with him.

14 Q. Okay. All right. So you all were pretty cool?

15 A. No, I wouldn't say we was cool. I don't know him
16 like that.

17 Q. You don't know him like that. Oh, so you don't
18 know him like that. Okay. All right. So Tyhira, she
19 did your hair.

20 A. No.

21 Q. She never did your hair?

22 A. Never did my hair.

23 Q. Never did your hair?

24 A. Never.

25 Q. Okay. Did they ever feed you?

5-9-18 STATE V SANDERS

GREGORY SANDERS - CX - LEGETTE

1 A. No.

2 Q. Okay. So Tyhira never did your hair, you didn't
3 know her baby father like that, but you said these
4 people were his associates.

5 A. Yeah. I -- whenever I see him, he be around them
6 people, when I see him.

7 Q. Okay. Hmm. Okay. Now, you said that you went
8 there to clear your name.

9 A. Yeah.

10 Q. Clear your name of what?

11 A. They -- I got word that Tyhira, that her mother or
12 whoever, told her that her -- that Tyhira -- and I'm
13 going to be robbed. So I went over there later to go
14 that I ain't told her nothing like that.

15 Q. Didn't you also go over there to clear your name
16 about telling Tyhira's mama that you were going to kill
17 her, she needed to buy a black dress?

18 A. That never came up when I was over there.

19 Q. Never came up when you were over there?

20 A. No. And I never said that.

21 Q. All right. Oh. Okay. So now, you never said
22 that. It just never came up.

23 A. I never.

24 Q. Okay.

25 A. Yeah. When -- when we was talking at the

5-9-18 STATE V SANDERS

GREGORY SANDERS - CX - LEGETTE

1 apartment, they never asked me about that.

2 Q. Okay. All right. But you never said it?

3 A. No, I never said that.

4 Q. So everybody -- basically, everybody's saying
5 something that didn't happen.

6 A. Exactly, cause I --

7 Q. And you're the only person that's telling the
8 truth.

9 A. I guess.

10 Q. Okay. All right. You said you were going home.
11 You were going home. Where were you going home to?

12 A. (Inaudible.)

13 Q. Okay.

14 COURT REPORTER: What?

15 A. Lu Town.

16 Q. All right. What was your address?

17 A. [REDACTED] Fifth Street.

18 Q. All right. So you didn't live on Second Street?

19 A. No.

20 Q. Okay. You didn't live on Second Street. All
21 right. So the injuries, did you ever make a statement
22 about your girlfriend punching you in the eye, which is
23 what caused your black eye?

24 A. No, ma'am.

25 Q. All right. So the officer who said that you said

5-9-18 STATE V SANDERS

GREGORY SANDERS - CX - LEGETTE

1 that is also not telling the truth.

2 MR. PLEXICO: Your Honor, that's pitting, and that
3 is -- I object.

4 THE COURT: Sustained. Don't pit witnesses.

5 SOLICITOR LEGETTE: Thank you, your Honor.

6 BY SOLICITOR LEGETTE:

7 Q. So your girlfriend Javasha didn't punch you in the
8 eye?

9 A. No, ma'am.

10 Q. Okay. Mr. Sanders, why is everybody angry at you?

11 A. That's what I was trying to figure out.

12 Q. Can you stand up, Mr. Sanders. Can you step down
13 for a second. I'm going to take off my shoes. Come
14 closer. Okay. You're taller than I am. All right.
15 Okay. Mr. Sanders, you can sit down. Thank you.

16 You didn't do anything to instigate any of these
17 attacks, correct?

18 A. No, ma'am.

19 Q. All right. And you're not a gang member?

20 A. No, ma'am.

21 Q. You never said anything about on the blood or your
22 bandana in the house?

23 A. No, ma'am.

24 Q. Okay. All right. Now, let's talk about the night
25 of the incident itself. Did you try to get into Tyhira

5-9-18 STATE V SANDERS

GREGORY SANDERS - CX - LEGETTE

1 Harrington's apartment?

2 A. No, ma'am.

3 Q. Okay. And you said that four people got out of the
4 car to lynch you?

5 A. Yes, ma'am.

6 Q. Okay. Tell me again, you said she pulled in to the
7 park?

8 A. Yeah -- no. She pulled in to the -- like, the
9 laundromat had, like, a parking lot.

10 Q. Yes.

11 A. When she pulled in, she pulled into that.

12 Q. Okay. Now, where were you walking?

13 A. We was going up there -- up what was that, Grayson
14 Street?

15 Q. Okay. You were on the sidewalk, or you were in the
16 street?

17 A. We was walking in the street.

18 Q. Walking in the street. So she pulled into the
19 parking lot, and you were walking in the street.

20 A. Yeah. When she pulled into the parking lot, we
21 walk, and like, we walk over some, and now we in the
22 parking lot.

23 Q. Okay. Now, Randy, you cool with Randy. So Randy
24 got out of the car to fight you, too.

25 A. I guess, cause that's his girlfriend.

5-9-18 STATE V SANDERS

GREGORY SANDERS - CX - LEGETTE

1 Q. Okay. And Marquis Alston, you know him?

2 A. I know of him.

3 Q. Know of him. Okay. You all related?

4 A. No.

5 Q. Okay. Did you know him that night?

6 A. What you mean did I know him that night?

7 Q. Did you know of him that night?

8 A. Yeah, I knew of him before that. I knew who -- how
9 he look.

10 Q. Okay.

11 A. And by his nickname.

12 Q. All right. And according to you, Yhantyse was
13 there as well, Daisy?

14 A. Yeah.

15 Q. Okay. Now, which of them were the associates of
16 Tyhira's baby daddy, Joe Frank.

17 A. No, he one them, too.

18 Q. All right. So who was?

19 A. The ones from the pool hall that I got lynched by,
20 by the projects.

21 Q. Okay. So you got lynched by the projects?

22 A. Yeah, twice.

23 Q. All right. You got lynched by the projects twice
24 by who?

25 A. The associates of the girl baby father.

5-9-18 STATE V SANDERS

GREGORY SANDERS - CX - LEGETTE

1 Q. Who are the associates, male or female?

2 A. No, they males.

3 Q. Males? All right, so males lynched you?

4 A. Earlier that day.

5 Q. All right, so some men lynched you?

6 A. Earlier.

7 Q. All right. So the men lynched you, not your
8 girlfriend?

9 A. No.

10 Q. She didn't punch you in the eye?

11 A. No.

12 Q. And it wasn't Tyhira?

13 A. Later on that night, Tyhira, Kywana Bradley, and
14 Yhantyse, what, Priestster? Yeah.

15 Q. Okay. Well, who was in the house when that
16 happened?

17 A. It was Yhantyse, Kywana, Tyhira, Samson, and her
18 mom. Tyhira mom.

19 Q. All right. So they all watched you -- they all
20 just let you get lynched.

21 A. Yeah.

22 Q. In the house.

23 A. Yeah.

24 Q. All right. Now, how did you get away?

25 A. I fought my way to the door and left out.

5-9-18 STATE V SANDERS

GREGORY SANDERS - CX - LEGETTE

1 Q. Fought your way to the door.

2 A. Yeah.

3 Q. And left out?

4 A. And left out.

5 Q. Okay. Was your girlfriend there, too?

6 A. No.

7 Q. So once you fought your way to the door and left
8 out, where did you go after that?

9 A. Go get my girlfriend so we could go home.

10 Q. Go home. All right. And where'd you go home to?

11 A. We never made it.

12 Q. You never made it. Oh, oh, we were headed home.

13 A. Heading home.

14 Q. Okay. All right. So how long after you left the
15 apartment after you got beat up did you encounter
16 Tyhira?

17 A. Probably thirty -- a little bit after that. Like,
18 thirty, probably forty minutes.

19 Q. Okay. All right. So, all right. Now, but you did
20 shoot and kill Tyhira?

21 A. Yes, ma'am.

22 Q. All right. Well, so I kind of want to understand
23 how this went down. You right-handed or left-handed?

24 A. I'm right-handed.

25 Q. Okay. And explain to me again -- so can you step

5-9-18 STATE V SANDERS

GREGORY SANDERS - CX - LEGETTE

1 down. Step down, Mr. Sanders. And explain to me where
2 you are and where all these other people are.

3 A. Randy like -- Randy like --

4 Q. Randy right here?

5 A. Marquis and he --

6 COURT REPORTER: I'm sorry. I'm so sorry. One at
7 a time.

8 A. I said, Marquis, he first to the left.

9 Q. Okay.

10 A. All right. Back a little bit.

11 COURT REPORTER: Quiet. Quiet, please.

12 Q. Huh?

13 A. Marquis, this is Marquis. You is Marquis.

14 Q. Okay.

15 A. All right. Come right here. You Randy.

16 Q. Okay.

17 A. No. Back further. I'm trying to -- all right, you
18 Randy.

19 Q. Okay.

20 A. You Randy. Step over two steps, here's Tyhira.

21 Q. Okay.

22 A. Where she's sitting at, there's Daisy.

23 Q. Okay.

24 A. I'm right here, my girlfriend's right here.

25 Q. Where is the car?

5-9-18 STATE V SANDERS

GREGORY SANDERS - CX - LEGETTE

1 A. The car is right in between -- like, see how you --
2 how you curve like this?

3 Q. Um-hmm.

4 A. All right, the car was like that.

5 Q. All right. Okay. So now what's going on? Who
6 hits you first?

7 A. Nobody hitting at me.

8 Q. Nobody hit you?

9 A. They was coming towards me like they was about to.

10 Q. Okay. So nobody hit you?

11 A. No, not then.

12 Q. All right. And what are you doing all this time?

13 A. I got my girlfriend behind me. I'm --

14 Q. And what are you saying?

15 A. I'm telling them to go home.

16 Q. Okay.

17 A. Leave us alone and go home. Just like this, leave
18 us alone and go home.

19 Q. You telling Randy he don't want to be a witness?

20 A. I did not say that.

21 Q. Okay. What did you say?

22 A. I said to go home and leave us alone. She said --
23 she kept saying she wanted to fight.

24 Q. Okay.

25 A. My girl said she did not want to fight.

5-9-18 STATE V SANDERS

GREGORY SANDERS - CX - LEGETTE

1 Q. What about this stripe thing?

2 A. I never said -- I don't even talk like that.

3 Q. What does it mean to get stripes?

4 A. That must -- when they -- you turning on me. It's
5 not mine.

6 Q. All right. So you're not a Blood?

7 A. No.

8 Q. Okay. You're not a Blood?

9 A. No.

10 Q. All right. So they standing right here; you're
11 telling them to go home. Your girlfriend is where?

12 A. Behind my back.

13 Q. All right. So what is Tyhira doing?

14 A. She's stated -- she's walking back and forth all
15 this and that.

16 Q. Walking back and forth. Okay. Now, where is the
17 street in relationship to all of this?

18 A. You all in the street. By now, we in the parking
19 lot. You all in the street.

20 Q. Okay. We in the street. So where are you, in the
21 street, too?

22 A. I'm in the parking lot.

23 Q. You're in the parking lot. Okay. So you're in the
24 parking lot. All right. What's on your left side over
25 here?

5-9-18 STATE V SANDERS

GREGORY SANDERS - CX - LEGETTE

1 A. Her -- Yhantyse.

2 Q. Yhantyse is back here. Where is -- what's on your
3 left?

4 A. Where she is standing there --

5 Q. Um-hmm.

6 A. -- is where Yhantyse is at.

7 Q. Okay. So what's over here?

8 A. Nothing.

9 Q. Nothing is over there?

10 A. But the apartment buildings.

11 Q. Okay. So apartment buildings over here.

12 A. Um-hmm.

13 Q. Just --

14 A. And the laundromat building right here.

15 Q. Laundromat's right there.

16 A. Then, across the street over there is the other
17 projects.

18 Q. Other projects. Okay.

19 A. Yeah.

20 Q. So you got room over here, but they're standing
21 right here, you say?

22 NO RESPONSE.

23 Q. All right. And then you said the laundromat's back
24 that way?

25 A. Right behind us.

5-9-18 STATE V SANDERS

GREGORY SANDERS - CX - LEGETTE

1 Q. Okay. All right. And they're in the street?

2 A. Yeah.

3 Q. So how close do you get to the street? Do you get
4 in the street?

5 A. Me? I know --

6 Q. Yes.

7 A. After I backed up, I never move.

8 Q. Oh, you never got back to the -- so they're in the
9 street?

10 A. Yeah.

11 Q. Okay. Hold on one second. Sit down, Mr. Sanders.
12 Sit down. Now, so all right. I got this picture, Mr.
13 Sanders. I'm going to come over to you.

14 SOLICITOR LEGETTE: May I approach, your Honor?

15 THE COURT: You may.

16 BY SOLICITOR LEGETTE:

17 Q. Now, Mr. Sanders, I'm going to have to turn this so
18 the jury can see it. Can you see that?

19 A. Um-hmm.

20 Q. Now, tell me where in this picture you were at.

21 A. I'm right here.

22 Q. You're right there. Okay.

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

24 THE COURT: You may.

25 BY SOLICITOR LEGETTE:

5-9-18 STATE V SANDERS

GREGORY SANDERS - CX - LEGETTE

1 Q. You're right here?

2 A. Yeah, I'm right there.

3 Q. All right. And --

4 A. And my girlfriend behind me.

5 Q. Behind you.

6 A. I'm right here.

7 Q. All right. And these people are out in here.

8 A. Yeah.

9 Q. All right. And Yhantyse is back in here somewhere?

10 A. No, Yhantyse is right here. Tyhira's right here.

11 Randy's right here. And Marquis right here.

12 Q. Okay.

13 A. And the car is over to right here.

14 Q. You said they pulled into the parking lot?

15 A. Yeah, they swerved like that. The car -- that's
16 what I'm saying. The car was like this.

17 Q. You said she pulled into the parking lot.

18 A. No, we was trying to cross the road.

19 Q. No, I'm sorry. You said she pulled into the
20 parking lot earlier.

21 MR. PLEXICO: Argumentative. I object.

22 THE COURT: Ask the question.

23 BY SOLICITOR LEGETTE:

24 A. Yeah.

25 Q. All right.

5-9-18 STATE V SANDERS

GREGORY SANDERS - CX - LEGETTE

1 A. So --

2 THE COURT: Okay. Mr. Plexico, step back.

3 BY SOLICITOR LEGETTE:

4 Q. Now, Mr. Sanders, you said -- all right. This is
5 your gun, right?

6 A. Yes, ma'am.

7 Q. And these are all your bullets?

8 A. Yes, ma'am.

9 Q. That were in it? And there was one in the chamber,
10 right?

11 A. Yes, ma'am.

12 Q. All right. You said you fired one, maybe two
13 times, right? Now, Mr. Sanders?

14 THE COURT: Is that a yes, for the record?

15 A. Oh. Yes.

16 BY SOLICITOR LEGETTE:

17 Q. Mr. Sanders, all these people here to lynch you,
18 right?

19 A. Yes, ma'am.

20 Q. Okay. And you fire one time, right?

21 A. Yes, ma'am.

22 Q. Mr. Sanders -- I'm going to give you some gloves,
23 Mr. Sanders.

24 SOLICITOR LEGETTE: May I approach the witness,
25 your Honor?

5-9-18 STATE V SANDERS

GREGORY SANDERS - CX - LEGETTE

1 THE COURT: You may.

2 BY SOLICITOR LEGETTE:

3 Q. I'm going to hand you now what's been marked into
4 evidence -- I'm sorry, marked and entered into evidence
5 as State's Number 44. This is yours, right?

6 A. Um-hmm.

7 THE COURT: That's a yes, for the record?

8 A. Oh. Yes.

9 BY SOLICITOR LEGETTE:

10 Q. And you got to say yes, for the record, please,
11 didn't, if you don't mind.

12 Now, Mr. Sanders, I'm going to ask you to pick up
13 your gun. Show me -- you said you killed Tyhira
14 Harrington, right? You had -- you had no other choice,
15 correct?

16 A. Yes, ma'am.

17 Q. All right. Show me.

18 A. What's that -- I mean, from beginning?

19 Q. You are Greg. I am Tyhira.

20 A. I mean, from the beginning?

21 Q. Well, when you had to shoot.

22 A. From the time I pull it out?

23 Q. Yeah.

24 A. All right.

25 THE COURT: Okay. And we'll tell the jury, there

5-9-18 STATE V SANDERS

GREGORY SANDERS - CX - LEGETTE

1 is a safety on this gun, obviously. And it's unloaded
2 as well. Okay.

3 MS. LEGETTE: Yes. It's unloaded.

4 BY SOLICITOR LEGETTE:

5 Q. All right, Mr. Sanders. Now, you are there; your
6 girlfriend's somewhere behind you; and Tyhira, all
7 right. So what happens?

8 A. They kept on acting like and they kept on coming or
9 whatever, --

10 Q. Um-hmm.

11 A. -- I just -- like this, stuck. I just pop, and
12 then ran.

13 Q. So you just popped and ran?

14 A. And ran.

15 Q. Okay. So now, you said that Yhantyse was where?
16 You said they ran behind the car?

17 A. No. Yhantyse stood where she was at; Randy ran;
18 Marquis ducked down behind the car.

19 Q. All right. So how fast was it?

20 DEFENDANT SANDERS INDICATING.

21 Q. So how -- okay. All right. So now, you can sit
22 back down. All these people there to lynch you, why did
23 you only shoot the one person and run?

24 A. Because she was the main one that was causing the
25 whole everything.

5-9-18 STATE V SANDERS

GREGORY SANDERS - CX - LEGETTE

1 Q. Okay. So she was the main one?

2 A. And she was closer.

3 Q. She was closer. All right. So you were afraid of
4 her?

5 A. Yes, sir. Yes, ma'am.

6 Q. All right. And you all were friends, or weren't
7 friends?

8 A. Yeah, we was cool at -- until a certain extent.

9 Q. Cool to a certain extent. She did your hair,
10 right?

11 A. No, I said after a certain extent.

12 Q. She did your hair, right?

13 A. No, she never did my hair.

14 Q. All right. She never fed you, either?

15 A. Never fed me.

16 Q. All right. She really -- you all weren't friends?

17 A. We was friends, but she never fed me or did my
18 hair.

19 Q. Okay. All right. So.

20 SOLICITOR LEGETTE: Begging the Court's indulgence.

21 BY SOLICITOR LEGETTE:

22 Q. Mr. Sanders, after this all happened, you went
23 where?

24 A. After that?

25 Q. Yes. The shooting. After you shot Tyhira and

5-9-18 STATE V SANDERS

GREGORY SANDERS - CX - LEGETTE

1 killed her?

2 A. Oh. WITHIN went to the house on Second Street.

3 Q. What house on Second Street?

4 A. It's a -- it's a house that being remodeled.

5 Q. Okay. You didn't go home?

6 A. No, because we was -- you know, there were two --
7 new projects?

8 Q. Not really.

9 A. Can't explain it to you.

10 Q. Okay. So you are on your way home, but you didn't
11 go home?

12 A. Yeah, never made it.

13 Q. Never made it. So where did you go in the hours
14 between the time when you killed Tyhira Harrington and
15 the police caught you?

16 A. To the house on Second Street.

17 Q. Did you live there?

18 A. No.

19 Q. Okay. Why did you go there?

20 A. It was closer, and ain't -- wasn't nobody living
21 there, so I just went.

22 Q. Oh, you just went there, to somebody else's house.
23 And what were you doing that morning with all the stuff
24 that you had on the ground? Were you getting ready to
25 get rid of it behind that trash can?

5-9-18 STATE V SANDERS

GREGORY SANDERS - CX - LEGETTE

1 A. No, I was changing clothes.

2 Q. You was changing clothes outside?

3 A. Yeah.

4 Q. Okay. All right. Now, these -- these injuries you
5 got that you told somebody at the jail that your
6 girlfriend punched you in the eye.

7 A. I did not tell nobody that.

8 Q. I want to show you these.

9 SOLICITOR LEGETTE: May I approach? They're
10 entered into evidence, but there's no number on them.

11 THE COURT: You may approach. You may approach.

12 SOLICITOR LEGETTE: I think they're -- oh, I'm
13 sorry. I see it.

14 BY SOLICITOR LEGETTE:

15 Q. This is Defendant's 1. Mr. Sanders, you heal
16 pretty fast, don't you?

17 A. Do I hear pretty fast?

18 Q. Heal? Heal fast.

19 A. Heal? No.

20 Q. They're all scabbed over.

21 A. Those are, but not my eye.

22 Q. Not your eye, where your girlfriend punched you.

23 A. My girlfriend did not punch me.

24 Q. Okay. Now, did anyone that night ever punch you?

25 A. In the apartment?

5-9-18 STATE V SANDERS

GREGORY SANDERS - CX - LEGETTE

1 Q. When you were standing there.

2 A. Not when I was standing, but in the apartment.

3 COURT REPORTER: I'm so sorry. Talking over. Do
4 you want to ask your question again? *Did anyone ever*
5 *punch you?* Yeah.

6 SOLICITOR LEGETTE: I'm sorry, ma'am.

7 BY SOLICITOR LEGETTE:

8 Q. Did anyone ever punch you when you were standing
9 there in the projects?

10 A. That night?

11 Q. Yes.

12 A. No.

13 Q. No. All right. What kind of trouble had you had
14 with Randy in the past?

15 A. None.

16 Q. How about Marquis?

17 A. None.

18 Q. How about Yhantyse?

19 A. None.

20 Q. Okay. And you said that you were lynched earlier
21 by?

22 A. The people who was over there, Tyhira Harrington's
23 baby father.

24 Q. But Tyhira wasn't with him.

25 A. No.

5-9-18 STATE V SANDERS

GREGORY SANDERS - CX - LEGETTE

1 Q. So now, Mr. Sanders, after you went to the house on
2 Second Street, you stayed there all night?

3 A. Yes, ma'am.

4 Q. Okay. At that time, did you believe it was self-
5 defense?

6 A. Yes, ma'am.

7 Q. Did you call 911?

8 A. I didn't have a phone.

9 Q. Okay. You didn't have a phone. How close is the
10 Second Street house to the police department?

11 A. Good little walking distance. It not really a good
12 little walking distance, but from there to there. You
13 can walk. It's walking distance.

14 Q. You can walk. So you walk by it to get to the
15 house on Second Street.

16 A. Yeah.

17 Q. All right. And when you got lynched by all these
18 people, you got lynched -- how many times have you been
19 lynched, Mr. Sanders?

20 A. Twice.

21 Q. You been lynched twice.

22 A. Twice in the projects, and once in the apartment.

23 Q. Did you ever tell the police about that?

24 A. No. Neither one of them. Not even the first two.

25 Q. Okay. All right. So you have an amazing memory,

5-9-18 STATE V SANDERS

GREGORY SANDERS - CX - LEGETTE

1 Mr. Sanders. What did you have for lunch on Monday?

2 A. Monday. Monday, this week?

3 Q. Um-hmm.

4 A. Hmm, what did we have at the county jail?

5 Q. Okay. All right, Mr. Sanders. Now, the person who
6 was doing all the talking you said was Tyhira?

7 A. Yeah.

8 Q. Okay. And you never told her mother you was going
9 to kill her?

10 A. No.

11 Q. Never said it to Samson, either?

12 A. No. And Monday we had chicken patty and chips.

13 Q. Mr. Sanders?

14 A. Ma'am.

15 Q. I'm going to approach you one more time. Now,
16 these injuries were already healed over.

17 A. No.

18 Q. Did one of them get scraped when you were getting
19 into the police car?

20 A. No, I one that had a Band-aid on it, this one.

21 Q. All right. It got scraped when you were getting
22 out of the patrol car?

23 A. Yeah. No -- one of the two.

24 Q. Out or in?

25 A. On the door -- the door handle that scratched it.

5-9-18 STATE V SANDERS

GREGORY SANDERS - CX - LEGETTE

1 Q. Okay. But the rest of them are healing over?

2 NO RESPONSE.

3 Q. Okay.

4 THE COURT: That's a yes, for the record?

5 A. Yes.

6 BY SOLICITOR LEGETTE:

7 Q. Okay. And you said you fired one shot?

8 A. Once or twice. I mean, I can't really remember as
9 far as that goes.

10 Q. Okay. And --

11 SOLICITOR LEGETTE: Begging the Court's indulgence.

12 THE COURT: Yes.

13 BY SOLICITOR LEGETTE:

14 Q. Mr. Sanders, how many people have lynched you on
15 May 10th?

16 A. It was -- it was a group of people.

17 Q. I mean, how many people lynched you on May 10th?
18 Not just a group. How many people lynched you?

19 A. You talking about during day?

20 Q. Well, you got lynched a couple times on that day,
21 right?

22 A. Yeah. And I know for a fact that when I got hit by
23 them, it was just three, Tyhira, Kywana, and that girl.
24 But as far as during the day, I couldn't say. I was on
25 the ground. But it was -- I know it was more than two

5-9-18 STATE V SANDERS

GREGORY SANDERS - CX - LEGETTE

1 or three people, I know that. They have a video of it
2 somewhere.

3 Q. So, on May 10th, you got lynched by -- who had a
4 video of it?

5 A. Whoever recorded it.

6 Q. Is it recorded, of you getting lynched?

7 A. Yes, ma'am.

8 Q. I've never seen that, Mr. Sanders. Have you seen
9 the video of you getting lynched?

10 A. I seen part of the ending of it.

11 Q. Okay.

12 A. Or one of them, I guess. I don't know how many
13 there was.

14 Q. All right. Could we see it? Can you get it for us
15 to see?

16 A. How?

17 MR. PLEXICO: Your Honor, I think we have a matter
18 of law here.

19 THE COURT: Okay. Ladies and gentlemen of the
20 jury, do not discuss this case. It wouldn't be
21 appropriate to do so. I'm going to send you back to the
22 jury room. We'll be right back with you. Thank you.

23 JURORS LEAVE COURTROOM 12:18 P.M.

24 THE COURT: Mr. Plexico.

25 MR. PLEXICO: Yes, your Honor. In Franklin versus

5-9-18 STATE V SANDERS

GREGORY SANDERS - CX - LEGETTE

1 Fitz there was a video part of that, and we have not
2 chosen to use that in our defense case, Judge. They
3 should've done due diligence if they wanted to find it.
4 I don't think -- I don't think he has a copy of the
5 video because he's been in jail.

6 THE COURT: Um-hmm. Okay.

7 SOLICITOR LEGETTE: Your Honor, Mr. Sanders himself
8 mentioned the video, and if there's a video, we would
9 like to have been able to see it. He says he has seen
10 the video. I'm simply asking him, well, where can we
11 find the video, pretty much, since he opened the door
12 and he mentioned there was a video of him being lynched.

13 THE COURT: Well, I don't think there's anything
14 wrong with you having asked about it. And I don't think
15 there's going to be anything wrong with now you say
16 you've seen this video, he says; but he didn't turn it
17 over to your lawyer, did you. Did anyone give it to
18 him? If this, you know -- I think you can ask all those
19 questions.

20 SOLICITOR LEGETTE: Yes, your Honor.

21 THE COURT: Seems to support his case.

22 SOLICITOR LEGETTE: Yes, your Honor.

23 MR. PLEXICO: Your Honor, I think that borders on
24 attorney/client privilege. We don't have to turn it
25 over because we're not using it, and --

5-9-18 STATE V SANDERS

GREGORY SANDERS - CX - LEGETTE

1 THE COURT: It doesn't border on attorney/client
2 privilege in any way.

3 MR. PLEXICO: Because I'm the one who showed it to
4 him.

5 THE COURT: He's the one that brought it up. The
6 defendant's the one that said it was on video. Okay.

7 Pumpkin, you know anything about the food? Is it
8 on its way?

9 MADAM CLERK: Yeah, she's on the way.

10 THE COURT: Perfect. Okay. Well, are we getting
11 close to wrapping him up?

12 SOLICITOR LEGETTE: Yes, your Honor, we are, very
13 close.

14 THE COURT: Okay. Let's bring the jury back out,
15 then.

16 Ms. Legette, do you think you're going to need a
17 rebuttal?

18 SOLICITOR LEGETTE: I don't think so your Honor.

19 THE COURT: Okay. We're ready, sir. Okay.

20 JURORS ENTER COURTROOM 12:25 P.M.

21 THE COURT: Welcome back, ladies and gentlemen.

22 All right. Ms. Legette, continue.

23 SOLICITOR LEGETTE: Thank you, your Honor.

24 CONTINUE CROSS-EXAMINATION

25 BY SOLICITOR LEGETTE:

5-9-18 STATE V SANDERS

BY THE COURT

1 Q. Just briefly, Mr. Sanders. But you ran after this
2 was all over? You ran after it was all over?

3 A. Yes, ma'am.

4 Q. Okay. Nobody followed you?

5 A. My girlfriend. Are you talking about out of them?

6 Q. Yeah, after that. You ran, nobody followed you.

7 A. I done ran, cause like I say, me and my girlfriend,
8 so.

9 Q. Okay. So nobody followed you?

10 A. No, ma'am.

11 Q. Nobody tried to stop you?

12 THE COURT: That's a no, for the record?

13 A. No. My bad. No.

14 BY SOLICITOR LEGETTE:

15 Q. And but, you went to the house on Second Street?

16 A. Yes, ma'am.

17 Q. All right.

18 SOLICITOR LEGETTE: Thank you. I have nothing
19 further.

20 BY THE COURT:

21 THE COURT: Mr. Plexico?

22 MR. PLEXICO: I don't have anything further, Judge.

23 THE COURT: All right. You may step down, sir.

24 Anything further, Mr. Plexico?

25 MR. PLEXICO: No, your Honor. Defense would rest.

5-9-18 STATE V SANDERS

BY THE COURT

1 DEFENSE RESTS.

2 BY THE COURT:

3 THE COURT: Ladies and gentlemen, at this time the
4 Defense also rests their case. Again, there is a matter
5 of law we need to take up. I expect your pizza to be
6 delivered any minute now, so what I am going to ask the
7 bailiffs to do is this. Go ahead and bring you your
8 pizza, you eat.

9 Mr. Foreperson, there are some matters I need to
10 take up with the attorneys. What we have left to do in
11 this case, the lawyers have to give their closing
12 arguments, and I have to charge you on the law that's
13 applicable to this case. So, when your pizza comes,
14 start eating. When you are done eating, sir, will you
15 please knock on the door. We'll bring you back in here.
16 We'll hear the closing arguments, I'll charge you, and
17 we'll get this case sent to you. Okay?

18 Again, do not begin discussing this case. Even
19 though you've heard all the evidence, you haven't heard
20 my charge on the law and closing arguments. It would
21 not be appropriate for you to start talking about the
22 case yet. Okay? Thank you.

23 JURORS LEAVE COURTROOM 12:28 P.M.

24 MOTIONS AND RULING:

25 THE COURT: All right. Mr. Plexico, you want to

5-9-18 STATE V SANDERS

BY THE COURT

1 renew your motions?

2 MR. PLEXICO: Yes, your Honor. I renew my motion
3 for a directed verdict based on the sufficiency of the
4 evidence and having heard the Defense's case, and would
5 move for a directed verdict of not guilty on murder, and
6 a dismissal of the indictment. And that would be the
7 indictment 2016-25, ending in 178. And therefore, also,
8 there would be no basis for a conviction on 2016-25-177,
9 and I'd move for a directed verdict based on the
10 sufficiency of the evidence.

11 THE COURT: All right. Well, respectfully, again,
12 based on your earlier argument, and certainly the
13 argument of the Solicitor's Office, I do think there's
14 evidence from which this jury could conclude Mr. Sanders
15 was guilty of murder and possession of a weapon during
16 the commission of a violent crime. Therefore, I'm going
17 to send it to them. I think it's for the jury to
18 determine in this case. Anything further?

19 MR. PLEXICO: I don't have anything further, your
20 Honor.

21 THE COURT: Okay. Ms. Legette?

22 SOLICITOR LEGETTE: Nothing from the State, your
23 Honor.

24 THE COURT: All right. I can tell you, by the
25 clock in the back of the courtroom -- and I know the

5-9-18 STATE V SANDERS

CHARGE CONFERENCE

1 food isn't quite here -- I am going to ask that all of
2 you be back at 1:00 o'clock. All right? So go grab a
3 bite to eat, and we are going to go ahead and do -- oh,
4 let's talk about the jury charges before we break, just
5 very quickly. But if you all are back at 1:00 o'clock,
6 we'll go ahead and argue and charge.

7 CHARGE CONFERENCE:

8 THE COURT: As far as my jury charge is concerned,
9 I know Crystal has talked to you about what you're
10 requesting to charge. I have my standard charge.
11 Obviously, that the indictment and the charge and the
12 arrest is not evidence. I talk about presumption of
13 innocence, reasonable doubt, the duty of the jury is to
14 find the facts, I'm the judge of the law. I talk about
15 direct and circumstantial evidence, the credibility of
16 the witnesses.

17 I also have the charge on prior inconsistent
18 statements. Also expert witnesses. I charge murder.
19 And of course, there is not the inference portion of
20 that. As to the gun and inferring malice, I just do it
21 without that, of course. And then, the charge of
22 possession of a weapon during the commission of a
23 violent crime.

24 Then, I charge self-defense, which includes,
25 obviously, the elements of self-defense, which is

5-9-18 STATE V SANDERS

CHARGE CONFERENCE

1 without fault, imminent danger, and no other way to
2 avoid the danger. And then, within that, I talk about
3 contemptuous language, mutual combat, defense of others,
4 and a right to act on appearances, and words accompanied
5 by hostile acts, prior difficulties, size and age, the
6 victim's reputation and any threats by the victim. And
7 then, just my normal standard at the very end.

8 And my understanding from Crystal is that you both
9 have seen the verdict form. Is there any objection to
10 the verdict form from the State?

11 SOLICITOR LEGETTE: I just wish you could flip it,
12 but I understand you flip it each time.

13 THE COURT: Okay. Anything from the Defense?

14 MR. PLEXICO: Your Honor, I would ask that you
15 charge defense of others, too. I think you said that.

16 THE COURT: I did say that.

17 MR. PLEXICO: Okay. And I would object to an
18 offense on prior -- a charge on prior inconsistent
19 statements. I don't think there is any inconsistent
20 statements that go to the heart of the matter involving
21 the shooting of Tyhira Harrington. I don't think it
22 would be proper on a collateral matter that does not
23 affect the shooting.

24 COURT REPORTER: *Does not affect?*

25 MR. PLEXICO: The shooting. The actual time of the

5-9-18 STATE V SANDERS

CHARGE CONFERENCE

1 shooting, if you want to go on the time of the shooting.

2 THE COURT: Well, what's the State's position on
3 that?

4 SOLICITOR LEGETTE: Your Honor, I would disagree.
5 I believe that Marquis Alston, in a prior statement, and
6 based on the statement of the defendant, witnesses have
7 indicated he said one thing. He said that he did not
8 say it. So I would believe that would be also
9 considered a prior inconsistent statement, but that is
10 our belief, your Honor.

11 THE COURT: I think it's appropriate in this case.
12 I don't think there's any question that when Randy White
13 testified, there was issues about a prior statement. So
14 that's obviously for them to determine. I think there's
15 also potential as to the defendant as well, so. I think
16 it's appropriate. Anything else?

17 SOLICITOR LEGETTE: Not from the State.

18 THE COURT: Anything else, Mr. Plexico?

19 MR. PLEXICO: Not from the Defense. No, your
20 Honor.

21 THE COURT: All right. Go grab a bite, you all.
22 Be back at 1:00. I know I'm giving you all a short time
23 frame, but we need to get going. Okay?

24 OFF THE RECORD 12:33 P.M.

25 BACK ON THE RECORD 1:15 P.M.

1 BY THE COURT:

2 THE COURT: Okay. And do the lawyers have whatever
3 they need as far as evidence is concerned?

4 SOLICITOR LEGETTE: Can we have two minutes?

5 THE COURT: Pardon?

6 SOLICITOR LEGETTE: Can we have two minutes?

7 THE COURT: Yes, you have two minutes.

8 MR. PLEXICO: I do have an objection to one of your
9 jury charges, too, Judge.

10 THE COURT: Sure. What is it?

11 MR. PLEXICO: That would be on mutual combat.

12 THE COURT: Oh, okay.

13 MR. PLEXICO: I don't think that mutual combat,
14 according to the evidence, comes into play in this
15 particular situation, your Honor, involving a shooting.

16 THE COURT: Tell me why.

17 MR. PLEXICO: I just don't see where the evidence
18 in the record supports a mutual combat charge.

19 THE COURT: Actually, I have to agree with you on
20 that. I don't think this is a mutual combat case.
21 Because usually, you have that as a case where people
22 fight, and then the defendant leaves and comes back.
23 And so, that happens oftentimes. Because his defense,
24 from everything I hear, is just that he didn't engage in
25 anything. I mean, if you took it according to him.

5-9-18 STATE V SANDERS

CHARGE CONFERENCE

1 MR. PLEXICO: Yes, your Honor.

2 THE COURT: I mean, also, and also testimony is, is
3 that the car came on them. It wasn't like -- so I'm
4 going to agree with Mr. Plexico on that. I don't think
5 I'm going to charge the mutual combat portion of this.
6 I just don't think it is appropriate. Anything else?

7 MR. PLEXICO: I have nothing else, your Honor.

8 THE COURT: Okay. Okay. All right. Well, if
9 we're ready to go, let's go ahead and bring them out.
10 We good to go?

11 MR. PLEXICO: Yes, your Honor, I'm ready.

12 THE COURT: All right. Ladies and gentlemen, for
13 those of you that are back there, if you would, please,
14 during the closing argument, I don't need you coming and
15 going from the courtroom. You need to keep your seat.
16 Also, I don't want to see any head bobbing or back-and-
17 forth shaking, that type of thing. Sometimes people
18 have a natural tendency to do that. Don't do it. Okay?
19 Because if not, I'll have one of the deputies come tap
20 you. Okay? Thank you.

21 Let's bring the jury out.

22 SOLICITOR LEGETTE: Your Honor, one matter?

23 THE COURT: Sure.

24 SOLICITOR LEGETTE: Close the door.

25 THE COURT: Sure. Can we close the door for just a

5-9-18 STATE V SANDERS

CHARGE CONFERENCE

1 second? I'm sorry, I apologize. Can we just close the
2 door for a quick second? Yes. Hold on.

3 SOLICITOR LEGETTE: Just the order of closing. We
4 did not specify the order of closing.

5 THE COURT: Okay. Well, he put up evidence.

6 SOLICITOR LEGETTE: Yes, ma'am.

7 THE COURT: So again, I think you need to open in
8 full, he can respond, and then you can respond. Okay?

9 SOLICITOR LEGETTE: Okay. Thank you, your Honor.

10 THE COURT: Also I want to make sure you're very
11 careful not to burden-shift in any way. This whole
12 issue of the video, you could ask about it, but you
13 can't throw anything in your closing about it. Okay?

14 SOLICITOR LEGETTE: Yes, your Honor.

15 THE COURT: I just want to make sure you understood
16 that.

17 SOLICITOR LEGETTE: Yes, your Honor.

18 THE COURT: Okay. All right. Let's bring them in.

19 JURORS ENTER COURTROOM 1:18 P.M.

20 THE COURT: All right. Did you all get something to
21 eat?

22 FOREPERSON: Yes, ma'am.

23 THE COURT: Very good. Ladies and gentlemen, what
24 we have to hear left is closing arguments from the
25 attorneys, and I'm going to charge you on the law.

5-9-18 STATE V SANDERSCLOSING - STATE - LEGETTE

1 What's going to happen is Ms. Legette is going to open,
2 Mr. Plexico is going to respond, and then she is allowed
3 to briefly respond after that. Then, I charge you on
4 the law that's applicable to this case, and we send it
5 to you. Okay? So, if you would give Ms. Legette your
6 attention, please.

7 SOLICITOR LEGETTE: Thank you, your Honor. May it
8 please the Court?

9 THE COURT: Yes.

10 SOLICITOR LEGETTE: Mr. Plexico.

11 CLOSING ARGUMENT ON BEHALF OF

12 THE STATE BY SOLICITOR LEGETTE:

13 SOLICITOR LEGETTE: Good afternoon. When I told
14 you -- when I met you on Monday, May 7th, 2016 [sic], I
15 told you this was a case about a deadly promise. A
16 deadly promise. A promise about Marilyn Garvin wearing
17 a black dress, buying a black dress, so she could wear
18 it, because Greg Sanders was going to kill her daughter.
19 Marilyn Garvin came before you on Monday, May 7th,
20 wearing a black dress. I didn't ask her about whether
21 she wore it to the funeral of her daughter, but she wore
22 it on Monday. A black dress.

23 Greg Sanders, his own words, his own words, and his
24 truth to those word, his words, a man of his word, are
25 what brought us here today. Now, my daddy was a man of

5-9-18 STATE V SANDERS

CLOSING - STATE - LEGETTE

1 his word, and I am in no way equating Greg Sanders to my
2 daddy. If my daddy ever told you something -- he had a
3 saying. He said, if I tell you huckleberries are ripe,
4 get your buckets. My daddy was the kind of man that my
5 brother and I -- he's three years younger than me. We
6 fought as kids, strong personalities, we'd fight. I
7 remember one particular time my daddy said, okay, you
8 all in here fighting, I got to go to church. But when I
9 get back, you're gonna get a whipping. Now, I don't
10 know if people still whip their kids or not. I don't
11 have any children. But my daddy, he told something, you
12 could put -- take that check to the bank.

13 Now, my daddy didn't get home 'til late that night.
14 My mom was with us, and we was like, mama, can you stop
15 him, you know, can you -- my mama was like, huh-uh, I
16 can't help you. My daddy got home, and it was time for
17 bed. But I can tell you this. Me and my brother got a
18 whipping.

19 One morning before school, we were fighting in the
20 house. My dad come running down the hall with a belt,
21 and he whipped us before school, and made us get on the
22 bus, because my daddy was a man of his word.

23 Greg Sanders is a man of his word. He told Marilyn
24 Garvin on May 7, 2016, standing with her boyfriend
25 Samson Williams, you better buy a black dress because

5-9-18 STATE V SANDERS

CLOSING - STATE - LEGETTE

1 I'm going to kill your daughter.

2 Now, ladies and gentlemen, you've heard a lot of
3 stuff in here today and throughout this week. I'm just
4 going to cut to the chase. You've been waiting a long
5 time. You got lives to go back to. I thank you. It's
6 been my privilege to stand before you. But you got
7 lives to go to, so I'm going to get on with it.

8 A lot of the witnesses we brought before you, some
9 of them were chain witnesses. I apologize for Ms.
10 Stephens having to come in here and read up and down for
11 fifteen minutes about what happened with the evidence at
12 SLED. All right. Mr. James came in here, same thing.
13 But there are just a few things I want to direct your
14 attention to.

15 The judge in this case is going to tell you what
16 the law ultimately is, but my job here today is to tell
17 you what the State's case is, because our burden is
18 beyond a reasonable doubt. It is a heavy burden to
19 bear. Yes, we take full responsibility for bearing it.
20 Our job is to prove to you beyond a reasonable doubt
21 that Greg Sanders committed a murder; that he also
22 committed a possession of a weapon during the commission
23 of a violent crime; and that this is not self-defense.

24 So before we tell you what the State has proved,
25 let us tell you what the State has disproved. Now, I

1 direct your attention here. This is not self-defense.
2 This, ladies and gentlemen, is not self-defense. So
3 let's discuss self-defense. What is self-defense? It
4 requires four things: be without fault in bringing on
5 the difficulty. The defendant must have -- the
6 defendant must been in imminent danger of losing his
7 life or suffering serious bodily injury. A reasonable
8 person would have entertained the same thing. And he
9 had no other means of avoiding the difficulty. So let's
10 examine this. Let's examine. My daddy, nice man. So
11 what we going -- we going to apply the law to the facts.
12 That's what we're going to do. When all four of these
13 things exist, then self-defense is proven, but all the
14 State needs to do is disprove one of the elements,
15 because you have to have all four to be able to have a
16 self-defense. And self-defense is a complete defense.
17 So, if you find that the defendant acted in self-defense
18 on the night of May 10, 2016, you must let him go, set
19 him free.

20 This case comes down to two issues: malice
21 aforethought or self defense. Either he killed her with
22 malice in his heart, or he acted reasonably, and you
23 must let him go.

24 Let's see what happened. Was Greg Sanders without
25 fault in bringing on this difficulty? Ask yourself the

5-9-18 STATE V SANDERSCLOSING - STATE - LEGETTE

1 question, what are the facts? What did Greg Sanders
2 say? You better buy a black dress, because I'm going to
3 kill your daughter. That's one thing that shows that
4 Greg Sanders had it in his mind days prior, three days
5 prior, that he was going to kill Tyhira Harrington. For
6 whatever reason he had in his mind, whether she took him
7 to Allendale and had him set up, he had intended to kill
8 her on that day when he saw her mother and Samson
9 Williams. Now, he denies it, but we'll get around to
10 that.

11 Now, Marilyn Garvin, text message sent to her
12 daughter -- sent to her, when she then calls her
13 daughter and says basically, somebody, Mr. Sanders, Greg
14 Sanders, with his nickname, behind the house, trying
15 something. Okay. You have all these things going on.
16 Tyhira Harrington, eventually, yes, she had alcohol in
17 her system. It's not against the law to have alcohol in
18 your system. Yes, she did.

19 Greg Sanders started the whole thing. He
20 threatened to kill her. Her mother told her what he
21 said. She was confronting him about what he had said
22 and why he had said it. Not only that, but Greg Sanders
23 was behind the house. Someone called and told her this
24 information. Somehow, she realized Greg Sanders, what
25 are you doing? So yes, she accosts him, but Greg

5-9-18 STATE V SANDERS

CLOSING - STATE - LEGETTE

1 Sanders started the entire thing. He started the entire
2 thing. And remember, now, there was an issue about Greg
3 Sanders offering up his girlfriend to fight. You heard
4 this over again. You heard this one time from Marilyn
5 Garvin. The night of May 7th, he offered up his
6 girlfriend to fight. She didn't want to fight. It come
7 up again with I believe Yhantyse Priester, Daisy,
8 talking about the girlfriend wanting to fight. The
9 girlfriend didn't want to fight, but the stripe thing.

10 Not only that, ladies and gentlemen. What else
11 happened in this case? What else happened? Mr.
12 Sanders' words, the words in and of themselves would
13 cause a reasonable person to think, okay, well, I guess
14 there's going to be a fight. He brought it on himself.
15 So it is the State's contention that Mr. Sanders is not
16 without fault in bringing on this difficulty. He
17 started it, for whatever reason, on May 7, 2016, and
18 again on May 10th, when he was trying to get in her
19 house.

20 So let's talk about this. He must have been in
21 imminent danger of death or bodily injury, or believe he
22 was in such danger. Was he in such danger? Let's
23 compare these two people. You saw Greg Sanders on that
24 witness stand today. You've seen him in court all day
25 long. What does he look like? Randy White called him,

5-9-18 STATE V SANDERS

CLOSING - STATE - LEGETTE

1 oh, he's cocky, he's muscular. He stood beside me,
2 taller than I am. And yes, he is muscular. Yes, he is
3 -- I'd call him a stocky individual, based on what I
4 have seen. But let's compare these two individuals,
5 shall we, then? Gregory Sanders. Muscular, strong,
6 cocky, a man, and he has a gun. He has a gun, the
7 element of surprise, a gun. Whereas, Tyhira Harrington,
8 skinny, 105 pounds.

9 Now, ladies and gentlemen, I've been -- I've been
10 rather, I won't say plump, but I've been a thick woman
11 most of my life. So I didn't realize what it meant to
12 be 105 pounds, skinny like that, so I had the
13 pathologist show you that picture. I didn't do it to
14 offend any of you. I didn't want to offend her as well,
15 her memory, which is why we redacted all of the
16 inappropriate things. But I wanted you to see what 105
17 pounds looks like on a woman. Petite. She had no
18 weapon, none. Zero. No gun. You heard Randy White say
19 it one-on-one. It was one-on-one. You heard Yhantyse
20 Priester say it was one-on-one. Possibly two-on-one,
21 but Tyhira Harrington was the only one. She was the
22 only one. One-on-one, ladies and gentlemen.

23 He told Randy to walk away. Is it reasonable to
24 believe that Greg Sanders was in fear of imminent death
25 or bodily injury? Is that reasonable? That's what you

5-9-18 STATE V SANDERS

CLOSING - STATE - LEGETTE

1 have to ask yourselves. Is it reasonable that he was in
2 fear? According to the witnesses, he was not in fear.
3 According to the witnesses, he was not in fear.

4 And the eyes that I saw in this courtroom today,
5 when he took that gun and put it in his pocket and
6 pulled it out, that was the man the night of May 10,
7 2016. The eyes that I saw was in his element. He
8 pulled out the gun, and did you notice how he did it?
9 Because remember the pathologist said that that the shot
10 goes across her here, from left to right. It goes
11 across. How did he do it? He pulled it out, then it
12 was pow. Just like that. Pow. Just like that. And
13 then he hopped and ran away. Imminent bodily injury.
14 Was he in any imminent bodily injury? Imminent death,
15 danger? What did he tell Randy? Walk away, you don't
16 want to be a witness to this. Not that Randy -- Randy,
17 you are going to get it; Randy, I'm going to have to
18 hurt you; none of that. Randy, you don't want to be a
19 witness.

20 Now, ask yourself a question. If you are getting
21 -- you heard him in here today -- you're getting lynched
22 by four people. Four. You've been lynched earlier in
23 the day. You were lynched again that night. You fought
24 your way out that time, but you didn't make it home.
25 Remember, now, you fought your way out of the apartment.

5-9-18 STATE V SANDERS

CLOSING - STATE - LEGETTE

1 Door closed, you fought your way out. Three women, one
2 man. You fought your way out. But somehow, you got
3 intercepted on the way home, never got home, but you end
4 up with a gun. How did you get the gun? Did you really
5 get lynched in the apartment with the three women, where
6 you couldn't get away, where you had no way out, but
7 suddenly, you have a gun thirty minutes later?

8 And now, ladies and gentlemen, I don't mean to
9 insult any of you. I did put up there a woman. Tyhira
10 Harrington was a woman, 105 pounds of a woman. Now,
11 ladies and gentlemen, I know many men, and I don't want
12 to be insulting here or offensive. But men, the men
13 that I know -- you are being lynched by four people. So
14 there's two men, and there are two women. Greg Sanders
15 -- you all saw how big Yhantyse was. Out of his own
16 mouth, not mine. You all saw how big she was.

17 You all saw -- did you all see Marquis Alston? Oh.
18 Did you all see him? Marquis Alston, did you see how
19 nasty Marquis Alston was when he came in here? I told
20 you all, there were some people who did not want to be
21 here. Marquis Alston didn't want to be here. You saw
22 him walk in, all cocky. You saw him take that chair and
23 -- he wouldn't even listen to the judge. Did you see
24 Marquis Alston?

25 And then, there was Randy, another man. So is it

5-9-18 STATE V SANDERS

CLOSING - STATE - LEGETTE

1 reasonable -- are you really in imminent fear of death
2 or imminent bodily injury by shooting the smallest
3 person there? He shot the smallest person there.
4 Yhantyse? No, he didn't shoot her. Randy? No, he
5 didn't shoot him. Marquis, who you -- all of you have
6 seen how nasty Marquis can be. And I believe if Marquis
7 came to lynch you, oh, you would get lynched.

8 Speaking of which, lynch is a bad, bad word. Bad
9 connotation. Beat up is a better phrase, but. Marquis
10 Alston, if he's coming for you, I believe he wouldn't
11 come for you. But you shoot the smallest person there,
12 not because she's pacing back and forth, not because
13 she's pacing back and forth; no, no, no, no, no.
14 Because you might have owned her, you was tied, because
15 you told -- you promised her mama, you promised her,
16 that deadly promise, you promised her she was going to
17 wear a black dress. That is not reasonable. You are
18 not in imminent fear of deadly injury or bodily injury.
19 It is not -- it is not reasonable.

20 Listen to his words. How frightening are his
21 words? What did he -- what did Yhantyse say he said?
22 All these people out here, who you think gonna ride?
23 Who you think gonna ride? That means -- you know what
24 that means, ladies and gentlemen? You know what ride
25 means? Because mama, in her text -- mama's text was --

5-9-18 STATE V SANDERS

CLOSING - STATE - LEGETTE

1 I admit, mama's text was offensive, and I apologize for
2 -- for the -- for the words. Mama said she's angry,
3 very angry. I can imagine she very likely was angry
4 about him threatening to kill her child, her only child.
5 But what did she say in the text? She said she was a
6 ride or die. I looked up that word, ride or die. It's
7 in urban legend, urban dictionary, and even on *Bad Boys*
8 *I*. I'm not sure if you all watch movies, but on *Bad*
9 *Boys I*, they talk about how we ride together, we die
10 together. Bad Boys for life. Ride. Ride means, I'm
11 with you, I'm with you. Her mama say I'll ride or die;
12 I'm with you. And what did Greg Sanders ask that child
13 that night? What did he say? All these people out
14 there, who you think gonna ride with you? Who you think
15 gonna be with you? Who gonna be there for you?

16 He wasn't afraid of anybody. He wasn't fearing any
17 man. Not any man and not any woman, because you know
18 what he had? If you could've seen his eyes. The eyes,
19 the eyes tell the story. The windows to the soul. And
20 what I saw in those eyes today when he pulled that gun
21 and he shhh. Eyes of a killer. He was not in fear. He
22 was not in fear. He knew there was nobody out there who
23 would ride for her, and literally no one rolled for her.
24 No one was there for her. No one stopped him, because
25 he knew he couldn't be stopped. He couldn't be stopped.

1 Mama's text. Mama's text, ride or die. Yes, it is
2 offensive. Now, Ms. Garvin, let's just go ahead and
3 deal with the pink elephant. Ms. Garvin did not cause
4 her daughter's death. That question got asked in here
5 on Monday. That question was asked of her, did she stir
6 up this pot. Ms. Garvin told you she was trying to
7 protect her daughter. She was trying to warn her
8 daughter about Mr. Sanders. That's simply what she was
9 trying to do. She'd gotten it. Mr. Sanders said today
10 that, basically, he didn't say any of those things; that
11 everyone else in here that has come before you has
12 somehow not been telling you the truth. He's the only
13 person that is the arbiter of the facts.

14 So Marilyn Garvin made up on the 7th -- let's go
15 back. Look at this. I wish I had a pointer. Look at
16 this. He says May 7th, at 12:04 a.m. She didn't just
17 come in here and tell you that Greg Sanders told her
18 that, threatened her daughter, that deadly promise, but
19 she actually texted her daughter on May the 7th, three
20 days prior to her death, she texted her and told her,
21 he's talking about killing you. He talking about
22 killing you.

23 Mama just made that up, and sent a text to her
24 daughter that was just to create some problem? No,
25 ladies and gentlemen. No. No. Ladies and gentlemen,

5-9-18 STATE V SANDERS

CLOSING - STATE - LEGETTE

1 he was not in fear of harm. He pulled that trigger. He
2 pulled that gun, pulled the trigger, and he murdered
3 Tyhira Harrington. He was not in fear of his life. It
4 was murder, and it was not self-defense. Would a
5 reasonable person have been in fear of imminent danger
6 or bodily injury? Reasonable. What is a reasonable
7 person? Would a reasonable person have been in fear of
8 imminent death or bodily injury? So we have to examine
9 some things, ladies and gentlemen.

10 The way he explained all this and how it all went
11 down, I asked him some questions and we went over some
12 pictures, for him to tell me exactly where he was
13 standing when all this was happening. Remember he told
14 us that -- that he was -- she pulled into the parking
15 lot? I'm sorry, I don't have a better picture of this,
16 but he pulled in -- she pulled into the parking lot
17 here. She pulled into the parking lot, and that,
18 basically, he had his back to the wall. He told several
19 different things, but his back was against the wall.
20 But the blood is out here in the street.

21 And did you see what happened whenever he said he
22 shot her? He turned and he ran backwards, but his back
23 was against the wall. How can you run backwards if your
24 back is against the wall? But if you examine the
25 photographs, where the blood is in the middle of the

5-9-18 STATE V SANDERS

CLOSING - STATE - LEGETTE

1 street, they were in the street. And if you look at the
2 pictures, there's plenty of places to go. Plenty of
3 places to go. Was it reasonable for him to believe he
4 was in imminent danger?

5 Tyhira Harrington had no weapons. The witnesses
6 all say this. She was skinny, 105 pounds. We've been
7 over it before. Was it reasonable? There was no
8 fighting, it was one-on-one. She was the woman. She
9 was a woman. They want you to believe she was violent.

10 Mr. Sanders said that there was a lynching. They
11 lynched him inside the apartment that night. He got
12 lynched earlier. Everybody is upset with Greg Sanders
13 for some reason. They're all upset. A group of six --
14 five or six people lynched him earlier in the day.
15 They're associates of Tyhira's ex-boyfriend. They
16 lynched him earlier in the day, and then he talks about
17 how, you know, he's got these injuries, and they were
18 caused, apparently, by these -- these lynchers, who all
19 hit him, these injuries that appear to be in a healing
20 state. You have the pictures yourself. I can't find it
21 right now, but all the pictures that appear to be in a
22 healing state of Greg Sanders, with all the scabs over
23 them. Ladies and gentlemen, you'll be able to see them
24 for yourself.

25 He says he was lynched earlier, and then, lynched

5-9-18 STATE V SANDERS

CLOSING - STATE - LEGETTE

1 in the apartment, but check out this one thing. So the
2 pathologist actually has these diagrams, where she
3 actually took photographs, and she actually diagramed
4 the injury to the victim's body. You'll be able to
5 examine this. She was documenting other injuries,
6 bruises. Remember he said he fought his way out? But
7 she has no injuries, except the head shot, where he shot
8 her. No injuries. It did not happen. It did not
9 happen, ladies and gentlemen. There was no lynching
10 inside the apartment. The witnesses have already told
11 you there was no lynching inside the apartment. 105
12 pounds.

13 Now, as far as defense of others, ladies and
14 gentlemen, the fact of the matter remains, even if
15 Javasha -- I'm sorry -- even if Tyhira Harrington
16 offered to fight Greg Sanders, there were never any
17 licks passed. No licks were ever passed, not between
18 Tyhira and the girlfriend, Javasha Forrester; not
19 between Tyhira and Greg Sanders. No one ever touched
20 him. No one ever touched him. Think about this. Is it
21 reasonable? You got in a -- you were beat up, lynched
22 earlier in the day. Your injuries say that they're
23 older, but you got beat up earlier in the day on May
24 10th. You got beat up again that night on May 10th.
25 People laid hands on you. You couldn't have gotten home

5-9-18 STATE V SANDERS

CLOSING - STATE - LEGETTE

1 and gotten that gun. You had the gun on you at least
2 when you said you were lynched in the apartment, but you
3 didn't take out the gun and shoot anyone. They had
4 already laid hands on you. Maybe eight people have laid
5 hands on you, and out of the eight people you didn't
6 shoot one single person. Not fire one single round from
7 that gun. Yet, nobody's fighting with him. There's a
8 confrontation. You're so afraid -- you're so afraid of
9 the 105-pound woman, the girl that would go to the right
10 or go to the left. Your cousin and boisterous Marquis
11 Alston. Nobody's fighting, but you still fired the gun,
12 and you shoot the smallest person dead. Is that
13 reasonable? It is not reasonable. It was murder. It
14 was not self-defense.

15 And finally, ladies and gentlemen, we've been
16 belaboring it a long time, but I've got to make sure you
17 understand. He had no other means of avoiding the
18 difficulty. That means he couldn't get away. Remember
19 I told you -- remember he told you his back was against
20 the wall. Back against the wall, they were coming at
21 him from all angles. He told you that the car itself
22 was in the parking lot, then he tried to change it, but
23 the car was in the parking lot. Her blood's in the
24 street. The pathologist told you, and Ms. Ila Simmons,
25 who Mr. Plexico wanted you not to think was an expert;

5-9-18 STATE V SANDERS

CLOSING - STATE - LEGETTE

1 I'm not sure why because all of the stuff belongs to Mr.
2 Sanders. He admitted the gun was his, the shirt was
3 his, all of the stuff was his. But here's the thing.
4 She's got stippling around her eye. The pathologist
5 told you it's so close, it's so close. Did you see how
6 he roll up on me and shot me? Just like this, boom.

7 They were in the street. They were in the street,
8 ladies and gentlemen. He was in the street. Remember
9 how close I was to him. He didn't tell me to move back.
10 Huh-uh. Huh-uh. He didn't say move back. No, no.
11 Move back a little bit, move back a little bit, come on
12 up a little bit, come on up a little bit. What did he
13 do? He pulled that gun out of his pocket, and his eyes
14 told the story. Boom. He was just that close. And if
15 he was just that close, ladies and gentlemen, look at
16 this blood. That blood came from the one wound she had,
17 and that blood's in the street. And you can have these
18 pictures, and I want you to take your time in your jury
19 room, and look at these pictures, and see what it's --
20 these dots are, where they're actually in the street.
21 He was in the street.

22 You saw him demonstrate how close he was to me. He
23 was close, inches. The experts told you, he was within
24 inches of her. It was murder. It was not self-defense.

25 These pictures right here. How close he was. One

5-9-18 STATE V SANDERS

CLOSING - STATE - LEGETTE

1 thing about self-defense. I asked him, it's self-
2 defense, huh? Okay. Did you tell about a lynching
3 earlier in the day? No. How about the lynching at the
4 apartment? No. How about when you had to shoot her
5 because you was getting ready to get lynched? I didn't
6 have no phone. But you had to go by the police
7 department to get to the house on Second Street. But
8 you still didn't say, hey, hey, I had to kill this chick
9 because, you know, her and her friends were trying to --
10 trying to beat up on me, lynch me and my girlfriend.
11 Nothing. Nothing. He just walked by the police
12 department. You walked by. What's the first thing you
13 do? Self-defense? Call somebody. Tell somebody, tell
14 the police. What was the second thing he did? He was
15 getting rid of evidence. Standing behind a trash can.
16 Standing behind the trash can, taking off clothes.
17 Taking off clothes behind a trash can? What are you
18 doing with the stuff? What are you doing? Why don't
19 you just take it to the police?

20 And when he -- he did talk to the police, what did
21 he say? She was a nobody. She's a nobody. And what
22 did he next say? I got this injury from my girlfriend,
23 my girlfriend. My girlfriend punched me in the eye.
24 But today, no. Captain Williams was just -- well,
25 Captain Williams -- just didn't tell you all this, and

5-9-18 STATE V SANDERS

CLOSING - STATE - LEGETTE

1 he didn't say none of that. He didn't say any of it
2 today. His own words defeat his theory of self-defense.
3 Buy a black dress. Buy a black dress, because I'm going
4 to kill your daughter. You need to leave, you don't
5 want to be a witness, telling Randy, you don't want to
6 be a witness, because he had in his mind premeditation.
7 We're getting in the praise 2693 3053theory. I'm
8 getting ready to kill this chick; I'm getting ready to
9 handle this; you don't want to be a witness, Randy;
10 we're cousins. All these people out here, who you
11 think's gonna ride with you? His own words defeat the
12 self-defense claim. She must be a nobody.

13 Now, ladies and gentlemen, if you notice, he seemed
14 to have a really, really, really good memory. I asked
15 him about what they ate for -- what he ate for lunch on
16 Monday. He had to think about it. Came up with it.
17 He's had two years to think about this, to tell you
18 today his version of how it happened. Let's subtract it
19 all. Subtract. Without fault in bringing on the
20 difficulty? Subtract. No. He started it all. Being
21 in imminent danger or believes he was? Nope. Subtract.
22 He did not believe he was in any imminent danger,
23 evidenced by the fact that he shot the 105-pound
24 smallest person there, and told you don't want to be a
25 witness, who gonna ride with you. No, he didn't believe

1 he was any imminent bodily -- in any imminent danger.
2 None of that. Would a reasonable person have believed
3 the same? No. Subtract it all. It's not reasonable.
4 None of it's reasonable.

5 And then, no other means of avoiding the
6 difficulty. Ladies and gentlemen, he had plenty of
7 places he could go. Look at this open -- this open
8 area. This open area up there with the apartment. Open
9 area. He could have gone to the left, he could've gone
10 to the right. He could've gone behind himself, like he
11 showed me here today. They were in the street. He had
12 plenty of places to go. The street was open. He
13 could've walked away. He walked away, supposedly, when
14 he was lynched earlier in the day. He walked away,
15 supposedly, when he was lynched in the apartment. He
16 ran out. But suddenly, the 105-pound woman shows up by
17 herself. Nobody gonna ride for her. Or was it this, I
18 got the drop on you now, I promise your mama, and I'm
19 about to handle this. So, ladies and gentlemen, this is
20 not self-defense, this is murder. This is murder.

21 I told you we would talk about the State's case.
22 What is the State's case? We have the burden of proving
23 beyond a reasonable doubt that the defendant is guilty
24 of murder. What does that mean? The Judge herself will
25 ultimately tell you what the law is, but just so you can

5-9-18 STATE V SANDERS

CLOSING - STATE - LEGETTE

1 apply this to the facts of the case, I'm going to break
2 down -- I'm going to do a chart here. I'm going to
3 break down for you what the elements of murder are.

4 What is murder? Thank you. Murder is a willful
5 feeling of another person with malice aforethought,
6 express or implied. Murder she wrote. Murder she
7 wrote. What is murder. Examine the facts. I'll give
8 them to you very briefly. Willful. Did Gregory Sanders
9 willfully kill Tyhira Harrington. Yes, it was willful.
10 He showed you how he did it. And we've already shown
11 you that it was not self-defense. So the question is,
12 was it willful, was it unlawful. If there's no self-
13 defense, then you're not justified in shooting a person.
14 And there, in this case, is no self-defense. So the
15 willful killing. We know that she's dead, based on the
16 pathologist having autopsied her, taking a bullet out of
17 her brain. And we know that it's her; that it's not
18 another person. We've identified her as that person.

19 With malice aforethought, what is malice? Malice
20 is wickedness, a depraved heart, a person bent on doing
21 wrong, evil. Malice. Malice has to be aforethought,
22 meaning it has to be just before. It can't be an
23 accident. It can't be just something that happens
24 involuntarily, like many things that could happen as
25 opposed to that.

1 Accidentally. He could've come in here and told
2 you I accidentally pulled the trigger. He didn't say
3 any of those things. With malice aforethought? What is
4 malice? That is wickedness. Malice.

5 His statement to Marilyn Garvin, you better buy a
6 black dress, I'm going to kill your daughter.
7 Aforethought, that means he planned it, premeditated.
8 When he told her on May 7, 2016 that he was going to
9 kill her daughter, he meant every word of what he said.
10 He meant it. His heart was bent on doing wrong. He
11 told her, who do you think's gonna ride with you? He
12 told Randy walk away, you do not want to be a witness to
13 this. That is what malice is. That is what malice is.
14 Malice was in his eyes today when he pulled out the gun,
15 and pow. That is malice aforethought, ladies and
16 gentlemen. Evil.

17 Express or implied simply means -- express means it
18 could be expressed in words. He expressed his malice,
19 his hatred, his ill will, his evil intent, his
20 wickedness, towards Tyhira Harrington on May 7, 2016.

21 I'm just going to drive it home, beat it home,
22 ladies and gentlemen. Marilyn Garvin, Samson Williams,
23 and a text message all show you that actually happened.
24 He was going to clear his name that night, not just
25 having said, oh, she took him to get him set up. What

5-9-18 STATE V SANDERS

CLOSING - STATE - LEGETTE

1 did he leave out? The part where he said I'm going to
2 kill your daughter. Oh, he told -- he told you the
3 second part of it. He was gonna clear his name, but he
4 left out the one most important issue. He said it, but
5 he wasn't going to admit it here today. I understand.
6 Express, implied. Implied can be used -- can be
7 inferred by different things. Using a weapon, that kind
8 of thing. What we have here, murder. The murder of
9 Tyhira Harrington.

10 And ladies and gentlemen, not only that, the other
11 charge we have before you today is possession of a
12 weapon during the commission of a violent crime. What
13 is it? The defendant was in possession of a weapon
14 during the commission of a violent crime. The trial
15 judge will charge you that murder is a violent crime.

16 Now, ladies and gentlemen, understand this. If you
17 find the defendant not guilty of murder, then you stop;
18 knock on this door; tell the bailiff that we have a
19 verdict; because you can't even get to this one. If
20 he's not guilty of murder, then he is not guilty of
21 possession of a weapon during a violent crime. Simple
22 as that.

23 So let's go through this. The defendant, quite
24 obviously, Greg Sanders, in possession -- he admitted he
25 was in possession of the weapon. Can we go ahead and

5-9-18 STATE V SANDERS

CLOSING - STATE - LEGETTE

1 check those off? He admits he's in possession of the
2 weapon and during the commission of the violent crime.
3 Murder, this is what it's going to come down to. This
4 is going to be your issue right here. Murder is a
5 violent crime, because if have not gotten to murder by
6 this time, then this is going to be not a check. But we
7 submit to you, ladies and gentlemen, that this case is
8 murder.

9 So there is the State's case, ladies and gentlemen.
10 There it is, in a nutshell. All the rest of it,
11 separate the weak from the tears. The weak from the
12 tears. Sift it out. Sift it out. The gun in this
13 courtroom that the defendant had with him, that he
14 appeared to be getting ready to discard behind that
15 trash can, his gun, the one that he took with him when
16 he rolled or walked or ran by the police department, was
17 in the process, in our opinion, of being discarded.
18 That's the gun.

19 The clothes he had on had GSR on them. The victim
20 was shot at a close range, right in her left eye. He
21 promised her mama he was going to kill her. He promised
22 her, a deadly promise. That is the case, ladies and
23 gentlemen.

24 And apparently, according to Mr. Sanders, no one
25 else to be believed, because everyone else here,

5-9-18 STATE V SANDERS

CLOSING - STATE - LEGETTE

1 everyone else here has not told you what really
2 happened. Not even Captain Williams.

3 Ladies and gentlemen, I thank you for listening. I
4 thank you. And I told you before, when all the evidence
5 was in, I would come back, and I would ask you for
6 justice.

7 Marilyn Garvin, after she was berated for being a
8 drunken mother who stirred up a pot, I asked her what
9 she wanted. All she said was justice for her daughter.
10 I ask you all, ladies and gentlemen, to judge between
11 the defendant at the Bar and the case that the State has
12 put up. I submit to you this was not self-defense. He
13 did not have to shoot that girl. He could've walked
14 away. He did not have to do what he had promised her
15 mama he would. He's a man of his word.

16 Now, I ask you, ladies and gentlemen, to find
17 justice for Mr. Sanders for being a man of his word.
18 Find him guilty of what he said he would do, and what he
19 did. Find him guilty of the murder of Tyhira
20 Harrington, and find him guilty of possession of a
21 weapon during the commission of a violent crime of
22 murder. Thank you.

23 THE COURT: Mr. Plexico.

24 MR. PLEXICO: Your Honor, Madam Solicitor.

25 SOLICITOR LEGETTE: Mr. Plexico.

1 CLOSING ARGUMENT ON BEHALF OF

2 DEFENDANT BY MR. PLEXICO:

3 MR. PLEXICO: Okay. I want everybody to wake up
4 from their dreamlike state. Okay? This is not about
5 drama. This is about looking at the evidence, From
6 what I've heard the Solicitor say, if somebody
7 threatened someone last week, that means that that
8 person could go get a group of people, and then go drive
9 up on them at 12:30 at night, and leap out at them,
10 saying I'm going to F you up. Or next month or this
11 week. This was May 7th. And here's the whole point.
12 Even if he said that on May 7th, he wasn't there
13 starting anything with them. Okay? He's completely
14 without fault, and he's going to explain all this to you
15 when I put him up. Okay?

16 His behavior was backing up. They said look at the
17 testimony. I'll get to that. But completely without
18 fault. If he had risked serious bodily injury or death,
19 he would've had to abandon the little girl behind him.
20 Okay? And how else could he act with Rachet about to
21 drop one on him, and Randy White up there. And you can
22 argue about whether Yhantyse Priester was moving up with
23 Randy right beside of her, obviously. That was the
24 group coming up saying I'm going to screw you up.

25 And that four -- those -- those two girls, who went

5-9-18 SANDERS V STATE

CLOSING DEFENSE - PLEXICO

1 and got the backup, the boys. They didn't come
2 equipped, didn't have a weapon, and what was the
3 testimony? The testimony I got mine under the seat.
4 Okay? And that just shows how intense they were coming
5 at Greg Sanders and Javasha. And that's something --
6 you can't get around that. You can't get around the
7 attack. The group attack on those people walking down
8 the road, minding their own business.

9 Would a reasonable person at 12:30 have been in
10 fear of bodily injury, of serious bodily injury, with
11 Ratchet and the other guy. Big Yhantyse. Okay? All
12 right? And they want to dwell on the small one in the
13 group? Big deal. That's just the leader of the pack.
14 And speaking of the pack, this is the pack out of
15 Allendale. Apparently, they moved over to Estill.
16 Okay? And they brought their philosophy, ride-die
17 mother. Okay? What a -- what a philosophy to have to
18 bring your children up in. Do you doubt for a minute
19 the testimony about her being in a gang? No. That's
20 not really -- that's not -- there's no real doubt there.

21 So the State has to disprove self-defense in this
22 case beyond a reasonable doubt. Now, just look at this.
23 Is he with any fault that night of bringing on the
24 situation of violence that was directed at him? He's
25 not. You can -- oh, last year he did something; it was

1 two days ago; it was five days ago. Even if that was
2 true, it doesn't justify the attack that night. He's
3 completely without fault, totally without fault, in
4 bringing on the difficulty. That's a requirement of the
5 act. Could you reasonably retreat from that group
6 without being faced by them or leaving someone you love?
7 Don't we have a right to defend our loved ones? What is
8 it? Is there something wrong now? Did that stop. You
9 have to leave your -- your loved one behind? Or do you
10 stay and you protect your loved one? You back up, you
11 go away, you leave her. That's not a man at all.

12 And they all admitted they were moving up. She
13 moved up. Yhantyse. Randy White testified that he
14 moved up with her. Okay. Yhantyse said something was
15 going to go left. Been drinking all day, out of
16 control. Drink. Okay? They decided to go watch there
17 at the strip club. I don't know how these people do it.
18 Okay? I mean, what's their attitude? Okay? What are
19 they out to do to go get the boys, and then hunt him?
20 Completely without fault in bringing on the difficulty.

21 Was he in danger? Yes. We know he was in danger.
22 You can agree he's in danger. You might argue about how
23 much danger, because if your focus has been properly
24 put, just on Tyhira Harrington, and not as the leader of
25 the pack, you go, what were they all -- they all said

5-9-18 SANDERS V STATE

CLOSING DEFENSE - PLEXICO

1 they were moving up, except for Alston, and he was just
2 the most frightening fellow from Charlotte that I could
3 think of. I wouldn't want Ratchet bringing one down.
4 Okay? Because that's going to be pretty serious. So
5 that would be a hard lick.

6 She went and got a couple of them to back -- to
7 back them up. Oh, what else would have been the
8 purpose? Oh, we're going go get some dope. But that's
9 an excuse. Pretty poor excuse. But that also shows you
10 of little of what they'd been doing. Remember what the
11 fellow just said. They back up, but my client said that
12 he backed up; he was saying don't come any closer;
13 without fault; risk of serious bodily injury. You've
14 got a little girl behind my client, a small person
15 behind my client. They want you to dwell on Tyhira, not
16 on Javasha. That's undisputed in the evidence. But my
17 client said undisputed that they say back up, he backs
18 up my client. And do you have to sit there and allow
19 yourself -- and have we come to that in America? You
20 sit there and allow somebody to beat you down? No.
21 Thank goodness. You're out walking at night, you know,
22 good idea to carry at night.

23 But when you saw him get cornered over there by the
24 Solicitor, I didn't say a word. He's not a hothead.
25 He's not a hothead. But they came for him that night

1 saying we're gonna F you up, in the dead of night. He
2 was out walking, minding his own business, he had a
3 right to defend himself from serious bodily injury with
4 a problem he was minding his own business. He was
5 wholly without fault. Did he unload the gun? No. He
6 says he shot, she fell. Okay? They took off to safety.
7

8 And how can you really get away unless you abandon
9 -- is that what it -- it's his fault. He's a murderer
10 because he didn't abandon his loved one to a mob, a wolf
11 pack? Does that make him a bad man? It makes him a
12 hero, is what it makes him. It makes him brave. Okay?
13 They're moving in. Their mind's made up. He stopped
14 the lead person. That's just common sense. And that's
15 what he did, and he used that break. So he's supposed
16 to take off somewhere, and they're not chasing him, and
17 they're going to leave her alone? They were ready to
18 hurt anybody, and they were moving up together.

19 The law says self-defense, you have the right to
20 act on appearance, and you appear that a reasonable
21 person's going to wait, you can get some serious injury
22 out of this. And you have a right under the law to
23 defense of others. Those statutes, the law gives us
24 this to defend others. You don't have to abandon your
25 child out there and run off. You don't have to abandon

5-9-18 SANDERS V STATE

CLOSING DEFENSE - PLEXICO

1 your spouse. You don't have to abandon your best
2 friend. You could -- you could stay there and defend,
3 as if they could defend themselves.

4 What was the intent going forward? They had in
5 their mind initiation of some gang. How do you get
6 initiated. You have to kill somebody. Beat them down
7 like a dog. And you know that's serious. Just use your
8 common sense. Now, if he doesn't have self-defense, who
9 does? That's self defense. And it's -- can't be
10 excessive. Shot one. I'm going to shoot the whole
11 group. He shot, opportunity, they backed off, one ran,
12 one ducked, one froze, and that's what they did. You
13 know, any time somebody dies, it's serious. But you're
14 doing that kind of activity, and you think your going to
15 have -- and then have -- I don't understand what's going
16 on with the government. And then to call the behavior
17 wrong? Huh, that's not it. Yeah, they had their mind
18 made up to start with that Greg was in the wrong. And
19 you sit down and calmly and rationally think about this,
20 I'm glad he had a gun. I'm glad he wasn't hurt. You
21 should, too. You should feel that way, too. I'm glad
22 Javasha wasn't hurt. You should feel that way, too.
23 Why? They didn't start it. Now, I don't know where all
24 this is coming from.

25 I'm going to start going over some of the evidence

1 with you. And remember -- all right, you had officers
2 testify. You said Chief -- you had -- Officer Thomas
3 testified; you had Chief Collins testify, and they said
4 my client didn't say anything. I don't know where this
5 comes from with Alex Williams, you know. And you can
6 look at those pictures. What happens as soon as you get
7 -- you know, you're out working in the yard, and you're
8 cutting a tree or whatever, and you know, you've got a
9 -- you've got a cut on your hand or whatever it is, and
10 you're working with a tool, it scabs right over. That's
11 what it's supposed to do. But you drive out to the E.R.
12 and get you a couple of stitches. So, you know, that's
13 normal. So this idea they were old wounds doesn't make
14 any sense. And you can look at the -- it's State's
15 exhibit, Madam Court Reporter, 1?

16 COURT REPORTER: Which one?

17 MR. PLEXICO: Excuse me. Defense Exhibit Number 1.

18 COURT REPORTER: Is that it laying right over
19 there?

20 MR. PLEXICO: No, ma'am. Thank you. Here we go.
21 I have it. Thank you.

22 Looks pretty fresh to me. You can take this back
23 there with you. Okay?

24 And there's no evidence of any malice between my
25 client and his girlfriend of seven years. And somebody

5-9-18 SANDERS V STATE

CLOSING DEFENSE - PLEXICO

1 -- something's happened to him. He's got a red rash
2 from somewhere. You can't dispute that. And did he go
3 act out? No. This when he was cornered, okay? All
4 right? And he didn't feel like he had a way out, and
5 was that reasonable? I think it obviously was.

6 You heard from a lot of people here. You know,
7 that's -- you go out in the road, it shows you're out
8 fighting in the street. We're talking 12:30, 12:40, you
9 know, late at night. What are these people thinking? I
10 know what they were thinking, and I'll get to that.

11 There's no question this happened in the road,
12 because you can't move the blood stain. That's
13 something the State can't argue over.

14 Samson, let's think about Samson. He came in here
15 and told you the record. Man, he was slick, though.
16 Samson Williams, this is Marilyn Garvin's, the
17 shoplifter's boyfriend. They talked about his criminal
18 record and receiving stolen goods, grand larceny, and
19 shoplifting, too. And then he popped up and he saw,
20 yeah, I got six grand larcenies over in Allendale. I
21 guess they cleaned out Allendale and moved -- and moved
22 over to Hampton County. Okay?

23 So stealing is an act of deception, and taking
24 something that is someone else's and converting it to
25 yours. That's an act of deceit. You know, that's --

5-9-18 SANDERS V STATE

CLOSING DEFENSE - PLEXICO

1 it's wrong. You're a thief. You know, if you'll steal,
2 you'll lie. So what is this all about between them with
3 Marilyn? And he was saying, remember my client says he
4 just wanted to clear the air, make sure, you know, look,
5 there's nothing going on here. Tyhira's not afraid of
6 him. They're in the house talking. Everything's
7 peaceable. Samson says, well, I did -- might have left
8 for a minute. Do you see that? I might have left for a
9 minute. He's not saying they didn't assault him. He
10 says I don't know. Okay? Because you know the rest of
11 them aren't going to admit to it. And Mama's not going
12 to admit to stirring all this up. Okay?

13 So whatever's going on with Mama, and you've seen
14 the nastiness of all this, now, right after Mama stirs
15 this up and starts it, Mr. Sanders is assaulted. Okay?
16 He tries to clear his -- this is a man acting in the
17 right. He tries to clear his name. Okay? He gets
18 assaulted again. This isn't a man quick to a gun and
19 quick to his temper. Obviously, this takes a lot. He
20 has restraint. Okay? Now, all this is in the day time.
21 Yeah. These things are trouble. All right? Because
22 when somebody's sneaking up on you at night. All right?
23 And about driving a car into you, and then unloading the
24 car and coming at you, saying we're gonna F you up, do
25 you doubt for a minute they weren't that vile? You

5-9-18 SANDERS V STATE

CLOSING DEFENSE - PLEXICO

1 can't, reasonably. How angry would they have been? And
2 then, this stuff about he was supposed to be messing
3 with the gangs and all that. There's no evidence of
4 that. That's just more of the he said/she said stirring
5 stuff up that makes no sense, and makes my client guilty
6 of nothing. This is unfounded belief that --

7 What was it that Yhantyse Priester said about
8 Marilyn Garvin? She said -- I jotted it down. She said
9 she was hollering and angry. Okay? You can believe
10 that much, because it sure matches the tone of her text
11 message she sent her own daughter. Okay? And in all
12 this stuff where she's over -- she's living, even though
13 they kind of -- it's too big of an apartment with, you
14 know, kids there, Tyhira Harrington there, Yhantyse
15 Priester there, Tywana Bradley there, Samson there. I
16 mean, start adding them up. You know, they were just
17 packed up in there like, you know, cheese, a pack of
18 cheese.

19 I mean, a man didn't have the emotions of Mama over
20 there who keeps keep pushing that, and wouldn't let it
21 go. So what kind of effect did that have on it? Now,
22 and who is attacking my client? Friends of the baby
23 daddy, Tyhira Harrington's baby daddy. So, apparently,
24 it's reasonable to infer Marilyn Garvin got them all
25 stirred up. Well, yeah, that's -- what reason would my

5-9-18 SANDERS V STATE

CLOSING DEFENSE - PLEXICO

1 client have had to say any of that? I don't know what
2 the misunderstanding was. Okay? But if her mother was
3 stirring stuff up and all this came to light later, none
4 of this was reported, nobody was told this, unless she
5 felt really guilty about starting something, okay, where
6 her daughter went out -- went out to do whatever,
7 essentially a lynching.

8 I think black people -- clearly, everybody -- but
9 particularly black people know what lynching is. Okay?
10 That's where a mob of people, a gang of people, come up
11 and going to do you some harm and maybe hang you. It
12 doesn't take a law degree to know that. You can watch
13 that from watching Marshall Dillon. I guess I'm going
14 to date you all a little bit. But you know, you know
15 what a lynching is. Okay? And when you come out,
16 that's about what the size of it is. I'm going to hang
17 you and I'll stomp you down. And that's just a --
18 that's just an awful, awful thing.

19 Now, in all that that was going on, Marilyn
20 testified my client walked out. Do you think for a
21 minute after they had him over there, and all of those
22 tough girls were over there -- take a look -- they
23 weren't going to go to whooping on him. With everybody
24 else in there? You can believe what my client says is
25 reasonable to believe. Not what the State wants you to

5-9-18 SANDERS V STATE

CLOSING DEFENSE - PLEXICO

1 believe or what they're saying. They had to cover up
2 what they did, because, you know what, they should've
3 been charged with -- with attempted lynching, the rest
4 of them. That's what really should have happened. But,
5 you know, the State makes those -- those decisions.

6 So then, her little buddy gets in on the game. She
7 texts her over at the strip club. Of course, they've
8 been drinking all day, but they didn't drink -- they
9 didn't go in the strip club and drink. I guess they
10 thought it might make them look bad. Do you believe
11 that for a minute?

12 Okay. So they come back over, all right? Now, the
13 pot's still getting stirred. All right? They're angry
14 at my client. They pick up Ratchet and they pick up
15 Randy White. And what does Randy say? Randy says she
16 stomped the car. Okay? She went to the projects. And
17 by that time, she had gotten another email saying, oh,
18 his girlfriend's at your house; he's probably there,
19 too. What do they do? They got the back-up, got the
20 men. When ty see them, boom. Hit the brakes, pull up,
21 back up, pull over to the street they're on. It's not
22 like they had the self-control to go back. Remember,
23 drinking all day, out at the strip club, angry, out
24 driving a car, .13 at least on the B.A., I think it was.
25 And what else?

1 And then, I didn't understand what pathologist
2 said. And then, they pulled right up to them, and he
3 said you could touch the hood of the car. And then they
4 all piled out. Now, and Randy backs that up completely.
5 Randy White says that Greg Sanders is telling the truth,
6 because Randy White says that's exactly what happens.
7 Exactly what happens. And she was what? Yhantyse was
8 right. She was full effect. I think you heard that
9 once before, right? Full. That means dangerous. Not
10 Yhantyse. Tyhira Harrington was in full effect.
11 Yhantyse said that. All right? She was scared. Made
12 her scared.

13 It was something like that. She was scared. All
14 right? She was going left -- or it was going left. And
15 that's her big-girl backup, so. And there's no dispute.
16 They're there to fight. What is fight? Do violence.
17 And if you've been drinking all day, and you're out
18 fighting, and anybody in a reasonable month of Sunday
19 would think that the rest of them is not going to help
20 their friend if their friend's losing. No. There ain't
21 no way in hell. It's common sense. How they have the
22 gall to say that -- that my client started something at
23 12:30 when he was walking along and minding his own
24 business, I just really can't understand.

25 And you think about Randy. The last thing he said

5-9-18 SANDERS V STATE

CLOSING DEFENSE - PLEXICO

1 was, yeah, self-defense. Okay? He didn't want to say
2 he was part of all that. Okay? He didn't want to say
3 he was part of all that. Okay? He was just moving up
4 with her. Okay? But he's not saying anything. He's
5 not saying calm down; she's not going to do anything.
6 He's not picking that little thing up as they're wanting
7 you to believe and picking her up and putting her in the
8 car and saying shut you're your drunk mouth shut up; I'm
9 driving you back home. Okay?

10 Is Ratchet, tough Ratchet, picking her up and
11 going, hey, now, they don't want to fight; you leave
12 them alone we're going to be law-abiding? No. Big
13 Yhantyse picking her up saying, hey, huh-uh, huh-uh,
14 sister, don't do this; okay; I'm starting to love you,
15 and you know, I don't want you fighting. All right?
16 No, no, no. No, they're just silently moving up, and
17 apparent -- what would appear to a person they're moving
18 in on, is there's an apparent, real plan to do them
19 harm. That's the only reasonable explanation.

20 Randy said they were going to get hurt. That was
21 apparent. Okay? And he sure isn't going to -- once he
22 realized what had happened, and what he was a part of,
23 he knew -- his mama, somebody told him, hey, you could
24 go to jail. It ain't like he went to the cops. Marquis
25 surely didn't go to the cops. Okay? They found

1 Yhantyse at the hospital.

2 Now, this idea of plenty of space, when somebody's
3 alluding to having a gun, you got four people on the
4 attack, there's no way to retreat. There's no way to,
5 you know, to avoid danger. They got a car to run him
6 down. It's just -- just doesn't make sense. Okay?
7 There's four of them, and you got to abandon your loved
8 one? I'm going to address that, but I mean, that's just
9 -- there's just no retreat here. You know, when you say
10 stop, stop, stop; they keep on to do harm to you, you've
11 got a right to protect yourself. He shot one person.
12 And the law allows you to do that, but it takes a jury
13 to say it's self-defense. And I'm imploring you to do
14 that.

15 So Marquis Alston. Now, I describe him, you know,
16 he's, you know, this is the kid from Charlotte,
17 Mecklenburg County. He was the toughest one in the
18 bunch. Okay? Now, he knows he's in the wrong. Oh, I
19 didn't see nothing; I wasn't part of that. Because he
20 knows he probably should've been charged, too. Okay?
21 Think about it.

22 Now, he kept telling the Solicitor, you've got my
23 statement mixed up with somebody else's. And
24 eventually, Hipp testified and -- their investigator --
25 and he said, yeah, well, we didn't write it right.

5-9-18 SANDERS V STATE

CLOSING DEFENSE - PLEXICO

1 Okay. All right. So what was he really hiding? What
2 he was really hiding, okay, is what they were doing with
3 my client. And what they were doing to my client, okay,
4 was a mob attack. So how can you even allude back,
5 saying my client's the cause of any trouble, when, in
6 fact, their testimony is, from the States's witnesses,
7 that he went there to clear his name, to not have any
8 trouble. I mean, that's just -- that's just -- that's
9 just strange credulity.

10 And Yhantyse said there was only a conversation at
11 the apartment. Well, she also said my client held a gun
12 for three or four minutes. That didn't seem credible.
13 That didn't seem to match any evidence. Okay? All
14 right? And listening to her, if you read between the
15 lines, she's almost saying Tyhira Harrington had no
16 reason to be mad at my client. You know, so nobody
17 backs up this -- this idea that my client is angry at
18 Tyhira Harrington and wants to hurt her. Nobody backs
19 that up. Now, this is supposed to come from something
20 from Allendale and where -- he hadn't been to Allendale
21 in eight years. And there's -- there's no history of
22 him in Allendale. There's no history of him at all.
23 Twenty-nine years old. You know, this is not a bad guy.

24 So what they were doing was gang-related. What
25 they were doing just seems to -- because you have

1 victims of gangs. And it was going to be his
2 girlfriend, Greg Sanders' girlfriend, or Greg Sanders.

3 So, and the officer said he opened a wound on his
4 shoulder when he was -- when he got in the car. That
5 shows up in the evidence. Okay? All right? And it had
6 to be re-bandaged. And you know, and the scab's not --
7 the scab's fresh, you pull it off, it's going to start
8 bleeding again, because it hadn't had time to heal.
9 That shows the current degree of the injuries.

10 And the State's witnesses, I'll just run through
11 them, like, in two minutes. I mean, Ira James really
12 had nothing to do with the case. He just took packages.
13 Somebody logged them in. You had the fingerprints.
14 Well, there weren't any. Talked about body fluids.
15 Sara Goodman was -- you know, she talked about the DNA.

16 Now, Ila Simmons is the one who was talking about
17 the stippling. And you got a choice here. You have a
18 pathologist with years and years and years of training,
19 who has been board-certified to study the causes of
20 death, who understands what stippling and gunshot --
21 muzzle-to-gunshot distance is. And what she says is,
22 it's from three inches to a couple of feet. Now, what
23 Ila Simmons said was, oh, three inches. Well, she is
24 SLED member, too. Now, that means that all the
25 testimony you heard was untrue, because nobody said they

5-9-18 SANDERS V STATE

CLOSING DEFENSE - PLEXICO

1 were up that close. Nobody said that. Okay? So, when
2 you defend yourself, when they're moving in, and that's
3 -- they keep moving and you're not, comes a time you got
4 to make that decision to avoid personal injury to
5 yourself, serious injury also to your loved one. Do you
6 have a right to do that? My answer is yes.

7 Now, you know, Tyhira Harrington had no fear,
8 because she had backup, and she wasn't going to stop.
9 And I think that's quite obvious when you all look at
10 this. She's also part of a group known to attack
11 others. And somehow, the Solicitor had the audacity to
12 talk about a one-on-one. Well, it was probably a one-
13 on-one. Does that sound like a one-on-one to you? You
14 know, a bunch of drunks coming up, all right? And
15 whatever they said, when you stop a car near somebody
16 like that, and you go piling out, it's not going to be,
17 hey, how are you, do you want a ride. Okay? No. No.
18 They're there to do violence, and that -- what goes with
19 violence is vile mouths. And look at the vileness of,
20 you know, the mother, on down. And I'm sorry to say
21 that, but, you know, it's -- you know, you should raise
22 them better.

23 And then, maybe two on one? Where did that come
24 from? Nobody's saying I'm not part of this group; I'm
25 not part of this; I'm not part of the action she's

1 declaring she's going to take. If she's here to do
2 violence, we're moving up together. Nobody's trying to
3 stop it, aside from my client and his girlfriend, who
4 were backing up. He's saying, no, no, trying to protect
5 her, which he has every right to do. Every right to do.

6 And you know, if Javasha Forrester had anything
7 different to say, the State could have called her as a
8 witness. You know, she needed protecting. What did
9 Greg say about her? She was a resources special ed kid.
10 He loves her. You know.

11 You might not be, you know, the brightest person,
12 you know, you might not be the best-known person, but
13 every person has a right to dignity and self-defense,
14 you know. And Greg Sanders has that, too. You know, he
15 loves the girl. You know, you're going to protect
16 people you love. You're supposed to do that. You're
17 supposed to do that.

18 You know, before government and before law, you had
19 family, and then you had community. Okay? In the
20 history of man, the family comes first. The family
21 comes first. And community comes after that. That's
22 it.

23 But I think probably the best point, and I want to
24 close with it, and if I'm being redundant, I apologize.
25 Even if somebody said something days ago or weeks ago,

5-9-18 STATE V SANDERS

CLOSING IN REBUTTAL - LEGETTE

1 you can't go out and lynch them. You know? That's
2 over. And trying to meld the two into one is unfair.
3 It's the actions that night that those people against
4 Greg Sanders and his girlfriend that created the problem
5 that he couldn't reasonably get away from without
6 abandoning his loved one, abandoning his family, the
7 fundamental root of our society. Throwing it away. And
8 we don't have to do that. That's why we have self-
9 defense. And he acted reasonable.

10 I'm asking you to find him not guilty. It was
11 clear self-defense. Defense of others. He had the
12 right to defend her, or she had a right to defend
13 herself, if she was capable of it. I ask you to bring
14 back a verdict of not guilty. Thank you.

15 SOLICITOR LEGETTE: May it please the Court?

16 THE COURT: Yes, ma'am.

17 CLOSING ARGUMENT IN REBUTTAL ON

18 BEHALF OF THE STATE BY SOLICITOR LEGETTE:

19 SOLICITOR LEGETTE: Mr. Plexico. Ladies and
20 gentlemen, simply this. You have to disbelieve every
21 witness the State brought before you to find Greg
22 Sanders not guilty. So apparently, according to Mr.
23 Plexico, the only person here who has told you the truth
24 is Greg Sanders. And you have to disbelieve every other
25 single witness. But then, there are things about the

1 witnesses that you can't believe. He wants you to
2 believe certain parts about what Randy said, but not
3 other parts about what Randy said. He wants you to
4 believe certain parts about what Yhantyse Daisy Priester
5 said, but then disbelieve the other parts. He wants you
6 to believe that Greg Sanders is somehow a hero, and that
7 black people understand what lynching is. My version of
8 lynching ain't quite like how it happened here.

9 Ha, we should raise them better. I guess Ms.
10 Garvin should've raised her better. Somebody should've
11 raised Greg Sanders better. Somebody should've raised
12 him not to go around telling people mama I'm gonna kill
13 your daughter and buy yourself a black dress. Somebody.
14 Somebody. Because this right here is where it comes
15 down to, ladies and gentlemen. This black dress, the
16 black dress that Marilyn Garvin wore on Monday, that's
17 where it comes down to. Because Greg Sanders promised
18 her, a deadly promise, he was going to kill her child,
19 and three days later she was lying in a morgue. Greg
20 Sanders.

21 And guess what? He tried to tell you undisputed,
22 oh, the facts are different; oh, the witnesses said
23 different things. Who told you exactly how it happened?
24 The man who did it. The pathologist backs him up, how
25 close the wound was. Ila Simmons backs him up, how

5-9-18 STATE V SANDERS

CLOSING IN REBUTTAL - LEGETTE

1 close the wound was. Right here. Right here is where
2 it was.

3 Apparently, ladies and gentlemen, being from
4 Allendale is some kind of sin, because the Allendale
5 people came over to Hampton County to get some things to
6 a Hampton County guy. Except Randy, Randy White's from
7 Estill. And him and Marquis went to, you know, went to
8 school together. Remember, Marquis said he spent most
9 of his school -- yeah, he's from Charlotte, but he spent
10 most of his schooling down here. Marquis is the
11 frightened fellow, but somehow, Greg Sanders is the
12 hero. A hero who goes around shooting unarmed, 105-
13 pound women.

14 Ladies and gentlemen, Mr. Plexico said he is not a
15 hothead. We never called him a hothead. Because think
16 about it. He's not a hothead. He's meticulous, he's
17 methodical, he waits. He lies and waits. He formulates
18 a plan. He tells the mother, her boyfriend, and then he
19 puts it into action, little by little. Little by
20 little, he goes to work on it. He's methodical. Yes.
21 What he did on May 10th, it wasn't an act of a hot-
22 headed individual. It wasn't the act of a hot-blooded
23 man, or someone who's blood pumps Kool-aid. Their heart
24 pumps Kool-aid. It was an act of a cold-blooded killer
25 with murder in his eyes. And when he took that gun out

5-9-18 STATE V SANDERS

CLOSING IN REBUTTAL - LEGETTE

1 of that box today, boom. That's exactly how he shot
2 Tyhira Harrington.

3 And this group that Mr. Plexico wants you to
4 believe was there, that group wasn't there. Marquis was
5 off somewhere. He wasn't there. He was not there. And
6 Yhantyse? She didn't say she was afraid of Tyhira. She
7 was afraid of Greg Sanders, who held a gun on her
8 afterwards. And yeah, she said three or four minutes,
9 but it can seem like an eternity, I imagine, to have a
10 gun held on you. When that gun was pointed at me, I
11 would pay attention to all kinds of details. It wasn't
12 three or four minutes, but, oh, it seemed like an
13 eternity.

14 Ladies and gentlemen, Mr. Plexico mentioned
15 something about a gang that beats you in or you kill to
16 get in. The only person here who killed anybody was
17 Greg Sanders.

18 Now, ladies and gentlemen, everybody here,
19 apparently -- I've said it before, I'm going to say it
20 one more time. To find Greg Sanders not guilty, you
21 have to suspend your common sense. You have to
22 disbelieve every other witness, including Randy White,
23 who is a cousin of Greg Sanders, who was afraid on the
24 witness stand, who wouldn't even look at him, because he
25 was afraid. Your own family.

5-9-18 STATE V SANDERS

CLOSING IN REBUTTAL - LEGETTE

1 Mr. Plexico talked a lot about family. Family.
2 Family and defense of others. Family. Randy told you
3 he stood beside Tyhira because she was his girl, not
4 because he was there to fight. He stood beside a girl
5 who he had been dating two weeks, maybe a little longer.
6 He stood beside her. Not to help fight, but to try and
7 help protect her. And then, he came in here and
8 testified against his own family because of what Greg
9 Sanders did. Something that he did not have to do.

10 Ladies and gentlemen, the fresh wound, the fresh
11 wound. You're going to see the picture. Mr. Plexico
12 wants you to believe all manner of things about these
13 wounds. It's a funny thing about these wounds.
14 Remember one of the wounds, the scab got pulled up, and
15 it had a bandage on it because it was fresh? That's the
16 one right there, pulled off whenever he was getting out
17 of the car, or getting into the car. I'm not sure how,
18 but it was -- that was a fresh wound. Ladies and
19 gentlemen, these wounds are not fresh, they are scabbed
20 over. The only one that's fresh, and only because it's
21 fresh because it got scabbed -- got the scab pulled off
22 was this one. Mr. Sanders has had two years to make it
23 all up. Yes, methodical. Remember that. Methodical.
24 Not hot blooded. He was calm, cool, and collected. Oh,
25 he remained calm. He remained cool, oh, he was cool,

5-9-18 STATE V SANDERS

JURY CHARGE

1 because he's a cold-blooded killer, and he's had two
2 years to come up with this.

3 And do not be deceived, ladies and gentlemen. This
4 is not self-defense. It is not defense of others. It
5 is murder, in its purest form. He had ill will against
6 her, he hated her, he wanted to kill her, and he did it.
7 He promised her he would, promised her mama, and then he
8 carried out his plan. His murder. Thank you.

9 JURY CHARGE:

10 THE COURT: Thank you. All right. Everyone take a
11 stand. Stand up. Ladies and gentlemen, my charge will
12 take ten to fifteen minutes. Okay? So I just wanted to
13 make sure everyone was up, feeling okay. Is everyone
14 okay? We've been going for an hour and a half. Does
15 anyone need a break before I charge? You all okay? All
16 right. You all may be seated. Thank you.

17 Mr. Foreperson, members of the jury, you've
18 followed very patiently and listened very attentively to
19 the presentation of the evidence in this case, and I
20 want to thank you for that. It now becomes the duty of
21 the trial judge to instruct you on the law that's
22 applicable to this case, and it's your duty, as jurors,
23 to accept and apply the law as I will now give it to
24 you.

25 Ladies and gentlemen, as jurors, it is your

5-9-18 STATE V SANDERS

JURY CHARGE

1 exclusive duty to decide all the issues of fact in this
2 case. You must determine the effect, the value, and the
3 weight of the evidence. Both the State and the
4 defendant, Mr. Sanders, have the right to expect that
5 you will carefully consider and evaluate the evidence,
6 and apply the law of the case to the evidence. And by
7 doing so, both the State and the defendant will receive
8 and obtain a fair and impartial trial in this matter.

9 Ladies and gentlemen, the State of South Carolina,
10 by the Bills of Indictment in this case, charge the
11 defendant, Gregory Sanders, with the offense of murder
12 and possession of a weapon during the commission of a
13 violent crime.

14 Ladies and gentlemen, I remind you that the
15 defendant was arrested, charged, and indicted in this
16 case is not evidence in this case, and cannot be
17 considered by you as evidence of guilt in this case, nor
18 does it create a presumption of guilt. An indictment is
19 simply the written instrument that contains the charge
20 that's made against the defendant. It's the formal
21 document by which the case is brought into the
22 courtroom.

23 Now, ladies and gentlemen, the defendant in this
24 case, Mr. Sanders, has pled not guilty to these
25 indictments, and that plea puts the burden on the State

5-9-18 STATE V SANDERS

JURY CHARGE

1 to prove his guilt beyond a reasonable doubt. Now, a
2 person charged with committing a criminal offense in
3 South Carolina is never required to prove himself
4 innocent. I charge you that it's an important rule of
5 law that a defendant in a criminal trial, no matter what
6 the seriousness of the charges may be, will always be
7 presumed innocent of the crimes for which an indictment
8 was issued, unless guilt has been proven of -- been
9 proven, excuse me, by evidence satisfying you, the jury,
10 of that guilt beyond a reasonable doubt. That is,
11 presumption of innocence does not end when you begin
12 your deliberations, but it accompanies the defendant
13 throughout the trial until you, the jury, reach a
14 verdict of guilt beyond a reasonable doubt.

15 Now, ladies and gentlemen, presumption of innocence
16 is not a mere legal theory. Again, it's not just a
17 legal phrase we use. It's a substantial right, ladies
18 and gentlemen, to which every defendant is entitled;
19 again, unless you, the jury, are convinced, finding
20 evidence of the defendant's guilt.

21 Ladies and gentlemen, so what is reasonable doubt
22 in the law? A reasonable doubt is the kind of doubt
23 that would cause a reasonable person to hesitate to act
24 in their most important decisions. The State has the
25 burden to prove the defendant guilty beyond a reasonable

5-9-18 STATE V SANDERS

JURY CHARGE

1 doubt. And again, the term reasonable doubt must be
2 given its plain and ordinary meaning. However, to the
3 extent that I can define it for you again, a reasonable
4 doubt is the kind of doubt that would cause a reasonable
5 person to hesitate to act in the most important of their
6 personal decisions.

7 Now, the defendant is entitled to every reasonable
8 doubt in this case. If, upon a fact essential to
9 conviction, you, the jury, have a reasonable doubt as to
10 how that issue should be decided, you must resolve that
11 reasonable doubt in favor of the defendant.

12 Now, some of you may have served as jurors in civil
13 cases, where you were told it was necessary to prove
14 that a fact is more likely true than not true. It's
15 what we call the greater weight, or preponderance, of
16 the evidence. In criminal cases the State's proof must
17 be more powerful than that. It must be beyond a
18 reasonable doubt. Now, suspicion, no matter how strong,
19 is insufficient to convict a person charged with a
20 crime. That the facts and circumstances presented may
21 seem suspicious, and a defendant's guilt may seem
22 probable, this is not sufficient in the law to convict.
23 Truth beyond a reasonable doubt is a proof that leaves
24 you firmly convinced of the defendant's guilt.

25 Now, again, there are very few things we know in

5-9-18 STATE V SANDERSJURY CHARGE

1 this world with absolute certainty. In criminal cases
2 the law does not require proof that overcomes every
3 possible doubt. If, based on your consideration of the
4 evidence, you are firmly convinced that the defendant is
5 guilty, ladies and gentlemen, you must find him guilty.
6 If, on the other hand, you think there is a real
7 possibility that the defendant is not guilty, you must
8 find the defendant not guilty, and give him that benefit
9 of the doubt. Now, I remind you that during this trial
10 you and I have certain duties to perform. As the judge,
11 it's my responsibility to preside over the trial of this
12 case, and I also have the duty to rule on the
13 admissibility of evidence in this case. You are to
14 consider only the competent evidence that's before you.
15 You are to consider only the testimony that came here
16 from the witness stand, and any other exhibits that were
17 made a part of the record in this case. I have the
18 additional duty to charge you on the law that's
19 applicable to this case.

20 I am the sole judge of the law in this case. It's
21 your duty as jurors to accept and apply the law as I
22 give it to you. Now, if you have any idea as to what
23 you think the ought to be or what the law is, and it now
24 does not agree with what I tell you it is, you must
25 abandon this idea, because you are sworn to accept and

5-9-18 STATE V SANDERS

JURY CHARGE

1 apply the law exactly as I state it to you. Now, in
2 every case that's tried in this courtroom before a jury,
3 the jury is the sole and exclusive judge of the facts.
4 A trial judge cannot intimate, comment on, or make any
5 statement to a trial jury about the facts in the case.
6 And since you, the jury, are the sole judge of all the
7 facts in this case, you are not to infer from what I've
8 said during the progress of this trial in ruling upon
9 the admissibility of evidence or otherwise, or anything
10 that I say now during the course of this instruction to
11 you, that I have an opinion about the case. The law
12 does not allow me to have an opinion about the case.
13 Again, this matter is solely for you to determine.

14 Now, I remind you, again, as jurors, it's your duty
15 to determine the effect, the value, and the weight of
16 the evidence that's been presented during this trial.
17 Now, there are two types of evidence which are generally
18 presented during a trial. There's direct evidence and
19 circumstantial evidence. Direct evidence is the
20 testimony of a person who claims to have actual
21 knowledge of a fact, such as an eyewitness. It's
22 evidence that immediately establishes a main fact to be
23 proved. Circumstantial evidence proof of a chain of
24 facts and circumstances indicating the existence of a
25 fact. It is evidence which immediately establishes

5-9-18 STATE V SANDERS

JURY CHARGE

1 collateral facts from which the main fact may be
2 inferred. Circumstantial evidence is based on
3 inference, and not on personal knowledge or
4 observations.

5 Ladies and gentlemen, crimes may be proven by
6 circumstantial evidence. The law makes no distinction
7 between the weight or value to be given to either direct
8 or circumstantial evidence. However, to the extent the
9 State relies on circumstantial evidence, all of the
10 circumstances must be consistent with each other, and
11 when taken together, point conclusively to the guilt of
12 the accused beyond a reasonable doubt. Now, if these
13 circumstances merely portray the defendant's behavior as
14 suspicious, the proof has failed.

15 The State has the burden of proving the defendant
16 guilty beyond a reasonable doubt, and this burden rests
17 with the State regardless of whether the State relies on
18 direct evidence, circumstantial evidence, or some
19 combination of the two.

20 Now, ladies and gentlemen, it is your duty to
21 determine the credibility of the witnesses who have
22 testified in this case, and credibility simply means
23 believability. It's your duty as jurors to analyze and
24 evaluate the evidence, and determine which evidence
25 convinces you of its truth. Now, in determining the

5-9-18 STATE V SANDERSJURY CHARGE

1 believability of witnesses who have testified in this
2 case, you may believe one witness over several
3 witnesses. You may believe a part of the testimony of a
4 witness and reject the remaining part of the testimony
5 of that same witness. You may believe the testimony of
6 a witness in its entirety, or reject the testimony of a
7 witness in its entirety. And you may consider whether
8 the witness has exhibited to you any interest, bias,
9 prejudice, or other motive in this case. You may also
10 consider the appearance and manner of a witness on the
11 witness stand.

12 Now, there may have been evidence presented that
13 witnesses made prior statements which may not be
14 consistent with the witness's present testimony. You
15 may use this evidence to decide whether to believe the
16 witness. You may also use evidence of the earlier
17 contradictory statement to determine the truth of those
18 statements. It is up to you to determine or to decide
19 whether to believe the earlier statements or the
20 testimony given at trial.

21 Now, if a witness has shown to knowingly testified
22 untruthfully concerning any material matter, you may
23 consider this in determining whether to trust the
24 witness's testimony as to other matters; and you may
25 reject all testimony of that witness, or give all or

5-9-18 STATE V SANDERS

JURY CHARGE

1 part of the testimony the weight you think it deserves.
2 Now, normally a person cannot give opinion testimony.
3 Normally, when a person testifies, they must testify as
4 what they either saw, heard, sensed or smelled, or
5 something of that nature. Ladies and gentlemen, there
6 is an exception, though, when someone is qualified,
7 because of education and/or experience. They are
8 permitted to give their opinion in certain areas that
9 the Court qualifies in that way, and that evidence is
10 for you to use in any way you see fit, and give it the
11 weight and credibility you believe is appropriate.

12 Now, ladies and gentlemen, there are two
13 indictments in this case, or two charges. And again,
14 each indictment charges a separate and distinct offense.
15 Ladies and gentlemen, you must decide each indictment
16 based on the evidence and the law that's applicable to
17 it.

18 Now, to begin with, the defendant is charged with
19 the murder of Tyhira Harrington. Now, the State must
20 prove beyond a reasonable doubt that the defendant
21 killed another person with malice aforethought. Now,
22 malice is hatred, ill will, or hostility towards another
23 person. It is the intentional doing of a wrongful act
24 without just cause or excuse, and with an intent to
25 inflict an injury, or other circumstances that the law

5-9-18 STATE V SANDERS

JURY CHARGE

1 will infer an evil intent. Malice aforethought does not
2 require that malice exists for any particular time
3 before the act is committed, but malice must exist in
4 the mind of the defendant just before and at the time
5 the act is committed. Therefore, there must be a
6 combination of the previous evil intent and the act.

7 Ladies and gentlemen, malice aforethought may be
8 express or inferred, and these terms, express and
9 inferred, do not mean different kinds of malice, but
10 merely the manner in which malice may be shown to exist.
11 This is either by direct evidence, or by inference from
12 the facts and circumstances which are proved. Express
13 malice is shown when a person speaks words which express
14 hatred or ill will for another, or when a person
15 prepared beforehand to do the act which was later
16 accomplished.

17 For example, lying in wait for a person, or any
18 other acts of preparation going to show that the deed
19 was within the defendant's mind with the express malice.
20 Malice may be inferred from conduct showing a total
21 disregard for human life.

22 Now, the defendant is also charged with possession
23 of a weapon during the commission of a violent crime.
24 Now, the State must prove beyond a reasonable doubt that
25 the defendant was in possession of a firearm, or visibly

5-9-18 STATE V SANDERSJURY CHARGE

1 displayed what appeared to be a firearm during the
2 commission of a violent crime. Now, ladies and
3 gentlemen, a firearm means any machine gun, automatic
4 rifle, revolver, pistol, or any weapon which will, is
5 designed to, or may be readily converted to expel a
6 projectile.

7 Now, in order to find the defendant guilty of
8 possession of a weapon during the commission of a
9 violent crime, you must first find the defendant guilty
10 of committing a violent crime. And under the laws of
11 South Carolina, ladies and gentlemen, murder is a
12 violent crime. The State must prove that, also beyond a
13 reasonable doubt that the weapon further advanced or
14 helped in the commission of the crime.

15 Now, in this case, ladies and gentlemen, the
16 defendant has raised the defense of self-defense. Self-
17 defense is a complete defense, and if it is established,
18 you must find the defendant not guilty. Now, the State
19 has the burden of disproving self-defense by proof
20 beyond a reasonable doubt. If you have a reasonable
21 doubt of the defendant's guilt after considering all of
22 the evidence, including the evidence of self-defense,
23 then you must find the defendant not guilty. On the
24 other hand, if you have no reasonable doubt of the
25 defendant's guilt after considering all of the evidence,

5-9-18 STATE V SANDERS

JURY CHARGE

1 including the evidence of self-defense, then you must
2 find the defendant guilty.

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

11 Ladies and gentlemen, self-defense is not available
12 to a person who uses language which is so contemptuous
13 that a reasonable person would expect it to bring on a
14 physical encounter, and which did actually contribute to
15 the physical encounter.

16 Now, the second element of self-defense, ladies and
17 gentlemen, is if the defendant was actually in imminent
18 danger of death or serious bodily injury, or that the
19 defendant actually believed he was in imminent danger of
20 death or serious bodily injury. Now, if the defendant
21 was actually in imminent danger, it must be shown that
22 the circumstances would have warranted a person of
23 ordinary firmness and courage to strike a blow to
24 prevent death or serious bodily injury. If a defendant
25 believed he was in imminent danger of death or serious

5-9-18 STATE V SANDERS

JURY CHARGE

1 bodily injury, it must be shown that a reasonably
2 prudent person of ordinary firmness and courage would
3 have had the same belief.

4 Now, in deciding whether the defendant actually was
5 or believed he was in imminent danger of death or
6 serious bodily injury, you should consider all the facts
7 and circumstances surrounding the events, including the
8 physical condition and characteristics of the defendant
9 and the victim. Now, under the law of self-defense, the
10 defendant may take another's life in the defense of
11 others. The right to intervene to protect another
12 person is subject to the same rights and limitations as
13 the right of self-defense. The defendant may take the
14 life of a person who assaults a friend, relative, or
15 bystander, if that friend, relative, or bystander would
16 have had the right of self-defense.

17 To show that the person being defended had the
18 right of self-defense, it must first be shown that the
19 person being defended and the defendant were both
20 without fault in bringing on the difficulty. If the
21 conduct of the person defended or the defendant was the
22 type which was reasonably calculated to and did provoke
23 a deadly assault, the person would be at fault in
24 bringing on the difficulty, and would not have the right
25 of self-defense. Therefore, the defendant would not

5-9-18 STATE V SANDERSJURY CHARGE

1 have the right to use deadly force in defending that
2 person. The defense of another person is excusable if
3 the defendant had reasonable grounds to believe, and in
4 good faith did believe, that the person being defended
5 was in imminent danger of death or serious bodily injury
6 or bodily harm from the victim.

7 Now, in deciding, again, whether a person defended
8 actually was, or that the defendant actually believed
9 that that person was, in imminent danger of death or
10 serious bodily injury, you should consider all the facts
11 and circumstances surrounding the crime, including the
12 physical condition and characteristics of the parties.

13 Now, the defendant does not have to show that he
14 was actually in danger. It is enough that the defendant
15 believed he was in imminent danger, and a reasonably
16 prudent person of ordinary firmness and courage would
17 have had the same belief. The defendant has the right
18 to act on appearances, even though the defendant's
19 beliefs may have been mistaken. It is for you, the
20 jury, to decide whether the defendant's feared of
21 immediate danger of death or serious bodily injury was
22 reasonable, and would have been felt by an ordinary
23 person in the same situation.

24 Now, ladies and gentlemen, words accompanied by
25 hostile acts may, depending on the circumstances,

5-9-18 STATE V SANDERS

JURY CHARGE

1 establish self-defense. Now, also evidence of prior
2 difficulties between the defendant and the victim may be
3 considered in deciding whether a threat existed, whether
4 the defendant had a reason to believe that a threat
5 existed, and how serious that threat was.

6 Now, the relative sizes, ages, and weight of the
7 defendant and the victim may be considered in deciding
8 the appearance or actual need for force in self-defense,
9 and the amount of force needed.

10 Now, ladies and gentlemen, the reputation of the
11 victim may also be considered in deciding whether there
12 was a need for force, whether the defendant had reason
13 to believe there was a need for force, and whether force
14 was reasonably necessary. Threats made by the victim
15 may be considered in determining whether the defendant
16 actually was or believe he was in imminent danger.

17 Now, ladies and gentlemen, lastly, the final
18 element of self-defense is that the defendant had no
19 other probable way to avoid the danger of death or
20 serious bodily injury than to act as the defendant did
21 in this particular instance.

22 Mr. Foreperson, members of the jury, as you retire
23 to begin your deliberations in this case, I wish to
24 express the hope that each of you are mindful of your
25 responsibility here today. You're not called upon very

5-9-18 STATE V SANDERS

JURY CHARGE

1 often to serve as jurors, and the proper performance of
2 that duty requires each of you to reach the height of
3 freeing your mind of all improper influences.

4 And please don't get the idea that I'm trying to
5 intimate to you how you should decide this case, as
6 again, I've already told you, under the laws of the
7 state of South Carolina, you, the jury, are the sole
8 judge of all facts, and it would be highly improper or
9 me to influence you in your performance of that duty.
10 But, ladies and gentlemen, as the presiding officer of
11 this court, I am vitally concerned that whatever verdict
12 you reach in this case will be the result of you going
13 back into the jury room and confining your consideration
14 to the evidence in this case, and to the law that you've
15 heard in this courtroom, weighing it fairly and
16 impartially, as I have every confidence you will.

17 Mr. Foreperson, I remind you, your verdict must be
18 the verdict of all twelve jurors, and to that end my law
19 clerk has prepared a verdict form, which simply has the
20 case caption, the State of South Carolina versus Gregory
21 Sanders. It has the two indictment numbers, and it has
22 two questions, sir. The first one says, *as to the*
23 *charge of murder of Tyhira Harrington, we find the*
24 *defendant, Gregory Sanders;* and then, it either says not
25 guilty or guilty. Sir, you'll checkmark one of those.

5-9-18 STATE V SANDERS

JURY CHARGE

1 If you find not guilty, you will stop your
2 deliberations, you are done. If you do find the
3 defendant guilty of murder, then you would go on to the
4 second question and answer that as well. And it simply
5 asks, as to the charge of possession of a weapon during
6 the commission of a violent crime, do you find the
7 defendant guilty or not guilty.

8 Sir, it also states that this is the unanimous
9 decision of the jury, and there is a place for you to
10 sign, sir, as the foreperson and date the form. When
11 the jury has reached a unanimous verdict, I ask that you
12 knock on your jury room door. We are going to accept
13 you back into the courtroom to take your verdict. All
14 right?

15 Ladies and gentlemen, just a couple of other
16 housekeeping matters, you know my court reporter has
17 been taking everything down during the trial of this
18 case. But I want you to know that there is no
19 transcript of this trial testimony. If there is certain
20 testimony that you want played back, what I can do is
21 bring you back into the courtroom, and we can play the
22 backup, which is called the audiotape, transcription.
23 The only thing I need to tell you, ladies and gentlemen,
24 is that if you ask for a particular witness's testimony,
25 I have to play the entire testimony of that witness. In

5-9-18 STATE V SANDERS

JURY CHARGE

1 other words, the direct, cross, re-direct, the re-cross.
2 All right?

3 Also, ladies and gentlemen, you're going to have
4 back in the jury room all of the exhibits that have been
5 entered into this case. So, if you don't have it back
6 in there, it wasn't entered into evidence. It could've
7 been what's called a demonstrative exhibit that was just
8 put up here for you to look at, but it wasn't evidence
9 that was entered into. So you can't ask me for that if
10 there is something in which you had, you simply can't
11 get that. You are going to have everything that you are
12 entitled to back there. Okay? All right.

13 Ladies and gentlemen, for the last time I send you
14 back to your jury room, and I'm going to tell you not to
15 discuss this case. If there's something further on the
16 law that the lawyers want me to charge you, I'm going to
17 bring you back to the courtroom, and I'm going to charge
18 you further. If not, Mr. Foreperson, you are going to
19 get the verdict form and the evidence that was entered
20 into, and some gloves back there. That'll be your
21 signal to begin your deliberations. If not, I'll bring
22 you back in here, and I'll charge you further. Okay?

23 I appreciate it, ladies and gentlemen. I'm going
24 to excuse you back to your jury room. Please let our
25 bailiffs know if there's anything you need. Okay?

5-9-18 STATE V SANDERS

VERDICT

1 JURORS LEAVE COURTROOM 3:08 P.M.

2 THE COURT: All right. Any exceptions or additions
3 to the charge from the State?

4 SOLICITOR LEGETTE: None from the State, your
5 Honor.

6 THE COURT: From the Defense?

7 MR. PLEXICO: No, your Honor.

8 THE COURT: All right. Let's make sure we have all
9 the exhibits together, and I'd like to have a couple of
10 pairs of fresh gloves to be able to send back those back
11 as well.

12 THE COURT: All right. What we're going to order
13 is this. If it's all right with you all, we're going to
14 take -- you all be quiet for a minute. But we're going
15 to take about ten minutes.

16 OFF THE RECORD 3:09 P.M.

17 ATTORNEYS AND REPORTER REVIEWING
18 EXHIBITS.

19 VERDICT FORM AND EXHIBITS TAKEN

20 TO JURORS 3:18 P.M.

21 BACK ON THE RECORD 3:54 P.M.

22 VERDICT:

23 BAILIFF: All rise. Court will come to order.

24 THE COURT: Please be seated. All right. It's my
25 understanding the jury has a verdict. For those of you

5-9-18 STATE V SANDERS

VERDICT

1 in the courtroom that are involved in this case, I need
2 to ask you to make sure you can contain yourself. If,
3 for some reason, you can't, you need to remove yourself
4 now, because if you have any type of outburst we're
5 going to have to put you into custody, and I would hate
6 to have to do that. Okay? So just make sure you can
7 keep yourself contained.

8 All right. Is the State ready?

9 SOLICITOR LEGETTE: Yes, your Honor.

10 THE COURT: Defense ready?

11 MR. PLEXICO: Yes, your Honor.

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

13 JURORS ENTER COURTROOM 3:55 P.M.

14 THE COURT: Mr. Foreperson, I understand the jury
15 has reached a verdict, sir.

16 FOREPERSON: Yes, we have.

17 THE COURT: Would you please hand it to the bailiff
18 or the clerk? Thank you.

19 Would you please stand, Mr. Sanders, along with
20 your Counsel. Thank you, gentlemen.

21 *In the case of the state of South Carolina versus*
22 *Gregory Sanders, Question Number 1, as to the charge of*
23 *murder of Tyhira Harrington, we find the defendant,*
24 *Gregory Sanders, guilty.*

25 *As to the charge of possession of a weapon during*

5-9-18 STATE V SANDERS

JURORS POLLED

1 *a violent crime, we, the jury, find the defendant,*
2 *Gregory Sanders, guilty.*

3 It is signed by our foreperson.

4 You may be seated, Mr. Plexico.

5 Ladies and gentlemen of the jury, if this is your
6 verdict will you please indicate by raising your right
7 hand?

8 And I notice all of the jurors have raised their
9 hand. Is there any further required of this verdict.

10 MR. PLEXICO: Yes, your Honor. I ask that the
11 jurors be polled.

12 JURORS POLLED:

13 THE COURT: All right. Ladies and gentlemen, what
14 we are going to do is go through -- or Pumpkin's going
15 to go through and do it, and what she's going to ask you
16 is, when your -- do you have just -- do you all know
17 your numbers, still, or do you -- do you remember your
18 juror numbers?

19 SOLICITOR LEGETTE: I have them, also.

20 THE COURT: Okay. I know that you have them. But
21 we're going to try to avoid calling names, but that's
22 fine. What she's going to do is call your name, and
23 when she calls your name, if you would just let us know
24 who we're talking to. And she's going to ask you if
25 this is your verdict, and you're going to answer yes or

5-9-18 STATE V SANDERSJURORS POLLED

1 no; and is this still your verdict, and you're going to
2 answer yes or no. All right?

3 If you would, just stand when you do it, and that
4 way I'll know where to find you. You don't have to
5 waive for me. Okay?

6 So you want to go ahead and start, Pumpkin.

7 MADAM CLERK: Would you like for me to call the
8 numbers or the name?

9 THE COURT: Let's first see if they know it by
10 name. So the first one is going to be Number 67. Does
11 anyone remember? There we go.

12 MADAM CLERK: Is this your verdict?

13 JUROR NUMBER 67: Yes.

14 MADAM CLERK: And is it still your verdict?

15 JUROR NUMBER 67: Yes.

16 MADAM CLERK: You may be seated. Juror Number 113.
17 Is this your verdict?

18 JUROR NUMBER 113: Yes.

19 MADAM CLERK: Is it still your verdict?

20 JUROR NUMBER 113: Yes.

21 MADAM CLERK: You may be seated. Juror Number 40.
22 Is this your verdict?

23 JUROR NUMBER 40: Yes.

24 MADAM CLERK: Is it still your verdict?

25 JUROR NUMBER 40: Yes.

5-9-18 STATE V SANDERSJURORS POLLED

1 MADAM CLERK: You may be seated. Juror Number 134.

2 Is this your verdict?

3 JUROR NUMBER 134: Yes.

4 MADAM CLERK: Is it still your verdict?

5 JUROR NUMBER 134: Yes.

6 MADAM CLERK: You may be seated. Juror Number 99.

7 Is this your verdict?

8 JUROR NUMBER 99: Yes.

9 MADAM CLERK: Is it still your verdict?

10 JUROR NUMBER 99: Yes.

11 MADAM CLERK: You may be seated. Juror Number 76.

12 Is this your verdict?

13 JUROR NUMBER 76: Yes.

14 MADAM CLERK: Is it still your verdict?

15 JUROR NUMBER 76: Yes.

16 MADAM CLERK: You may be seated. Juror Number 59.

17 Is this your verdict?

18 JUROR NUMBER 59: Yes.

19 MADAM CLERK: Is it still your verdict?

20 JUROR NUMBER 59: Yes.

21 MADAM CLERK: You may be seated. Juror Number 116.

22 Is this your verdict?

23 JUROR NUMBER 116: Yes.

24 MADAM CLERK: Is it still your verdict?

25 JUROR NUMBER 116: Yes.

5-9-18 STATE V SANDERS

JURORS POLLED

1 MADAM CLERK: You may be seated. Juror Number 11.

2 Is this your verdict?

3 JUROR NUMBER 11: Yes.

4 MADAM CLERK: Is it still your verdict?

5 JUROR NUMBER 11: Yes.

6 MADAM CLERK: You may be seated. Juror Number 112.

7 Is this your verdict?

8 JUROR NUMBER 112: Yes.

9 MADAM CLERK: Is it still your verdict?

10 JUROR NUMBER 112: Yes.

11 MADAM CLERK: You may be seated.

12 COURT REPORTER: I'm sorry, I did not hear. *Is*

13 *this your verdict?*

14 MADAM CLERK: Ma'am.

15 JUROR NUMBER 112: Yes. Yes.

16 THE COURT: Thank you.

17 MADAM CLERK: Juror Number 6. Is this your
18 verdict?

19 JUROR NUMBER 6: Yes.

20 MADAM CLERK: Is it still your verdict?

21 JUROR NUMBER 6: Yes.

22 MADAM CLERK: You may be seated. And Juror Number
23 130. Is this your verdict?

24 JUROR NUMBER 130: Yes.

25 MADAM CLERK: Is it still your verdict?

5-9-18 STATE V SANDERSJURORS POLLED

1 JUROR NUMBER 130: Yes.

2 MADAM CLERK: You may be seated.

3 THE COURT: Thank you. All right. Mr. Plexico, is
4 there anything further required of this panel?

5 MR. PLEXICO: No, your Honor.

6 THE COURT: Anything from the State?

7 SOLICITOR LEGETTE: No, your Honor.

8 THE COURT: Ladies and gentlemen, at this time I am
9 going to go ahead and send you away with my thanks. We
10 appreciate you resolving this matter for us. You have
11 certainly earned your exemption for the next three
12 years, and you are also excused for the remainder of the
13 week. However, I will tell you, ladies and gentlemen,
14 at this time, I am going to probably go ahead and
15 sentence Mr. Sanders. You are welcome to stay, but you
16 certainly don't have to. If you do stay, I'm going to
17 tell you just to keep your seats with you here until we
18 complete that. But if you would like to go, ladies and
19 gentlemen, now is the time to excuse yourself. If you
20 need any type of work excuse, certainly ask the
21 bailiffs, and they'll take care of you. But with that
22 said, your duty here is complete, and again we
23 appreciate you resolving this matter for us, and again,
24 thank you. And I know on behalf of the attorneys and on
25 behalf of all the parties, they thank you. All right.

5-9-18 STATE V SANDERSSENTENCING

1 So, if you do want to leave, now is the time to
2 excuse yourself. From here, I will go ahead and
3 sentence him. Okay? If you want to go, go. Okay? You
4 certainly don't have to stay.

5 JURORS EXCUSED FROM TRIAL.

6 SENTENCING:

7 THE COURT: Okay. Do you have a sentencing sheet
8 for me?

9 SOLICITOR LEGETTE: I do, your Honor.

10 THE COURT: Okay.

11 SOLICITOR LEGETTE: Let me just sign.

12 THE COURT: Thank you. All right. Mr. Plexico.

13 MR. PLEXICO: Yes, your Honor. My client is
14 twenty-nine years old, Judge.

15 THE COURT: How old is he? I'm sorry?

16 MR. PLEXICO: He's twenty-nine years old. You have
17 heard all the facts in the case. While the jurors have
18 spoken and believe that a judgment was bad, this is not
19 something that he brought on that night, Judge. I would
20 ask that you take that into consideration, and we would
21 ask for the thirty-year sentence, with the five years of
22 possession of a firearm concurrent.

23 THE COURT: Solicitor, would you please give me his
24 prior record again.

25 SOLICITOR LEGETTE: Yes, your Honor. Mr. Sanders

5-9-18 STATE V SANDERS

SENTENCING

1 has, back from 2006, he has a common-law robbery. And
2 actually, there were three counts of common-law robbery
3 were pled down from armed robbery; along with, I believe
4 it is, one -- two counts of burglary second degree, non-
5 violent. Basically, that was a home invasion where Mr.
6 Sanders went into that home and actually robbed several
7 people who were inside the house. He pled guilty to the
8 lesser-included offense. For him being so young he got
9 a active YOA sentence. And at some point during the
10 YOA, he was revoked on probation. He finished his YOA
11 parole sentence in 2011.

12 Additionally, he also has the threatening of a
13 public official from 2010. For some period of time he
14 was actually not -- actually in court, and he ended up
15 being found on a bench warrant, put in jail, and he
16 ended up getting a one-year sentence on threatening a
17 public official, which was a police officer, Sheriff's
18 Deputy Douglas Byrd, of the Hampton County Sheriff's
19 Office.

20 He also has a public disorderly conduct, which is,
21 you know, a small offense, your Honor, but that was from
22 2015. And he is currently been in jail, in the Hampton
23 County Detention Center. I believe it is, according to
24 this jail list from today, 730 days.

25 THE COURT: Any other -- yes, sir?

5-9-18 STATE V SANDERS

SENTENCING

1 MR. PLEXICO: Yes, your Honor. The prior offenses
2 that I -- my client had just turned seventeen on the
3 prior offenses that she mentioned of common-law robbery
4 were -- he was charged and pled guilty to those, and
5 received YOA. He's had nothing else significant since
6 ..., Judge.

7 COURT REPORTER: Two thousand?

8 MR. PLEXICO: '10. So I mean, aside from the
9 youthful -- mistake in his youth, a sentence for running
10 is mouth he got a year for, we think that, you know, in
11 view of these particular circumstances, a thirty-year
12 sentence day-for-day is extremely punishing. We would
13 ask for five years on possession of a weapon during the
14 commission of a violent crime run concurrent.

15 THE COURT: What's the State's position?

16 SOLICITOR LEGETTE: Your Honor, the State made a
17 plea offer in this matter earlier, whenever we got this
18 case to a twenty-five year cap, voluntary manslaughter.
19 We thought it might be able to lend itself to a
20 voluntary manslaughter. Your Honor, however, given the
21 nature of this -- this trial, the impact of the victims
22 in this community, your Honor, looking at his prior
23 record, having threatened a public official in the past,
24 and I myself pled him to that offense, your Honor, and I
25 didn't realize at the time that him making the threat,

1 actually he might carry it out. Him having now made a
2 threat to another young person and carrying out that
3 threat, your Honor, he's a man of his word. Like I said
4 in my closing argument, he will do what he says he will
5 do. So, your Honor, I would -- I don't just ask this
6 arbitrarily or capriciously, your Honor, but I do
7 believe that Mr. Sanders poses a threat to society, to
8 persons of -- police officers, who he's threatened in
9 the past; home invasions, your Honor, and just various
10 people in the community. So I would ask the Court for a
11 sentence of life. I'm not asking for life for life,
12 your Honor, but I do believe that his prior record, the
13 nature of what he did here, and now the harm that he
14 caused to Ms. Garvin in threatening her daughter, what
15 he's done in the past about threats and carrying them
16 out, your Honor, he has, in my opinion, a propensity to
17 threaten people, and then to see that threat carried
18 out. So rather than watch anyone else die on my watch,
19 your Honor, I would ask you to sentence him to the
20 balance of his life. Thank you.

21 THE COURT: Okay. All right. Mr. Plexico, if you
22 and your client will stand. In the case of 2016-178,
23 it's the State versus Gregory Sanders, on the charge of
24 murder, the sentence of this court is you be committed
25 to the Department of Corrections for a period of life

5-9-18 STATE V SANDERS

SENTENCING

1 imprisonment. On Indictment 2016-177, possession of a
2 weapon during the commission of a violent crime, the
3 sentence of this court is you be committed to the
4 Department of Corrections for a period of five years,
5 and that's to run concurrent. Good luck to you, Mr.
6 Sanders.

7 SOLICITOR LEGETTE: Thank you, your Honor.

8 THE COURT: All right. I will tell you that I
9 think, certainly, in the wisdom of our rules and our
10 court system, your job is to determine guilt or
11 innocence, and my job is to sentence. So I always tell
12 juries that's my responsibility, and I accept that, and
13 I'm very mindful and respectful of it. I understand,
14 certainly, the awesome power it does hold. I don't take
15 anything lightly in any way, shape, or form.

16 So, with that said, I want to, again, thank you
17 all, and I appreciate you being here.

18 I just want to make sure that you've got him back
19 and secure. And I will just let you know that the
20 bailiffs will make sure you all get to your cars. And
21 again, thank you. Okay? They should be okay? Do they
22 have him?

23 DEPUTY: Yes, Judge.

24 THE COURT: All right. Thank you. I appreciate
25 it. All right. Is there anything further in this case

5-9-18 STATE V SANDERSSENTENCING

1 from the State?

2 SOLICITOR LEGETTE: No, your Honor.

3 THE COURT: From the Defense?

4 MR. PLEXICO: No, your Honor.

5 THE COURT: All right. Thank you. I appreciate
6 it, you all. We're at ease on this case.

END TRIAL 4:05 P.M.

5-9-18 STATE V SANDERSCERTIFICATE OF REPORTER

CERTIFICATE OF REPORTER

MAY 7, 8, 9, 2018 TRANSCRIPT OF HEARING

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

I, Wanda H. Rowe, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing May 7, 8, 9, 2018 Transcript of Hearing is a true and accurate record of the proceedings had on said dates, to the very best of my ability, as throughout this trial, witnesses and attorneys talked over each other or would not speak up, despite the Court's and my attempts to correct them, in the case of State v. Gregory Saunders, Hampton County, Court of General Sessions, Case Numbers 2016-GS-25-00177 and 2016-G-25-00178; that I am of neither kin, counsel, nor interest to any party hereto.

This Certificate of Reporter contains my original signature and is attached to the original transcript requested by SCCID. Pursuant to SCACR 607, requests for copies of this transcript must be made to the court reporter. Unauthorized copying/emailing is prohibited.

Witness my signature August 8, 2018.


Wanda H. Rowe, CVR-M
Official Court Reporter

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Hampton County
Carmen T. Mullen, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

GREGORY SANDERS,

APPELLANT

APPELLATE CASE NO. 2018-000911

FINAL BRIEF OF APPELLANT

SUSAN B. HACKETT
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

TABLE OF CONTENTS.....	i
TABLE OF AUTHORITIES	ii
STATEMENT OF ISSUE ON APPEAL.....	1
STATEMENT OF THE CASE.....	2
STANDARD OF REVIEW	3
STATEMENT OF FACTS	4
ARGUMENT	
The trial judge erred by allowing the state to introduce the contents of a text message allegedly written by a person who did not testify because (1) the text message was inadmissible hearsay for which there was no exception and (2) the state failed to authenticate the text message, and the erroneous admission of the text message permitted the state to use the contents of the message to argue that Appellant was not without fault in bringing on the difficult to defeat his claim of self-defense.	6
Relevant Facts.....	6
Discussion.....	9
CONCLUSION.....	28

TABLE OF AUTHORITIES

Cases

<u>Com. v. Williams</u> , 926 N.E.2d 1162 (Mass. 2010).....	19
<u>Commonwealth v. Mangel</u> , 181 A.3d 1154 (Pa. Super. Ct. 2018).....	19
<u>Deep Keel, LLC v. Atlantic Private Equity Group, LLC</u> , 413 S.C. 58, 773 S.E.2d 607 (Ct. App. 2015)	16
<u>Griffin v. State</u> , 19 A.3d 415 (Md. 2011)	17
<u>Lorraine v. Markel American Ins. Co.</u> , 241 F.R.D. 534 (D. Md. 2007).....	18
<u>Parker v. State</u> , 85 A.3d 682 (Del. 2014).....	21
<u>Smith v. State</u> , 136 So.3d 424 (Miss. 2014)	18
<u>State v. Anderson</u> , 386 S.C. 120, 687 S.E.2d 35 (2009).....	17
<u>State v. Blackburn</u> , 271 S.C. 324, 247 S.E.2d 334 (1978)	10
<u>State v. Burroughs</u> , 328 S.C. 489, 492 S.E.2d 408 (Ct. App. 1997).....	11, 12
<u>State v. Davis</u> , 371 S.C. 170, 638 S.E.2d 57 (2006)	11, 12, 13
<u>State v. Dennis</u> , 337 S.C. 275, 523 S.E.2d 173 (1999).....	12
<u>State v. Douglas</u> , 369 S.C. 424, 632 S.E.2d 845 (2006).....	3
<u>State v. Eleck</u> , 23 A.3d 818 (Conn. App. Ct. 2011).....	19
<u>State v. Garcia</u> , 334 S.C. 71, 512 S.E.2d 507 (1999)	11, 14
<u>State v. Griffin</u> , 339 S.C. 74, 528 S.E.2d 668 (2000).....	10, 14
<u>State v. Hendricks</u> , 408 S.C. 525, 759 S.E.2d 434 (Ct. App. 2014)	10, 11
<u>State v. Hill</u> , 331 S.C. 94, 501 S.E.2d 122 (1998)).....	12
<u>State v. Hughes</u> , 419 S.C. 149, 796 S.E.2d 174 (Ct. App. 2017)	15
<u>State v. Washington</u> , 379 S.C. 120, 665 S.E.2d 602 (2008).....	12
<u>State v. Weston</u> , 367 S.C. 279, 625 S.E.2d 641 (2006).....	15

<u>State v. Whisonant</u> , 335 S.C. 148, 515 S.E.2d 768 (Ct. App. 1999), ...	13
<u>Tienda v. State</u> , 358 S.W.3d 633 (Tex. Crim. App. 2012)	21
<u>United States v. Barnes</u> , 803 F.3d 209 (5th Cir. 2015).....	26
<u>United States v. Browne</u> , 834 F.3d 403 (3rd Cir. 2016)	24
<u>United States v. Hassan</u> , 742 F.3d 104, 133 (4th Cir. 2014)	17, 23
<u>United States v. Mitchell</u> , 145 F.3d 572, 576 (3 rd Cir. 1998)	10
<u>United States v. Recio</u> , 884 F.3d 230 (4th Cir. 2018).....	23
<u>United States v. Vayner</u> , 769 F.3d 125 (2nd Cir. 2014).	21
<u>Vail v. State</u> , 402 S.C. 77, 738 S.E.2d 503 (Ct. App. 2013).....	14

Rules

Rule 902(11), FRE	23, 24, 25
Rule 801(c), SCRE	9
Rule 802, SCRE.....	9
Rule 803, SCRE.....	9
Rule 803(1), SCRE	10
Rule 803(2), SCRE	12
Rule 803(3), SCRE	14, 15
Rule 803(6), FRE	24
Rule 804, SCRE.....	9
Rule 901(a), FRE	23, 25
Rule 901(a), SCRE.....	16
Rule 901(b)(1), SCRE.....	17
Rule 901(b)(4), SCRE.....	17

Rule 901, FRE.....	23

STATEMENT OF ISSUE ON APPEAL

Did the trial judge err by allowing the state to introduce the contents of a text message allegedly written by a person who did not testify because (1) the text message was inadmissible hearsay for which there was no exception and (2) the state failed to authenticate the text message, and the erroneous admission of the text message permitted the state to use the contents of the message to argue that Appellant was not without fault in bringing on the difficult to defeat his claim of self-defense?

STATEMENT OF THE CASE

On February 6, 2017, the Hampton County grand jury indicted Appellant for possession of a weapon during the commission of a violent crime (2016-GS-25-177) and murder (2016-GS-25-178). R. 460-465. On May 7-9, 2018, the state, represented by Tameaka Legette and Bryan Hollen, called the case for trial before the Honorable Carmen T. Mullen and a jury. R. 1-2. Stephen T. Plexico represented Appellant. R. 2. The jury found Appellant guilty as charged. R. 454 l. 21 – R. 455, l. 2. Judge Mullen sentenced Appellant to life imprisonment without the possibility of parole for murder and to five years imprisonment for the weapon. R. 456, l. 21 – R. 457, l. 4; R. 460-465. She ordered the sentences to be served concurrently. R. 457, l. 5; R. 460-465.

STANDARD OF REVIEW

“The admission or exclusion of evidence is a matter addressed to the sound discretion of the trial court and its ruling will not be disturbed in the absence of a manifest abuse of discretion accompanied by probable prejudice.” State v. Douglas, 369 S.C. 424, 429, 632 S.E.2d 845, 847–48 (2006). “An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law.” Id. at 429–30, 632 S.E.2d at 848.

STATEMENT OF FACTS

Appellant and Tyhira Harrington were friends. R. 132, ll. 16-20; R. 172, ll. 13-18. On May 10, 2016, Appellant was aware that there were rumors going around Estill that were damaging his friendship with Harrington. R. 333, l. 21 – R. 334, l. 2. As a result, Appellant went to visit with Harrington to clear his name. R. 136, ll. 13-14; R. 177, ll. 1-2; R. 333, l. 25 – R. 334, l. 13. Harrington had been drinking all day. R. 181, ll. 22-23; R. 192, ll. 2-23. Initially, the two engaged in a civil discussion, however, Harrington punched Appellant and her friends, Kywana Bradley and Yhantyse “Daisy” Priester, joined in to assist Harrington. R. 136, ll. 22-24; R. 137, ll. 19-21; R. 334, ll. 14-22; Defense Exhibit #1. Eventually, Appellant was able to get out of Harrington’s apartment. R. 334, ll. 23-24.

Later that evening, Appellant and his girlfriend, Javasha Forrester, were walking down the street, going home. R. 101, ll. 14-18; R. 337, l. 12 – R. 338, l. 1. A car drove past then, slammed on brakes, backed up, and then pulled into a parking lot within inches of the pair. R. 101, ll. 22-25; R. 180, ll. 10-13; R. 193, ll. 12-24; R. 338, ll. 10-24. From the car emerged Harrington, Priester, and two young men named Randy White and Marquis Alston. R. 102, ll. 11-17; R. 110, ll. 23-25; R. 181, ll. 7-8; R. 338, ll. 18-19; R. 339, ll. 14-18.

Appellant was scared. R. 339, ll. 1-2; R. 344, ll. 6-7. Harrington was in “full effect” and immediately started threatening Appellant and Forrester. R. 101, l. 24 – R. 102, l. 2; R. 107, ll. 2-8; R. 194, ll. 8-11; R. 340, ll. 1-11. According to White, Harrington was “full of rage.” R. 107, l. 25; R. 181, l. 22. Harrington wanted to fight and was intent on doing violence. R. 111, ll. 1-4; R. 117, ll. 1-3; R. 125, ll. 13-15; R. 180, ll. 14-15; R. 199, l. 25 – R. 200, l. 1. Appellant put Forrester behind him to shield her from Harrington and the two backed up. R. 102, ll. 3-4; R. 110, ll. 23-25; R. 111, ll. 16-19; R. 112, ll. 12-15; R. 187, ll. 3-5; R. 340, ll. 12-18. Harrington’s

boyfriend, Randy White, was “right beside” Harrington as she continued to approach Appellant and Forrester. R. 111, ll. 20-24; R. 125, ll. 16-18; R. 341, ll. 3-8; R. 341, ll. 18-22. Harrington’s other compatriots were not far behind them. R. 341, l. 23 – R. 342, l. 1.¹ When Forrester repeatedly assured Harrington that she did not want to fight, Harrington turned her ire toward Appellant. R. 180, ll. 15-16; R. 183, ll. 5-7; R. 191, l. 22; R. 341, ll. 9-13. Harrington even told Appellant at she had a gun in her car. R. 341, ll. 13-15.

Appellant explained that there was a building behind him and the foursome had him cornered. R. 342, ll. 2-7. In short, he had no avenue of retreat. R. 342, ll. 2-12. Despite Appellant’s repeated requests that the foursome, led by Harrington, leave them alone, the group continued its advance. R. 343, ll. 9-22. At that point, Appellant did the only thing he could do – he pulled his gun and shot Harrington. R. 345, ll. 15-17. Appellant and Forrester then ran to safety. R. 345, l. 18 – R. 346, l. 7.

¹ Marquis Alston claimed that when the car stopped he got out and went to the home of a friend who lived nearby. R. 154, ll. 10-12; R. 155, ll. 17-24; R. 157, ll. 1-7. Yhantyse Priester claimed that she sent Alston and Randy White to get Kywana Bradley to calm Tyhira Harrington. R. 181, ll. 7-11.

ARGUMENT

The trial judge erred by allowing the state to introduce the contents of a text message allegedly written by a person who did not testify because (1) the text message was inadmissible hearsay for which there was no exception and (2) the state failed to authenticate the text message, and the erroneous admission of the text message permitted the state to use the contents of the message to argue that Appellant was not without fault in bringing on the difficult to defeat his claim of self-defense.

Relevant facts

Marilyn Garvin, the deceased's mother, lived with the deceased in Fairwood Apartments in Estill. R. 59, l. 24 – R. 60, l. 22. Garvin claimed that on May 7, 2016, Appellant made threats to her related to the deceased. R. 66, ll. 3-21. Garvin sent the deceased a text message relaying what she claimed Appellant said. R. 67, l. 1 – R. 71, l. 3; R. 458. In the message, Garvin indicated she was the deceased's "ride or die" and that Appellant "better recognize" that all it would take would be "a phone call." R. 70, l. 24 – R. 71, l. 3. Garvin explained that she meant that she "would be behind" the deceased regardless. R. 71, l. 22 – R. 72, l. 3.

On May 10, 2016, Garvin and her boyfriend, Samson Williams, were moving out of the deceased's apartment and into an apartment of their own. R. 74, ll. 4-12. During the evening of May 10, 2016, Garvin went to her apartment. R. 74, ll. 13-22. While at her apartment, she received a phone call from Johnny McKnight saying that "Hard and his girlfriend [were] on the back of [the deceased's] apartment fiddling with the door." R. 75, ll. 6-12. When the solicitor asked Garvin about the text message, defense counsel objected to the question as eliciting hearsay, and the judge sustained the objection and struck the testimony. R. 75, ll. 13-18. However, the solicitor next asked if Garvin received a text message from anyone. R. 75, ll. 20-

21. Garvin explained she received a text message from “Mr. Johnny McKnight. Johnny [is also] known as Johnny Blaze.” R. 75, l. 20. She further explained that she had “Mr. McKnight programmed” into her phone “under Johnny Blaze.” R. 76, ll. 1-3. According to Garvin, she called the deceased and told her what McKnight allegedly said to her. R. 77, ll. 10-14; R. 77, ll. 21-22. Garvin claimed the deceased had no reaction and simply hung up the phone. R. 77, ll. 23-24.

During the examination, the solicitor instructed Garvin not to say “what he said.” R. 77, l. 15. While this instruction appeared to demonstrate the solicitor’s understanding that what McKnight said to Garvin via text message was inadmissible hearsay and was not authenticated, the solicitor then sought to introduce the message into evidence. R. 77, l. 25 – R. 78, l. 2. Defense counsel immediately objected, explaining the text message itself was hearsay and unauthenticated because the sender was unknown. R. 78, ll. 3-6; R. 78, ll. 11-13. The state defended its request for admission by arguing, “she knows that it was her phone, and it - - the text message came to her phone.” R. 78, ll. 7-9. Thereafter, an off-the-record bench conference ensued. R. 78, ll. 17-20. Ultimately, Judge Mullen allowed the text message to be admitted into evidence. R. 78, l. 23 – R. 79, l. 7; R. 459.

Subsequently, Garvin read the text message to the jurors: “I just seen Hard girlfriend walking behind apartment. He’s probably behind her to trying something.” R. 79, ll. 23-25. According to Garvin, the message meant “that Hard was trying, him and his girlfriend, trying to lure [her] baby out the house.” R. 80, ll. 1-5. The solicitor then had Garvin repeat that in response to receiving the text message, she called the deceased and said, “Johnny just text me and said that Hard and his girlfriend - - Mr. Sanders and his girlfriend was going back behind your apartment.” R. 80, ll. 20-24.

During the next break, Judge Mullen permitted the parties to put their arguments regarding the admissibility of the text message on the record. R. 91, ll. 14-18. Defense counsel explained that he objected to the admission of the text message because although Garvin claimed the message was from “Johnny McKnight,” the message indicated it was from “Johnny Blaze.” R. 91, ll. 19-22. This exemplified how the message had not been authenticated by the state. Additionally, trial counsel objected to the admission of the text message as hearsay. R. 91, ll. 22-24. Trial counsel explained that the change in technology had not altered the evidentiary rules – “If she could not read a letter from him in prior [to] texting days, or she could not quote what he said,” then “she should [not] be able to reprint it and read it out of a text.” R. 92, ll. 5-8.

The state argued the text message was not hearsay because it was “reliable”:

She knew Mr. McKnight; she had his phone number in her phone; he sent the text; she still has that phone; and she’s able to look at it. And it is basically part of the hearsay law, the main problem with hearsay that we have is that it’s not reliable. This is written down, it can’t be misconstrued, and can only be read the way it is, which is exactly what she did.

R. 92, ll. 14-24. Turning to the authentication argument, the state admitted that it is “always the issue with text messages” that “[y]ou can’t say that a particular person had a phone any particular time.” R. 93, ll. 6-9. However, the state claimed that failing did not “go to the authentication.” R. 93, ll. 9-10. According to the state, it was “a jury argument, as far as whether or not Mr. McKnight sent that text.” R. 93, ll. 10-11.

The state then used this text message and the corresponding phone call to argue that Appellant’s claim of self-defense was disproved because the text message showed Appellant was not “without fault in bringing on this difficulty.” R. 389, l. 24 – R. 390, l. 15. As the solicitor explained, the text message, which was communicated by Garvin to the deceased, showed that Appellant was “behind the house, trying something.” R. 390, ll. 11-15; R. 390, ll. 19-24.

According to the solicitor, this meant Appellant “started the whole thing.” R. 390, l. 19; R. 390, l. 25 – R. 391, l. 2. The state went so far as to claim that Appellant “started it” “when he was trying to get in her house.” R. 391, ll. 16-19.

Discussion

The trial judge erred when she permitted the state to introduce inadmissible hearsay regarding a text message purportedly written by a witness who did not testify and where the state failed to authenticate the message.

Hearsay

“Hearsay is not admissible.” Rule 802, SCRE. “‘Hearsay’ is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.” Rule 801(c), SCRE. While there are multiple exceptions to the rule against hearsay, see Rule 803, SCRE, Rule 804, SCRE, none of those exceptions were articulated by the state to support its argument for admission and an analysis of the exceptions show that none were satisfied.

An examination of the South Carolina Rules of Evidence, and the case law interpreting those Rules reveals the testimony did not fall within one of the exceptions. The exceptions found within Rule 804, SCRE, require the declarant be unavailable. The state never presented any evidence or argument to show the purported declarant – Johnny McKnight a.k.a. Johnny Blaze – was unavailable. Therefore, the state may not avail itself of the exceptions contained within Rule 804, SCRE, on appeal. The exceptions provided for by Rule 803, SCRE, apply regardless of the availability of the declarant; thus, those are the only exceptions the state may use on appeal. Nevertheless, none of those exceptions apply.

Present sense impression

The Rules of Evidence permit the introduction of statements “describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter” as an exception to the bar against hearsay. Rule 803(1), SCRE. “There are three elements to the foundation for the admission of a hearsay statement as a present sense impression: (1) the statement must describe or explain an event or condition; (2) the statement must be contemporaneous with the event; and (3) the declarant must have personally perceived the event.” State v. Hendricks, 408 S.C. 525, 533, 759 S.E.2d 434, 438 (Ct. App. 2014); see also, United States v. Mitchell, 145 F.3d 572, 576 (3rd Cir. 1998). The state failed to present evidence to satisfy any of the three elements.

By the Rule’s very language, the proffered statement must describe or explain an event or condition. The South Carolina Supreme Court held a statement by an alleged victim that he planned to meet the defendant for a drug deal was not admissible as a present sense impression because the statement was “regarding a *future* event and not a statement regarding something contemporaneously perceived.” State v. Griffin, 339 S.C. 74, 78 n. 3, 528 S.E.2d 668, 670 n. 3 (2000)(emphasis in original). Importantly, the statement must not concern an opinion or draw a conclusion; rather, the statement must “explain, elucidate or in some way characterize the nature of the event.” State v. Blackburn, 271 S.C. 324, 328, 247 S.E.2d 334, 337 (1978) (explaining how a statement would not be admissible under the present sense impression of Rule 803 of the Federal Rules of Evidence due to conclusory nature).

In State v. Burroughs, 328 S.C. 489, 499, 492 S.E.2d 408, 413 (Ct. App. 1997), this Court held a statement given nearly ten hours after the alleged incident was not made while the declarant was perceiving the event or condition, or immediately thereafter, as required by the Rule. The South Carolina Supreme Court made clear that in order for a statement to fall within the present

sense impression exception, the record must contain evidence of when the event or condition occurred in order to establish the statement was made while the declarant was perceiving the event or condition or immediately thereafter. State v. Garcia, 334 S.C. 71, 77 n. 4, 512 S.E.2d 507, 510 n.4 (1999).

This Court has emphasized that the declarant actually perceive the event or condition described. In State v. Hendricks, 408 S.C. 525, 533, 759 S.E.2d 434, 438 (Ct. App. 2014), this Court held statements during a 911 call by a mother concerning her daughter's allegations of rape were not a present sense impression because the mother did not perceive the rape. The Supreme Court likewise emphasized the necessity that the declarant actually perceive or witness the event or condition in State v. Davis, 371 S.C. 170, 180 n. 9, 638 S.E.2d 57, 63 n. 9 (2006) where the record contained insufficient evidence that the declarant witnessed the shooting.

While the first sentence of the text message, "I just seen hard gf walkn behind da apts," likely described an event actually perceived by the declarant, actually described an event in the past, and possibly satisfied the contemporaneity requirement due to the use of the word "just," the second sentence failed to satisfy the present sense impression exception's requirements. The second sentence concerned the declarant's opinion as indicated by the use of the word "probably." In fact, the second sentence put forth the declarant's opinion that Appellant was *probably hiding and trying something*, for which there was no evidence. Furthermore, the first sentence referred simply to "da apts," which Garvin claimed referred to the deceased's apartment specifically, but for which there was no evidence to support. The text message failed to satisfy the present sense impression exception, and the state failed to present evidence or argument to support the exception.

Excited Utterance

The Rules of Evidence provide an exception for the admissibility of excited utterances as well. An excited utterance is a “statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition” and may be admitted at trial as an exception to the hearsay rule. Rule 803(2), SCRE. “The rationale behind the excited utterance exception to the hearsay rule is that the startling event suspends the declarant’s process of reflective thought and, consequently, reduces the likelihood of fabrication.” State v. Davis, 371 S.C. 170, 178, 638 S.E.2d 57, 62 (2006) (citing State v. Dennis, 337 S.C. 275, 284, 523 S.E.2d 173, 177 (1999)). The Supreme Court has identified three elements a trial court must consider when determining whether a statement has the spontaneous quality necessary for admission as an excited utterance: “(1) the statement must relate to a startling event or condition; (2) the statement must have been made while the declarant was under the stress of excitement; and (3) the stress of excitement must be caused by the startling event or condition.” State v. Washington, 379 S.C. 120, 124, 665 S.E.2d 602, 604 (2008). “[S]tatements which are not based on firsthand information, such as where the declarant was not an actual witness to the event, are not admissible under the excited utterance exception to the hearsay rule.” State v. Davis, 371 S.C. 170, 179, 638 S.E.2d 57, 62 (2006) (citing State v. Hill, 331 S.C. 94, 99, 501 S.E.2d 122, 125 (1998)).

In State v. Burroughs, 328 S.C. 489, 496, 492 S.E.2d 408, 411 (Ct. App. 1997), “the trial court allowed the police officer who first took the victim’s statement and a nurse who examined the victim in the emergency room to testify about the victim’s statements to them describing the assault.” This Court held that “the testimony was hearsay and amounted to impermissible bolstering of the victim’s trial testimony.” Id. This Court also noted that the statements did not amount to an excited utterance because there was “a great deal of time for reflection” before the

victim made the statements to the police officer and nurse. Id. at 500, 492 S.E.2d at 413. In State v. Whisonant, 335 S.C. 148, 515 S.E.2d 768 (Ct. App. 1999), this Court held the admission of the victim's statements to her stepmother regarding details of the assault under the excited utterance exception to the hearsay rule was reversible error where a considerable time period had passed between the assault and the statement giving the victim time to reflect. This Court further held the stepmother's testimony was cumulative because it mirrored that of the victim and improperly bolstered the victim's story in the minds of the jury. Id. at 156, 515, S.E.2d at 772.

In State v. Davis, 371 S.C. 170, 178-81, 638 S.E.2d 57, 61-63 (2006), the Court found that the trial court committed reversible error in admitting the co-defendant's statements, as an excited utterance, that his brother had shot the victim because the victim had taken a swing at his brother. In addition to a lack of evidence that the co-defendant was under the stress or excitement of the shooting when he made the statement, the Davis Court found that the record did not support the conclusion that Hill witnessed the shooting. 371 S.C. at 180, 638 S.E.2d at 63. Thus, the Court ruled: "Because there is no evidence Hill actually saw Paul get shot, Hill's statement is not admissible under the excited utterance exception to the hearsay rule." Id.

There was simply no "startling" event described by the text message. According to the text message, the author "just seen hard gf walkn behind da apt." The message fails to describe anything startling or why seeing someone walking would be startling. The second sentence of the text message, "[h]e probably hidn 2. Tryn sum," does not describe an event or condition at all. It puts forward an unknown person's opinion for which there was no evidence or basis. The state failed to put forth any evidence or argument that the text message satisfied the excited utterance exception to the rule against hearsay. Quite simply, the text message was not an excited utterance.

State of mind

“A statement of the declarant’s then existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain, and bodily health), but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the execution, revocation, identification, or terms of declarant’s will” is not hearsay. Rule 803(3), SCRE. As an example, the Court held “a statement by the victim that he or she planned to meet the defendant at the time or place of the murder is admissible under Rule 803(3) as evidence of the declarant’s then-existing state of mind.” State v. Griffin, 339 S.C. 74, 78, 528 S.E.2d 668, 670 (2000).

In State v. Garcia, 334 S.C. 71, 76, 512 S.E.2d 507, 509 (1999), the South Carolina Supreme Court explained that “while the present state of the declarant’s mind is admissible as an exception to hearsay, the reason for the declarant’s state of mind is not.” This Court held testimony by two witnesses concerning what an alleged sexual assault victim said did not “fit within the exception provided in Rule 803(3).” Vail v. State, 402 S.C. 77, 87, 738 S.E.2d 503, 508-509 (Ct. App. 2013). One witness testified the alleged victim told her Vail was mad at her for telling the witness she and Vail had sex. Id. at 87, 738 S.E.2d at 508. Another witness testified the alleged victim was very upset Vail had left their church, that everyone would hate her because they would know she was the reason he left, and that she was really upset because she had given her virginity to Vail. Id. at 87, 738 S.E.2d at 508-509.

Perhaps the best known case interpreting Rule 803(3), SCRE, is State v. Weston, 367 S.C. 279, 625 S.E.2d 641 (2006). Weston was charged with killing his mother, whose body was never found. Weston, 367 S.C. at 282, 625 S.E.2d at 643. Mother’s friend, Suzanne Allen, testified that prior to Weston moving in with Mother, Mother “was a happy person, cheerful, and fun to be with.”

Id. at 285, 625 S.E.2d at 644. Allen also testified that Mother was ““very unhappy”” concerning Weston. Id. Finally, Allen testified that Mother told her she intended to ask Weston to leave her home. Id. at 286, 625 S.E.2d at 645. Weston’s sister and Mother’s daughter, Toni Franchey, testified that Mother seemed “more nervous and anxious than normal” during the two-week period before her disappearance. Id. According to Franchey, Mother “just seemed more anxious and just uncertain,” including that she requested no one touch anything in Weston’s room because she “was afraid.” Id. This Court held the testimony “was properly admitted” because the witnesses “did not give a reason” for Mother’s fear. Id. at 287, 625 S.E.2d at 646. Rather, the witnesses “testified only” that Mother “was afraid of Weston.” Id. The Court determined that holding “that a witness may testify to the fact that the decedent was afraid, but not that the decedent was afraid of the defendant” was “simply too constrained a reading of Garcia.” Id. at 287-288, 625 S.E.2d at 646.

Recently, this Court had the opportunity to examine Rule 803(3), SCRE. State v. Hughes, 419 S.C. 149, 796 S.E.2d 174 (Ct. App. 2017). Hughes was accused of his killing his mother. Id. at 151, 419 S.C. at 175. Two days before her death, Hughes was released from the county jail after pleading guilty to forging two checks written on the deceased’s bank account. Id. He received a probationary sentence. Id. Margo Green, the deceased’s friend, testified that shortly before her death, the deceased was upset that Hughes was released without her knowledge and she would have to be very careful now as a result. Id. at 154, 796 S.E.2d at 177. Green also testified the deceased said she slept better when Hughes was in jail, that she was always afraid and on guard when he was not in jail. Id. at 154-155, 796 S.E.2d at 177. Ben Leaphart testified the deceased “indicated she was uncomfortable around Hughes, had some verbal confrontations with him, and was concerned about his ‘drug use and his lifestyle.’” Id. at 155, 796 S.E.2d at 177. Max Few testified that the deceased asked him to watch out for her because Hughes was out of jail and she feared he would

kill her. Id. Finally, Marion Beachum testified the deceased was deathly afraid of Hughes and feared he would kill her. Id.

This Court held the trial court “erred in admitting some of the challenged testimony,” but determined Hughes was not prejudiced from the inadmissible hearsay. Id. at 156, 796 S.E.2d at 178. This Court explained the statements “were inadmissible because they not only revealed [the deceased]’s state of mind, they described the reasons for her state of mind.” Id. at 157, 796 S.E.2d at 178.

The text message did not describe the author’s then existing state of mind, emotion, sensation, or physical condition. The first sentence purported to describe an observation by the author. The second sentence ran afoul of the state of mind exception because it was a statement of belief. The text message could not be considered a statement of the declarant’s state of mind based on the very language used.

Authentication

The proponent of evidence must satisfy “[t]he requirement of authentication or identification as a condition precedent to admissibility.” Rule 901(a), SCRE. This requirement “is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.” Id. While the burden is not high, the proponent must offer a satisfactory foundation to permit the jury to conclude the evidence is authentic. Deep Keel, LLC v. Atlantic Private Equity Group, LLC, 413 S.C. 58, 64-65, 773 S.E.2d 607, 610 (Ct. App. 2015)(citing United States v. Hassan, 742 F.3d 104, 133 (4th Cir. 2014)).

One of the most common ways for the proponent to authenticate evidence is through the testimony of a witness with knowledge that the “matter is what it is claimed to be.” See Rule 901(b)(1), SCRE. Another way to authenticate evidence is by showing the evidence contains

“distinctive characteristics and the like.” Rule 901(b)(4), SCRE. “Appearance, contents, substance, internal patterns, or other distinctive characteristics, taken in conjunction with circumstances” may serve to authenticate evidence. Id.; see also State v. Anderson, 386 S.C. 120, 129, 687 S.E.2d 35, 39-40 (2009) (finding a master fingerprint card authenticated where an expert explained the prints on the master card were taken at a correctional facility on a specific date, and assigned a unique state identifying number).

Examining an authentication issue related to a social networking post, the Maryland Court of Appeals delved into how social networking sites work – and do not work. Griffin v. State, 19 A.3d 415, 420-421 (Md. 2011). Particularly, the court recognized that “anyone can create a fictitious account and masquerade under another person’s name or can gain access to another’s account by obtaining the user’s username and password.” Id. at 421. “The potential for fabricating or tampering with electronically stored information on a social networking site, thus poses significant challenges from the standpoint of authentication of printouts of the site.” Id. at 422.

The court found a printout of a MySpace page was not authenticated. Id. at 423-424. The court explained the “picture of [the individual], coupled with her birth date and location, were not sufficient ‘distinctive characteristics’ on a MySpace profile to authenticate its printout, given the prospect that someone other than [the individual] could have not only created the site, but also posted the ... comment.” Id. at 424. According to the court, “the potential for abuse and manipulation of a social networking site by someone other than its purported creator and/or user” requires “a greater degree of authentication than merely identifying the date of birth of the creator and her visage in a photograph on the site” when what is offered is “a printout of an image from such a site.” Id. See also Lorraine v. Markel American Ins. Co., 241 F.R.D. 534

(D. Md. 2007) (laying out a “roadmap” for authentication of electronically stored information).

The Mississippi Supreme Court explained “[t]he authentication of social media poses unique issues regarding what is required to make a prima facie showing that the matter is what the proponent claims.” Smith v. State, 136 So.3d 424, 432 (Miss. 2014). “Creating a Facebook account is easy.” Id. “Not only can anyone create a profile and masquerade as another person, but such a risk is amplified when a person creates a real profile without the realization that third parties can ‘mine their personal data.’” Id. “Friends and strangers alike may have ‘access to family photos, intimate details about one’s likes and dislikes, hobbies, employer details, and other personal information,’ and, consequently, ‘the desire to share information with one’s friends may also expose users to unknown third parties who may misuse their information.’” Id.

Tremendous concerns over authentication exist due to the ease of fabricating and tampering with electronically stored information. Id. at 432-433. Therefore, the mere fact that an electronic communication purports to originate from a certain person’s account is insufficient to authenticate that person as the author of the communications. Id. at 433. “[S]omething more than simply a name and small, blurry photograph” is needed to identify the Facebook account as belonging to the purported user. Id.

The court held the state failed to provide sufficient evidence that the Facebook messages were from the defendant because the only information tying the account to the defendant was the name and a “very small, grainy, low-quality photograph.” Id. at 434. “No other identifying information from the Facebook profile, such as date of birth, interests, hometown, or the like was provided.” Id. Despite the defendant’s girlfriend’s testimony the defendant sent the messages to her, the court found this was not sufficient. Id. The court explained the state “utterly failed to provide any information as to the basis of her purported knowledge.” Id.; see also

Commonwealth v. Mangel, 181 A.3d 1154, 1162 (Pa. Super. Ct. 2018) (discussing the “additional challenges” presented by “[s]ocial media evidence” “because of the great ease with which a social media account may be falsified, or a legitimate account may be accessed by an imposter”).

The Supreme Judicial Court of Massachusetts held a trial court erred in permitting the prosecution to introduce messages sent via MySpace. Com. v. Williams, 926 N.E.2d 1162, 1172 (Mass. 2010). A witness testified that she received MySpace messages from the defendant’s brother telling her not to testify against the defendant. Id. The witness explained the account showed a picture of the brother and showed the user’s name was “doit4it.” Id. According to the court, the contents of the messages indicated the sender was familiar with the witness and the pending criminal cases against the defendant and wanted to keep the witness from testifying. Id. The court explained there “was insufficient evidence to authenticate the messages.” Id. There was no testimony regarding how secure the web page was or who could access the web page. Id. “While the foundational testimony established that the messages were sent by someone with access to [brother]’s MySpace Web page, it did not identify the person who actually sent the communication.” Id. at 1172-1173.

The Appellate Court of Connecticut concluded a defendant failed to authenticate authorship of electronic messages sent to him purportedly from a state’s witness using Facebook. State v. Eleck, 23 A.3d 818, 820-824 (Conn. App. Ct. 2011). After the witness provided damaging testimony against the defendant, he sought to impeach her credibility by asking if she had spoken with the defendant.” Id. at 820. The witness admitted to seeing the defendant, but claimed she had not spoken to him “in person, by telephone or by computer.” Id. Counsel showed the witness a printout of an exchange of electronic messages between the defendant’s

Facebook account and another account bearing her name. Id. She identified the user name on the account as hers, but denied sending the messages. Id. She also claimed that someone had “hacked” into her Facebook account and changed her password rendering her no longer able to access the account. Id. The defendant testified that he downloaded and printed the exchange of messages from his computer. Id. at 821. He testified that he recognized the user name as belonging to the witness and that the user name’s profile contained photographs and other entries identifying the witness as the account holder. Id.

Although the court found the witness’s testimony about the “hacking” “dubious,” particularly considering the messages were sent prior to the alleged hacking, the court noted the testimony highlighted “the general lack of security of the medium and raise[d] an issue as to whether a third party may have sent the messages” using the witness’s account. Id. at 824. The court determined “that the fact that [the witness] held and managed the account did not provide a sufficient foundation for admitting the printout, and it was incumbent on the defendant, as the proponent, to advance other foundational proof to authenticate the proffered messages did, in fact, come from [the witness] and not simply from her Facebook account.” Id. The court also found the content of the messages too vague to support the defendant’s position that circumstantial evidence established the witness as the author. Id. The messages did not “reflect distinct information that only [the witness] would have possessed regarding the defendant or the character of their relationship.” Id.

The Texas Court of Criminal Appeals also expressed concerns regarding authenticating electronic writings. Tienda v. State, 358 S.W.3d 633 (Tex. Crim. App. 2012). The court explained “computers can be hacked, protected passwords can be compromised, and cell phones can be purloined.” Id. at 642. The court observed “[t]hat an email on its face purports to come

from a certain person's email address, that the respondent in an internet chat room dialogue purports to identify himself, or that a text message emanates from a cell phone number assigned to the purported author – none of these circumstances, without more, has typically been regarded as sufficient to support a finding of authenticity.” Id. at 641-642. Nevertheless, the court found the circumstantial evidence presented in the case before it sufficient to authenticate the MySpace page and information contained therein as being authored by the defendant. Id. at 642. That evidence included numerous photographs of the defendant, including his unique tattoos and distinctive eyeglasses and earring, references to a specific death, references to a specific gang, references to a particular shooting, and evidence of defendant having been on a monitor for a year and a photograph on MySpace of him wearing a monitor. Id. at 645. See also, Parker v. State, 85 A.3d 682, 688 (Del. 2014) (finding Facebook posts allegedly from the defendant authenticated where the substance of the post referenced the altercation that was the subject of the criminal charge, the post was created on the same day as the altercation occurred, and the alleged victim in the case testified to seeing the post and sharing the post).

One of the leading cases concerning the authentication of social media postings is United States v. Vayner, 769 F.3d 125 (2nd Cir. 2014). The district court permitted the government to introduce a profile page from a Russian social networking site, which was similar to Facebook. Id. at 127. A Special Agent with the State Department's Diplomatic Security Service identified the printout from VK.com as “from ‘the Russian equivalent of Facebook,’ and noted that the page purported to be the profile of ‘Alexander Zhiltsov’ (an alternate spelling of Zhyltsou's name), and that it contained a photograph of Zhyltsou.” Id. at 128. The agent noted that under the heading for “contact information,” the profile listed “‘Azmadeuz’ as ‘Zhiltsov’s’ address on Skype. Id. Additionally, the page showed that “Zhiltsov” worked at Martex International and

Cyber Heaven, which were places where the state's key witness indicated the defendant worked. Id. The agent admitted he had only a "'cursory familiarity' with VK, had never used the site except to view this single page, and did not know whether any identity verification was required in order for a user to create an account on the site." Id. at 128-129.

The Second Circuit held the district court abused its discretion by admitting the VK web page because the government failed to authenticate the document. Id. at 131. The court explained that information about Zhylytsou appeared on the VK page, including his name, photograph, and details about his life that were consistent with the state's key witness. Id. at 132. However, the government presented "no evidence that Zhylytsou himself had created the page or was responsible for its contents." Id. "[T]he mere fact that a page with Zhylytsou's name and photograph happened to exist on the Internet at the time of Special Agent Cline's testimony does not permit a reasonable conclusion that this page was created by the defendant or on his behalf." Id. While distinctive characteristics of a document alone may provide circumstantial evidence sufficient for authentication, all of the information on the VK page tying it to Zhylytsou was also known by the state's key witness, and probably many others, "some of whom may have had reasons to create a profile page falsely attributed to the defendant." Id. Except for the VK page itself, "no evidence in the record suggested that Zhylytsou even had a VK profile page, much less that the page in question was that page." Id. at 132-133. The government failed to present any evidence that identification verification was necessary to create such a page with VK, which may have helped determine whether the page actually belonged to Zhylytsou. Id. at 133.

The Fourth Circuit Court of Appeals recently addressed authentication of Facebook pages. United States v. Hassan, 742 F.3d 104, 132-133 (4th Cir. 2014). The Fourth Circuit affirmed the trial court's ruling that the Facebook pages "were self-authenticating under Federal

Rule of Evidence 902(11).” Id. Although South Carolina does not have a Rule 902(11) in its Rules of Evidence, nor does it have any equivalent, the discussion of how the Fourth Circuit analyzed the issue is instructive because the court also addressed authentication under Rule 901(a), FRE, which is similar to South Carolina’s authentication rule.

Specifically, “Rule 902(11) authorizes the admission in evidence of records that satisfy the requirements of Rule 803(6)(A)-(C), ‘as shown by a certification of the custodian ... that complies with a federal statute or a rule prescribed by the Supreme Court.’” Id. at 133. After explaining that the government had satisfied Rule 902(11), FRE, by provision of a certification of the records custodian of Facebook, and that the documents were self-authenticating, the district court and the Fourth Circuit required the government to prove the Facebook pages were linked to the defendants, pursuant to Rule 901, FRE. Id. at 132-133. Both the district court and the Fourth Circuit found Rule 901(a), FRE, satisfied by “tracking the Facebook pages and Facebook accounts” to the defendants’ “mailing and email addresses via internet protocol addresses.” Id. at 133. See also United States v. Recio, 884 F.3d 230, 236-237 (4th Cir. 2018) (finding a Facebook post authenticated where the government presented “a certification by a Facebook records custodian, showing that the Facebook record containing the post was made ‘at or near the time the information was transmitted by the Facebook user,’” the user name associated with the account was the defendant’s, one of four email addresses associated with the account included the defendant’s full name, more than one hundred photos of the defendant were posted to the account, and one of the photos posted to the timeline was accompanied by text wishing the defendant a “happy birthday”).

However, the Third Circuit concluded that Facebook chat logs could not authenticated under Rule 902(11), FRE, because they were not the kinds of documents properly understood as

records of a regularly conducted activity under Rule 803(6), FRE. United States v. Browne, 834 F.3d 403, 409 (3rd Cir. 2016). According to the Third Circuit, “any argument to the contrary misconceives the relationship between authentication and relevance, as well as the purpose of the business records exception to the hearsay rule.” Id. Evidence is relevant “only if it is what the proponent claims it is, i.e., if it is authentic.” Id. The court explained that in the case before it, “the relevance of the Facebook records hinge[d] on the fact of authorship.” Id. at 410. Therefore, to authenticate the messages, the government was “required to introduce enough evidence such that the jury could reasonably find, by a preponderance of the evidence that [the defendant] and the victims authored the Facebook messages at issue.” Id. The records custodian affirmed “only that the communications took place as alleged between the named Facebook accounts.” Id. This was not sufficient. Id.

The Third Circuit also explained the government’s “theory of self-authentication” was “predicated on a misunderstanding of the business records exception.” Id. The purpose of the business records exception was “to capture records that are likely accurate and reliable in content, as demonstrated by the trustworthiness of the underlying sources of information and the process by which and purposes for which that information is recorded.” Id. However, Facebook did not “purport to verify or rely on the substantive contents of the communications in the course of its business.” Id. “At most, the records custodian employed by the social media platform can attest to the accuracy of only certain aspects of the communications exchanged over that platform, that is, confirmation that the depicted communications took place between certain Facebook accounts, on particular dates, or at particular times.” Id. at 410-411. According to the court, that was “no more sufficient to confirm the accuracy or reliability of the contents of the Facebook chats than a postal receipt would be to attest to the accuracy or reliability of the

contents of the enclosed mailed letter.” Id. at 411. The court concluded “the Facebook records [were] not business records under 803(6) and thus [could not] be authenticated by way of Rule 902(11).” Id.

Next, the court considered whether the government authenticated the Facebook chats via Rule 901(a), FRE. The court explained:

The authentication of electronically stored information in general requires consideration of the ways in which such data can be manipulated or corrupted, and the authentication of social media evidence in particular presents some special challenges because of the great ease with which a social media account may be falsified or a legitimate account may be accessed by an imposter.

Id. at 412 (internal citations omitted). Nonetheless, the Third Circuit concluded the government “provided more than adequate evidence to support the disputed Facebook records reflected online conversations that took place between” the alleged individuals “such that the jury could reasonably find the authenticity of the records by a preponderance of the evidence.” Id. at 413 (internal quotations omitted). Four witnesses who participated in the Facebook chats did not identify the records, but did offer “detailed testimony about the exchanges” over Facebook. Id. The testimony “was consistent with the content of the four chat logs.” Id. Three witnesses testified that “after conversing with the Button Facebook account ... they met in person with Button – whom they were able to identify in open court as [the defendant].” Id. The court found this “powerful evidence not only establishing the accuracy of the chat logs but also linking them to [the defendant].” Id. Additionally, when the defendant spoke to the police, he made “significant concessions that served to link him to the Facebook conversations.” Id. The defendant’s testimony was consistent with the personal details the Facebook user provided throughout his Facebook conversations with the four witnesses. Id. at 414. Finally, the court observed the government “supported the accuracy of the chat logs by obtaining them directly

from Facebook and introducing a certificate attesting to their maintenance by the company's automated systems." Id. at 414-415.

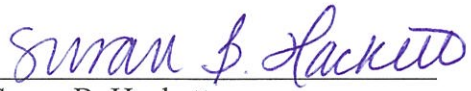
The Fifth Circuit Court of Appeals found Facebook messages and text messages properly authenticated by a witness with knowledge in United States v. Barnes, 803 F.3d 209, 217 (5th Cir. 2015). The messages were purportedly between a witness and a defendant. The witness testified she had seen the defendant use Facebook, she recognized his Facebook account, and the Facebook messages matched the defendant's manner of communicating. Id. Further, the witness testified the defendant could send text messages from his cell phone, she had spoken to the defendant on the phone number that was the source of the text messages, and the content of the text messages indicated they were from the defendant. Id. While the witness could not testify to certainty that the defendant authored the messages, the court explained that "conclusive proof of authenticity [was] not required for the admission of disputed evidence." Id.

The state failed to authenticate the text message contained within State's Exhibit #25. According to Garvin, she received a text message from "Mr. Johnny McKnight. Johnny known as Johnny Blaze." R. 75, ll. 20-22. The text message was received on her phone. R. 75, ll. 23-25. She claimed she had "Mr. McKnight programmed into [her] phone" "under "Johnny Blaze." R. 76, ll. 1-3. Garvin asserted that she could recognize the text message "[b]ecause they programmed in my phone as Johnny Blaze, and the same text is in my phone." R. 77, ll. 3-5. She asserted the text message was still on the phone in her possession. R. 77, ll. 6-9. This was the entirety of the state's presentation on authentication. This was a far cry from what is required to authenticate evidence – particularly, electronically stored evidence, where the potential for fabricating and tampering is so great. The state failed to show how Garvin knew the author of the text message. Garvin claimed she had a number programmed in her phone for someone

under the name of “Johnny Blaze.” She further claimed that “Johnny Blaze” was an alias used by Johnny McKnight. She never explained how she knew Blaze or McKnight or how she obtained the telephone number for him. It appeared she indicated the phone number for Blaze had been programmed into her phone by someone else when she said “they programmed.” She never indicated that she communicated with Blaze using that phone number or that she recognized the style of writing. In fact, the writer of the text message used a signature of “GOD S GIFT,” not anything related to “Johnny,” “McKnight,” or “Blaze.” The state failed to authenticate the text message, and the judge erred by permitting the state to introduce it.

CONCLUSION

Appellant respectfully requests this Court reverse his convictions and remand for a new trial.



Susan B. Hackett
Appellate Defender

ATTORNEY FOR APPELLANT

This 23rd day of May, 2019.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Hampton County

Carmen T. Mullen, Circuit Court Judge

THE STATE,

RESPONDENT,

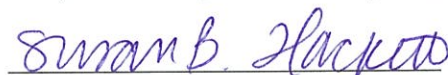
V.

GREGORY SANDERS,

APPELLANT

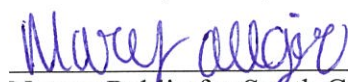
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Michael D. Ross, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 23rd day of May, 2019.



Susan B. Hackett
Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 23rd day of May, 2019.

 (L.S)
Notary Public for South Carolina
My Commission Expires: May 12, 2027

STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Hampton County

The Honorable Carmen T. Mullen, Circuit Court Judge

THE STATE,

Respondent,

v.

GREGORY SANDERS

Appellant.

Appellate Case No. 2018-000911

FINAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General

MICHAEL D. ROSS
Assistant Attorney General
S.C. Bar No. 73986

South Carolina Office of the Attorney General
P.O. Box 11549
Columbia, South Carolina 29211
(803) 734-6307

Isaac McDuffie Stone, III.
Solicitor, Fourteenth Judicial Circuit

ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES.....	ii
APPELLANT'S STATEMENT OF ISSUE ON APPEAL.....	1
RESPONDENT'S COUNTERSTATEMENT OF ISSUE ON APPEAL.....	2
STATEMENT OF THE CASE.....	3
STATEMENT OF FACTS.....	4
STANDARD OF REVIEW.....	11
ARGUMENT.....	12
The Circuit Court Did Not Abuse Its Discretion in Admitting the Text Message Because It Was Properly Authenticated and Was Not Inadmissible Hearsay.....	12
A. The Text Message Was Properly Authenticated Because It Was From A Known Number and Its Contents Provided Circumstantial Evidence Establishing Its Authenticity.....	13
B. The Text Message Was Not Inadmissible Hearsay.....	19
i. <i>The text message fell within the Present Sense Impression Exception to the Hearsay Rule.....</i>	19
ii. <i>Appellant suffered no prejudice from the admission of the text message because it was cumulative to other evidence.....</i>	21
iii. <i>Alternatively, the text message could have been admitted to explain the effect on the listener.....</i>	23
CONCLUSION.....	26
CERTIFICATE OF COMPLIANCE	
CERTIFICATE OF SERVICE	

TABLE OF AUTHORITIES

Cases

<u>Deep Keel, LLC v. Atl. Private Equity Group, LLC,</u> 413 S.C. 58, 773 S.E.2d 607 (Ct. App. 2015).....	13, 15, 16, 19
<u>Equivest Financial, LLC v. Ravenel,</u> 422 S.C. 499, 812 S.E.2d 438 (Ct. App. 2018).....	23
<u>Fields v. Reg'l Med. Ctr. of Orangeburg,</u> 363 S.C. 19, 609 S.E.2d 506 (2005).....	23
<u>I'On, L.L.C. v. Town of Mt. Pleasant,</u> 338 S.C. 406, 526 S.E.2d 716 (2000).....	23
<u>Pierce v. State,</u> 807 S.E.2d 425 (Ga. 2017).....	16, 17
<u>State v. Anderson,</u> 386 S.C. 120, 687 S.E.2d 35 (2009).....	11, 13, 14
<u>State v. Bryant,</u> 336 S.C. 340, 520 S.E.2d 319 (1999).....	24
<u>State v. Douglas,</u> 411 S.C. 307, 768 S.E.2d 232 (Ct. App. 2014).....	11
<u>State v. Griffin,</u> 339 S.C. 74, 528 S.E. 2d 668 (2000).....	24
<u>State v. Hendricks,</u> 408 S.C. 525 (Ct. App. 2014).....	23
<u>State v. Jennings,</u> 394 S.C. 473, 716 S.E.2d 91 (2011).....	21
<u>State v. New,</u> 338 S.C. 313, 526 S.E.2d 237 (Ct. App. 1999).....	25
<u>State v. Pagan,</u> 369 S.C. 201, 631 S.E.2d 262 (2006).....	11, 14
<u>State v. Parvin,</u> 413 S.C. 497, 777 S.E.2d 1 (Ct. App. 2015).....	20, 22
<u>State v. Townsend,</u> 321 S.C. 55, 467 S.E.2d 138 (Ct. App. 1995).....	23
<u>State v. Washington,</u> 424 S.C. 374, 818 S.E.2d 459 (Ct. App. 2018).....	20
<u>State v. Weston,</u> 367 S.C. 279, 625 S.E.2d 641 (2006).....	21
<u>State v. White,</u> 425 S.C. 304, 821 S.E.2d 523 (Ct. App. 2018).....	24
<u>United States v. Davis,</u> 918 F.3d 397 (4th Cir. 2019).....	17, 18
<u>United States v. Hassan,</u> 742 F.3d 104 (4th Cir. 2014).....	13
<u>United States v. Recio,</u> 884 F.3d 230 (4th Cir. 2018).....	18

Rules

Rule 220, SCACR.....	23
Rule 801, SCRE.....	19
Rule 803, SCRE.....	20
Rule 901	13, 18

APPELLANT'S STATEMENT OF ISSUE ON APPEAL

Did the judge err by allowing the state to introduce the contents of a text message allegedly written by a person who did not testify because (1) the text message was inadmissible hearsay for which there was no exception and (2) the state failed to authenticate the text message, and the erroneous admission of the text message permitted the state to use the contents of the message to argue that Appellant was not without fault in brining on the difficult to defeat his claim of self-defense?

RESPONDENT'S COUNTERSTATEMENT OF ISSUE ON APPEAL

Whether the circuit court abused its discretion and committed reversible error by admitting a text message into evidence.

STATEMENT OF THE CASE

In February 2017, a Hampton County grand jury indicted appellant for murder and possession of a firearm during the commission of a violent crime. (Indictment Nos. 2016-GS-25-00177 and 00178; R. 460-461; 463-464). The solicitor called the case for trial on May 7, 2018, before the Honorable Carmen T. Mullen. (R. 3, 1.15-24). Assistant Solicitors Tameka Legette and Bryan Hollen represented the State of South Carolina. (R. 1). Attorney Stephen Plexico represented appellant. After a three-day trial, the jury convicted appellant on both counts. (R. 454, 1.24, 455, 1.2). Judge Mullen sentenced appellant to life in prison for murder and five years (concurrent) for possession of a firearm during the commission of a violent crime. (R. 456, 1. 22, 457, 1. 1-5). This timely appeal follows.

STATEMENT OF FACTS

Murder of Tyhira Harrington

Tyhira Harrington (victim) lived at the Fairwood Apartments in Estill, South Carolina with her mother and two young children. (R. 60, l. 16-24). She stood approximately five feet, six inches tall and weighed 105 pounds.¹ (R. 324, l. 3-4). In addition to raising her children, she worked at several restaurants on Hilton Head Island. (R. 61, l. 11-13, 32, l. 22-23). Initially, Tyhira and appellant had a friendly relationship. (R. 132, l. 20.). In fact, appellant would regularly come by the apartment with his girlfriend for dinner. (R. 63, l. 10-11). Tyhira even occasionally braided appellant's hair when he visited the apartment. (R. 63, l. 23-25).

But their relationship drastically changed in the days leading up to Tyhira's murder. On May 7, 2016, the victim's mother was walking to a convenience store in Estill when she passed by appellant sitting on the porch of an abandoned home. (R. 6, l. 9-20, 82, l. 12). Appellant yelled, "you better get a black dress because I'm going to kill your daughter." (R. 66, l. 14-15). According to appellant, Tyhira had taken him to Allendale, as part of a "set up." (R. 66, l. 16). The victim's mother verbally confronted appellant, but the argument did not escalate to physical violence. (R. 66, l. 17-21, 67, l. 18-25). Instead, the victim's mother walked away and texted her daughter about the incident. (R. 67, l. 1-11, 458). Not only was she worried about the threat, but she also wanted Tyhira to know that she would support her regardless of what appellant claimed. (R. 71, l. 24-25, 72, l. 1-3).

Two days later, Tyhira was out with two friends when she received a call from her mother. (R. 134, l. 17-23). Appellant was at her apartment to "clear his name" regarding the

¹ In contrast, appellant was described as "cocky" with "a little muscle, a little weight." (R. 124, l. 11-14).

threat involving the black dress. (R. 136, l. 12-24, 177, l. 2). Tyhira and her two friends returned to the apartment, and what began as a calm discussion turned into a heated verbal exchange with various gang references. (R. 137, l. 19-24). According to the victim's mother, appellant threw down a blue bandana and said "it's on the five." (R. 73, l. 17-24). Appellant refused to pick the bandanna up, stating, "no, it's on there on the five," which apparently carried gang significance. (R. 73, l. 17-24, 88, l. 17-22). Another witness testified that appellant was talking about "earning stripes," which was also gang-related. (R. 177, l. 7-9, 198, l. 11-17). Ultimately, Tyhira asked appellant to leave, and he did without any physical altercation. (R. 137, l. 10-19, 178, l. 19).

When appellant left, Tyhira drove her mom to a new apartment that her mom had moved into earlier that day. (R. 178, l. 22-24). One of Tyhira's friends rode with her, while the other stayed behind at the apartment with an individual named Johnny McKnight. (R. 139, l. 14-23, 141, l. 9-12, 31, l. 12-25). After dropping off her mom, Tyhira picked up Randy White and his friend, Marquis Alston. (R. 178, l. 22-25, 179, l. 1-8). Randy White was Tyhira's boyfriend and is a distant cousin of appellant. (R. 95, l. 16, 96, l. 17, 350, l. 20).

Meanwhile, back at Tyhira's apartment, her friend noticed that someone was outside the apartment fiddling with the front doorknob. (R. 140, l. 3-6). The friend later testified that "we called Tyhira" to let her know "somebody's trying to get in her house, and to be careful." (R. 140, l. 9-17). Johnny McKnight also called Tyhira's mother to say that appellant was at the apartment fiddling with the door. (R. 75, l. 8-12). In addition to the phone call, McKnight sent a text to Tyhira's mother that read, "I just seen Hard² gf walkn behind da apts. He probably hidn 2. Tryn sum." (R. 75, l. 20-22, 459). Tyhira's mother believed the text meant that appellant and

² Appellant went by the nickname "Hard." (R. 48, l. 10, 64, l. 5, 171, l. 17).

his girlfriend were trying to lure Tyhira out of her apartment. (R. 80, l. 4-5). Upon hearing from McKnight, she immediately relayed his warning to Tyhira. (R. 80, l. 13-24). She would never speak with her daughter again. (R. 81, l. 2).

Once Tyhira learned that appellant had returned to her apartment, she hung up the phone and drove home. (R. 100, l. 18-25, 180, l. 6-11). Riding with her in the car was Randy White, Marquis Alston, and her friend, Daisy.³ (R. 178, l. 23-25, 179, l. 1-8). As they approached the apartment, they saw appellant and his girlfriend standing outside the laundromat of the apartment complex. (R. 101, l. 14-21, 157, l. 25, 180, l. 12). Tyhira got out of the car and walked towards appellant's girlfriend in the street. (R. 121, l. 17, 181, l. 14, 183, l. 2-17). An argument ensued in the street, first between Tyhira and the girlfriend, and then between Tyhira and appellant. (R. 125, l. 9-12, 183, l. 2-17). Although Tyhira was angry (R. 120, l. 18, 181, l. 22), she never attempted to hit appellant or his girlfriend. (R. 102, l. 21-25, 103, l. 8-13, 181, l. 20, 182, l. 16-24). Moreover, her friends stood in the background and did not engage appellant or his girlfriend. (R. 125, l. 11-25, 191, l. 12-14).

As the argument continued, appellant said to Randy White, "[l]eave, you don't want to be a witness." (R. 128, l. 12). Appellant then positioned himself to get a better angle on Tyhira and asked, "all these people out here, and how many people you think are gonna ride for you?"⁴ (R. 184, l. 12-14, 186, l. 5-10). Tyhira had no chance to respond before appellant took out his gun and shot her in the face. (R. 102, l. 4-5, 186, l. 15-21, 187, l. 9). Tyhira dropped to the

³ Daisy's legal name is Yhantyse Priester. (R. 167, l. 13-25).

⁴ The jury previously heard testimony that the phrase "ride or die" means that someone would stand by another's side during a conflict. (R. 71, l. 25-25, 72, l. 1-3).

ground, and appellant walked away.⁵ (R. 103, l. 18). Although her friends rushed her to Hampton Regional Medical Center, the attending physician pronounced Tyhira dead on arrival. (R. 40, l. 13).

Law enforcement responded to shots fired at the scene at approximately 1:00 a.m. on May 10, 2016. (R. 18, l. 1-21). When officers arrived, they found a large pool of blood in the middle of the street, two .40 caliber shell casings, and a pair of flip flops. (St. Ex. 8-10, 19, 21; R. 19, l. 8-17, 21, l. 4-17, 25, l. 9-12). Although law enforcement secured the scene and collected the evidence, the witnesses had already left the area. (R. 20, l. 9-13).

Nevertheless, law enforcement identified appellant as a suspect after speaking with Tyhira's friends at the hospital. (R. 253, l. 1-6). At around 9:00 a.m., law enforcement received a tip about appellant's whereabouts and quickly arrested him. (R. 219, l. 1-14). Appellant was found outside a house in Estill changing his pants near the trash can. (R. 219, l. 8-12). In his possession was a firearm wrapped in a bundle of clothing. (R. 220, l. 7-8). After being read his *Miranda* rights, appellant declined to speak with the police. (R. 4, l. 6-9). However, when law enforcement read him the warrant charging him with Tyhira's murder, appellant stated, "she must've been a nobody." (R. 239, l. 1-7).

Appellant's Trial

The central issue in appellant's trial was his claim of self-defense. Daisy and Randy White both testified for the State.⁶ Their testimony was consistent on four key points. First,

⁵ Daisy testified that after appellant shot Tyhira, "He took off. They took off running." (R. 187, l. 25).

⁶ The State also called Marquis Alston, but he was uncooperative. The circuit court declared him a hostile witness (R. 157, l. 17), and the State introduced his prior inconsistent statement that he saw appellant shoot Tyhira and calmly walk away. (R. 206, l. 15-18).

Tyhira never attempted to hit appellant or his girlfriend. (R. 102, l. 21-25, 103, l. 6-9, 181, l. 20, 182, l. 16-25, 183, l. 13-17). The only physical violence occurred when appellant pulled out his gun and shot Tyhira. (R. 122, l. 23-24). Second, neither Tyhira, nor her friends, had a weapon. (R. 121, l. 11, 182, l. 20). Appellant brought the only weapon to the altercation. Third, although Tyhira's friends got out of the car, they all stayed in the background during the argument. (R. 118, l. 17, 125, l. 9-25, 126, l. 1-4, 191, l. 12-25, 197, l. 17). None of them engaged appellant or appellant's girlfriend. Fourth, the argument occurred in the middle of the street, which meant that appellant could have walked away. (R. 121, l. 16-25, 122, l. 1-14, 181, l. 14, 193, l. 14-17). In short, although Tyhira was angry and confronted appellant in the street, his life was never in danger. (R. 188, l. 9-13).

In addition to eyewitness testimony, the State also presented law enforcement and expert testimony. A SLED firearms examiner matched the gun seized incident to appellant's arrest to a bullet removed from Tyhira's skull and the shell casings found at the scene. (R. 277, l. 14-23). Tyhira's autopsy also revealed stippling, or small burns to the skin from ejected gunpowder, near the bullet hole on her face. (R. 300, l. 6-12). The presence of stippling on Tyhira's skin indicated that she was extremely close to the gun when appellant fired. (R. 301, l. 3-4). According to an expert from SLED, Tyhira was probably within a few inches of the gun. (R. 301, l. 15-16). Similarly, a forensic pathologist estimated the distance from between three or four inches to potentially a couple of feet. (R. 320, l. 20-21). Given the puddle of blood found in the middle of the street (St. Ex. 8-10, 19, 21), the minimal distance between the gun and Tyhira's face corroborates Randy White and Daisy's testimony that appellant was standing in the middle of the street and could have walked away from the argument. Therefore, in contrast to appellant's testimony, his back was not against the wall when he fired the fatal shot.

Appellant took the stand in his own defense. He denied making the threat about the black dress, or even ever going to Allendale with Tyhira.⁷ (R. 332, l. 21, 336, l. 6). Appellant claimed that earlier in the day, friends of the father of Tyhira's children "lynched" him twice. (R. 332, l. 1-15). When he went to Tyhira's apartment to clear his name, Tyhira allegedly punched him in the eye. (R. 334, l. 16-20). Tyhira's three female friends subsequently jumped him and he had to fight his way out of the apartment. (R. 334, l. 20-23). Appellant introduced photographs taken incident to his arrest that purportedly showed the injuries he sustained that day.⁸ (R. 335, l. 8-19; Def. Ex. 1).

After he left the apartment, appellant testified that he and his girlfriend were simply walking down the street when Tyhira sped past them, slammed on the brakes, and pulled into the apartment complex. (R. 338, l. 7-18). All four doors of the car opened up, and Tyhira began threatening appellant and his girlfriend. (R. 340, l. 1-2). According to appellant, Tyhira implied that she a gun in the car. (R. 341, l. 14-15). Appellant stood in front of his girlfriend and began backing up. (R. 340, l. 14-15). Ultimately, he claimed that Tyhira and her friends had him surrounded with his back against the wall of the laundromat. (R. 342, l. 4-7). At that point, he shot and killed Tyhira so he and his girlfriend could escape. (R. 345, l. 19).

After appellant testified, the circuit court charged the jury on the law. Both parties agreed that the jury should not be charged with any lesser included offenses, such as voluntary manslaughter. (R. 330, l. 17-25, 582, l. 1-4). The jury was out for less than an hour before

⁷ In its case-in chief, the State introduced a text message from Tyhira's mother referencing the threat and its connection to Allendale, as described above. (R. 458). The text was sent several days before Tyhira's murder. (R. 70, l. 17-20).

⁸ One of the arresting officers testified that appellant said he sustained a black eye after he got caught cheating on his girlfriend. (R. 240, l. 16-17).

finding appellant guilty as charged of both murder and possession of a firearm during the commission of a violent crime. (R. 453, l. 16-21). The court sentenced appellant to life imprisonment for murder and five years (concurrent) for possession of a firearm during the commission of a violent crime. (R. 456 l. 22-25, 457, l. 1-5).

STANDARD OF REVIEW

The standard of review for the admission or exclusion of evidence is an abuse of discretion. State v. Douglas, 411 S.C. 307, 316, 768 S.E.2d 232, 237 (Ct. App. 2014). “An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law.” State v. Anderson, 386 S.C. 120, 126, 687 S.E.2d 35, 38 (2009)(quoting State v. Pagan, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006)).

ARGUMENT

The Circuit Court Did Not Abuse Its Discretion in Admitting the Text Message Because It Was Properly Authenticated and Was Not Inadmissible Hearsay.

Relevant Facts

As discussed above, on the night of Tyhira's murder, appellant came to her apartment to "clear his name" after he allegedly threatened to kill her. (R. 136, l. 12-24, 177, l. 2). Tyhira's mother, step-father, and several friends were present at the apartment when he arrived. (R. 137, l. 14). An argument ensued, and Tyhira asked appellant to leave. (R. 137, l. 21-24, 138, l. 10-12). Tyhira subsequently drove her mother home and met up with friends. (R. 178, l. 22-24). Later that night, Tyhira's mother received a phone call from Johnny McKnight. (R. 75, l. 8-12). Prior to the mother's testimony, the jury learned that Johnny McKnight drove Tyhira to the hospital after she was shot. (R. 31, l. 12-25).

During the mother's testimony, appellant objected to her description of the content of her phone call with Johnny McKnight. (R. 75, l. 13-18). The State agreed to strike the testimony, but then asked whether she also received a text message. (R. 75, l. 20-21). Tyhira's mother responded that she did receive a text message from Johnny McKnight. She knew McKnight sent the text because she had his number programmed into her cell phone as "Johnny Blaze." (R. 76, l. 1-6). Tyhira's mother testified that State's Exhibit 25 was an accurate copy of that text message because she still had the original text message saved in her phone. (R. 77, l. 4-9). The text read, "I just seen hard⁹ gf walkn behind da apts. He probably hidn 2. Tryn sum." (R. 79, l. 23-25, 459).

⁹ As noted above, appellant went by the nickname "Hard." (R. 48, l. 10, 64, l. 5, 171, l. 17).

When the State offered the text message into evidence, appellant objected that it was hearsay and the sender's identity was unknown. (R. 78, l. 3-13). After an off the record bench conference, the court admitted the text message subject to appellant's objection. (R. 79, l. 1-2). Tyhira's mother explained that she understood the text to mean that appellant and his girlfriend had returned and were trying to lure Tyhira out of the apartment. (R. 80, l. 1-10). Without objection, Tyhira's mother also testified that she subsequently called Tyhira to relay McKnight's warning. (R. 80, l. 13-14). Specifically, she told Tyhira that "Johnny just text me and said that Hard and his girlfriend -- Mr. Sanders and his girlfriend was going back behind your apartment." (R. 80, l. 21-24).

A. The Text Message Was Properly Authenticated Because It Was From A Known Number and Its Contents Provided Circumstantial Evidence Establishing Its Authenticity.

To authenticate evidence under Rule 901, "the proponent must produce evidence sufficient to support a finding that the item is what the proponent claims it is." Rule 901(a), SCRE. For example, a witness with knowledge may testify "that an item is what it is claimed to be." Rule 901 (b)(1), SCRE. Additionally, distinctive characteristics, such as appearance, contents, or substance can establish an item's authenticity. Rule 901 (b)(4) SCRE. Simply put, "[t]he burden to authenticate is not high and requires only that the proponent offer a satisfactory foundation from which the jury could reasonably find that the evidence is authentic." Deep Keel, LLC v. Atlantic Private Equity Group, LLC, 413 S.C. 58, 64, 773 S.E.2d 607, 610 (Ct. App. 2015) (quoting United States v. Hassan, 742 F.3d 104, 133 (4th Cir. 2014)(citations and alterations omitted)). The circuit court's ruling on authentication will not be reversed absent an abuse of discretion. State v. Anderson, 386 S.C. 120, 126, 687 S.E.2d 35, 38 (2009). "An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are

controlled by an error of law.” *Id.* (quoting *State v. Pagan*, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006)).

The circuit court’s ruling should be affirmed because there is evidentiary support that the exhibit was what the State purported it to be: a text message from Johnny McKnight. Tyhira’s mother already had McKnight’s cell phone number plugged into her phone, so when she received a text from that number, she knew it was from him. (R. 76, l. 1-6). This fact alone should be sufficient for a jury to find the evidence is authentic. Every day the average juror receives texts that they know are authentic for precisely the same reason: they have the sender’s number plugged into their phone.

The record also reveals that McKnight called Tyhira’s mother contemporaneously with sending the text message. During the mother’s testimony, she stated that “I got a call from Johnny -- Johnny McKnight saying -- calling and said” that appellant and his girlfriend were at the apartment. (R. 75, l. 8-12). Appellant objected on hearsay grounds to the content of McKnight’s statement, which the court sustained. The solicitor then asked “did you also get a text message from anyone?” (R. 75, l. 20-21)(emphasis added). The mother responded, “Mr. Johnny McKnight.” (R. 75, l. 22). Therefore, according to this passage, McKnight called Tyhira’s mother in addition to texting her. McKnight’s phone call confirms she had the correct number plugged into her phone and that McKnight later sent the message.¹⁰

Furthermore, the content of the message provides additional circumstantial evidence that McKnight sent it. The jury already heard testimony that: (1) appellant and Tyhira had been involved in an ongoing dispute, (2) appellant and his girlfriend were at the apartment earlier and

¹⁰ Appellant appears to take the position that there was no phone call in addition to the text message. (App. Brief 6-7). The plain text of the above cited passage indicates otherwise. (R. 75, l. 6-25).

an argument arose, and (3) McKnight subsequently took Tyhira to the hospital after she was shot.¹¹ Because the text message referenced the ongoing dispute in which McKnight ultimately became involved, its content corroborates the mother's belief that McKnight sent it. Had the message offered a great deal on life insurance, a chance to win a trip to the Caribbean, or any other statement indicating someone other than McKnight was the sender, then the jury might reasonably conclude that the number belonged to someone else.

Although the text message contained circumstantial evidence confirming McKnight was the sender, appellant argues that the State did not explain how Tyhira's mother knew McKnight or how she obtained his phone number. (App. Brief 27). But authentication does not require this level of proof. In fact, this Court rejected a similar argument in Deep Keel, LLC v. Atlantic Private Equity Group, LLC, 413 S.C. 58, 773 S.E.2d 607 (Ct. App. 2015).

In Deep Keel, LLC, Atlantic Private Equity Group executed a promissory note to a bank for a commercial loan. The note was secured by real estate in Beaufort County. Deep Keel, LLC later purchased the note and brought a foreclosure action when Atlantic defaulted. Deep Keel sought to introduce the original loan documents between Atlantic and the bank through its sole member, who purchased the note from the bank. The witness testified that he examined and received the loan documents while negotiating the transaction with the bank. Atlantic argued

¹¹ In addition to this factual basis that preceded the admission of the text message into evidence, the jury subsequently heard additional circumstantial evidence confirming McKnight sent the text. Tyhira's best friend, Kywana Bradley, testified that when Tyhira left the apartment to take her mother home, Kywana stayed behind at Tyhira's apartment with "Johnny." (R. 130, l. 17, 139, l. 14-23). Kywana testified that she later heard someone playing with the front doorknob, so "we called Tyhira." (R. 140, l. 3-9). Although Kywana did not give Johnny's last name, the jury could reasonably infer it was Johnny McKnight because she also testified that Johnny took Tyhira to the hospital. (R. 141, l. 9-12). As noted above, prior to the admission of the text message into evidence, the jury learned that Johnny McKnight took Tyhira to the hospital after she was shot. (R. 31, l. 12-25).

that his testimony was insufficient because the witness could not articulate “when, how, or by whom the documents were prepared, how they came to be in the possession of [the bank], or how they were maintained by that bank.” Id. at 65, 773 S.E.2d at 611.

This Court disagreed, noting that “[t]he authentication requirement does not demand this degree of proof.” Id. Rather, the witness’s testimony demonstrating his personal knowledge that the loan documents offered into evidence were the same ones he reviewed when he purchased the note from the bank was sufficient. Id. at 66, 773 S.E.2d at 611. Furthermore, the specific and distinctive information on the loan documents, such as the date of the loan, the amount of the loan, and the loan number, also supported a finding of authenticity. Id.

Like the witness in Deep Keel, LLC, Tyhira’s mother provided enough information for a juror to conclude that McKnight sent the text. Appellant’s argument that the State did not sufficiently articulate how Tyhira’s mother knew McKnight or how she obtained his phone number (App. Brief 27), mirrors the argument in Deep Keel, LLC that the witness did not articulate how the bank prepared, took possession of, and maintained the loan documents. The argument fails for the same reason: authentication does not require that level of proof. Deep Keel, LLC, 413 S.C. at 65, 773 S.E.2d at 611. In both instances, despite challenges to the basis of the witness’s knowledge, a juror could conclude that the evidence is what it was purported to be. Furthermore, like the loan documents in Deep Keel, LLC, the distinctive characteristics of the text, i.e., the phone number and content of the text message, support a finding of authenticity.

Although there is no South Carolina case law specifically dealing with the authentication of text messages, this analysis is consistent with decisions from other jurisdictions. For example, in Pierce v. State, 807 S.E.2d 425 (Ga. 2017), the State of Georgia offered text messages recovered from a teenage victim’s cell phone in a child molestation case. The State purported

the texts were between the victim and defendant based on circumstantial evidence. The victim testified the text came from the defendant, but conceded that the defendant did not personally give him his phone number. Instead, the victim received the number from other teenage victims. However, the content of the messages was consistent with testimony from other victims that the defendant offered pills in exchange for sexually explicit text messages. Furthermore, the victim received one message with the defendant's first name.

The defendant argued that this circumstantial evidence was insufficient to authenticate the texts. He acknowledged the messages came from one of four cell phone numbers assigned to his business, but claimed family members or employees could have sent them. The Supreme Court of Georgia disagreed, noting:

[w]ith all electronic sources of information there often are two authentication issues: what computer or other digital device generated the communication and second, who was using the device at that time. Although there may exist evidence that a specific phone sent a certain text message, that does not prove who used the phone **Every form of electronic communication can be "spoofed," "hacked," or "forged." But this does not and can not mean that courts should reject any and all such communications. Indeed the vast majority of these communications are just as they appear to be—quite authentic.** The goal is to supply sufficient, nonhearsay evidence as the identity of the source such that a reasonable factfinder could conclude that the evidence is what it is claimed to be.

Id. at 433 (quoting Paul S. Milich, Georgia Rules of Evidence § 7:6 at 194 (2017-2018)

(emphasis added). The court found that the State presented sufficient evidence to support a finding the defendant sent the text messages.

The Fourth Circuit Court of Appeals also recently addressed the issue in United States v. Davis, 918 F.3d 397 (4th Cir. 2019). The case involved text messages the defendant allegedly sent to a confidential informant prior to a controlled purchase of methamphetamine. The informant did not testify at trial, and the government offered no evidence that the defendant's

phone number matched the number on the texts the informant received. Instead, an officer testified that he observed the informant texting and receiving messages from someone identified in the informant's phone as "Joseph Davis"¹² and "Joseph Other." Id. at 401. The messages arranged a purchase of two ounces of methamphetamine at a mailbox outside of the defendant's apartment. After the exchange of text messages, officers observed the defendant arrive at the mailbox and sell the informant two ounces of methamphetamine. The defendant argued that the government failed to produce any evidence that he actually sent the texts, such as by offering evidence that the defendant's phone number matched the number for "Joseph Davis" and "Joseph Other." In fact, the defendant took the stand and suggested that other individuals had access to the cell phone. Id. at 403.

The court was not persuaded, noting that "the burden to authenticate under Rule 901 is not high."¹³ Id. at 402 (quoting United States v. Recio, 884 F.3d 230, 236-37 (4th Cir. 2018)). The trial "court must merely be able to conclude that the jury *could* reasonably find that the evidence is authentic, not that the jury necessarily *would* so find." Id. at 402 (emphasis in original). Admission only requires a prima facie showing that the true author is who the proponent claims it to be, which may be accomplished through circumstantial evidence. Id. The defendant's arrival at the mailbox and participation in the controlled buy was enough circumstantial evidence to establish a prima facie showing that he sent the text message. Id. Any doubts whether the defendant was actually "Joseph Davis" or "Joseph Other," was for the jury to resolve. Id. at 403.

¹² The defendant's full name was Joseph Howard Davis. Id.

¹³ With the exception of section (b)(10), South Carolina Rule of Evidence 901 is "identical to the federal rule." Section (b)(10) was modified from the federal rule "to make the language applicable to South Carolina statutes and rules." Note, Rule 901, SCRE.

The key takeaway from these cases is that text messages do not require an enhanced showing of proof for purposes of authentication. The burden to authenticate a text message is the same as any other piece of evidence, which is “not high.” See e.g. Davis, 888 F.3d at 402; Deep Keel, LLC, 413 S.C. at 64, 773 S.E.2d at 610. The State met that burden by showing the text message came from a known number and referenced the ongoing dispute. Therefore, the circuit court’s ruling had evidentiary support and should be upheld.

In arguing that the circuit court abused its discretion, appellant cites several cases from other jurisdictions dealing with social media accounts, like Facebook. (App. Brief 17-26). These cases are instructive on authentication issues arising in the social media context, but they do not specifically address the technology in this case: text messaging. Although text messages and social media posts both involve digital information visible on a screen, they are qualitatively different from an authentication perspective. The unique phone number associated with each text message makes it significantly easier to identify the sender. In contrast, social media accounts lack a similar mechanism to ensure the sender’s identity. From the user’s perspective, the identifier of a social media account is a profile name and picture. Unlike a phone number, profile names and profile pictures do not have to be unique to other social media accounts. Therefore, a text message from a known number is inherently more reliably authentic than a social media post. As such, applying case law from social media accounts to analyze the authentication of a text message is comparing apples to oranges.

B. The Text Message Was Not Inadmissible Hearsay.

- i. *The text message fell within the Present Sense Impression Exception to the Hearsay Rule.*

Hearsay is an out of court statement offered to prove the truth of the matter asserted. Rule 801(c), SCRE. However, under the “Present Sense Impression” exception to the hearsay

rule, “[a] statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter” is admissible. Rule 803(1), SCRE. In order to fall within this exception, “(1) the statement must describe or explain an event or condition; (2) the statement must be contemporaneous with the event; and (3) the declarant must have personally perceived the event.” State v. Washington, 424 S.C. 374, 399, 818 S.E.2d 459, 472 (Ct. App. 2018)(quoting State v. Parvin, 413 S.C. 497, 503, 777 S.E.2d 1, 4 (Ct. App. 2015).

Johnny McKnight’s text message to Tyhira’s mother falls within the exception because it contains all three of these elements. First, by its terms, the text message describes and explains an event: appellant’s girlfriend loitering behind the apartment complex. Second, the word “just”¹⁴ indicates that the declarant made the statement contemporaneously with the event or “immediately thereafter.” In fact, the second sentence of the text –that appellant *is* probably hiding– indicates that the event is still ongoing. Finally, the words “I seen” indicates that the declarant personally perceived the event. Thus, there was sufficient evidence for the circuit court to find the text message qualified as a present sense impression.

Appellant argues that although the first sentence of the text message appears to fall within the exception, the second sentence does not. (App. Brief 11-12). According to appellant, the second sentence is nothing more than the declarant’s opinion, not a description of an event he actually perceived. (App. Brief 11-12). However, Rule 803(1) encompasses both statements that describe an event and statements that “explain” an event. In this case, the first sentence is a pure description of the event—the girlfriend walking behind the apartment. The second sentence provides additional explanation. It explains the relevance of the girlfriend walking behind the

¹⁴ The American Heritage College Dictionary defines “just” as “only a moment ago.” The American Heritage College Dictionary 738 (3d ed. 1997).

apartment, i.e., that appellant is likely there too. It also conveys the declarant's suspicion about the nature of the event perceived. In other words, had the declarant seen the girlfriend walking towards the laundromat with a basket of clothes, then he probably would not have sent a text at 12:41 a.m. (R. 459). Accordingly, because the second sentence explains the event perceived, the entire text message should be read as one statement falling within the present sense impression exception.

- ii. *Appellant suffered no prejudice from the admission of the text message because it was cumulative to other evidence.*

To the extent that any portion of the text message exceeded the scope of the hearsay exception, appellant suffered no prejudice. As the Court is aware, “[t]he improper admission of hearsay is reversible error only when the admission causes prejudice. State v. Weston, 367 S.C. 279, 288, 625 S.E.2d 641, 646 (2006). Here, appellant suffered no prejudice because the message was cumulative to other evidence. See e.g. State v. Jennings, 394 S.C. 473, 478, 716 S.E.2d 91, 93-94 (2011)(“Improperly admitted hearsay which is merely cumulative to other evidence may be viewed as harmless.”).

As discussed above, the circuit court admitted the text message over appellant's objection, and Tyhira's mother read it to the jury. She later testified, without objection, that after receiving the text, she called Tyhira to tell her “Hard and his girlfriend behind the apartment.” [sic](R. 80, l. 13-14). When the solicitor asked her to clarify, she testified, again without objection, that “Johnny just text me and said that Hard and his girlfriend -- Mr. Sanders and his girlfriend was going back behind your apartment.” (R. 80, l. 21-24). Therefore, the actual text message is cumulative to the mother's subsequent testimony describing how she relayed that message to Tyhira.

The mother's subsequent testimony makes this case analogous to State v. Parvin, 413 S.C. 497, 777 S.E.2d 1 (Ct. App. 2015). In Parvin, a witness testified that a murder victim said "he was with an American" and "the American had given him \$200 to buy beer because he wanted to have sex." Id. at 504, 777 S.E.2d at 4. The defendant objected on hearsay grounds, but was overruled. Later at trial, one investigator testified that during an interview, the witness told him that the victim was with the American who gave him \$200 to have sex. A second investigator also testified that the witness made a similar statement during an interview. The defendant did not object to either investigator's testimony. On appeal, the State argued that the defendant suffered no prejudice because the out of court statement was cumulative to the investigators' subsequent testimony regarding the same statement. In response, the defendant claimed that once he objected during the witness's direct exam, he was relieved of any duty to object during the investigator's subsequent testimony.

This Court disagreed, noting that the defendant should have objected during the investigators' testimony. Id. at 506, 777 S.E.2d at 5. The original out of court statement became cumulative when he failed to do. Thus, the defendant suffered no prejudice from the statement's admission into evidence. Id. Similarly, in this case appellant failed to object during the mother's subsequent testimony explaining the content of the text message to Tyhira. (R. 80, l. 13-24). Once the jury heard that testimony, the text message became cumulative. As such, appellant suffered no prejudice from its admission.

In addition to the mother's testimony, the jury heard additional evidence that also renders the text message cumulative. Multiple witnesses established that Tyhira received a phone call, immediately drove back to her apartment, and found appellant and his girlfriend there. For example, Randy White testified that Tyhira received a phone call, floored it back to the

apartment, and found appellant and his girlfriend standing outside. (R. 100, l. 24-25, 101, l. 16-17). Daisy testified that Tyhira received a call that someone was at the back door, so they returned to the apartment and found appellant. (R. 180, l. 7-11). Kywana Bradley testified that she was inside Tyhira's apartment and heard someone fiddling with the front door knob. (R. 140, l. 3-13). She called Tyhira to tell her, and "the next thing [she] remembered" was Tyhira had been shot. (R. 140, l. 14-23). In other words, to the extent the text message showed appellant was at Tyhira's apartment and therefore at fault in bringing about the confrontation, it is cumulative to the testimony of these witnesses. As such, its admission caused appellant no prejudice. See e.g. State v. Hendricks, 408 S.C. 525 (Ct. App. 2014)(holding that the defendant suffered no prejudice from improperly admitted hearsay evidence because it was cumulative to live testimony); State v. Townsend, 321 S.C. 55, 467 S.E.2d 138 (Ct. App. 1995)(holding that improperly admitted hearsay identifying the defendant was cumulative to other circumstantial evidence and the defendant's own admission).

iii. *Alternatively, the text message could have been admitted to explain the effect on the listener.*

Although not presented to the circuit court, the text message could have been admitted to show the effect on the listener. See e.g. Fields v. Reg'l Med. Ctr. of Orangeburg, 363 S.C. 19, 31-32, 609 S.E.2d 506, 512 (2005)(noting testimony is not hearsay where it is offered to explain the statement's effect on the listener). On appeal, a respondent may raise "any additional reasons the appellate court should affirm the lower court's ruling, regardless of whether those reasons have been presented to or ruled on by the lower court." Equivest Financial, LLC v. Ravenel, 422 S.C. 499, 507-08, 812 S.E.2d 438, 442 (Ct. App. 2018)(quoting I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 419, 526 S.E.2d 716, 723 (2000)); See also Rule 220(c), SCACR. In

other words, this Court “may affirm on any ground appearing in the record.” State v. Griffin, 339 S.C. 74, 78 n. 2, 528 S.E. 2d 668, 670 n. 2 (2000).

In this case, the record reveals that the text message could have been offered to explain: (1) why Tyhira returned to the apartment, and (2) her state of mind when she returned. Simply put, in assessing appellant’s claim of self-defense, Tyhira’s conduct is relevant. The jury had to consider whether her actions gave appellant a reasonable belief of imminent and serious bodily harm. See e.g. State v. Bryant, 336 S.C. 340, 345-46, 520 S.E.2d 319, 321-22 (1999)(outlining the necessary elements to claim self-defense). The text message gives her actions context.

Because the text message could have been offered to show the effect on the listener, the case is similar to State v. White, 425 S.C. 304, 821 S.E.2d 523 (Ct. App. 2018). In White, the defendant was charged with assault and battery with intent to kill after cutting another man’s throat. The defendant claimed self-defense and testified that the victim said he had weapons underneath the seat of his moped. This Court ruled that the testimony was admissible because it was not offered for the truth of the matter asserted—that the victim actually had weapons underneath the seat of his moped. Instead, it was offered to show that the defendant *believed* the victim had weapons. Id. at 310, 821 S.E.2d at 527 (emphasis in original). In other words, the statement was relevant for the jury to consider whether the defendant thought he was in imminent danger and whether that belief was reasonable. Id. at 310-11, 821 S.E.2d at 527.

This case is similar to White in that the text message could have been offered not to prove appellant was actually behind the apartment, but rather that Tyhira *thought* he was. Tyhira’s belief that he was at her apartment explains why she returned to confront appellant. It also sheds light on her intent when she arrived. The jury had to determine where Tyhira’s actions fell on the spectrum from yelling to committing substantial bodily harm. By giving

context to her actions, the text message assists the jury in determining where Tyhira's actions fell on that spectrum.

Although admission for this purpose would have precluded the State from arguing that the text message itself proved appellant was "behind the house trying something," the State had other evidence to do so. As discussed above, one witness testified that someone was fiddling with the front door knob and trying to get in. Shortly thereafter, two other witnesses saw appellant and his girlfriend at the apartment complex even though he did not live there. (R. 354, l. 17-19). Given the escalating conflict between appellant and Tyhira, a reasonable inference is that appellant was "behind the house trying something." See e.g. State v. New, 338 S.C. 313, 526 S.E.2d 237 (Ct. App. 1999)("If a Solicitor's closing argument remains within the record evidence and the reasonable inferences therefrom, no error occurs.").

The record reveals that the State never explicitly used the text message, as opposed to the other evidence, in its argument that appellant's presence at the house meant he was at fault in bringing on the confrontation. As close as the State came was during its closing argument when the solicitor stated:

Greg Sanders started the whole thing. He threatened to kill her. Her mother told her what he said. She was confronting him about what he said and why he had said it. Not only that, but Greg Sanders was behind the house. Someone called and told her this information. Somehow, she realized Greg Sanders, what are you doing. So yes, she accosts him, but Greg Sanders started the entire thing.

(R. 390, l. 19 – 25, 391, l. 1). Although the solicitor stated "[s]omeone called and told her this information," she was explaining why Tyhira "accosts him." The solicitor never argued that the text message proved appellant was behind the house. Therefore, the record supports admission of the text message to show effect on the listener. Accordingly, this court can affirm on that basis.

CONCLUSION

The circuit court's decision to admit the text message had evidentiary support and should be upheld on appeal. The text message was properly authenticated and fell within an exception to the hearsay rule. Alternatively, the text message could have been offered to show the effect on the listener. Furthermore, appellant can show no prejudice because the text message was cumulative to other evidence. For these reasons, the State respectfully submits that the appeal should be dismissed.

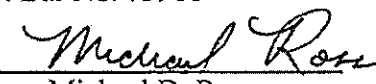
Respectfully submitted,

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General

MICHAEL D. ROSS
Assistant Attorney General
S.C. Bar No. 73986

By: 
Michael D. Ross
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
(803) 734-6307

ATTORNEYS FOR RESPONDENT

May 24, 2019

STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Hampton County
The Honorable Carmen T. Mullen, Circuit Court Judge

THE STATE,

Respondent,

v.

GREGORY SANDERS

Appellant.

CERTIFICATE OF COMPLIANCE

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and does not include, or partially redacts, personal data identifiers, Re Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings, 375 S.C. 56, 650 S.E.2d 462 (2007)(requiring redaction of social security numbers, names of minor children, financial account numbers, and home addresses).

May 24, 2019.

By: Michael D. Ross

Michael D. Ross
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
(803) 734-6307

ATTORNEY FOR RESPONDENT

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Hampton County
The Honorable Carmen R. Mullen, Circuit Court Judge

Appellate Case No. 2018-000911

THE STATE,

Respondent,

vs.

GREGORY SANDERS,

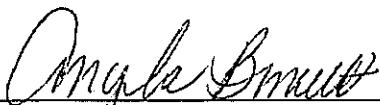
Appellant.

PROOF OF SERVICE

I, Angela Bennett, certify that I have served the Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to: Susan B. Hackett, Esquire, Office of Appellate Defense, P.O. Box 11589, Columbia, South Carolina 29211.

I further certify that all parties required by Rule to be served have been served.

This 24th day of May, 2019.


ANGELA BENNETT
Administrative Coordinator

Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-6305

**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.

Gregory Sanders, Appellant.

Appellate Case No. 2018-000911

Appeal From Hampton County
Carmen T. Mullen, Circuit Court Judge

Unpublished Opinion No. 2022-UP-298
Heard November 10, 2021 – Filed July 13, 2022

AFFIRMED

Appellate Defender Susan Barber Hackett, of Columbia,
for Appellant.

Attorney General Alan McCrory Wilson, Deputy
Attorney General Donald J. Zelenka, Senior Assistant
Deputy Attorney General Melody Jane Brown, Assistant
Attorney General Michael Douglas Ross, and Assistant
Attorney General Julianna E. Battenfield, all of
Columbia; and Solicitor Isaac McDuffie Stone, III, of
Bluffton, all for Respondent.

PER CURIAM: Gregory Sanders appeals his convictions for murder and possession of a weapon during the commission of a violent crime. Sanders argues the trial court erred by admitting a text message into evidence because the text message was (1) not properly authenticated and (2) inadmissible hearsay. We affirm.

FACTS/PROCEDURAL HISTORY

In the early morning hours of May 10, 2016, Sanders shot and killed Tyhira Harrington. A Hampton County grand jury indicted Sanders for murder and possession of weapon during the commission of a violent crime. At a jury trial in May of 2018, Sanders testified in his own defense and admitted to the shooting but claimed he was acting in self-defense.

At trial, Marilyn Garvin, Harrington's mother, testified she knew Sanders because he had spent time at an apartment she shared with Harrington, and Harrington did his hair. Garvin explained that a few days prior to the murder, she came across Sanders while she and her boyfriend, Samson Williams, were walking to the store. Garvin testified Sanders stated, "[Y]ou better get you a black dress, because I'm going to kill your daughter, because she took me to Allendale to try to get me set up."¹

Garvin testified that on the night of the shooting, she was in the process of moving out of the apartment she shared with Harrington. She stated Sanders came to Harrington's apartment earlier in the evening while she, Harrington, Kywana Bradley, Yhantyse "Daisy" Priester, and a man named Alexander were there. Garvin heard Harrington deny setting Sanders up to be robbed. Garvin recalled that Sanders "threw a bandana down on the floor" and said "it's on the five" but she did not know what that meant. She stated no one struck Sanders while he was in the apartment and he walked out unharmed after the encounter.

Garvin then testified she received a text message from Johnny McKnight, who was saved as a contact in her cellphone under the nickname, "Johnny Blaze." Garvin identified State's Exhibit 25 as a screenshot of the text message and agreed the message had not been changed or altered, and it was a "fair and accurate . . . copy of the text message." She stated she recognized State's Exhibit 25 "[b]ecause they [sic] programmed in my phone as Johnny Blaze, and the same text [wa]s in my

¹ Williams also testified at trial and gave the same account regarding Sanders's statement to Garvin.

phone." Garvin further indicated she still owned the same phone and could access the text message. When the State moved to enter the text message into evidence, Sanders objected, arguing the text message was inadmissible hearsay and questioning who created the text message. The trial court admitted the text message into evidence subject to Sanders's objection.

Garvin then read the text message aloud for the jury: "I just seen [Sanders's girlfriend] walkn behind da apt. He's probably hidn 2. Tryn sum. GOD S GIFT." She interpreted the text message to mean that Sanders and his girlfriend were "trying to lure [Harrington] out [of her] house." Without objection, Garvin explained she then called Harrington to tell her that McKnight had sent her a text message indicating that "[Sanders] and his girlfriend w[ere] going back behind [Harrington's] apartment." A few hours later, Garvin learned Harrington had been shot.

Bradley testified that earlier in the evening of the shooting, she, Priester, and Harrington had gone to a club and when they returned to Harrington's home, Sanders was there "to clear his name." Bradley recalled Harrington confronted Sanders about what he said to Garvin and the conversation led to an argument. Bradley stated there was no fighting, no one hit Sanders, and Sanders left when he was asked to leave. Bradley testified that after Sanders left, Harrington and Priester also departed to take Garvin home. Bradley stated she stayed behind, and while sitting in the apartment, she heard someone "playing with" the front doorknob. Bradley explained she did not know who it was at the time but called Harrington to warn her that someone was trying to get into her apartment and to be careful.

Priester, Randy White, and Marquis Alston, all of whom were with Harrington when she drove back to the apartments, also testified at trial. White, who was dating Harrington, testified Harrington picked him up on the night of the shooting and Priester and Alston were already in the car. White recalled Harrington received a phone call, hung up, and sped off towards the apartments. He stated they then saw Sanders and his girlfriend standing by a laundromat, and Harrington stopped and parked the car right in front of them. White testified the four of them got out of the car and Harrington started walking toward Sanders, who began backing up. According to White, after they got out of the car, Priester stayed close to the car but White followed Harrington as she advanced toward Sanders because he was trying to keep her from getting too close to Sanders. White testified Harrington was "full of rage" but the only people who were arguing were Harrington and Sanders. He stated no one tried to strike Sanders, no one was

standing in Sanders's way, and he could have walked away. White testified Sanders told him: "[G]o away; you don't want to be no witness." He stated Sanders "pulled out a gun and shot [Harrington] and then walked away with his girlfriend." White recalled he never saw Harrington with a weapon that night and never knew her to carry a weapon.

Alston testified he knew Harrington and Priester through White. Alston, although initially stating he did not remember much from the night of the shooting, testified that when Harrington stopped the car, he got out and went next door to see Bradley. He stated there was no fighting going on. He recalled he heard the gunshot but denied telling law enforcement he saw Sanders with a gun. Later during trial, Investigator Donald Hipp of the Hampton County Sheriff's Office testified he interviewed Alston, and during the interview, Alston stated he heard and saw Sanders shoot Harrington and walk away calmly.

Priester testified similarly to Bradley and Garvin as to Sanders's visit to Harrington's apartment earlier on the night of the shooting and recalled he had come to "clear his name." Consistent with White's testimony, Priester stated that while in the car with Harrington, Harrington received a call that someone was "at the back door trying to get in, shaking the back door" of Harrington's apartment. Priester testified Harrington drove back to the apartments and when she saw Sanders and his girlfriend near the laundromat, Harrington swung into the laundromat and they all got out of the car. Priester stated she tried to calm Harrington down because Harrington was angry and had been drinking all day. She recalled Sanders, his girlfriend, and Harrington were all standing in the street. Priester testified, "I guess he moved in the road to—to get what angle he would really want to shoot her at." Priester explained that when he moved, Sanders asked Harrington: "[A]ll these people out here, and how many people you think are gonna ride for you?" and then he shot her. Priester testified Sanders did not appear to be in fear of his safety at the time. She recalled that after he shot Harrington, he pointed the gun at her for a few moments and then ran away. Priester indicated Harrington was the only one confronting Sanders and his girlfriend. She testified Harrington had no weapon and made no reference to a gun.

Chief Mark Collins testified he arrested Sanders on May 10, 2016, and that during the arrest, he found a gun wrapped in a bundle of clothing near Sanders. Captain Alexander Williams testified he assisted with Sanders's arrest and gave Sanders *Miranda* warnings. Captain Williams recalled Sanders made a statement referring to his eye, which was bloodshot and "a little swollen," explaining his girlfriend caught him cheating.

Paul Greer, a firearms examiner with the South Carolina Law Enforcement Division (SLED) testified the projectile recovered from the wound to Harrington's head was fired by the gun found during Sanders's arrest. Ila Simmons, also with SLED, opined the gun had to have been within about two inches of Harrington's skin when it was fired. Similarly, Dr. Ellen Riemer, who performed Harrington's autopsy, opined the gunshot came from a distance of three or four inches up to a couple of feet from Harrington's head.

Sanders denied saying anything to Garvin about "buying a black dress" or threatening to kill Harrington. He testified he went to Harrington's earlier on the day of the shooting to "clear [his] name." Sanders stated Harrington punched him in the eye and Bradley, Harrington, and Priester "lynched" him inside the apartment. He claimed he fought his way to the door and left. Sanders testified he met up with his girlfriend afterwards and around midnight or 1:00 a.m., they left to walk home. Sanders explained that while they were walking home, a car drove past them, slammed on the brakes, backed up, and pulled up close to where they were. He stated all four of the occupants got out. Sanders testified Harrington said, "we about to f*** you all up." He recalled he stood in front of his girlfriend and started backing up. Sanders testified Harrington said she wanted to fight his girlfriend but because his girlfriend did not want to fight, Harrington said she wanted to fight Sanders. He stated Harrington then said, "I ain't worried about nothing, I got my iron in the seat" and he believed Harrington was referring to a gun. Sanders stated he did not really have an avenue of retreat because the car was in front of them and the laundromat was behind them. Sanders recalled he then told everyone to leave them alone and go home. He testified that in response, Harrington kept "running off at the mouth"; White was right beside her and every time she moved up, he moved up; Priester was on the other side of Harrington but did not move; and Alston was still standing beside the car. Sanders stated he was afraid that he and his girlfriend would be seriously injured because she was "short" and "real skinny" and they were outnumbered. He testified that when they "moved up and they got closer" he fired so that he and his girlfriend could get away. Sanders recalled that after he fired, White ran away, Priester stood there, and Alston ducked behind the car.

During cross-examination, Sanders admitted to shooting and killing Harrington. He stated he only fired once, and he identified the gun that matched the projectile taken from Harrington's body as his gun. Sanders explained he shot at Harrington because she was "the main one that was causing the whole everything" and "she was closer."

The jury found Sanders guilty as indicted, and the trial court sentenced him to life in prison for murder and five years' imprisonment for the weapon conviction, to run concurrently. This appeal followed.

ISSUE ON APPEAL

Did the trial court err in admitting the contents of a text message because the text message was inadmissible hearsay and the State failed to authenticate the text message?

STANDARD OF REVIEW

"In criminal cases, the appellate court sits to review errors of law only." *State v. Washington*, 379 S.C. 120, 123, 665 S.E.2d 602, 604 (2008). "The admission or exclusion of evidence is left to the sound discretion of the trial [court], whose decision will not be reversed on appeal absent an abuse of discretion." *State v. Washington*, 431 S.C. 394, 405, 848 S.E.2d 779, 785 (2020) (quoting *State v. Saltz*, 346 S.C. 114, 121, 551 S.E.2d 240, 244 (2001)). "An abuse of discretion occurs when the trial court's ruling is based on an error of law[.]" *Id.* at 405-06, 848 S.E.2d at 785 (quoting *State v. McDonald*, 343 S.C. 319, 325, 540 S.E.2d 464, 467 (2000)). "The improper admission of hearsay is reversible error only when the admission causes prejudice." *State v. Weston*, 367 S.C. 279, 288, 625 S.E.2d 641, 646 (2006).

LAW/ANALYSIS

A. Authentication

Sanders argues the State failed to authenticate the text message because it failed to show if and how Garvin knew McKnight or how she obtained his phone number. He asserts Garvin did not testify that she previously communicated with McKnight using the same phone number that sent the text message, and she did not testify that she recognized the text message as McKnight's writing style. Additionally, Sanders contends the signature on the text message, "GOD S GIFT," was not related to "Johnny," "McKnight," or his nickname, "Blaze." We disagree.

Evidence is not admissible unless it is properly authenticated. *See* Rule 901(a), SCRE ("The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding

that the matter in question is what its proponent claims."). Testimony from a witness with knowledge "that a matter is what it is claimed to be" can be sufficient to meet this requirement. Rule 901(b)(1), SCRE. "[T]he burden to authenticate . . . is not high' and requires only that the proponent 'offer[] a satisfactory foundation from which the jury could reasonably find that the evidence is authentic.'" *Deep Keel, LLC v. Atl. Priv. Equity Grp., LLC*, 413 S.C. 58, 64, 773 S.E.2d 607, 610 (Ct. App. 2015) (quoting *United States v. Hassan*, 742 F.3d 104, 133 (4th Cir. 2014)); see also *United States v. Davis*, 918 F.3d 397, 402 (4th Cir. 2019) (considering Federal Rule of Evidence 901 and holding the proponent was required to make "only a prima facie showing that the 'true author' is who the proponent claims it to be").

The trial court did not abuse its discretion by concluding the State offered sufficient evidence to satisfy the authentication requirement of Rule 901, SCRE. Garvin testified she received a text message from "Mr. Johnny McKnight" and stated McKnight was programmed into her phone under "Johnny Blaze." Garvin then identified a screenshot from her phone as the text message she received from McKnight. She also stated the screenshot of the text message had not been changed or altered and was a "fair and accurate" reflection of the text message she received from McKnight. When asked how she was able to recognize the exhibit containing the screenshot of the message, Garvin stated, "Because they [sic] programmed in my phone as Johnny Blaze, and the same text is in my phone." Standing alone, this would not be sufficient to satisfy Rule 901's authentication requirement. However, Garvin testified that prior to the admission of the text message, she received a phone call from and spoke to McKnight. Although the trial court excluded her testimony regarding the contents of that discussion, Garvin's statements regarding this prior conversation with McKnight that same night provided circumstantial evidence sufficient to support a finding that the text message was what she claimed it to be. See e.g., *State v. Benton*, 435 S.C. 250, 263, 865 S.E.2d 919, 926 (Ct. App. 2021) (noting the timing and distinctive characteristics of the text messages at issue—in addition to witness's identification of certain messages during his testimony—provided the circumstantial evidence necessary for authentication), *petition for cert. filed* (S.C. Dec. 20, 2021).

B. Hearsay

Sanders argues McKnight's text message was inadmissible hearsay because no hearsay exception applied. Specifically, he asserts the State did not argue or present evidence at trial indicating McKnight was unavailable to testify, and therefore, it cannot now argue the text message was admissible under Rule 804,

SCRE. Sanders further argues the text message was not admissible as a present sense impression, excited utterance, or then existing state of mind, emotion, sensation, or physical condition pursuant to Rules 803(1)-(3), SCRE. We agree.

"Hearsay is an out of court statement, offered in court to prove the truth of the matter asserted." *State v. Parvin*, 413 S.C. 497, 503, 777 S.E.2d 1, 4 (Ct. App. 2015) (quoting *State v. Townsend*, 321 S.C. 55, 59, 467 S.E.2d 138, 141 (Ct. App. 1996)); *see also* Rule 801, SCRE (providing the definition of hearsay and its scope). "Hearsay is not admissible except as provided by [the South Carolina Rules of Evidence] or by other rules prescribed by the Supreme Court of this State or by statute." Rule 802, SCRE. The exceptions to the general rule against hearsay include when a hearsay statement conveys the declarant's "present sense impression," or constitutes an "excited utterance" or "then existing mental, emotional, or physical condition." Rule 803(1)-(3), SCRE.

The trial court erred by admitting the text message into evidence because the message was hearsay with no applicable exception. McKnight's text message was hearsay because it was an out-of-court statement offered to prove the truth of the matter asserted: Sanders was behind Harrington's apartment. *See* 801, SCRE. Thus, the text message was inadmissible absent an applicable exception to the general rule. *See* Rule 802, SCRE ("Hearsay is not admissible except as provided by [the South Carolina Rules of Evidence] or by other rules prescribed by the Supreme Court of this State or by statute."). Additionally, the text message was not admissible under any hearsay exception. *See* Rule 803, SCRE (providing exceptions to the general rule against hearsay). We will address each exception in turn.

First, the text message was not admissible as a present sense impression. *See* Rule 803(1), SCRE (providing that a "statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter" is admissible under the present sense impression exception to the general rule against hearsay). The second and third sentences of the text message—"He probably hidn 2. Tryn sum"—did not constitute a present sense impression because they did not explain or describe an event or condition that McKnight personally perceived. *See State v. Prather*, 429 S.C. 583, 611, 840 S.E.2d 551, 565 (2020) ("To qualify as a present sense impression: '(1) the statement must describe or explain an event or condition; (2) the statement must be contemporaneous with the event; and (3) the declarant must have personally perceived the event.'" (quoting *State v. Hendricks*, 408 S.C. 525, 533, 759 S.E.2d 434, 438 (Ct. App. 2014))). McKnight's statement that Sanders was hiding and

trying something was not an explanation about his claim to have seen Sanders's girlfriend behind Harrington's apartment. *See id.* ("To qualify as a present sense impression: '(1) the statement must describe or explain an event or condition . . .'" (quoting *Hendricks*, 408 S.C. at 533, 759 S.E.2d at 438)). Rather, these statements conveyed McKnight's opinion that Sanders was likely with his girlfriend behind Harrington's apartment. Regardless, the first sentence of the text message did not require an explanation. Thus, the text message was not admissible as a present sense impression.

Next, McKnight's text message was not admissible as an excited utterance because the message did not indicate he witnessed a "startling event or condition" or "was under the stress of excitement caused by [an] event or condition" when he sent the text message to Garvin. *See id.* at 611, 840 S.E.2d at 565-66 ("For a statement to be an excited utterance: '(1) the statement must relate to a startling event or condition; (2) the statement must have been made while the declarant was under the stress of excitement; and (3) the stress of excitement must be caused by the startling event or condition.'" (quoting *Washington*, 379 S.C. at 124, 665 S.E.2d at 604)); *see also* Rule 803(2), SCRE (providing an excited utterance is a "statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition").

Finally, McKnight's text message was not admissible under Rule 803(3), SCRE, as a then existing mental, emotional, or physical condition because the message constituted a statement of McKnight's belief rather than a statement of "intent, plan, motive, design, mental feeling, pain, [or] bodily health." *See* Rule 803(3), SCRE (providing an exception to the hearsay rule for a "statement of the declarant's then existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain, and bodily health), but not including a statement of memory or belief to prove the fact").

Based on the foregoing, we find the trial court erred in admitting McKnight's text message into evidence; however, as we discuss below, we hold any error in admitting the text message was harmless.

C. Harmless Error

We hold admitting the content of the text message was harmless error because the evidence establishing Sanders's guilt was overwhelming. *See State v. Page*, 378 S.C. 476, 483, 663 S.E.2d 357, 360 (Ct. App. 2008) ("Error is harmless whe[n] it could not reasonably have affected the trial's outcome."); *State v. Vick*, 384 S.C.

189, 199, 682 S.E.2d 275, 280 (Ct. App. 2009) ("An insubstantial error not affecting the result of the trial is harmless where guilt has been conclusively proven by competent evidence such that no other rational conclusion can be reached.").

We acknowledge the State had the burden of disproving self-defense, and we find the State met this burden. *See State v. Dickey*, 394 S.C. 491, 499, 716 S.E.2d 97, 101 (2011) ("[W]hen a defendant claims self-defense, the State is required to disprove the elements of self-defense beyond a reasonable doubt.").

A person is justified in using deadly force in self-defense when:

- (1) The defendant was without fault in bringing on the difficulty;
- (2) The defendant . . . actually believed he was in imminent danger of losing his life or sustaining serious bodily injury, or he actually was in such imminent danger;
- (3) If the defense is based upon the defendant's actual belief of imminent danger, a reasonable prudent man of ordinary firmness and courage would have entertained the same belief . . . ; and
- (4) The defendant had no other probable means of avoiding the danger of losing his own life or sustaining serious bodily injury than to act as he did in this particular instance.

Id. (quoting *State v. Wiggins*, 330 S.C. 538, 545, 500 S.E.2d 489, 493 (1998)).

The evidence showed the State disproved the elements of self-defense beyond a reasonable doubt and Sanders's guilt was conclusively proven such that no other rational conclusion could be reached. As to the element of fault in bringing on the difficulty, both Garvin and Williams testified they encountered Sanders a few days prior to the shooting when he told Garvin, "[Y]ou better get you a black dress, because I'm going to kill your daughter." Additionally, Bradley testified she heard someone trying to get into Harrington's apartment, and when Harrington returned soon afterwards, Sanders and his girlfriend were near the apartments.

As to his belief that he was in imminent danger of losing his life or suffering serious bodily harm, Sanders testified he was "scared" that he and his girlfriend would be hurt or seriously injured during the confrontation with Harrington. However, we find the evidence conclusively showed no person of ordinary firmness and courage would have entertained the same belief. Priester, White, and Marquis testified they all exited the vehicle when Harrington pulled up in front of the apartments near the laundromat. Although their testimonies were conflicting as to who remained close to Harrington as she approached Sanders and his girlfriend, they testified consistently that Harrington was unarmed and no one tried to strike Sanders. Sanders also testified no one hit him. Moreover, although Sanders indicated Harrington implied she had a gun in the car, he never stated he saw anyone with a weapon or believed anyone was armed. Additionally, the pathologist who conducted the autopsy testified Harrington weighed 105 pounds and was about five feet, six inches tall. White described Harrington as "skinny" and "tall" and described Sanders as "short" and having "a little muscle, a little weight." Sanders's testimony did not contradict the evidence of Harrington's slight weight, that Harrington was neither armed nor appeared to be armed, or that White, Priester, or Alston were not armed nor appeared to be armed. Sanders testified Alston stayed near the car, White was near Harrington, and Priester was on the other side of Harrington "but just standing there." Further, based on his testimony, Harrington was the only one who made a threatening statement. The foregoing evidence conclusively showed no person of ordinary firmness and courage would have entertained the belief that he was in imminent danger of death or serious bodily injury under the same circumstances so as to justify the use of deadly force.

As to whether Sanders had any other probable means of avoiding the danger, the evidence also conclusively showed he could have avoided the danger without using deadly force. Even according to Sanders's testimony, no one other than Harrington—who weighed only 105 pounds—was threatening him with violence, and he did not dispute that Harrington was unarmed. Further, there is no indication in the record that Sanders believed any of the other three to be armed. Both Priester and White testified everyone was in the street when the shooting occurred, and White stated there was plenty of room to move around. In addition, photographs from the scene demonstrate this, and State's Exhibits 8-10 show a large pool of blood in the middle of the street between the laundromat and the apartments. The photographs also show a large, open area, and White testified no one prevented Sanders from leaving. Therefore, the evidence conclusively showed Sanders could have avoided the danger without using deadly force by simply leaving.

Based on the foregoing, we hold the trial court's error in admitting the hearsay evidence was harmless because it could not reasonably have affected the outcome at trial.

CONCLUSION

Accordingly, Sanders's convictions and sentences are

AFFIRMED.

WILLIAMS, C.J., MCDONALD, J., and LOCKEMY, A.J., concur.

RECEIVED**Jul 28 2022****SC Court of Appeals**

STATE OF SOUTH CAROLINA
 IN THE COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

GREGORY SANDERS,

APPELLANT

APPELLATE CASE NO. 2018-000911

Appeal from Hampton County

Carmen T. Mullen, Circuit Court Judge

Opinion No. 2022-UP-298

PETITION FOR REHEARING

On July 13, 2022, this Court affirmed Appellant's convictions in an unpublished opinion. State v. Sanders, 2022-UP-298 (S.C. Ct. App. filed July 13, 2022). Pursuant to Rule 221(a), SCACR, Appellant now files this petition for rehearing based upon significant factual and legal points overlooked or misapprehended by this Court in rendering its decision.

On appeal, Appellant challenged the trial court's ruling that a text message was admissible as evidence to be considered by the jury against Appellant. This Court held that although the text message was properly authenticated, it was inadmissible hearsay. Nevertheless, this Court concluded the erroneous admission of the text message was harmless. In this petition for rehearing,

Appellant challenges this Court's conclusions regarding authentication and harmless error; Appellant agrees the text message was inadmissible hearsay.

Relevant facts

On May 10, 2016, Marilyn Garvin, the deceased's mother, and her boyfriend, Samson Williams, were moving out of the deceased's apartment and into an apartment of their own. R. 74, ll. 4-12. During the evening of May 10, 2016, Garvin went to her new apartment. R. 74, ll. 13-22. While at her new apartment, she received a phone call from Johnny McKnight saying that "Hard and his girlfriend [were] on the back of [the deceased's] apartment fiddling with the door." R. 75, ll. 6-12. When the solicitor asked Garvin about the text message, defense counsel objected to the question as eliciting hearsay, and the judge sustained the objection and struck the testimony. R. 75, ll. 13-18.

Undeterred, the solicitor next asked if Garvin received a text message from anyone. R. 75, ll. 20-21. Garvin explained she received a text message from "Mr. Johnny McKnight. Johnny [is also] known as Johnny Blaze." R. 75, l. 20. She further explained that she had "Mr. McKnight programmed" into her phone "under Johnny Blaze." R. 76, ll. 1-3. According to Garvin, she called the deceased and told her what McKnight allegedly said to her. R. 77, ll. 10-14; R. 77, ll. 21-22. Garvin claimed the deceased had no reaction and simply hung up the phone. R. 77, ll. 23-24.

During the examination, the solicitor instructed Garvin not to say "what he said." R. 77, l. 15. While this instruction appeared to demonstrate the solicitor's understanding that what McKnight said to Garvin via text message was inadmissible hearsay and was not authenticated, the solicitor then sought to introduce the message into evidence. R. 77, l. 25 – R. 78, l. 2. Defense counsel immediately objected, explaining the text message itself was hearsay and unauthenticated

because the sender was unknown. R. 78, ll. 3-6; R. 78, ll. 11-13. The state defended its request for admission by arguing, “she knows that it was her phone, and it - - the text message came to her phone.” R. 78, ll. 7-9. Ultimately, the trial judge allowed the text message to be admitted into evidence. R. 78, l. 23 – R. 79, l. 7; R. 459.

Subsequently, Garvin read the text message to the jurors: “I just seen Hard girlfriend walking behind apartment. He’s probably behind her to[o] trying something.” R. 79, ll. 23-25. According to Garvin, the message meant “that Hard was trying, him and his girlfriend, trying to lure [her] baby out the house.” R. 80, ll. 1-5. The solicitor then had Garvin repeat that in response to receiving the text message, she called the deceased and said, “Johnny just text me and said that Hard and his girlfriend - - Mr. Sanders and his girlfriend was going back behind your apartment.” R. 80, ll. 20-24.

Not Authenticated

The proponent of evidence must satisfy “[t]he requirement of authentication or identification as a condition precedent to admissibility.” Rule 901(a), SCRE. This requirement “is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.” *Id.* While the burden is not high, the proponent must offer a satisfactory foundation to permit the jury to conclude the evidence is authentic. Deep Keel, LLC v. Atlantic Private Equity Group, LLC, 413 S.C. 58, 64-65, 773 S.E.2d 607, 610 (Ct. App. 2015)(citing United States v. Hassan, 742 F.3d 104, 133 (4th Cir. 2014)).

This Court held the state properly authenticated the text message by showing the text message “contained distinctive characteristics and the like.” See Rule 901(b)(4), SCRE. This Court relied on Garvin’s testimony that “she received a phone call and spoke to McKnight.” According to this Court, “Garvin’s statements regarding this prior conversation with McKnight

that same night provided circumstantial evidence sufficient to support a finding that the text message was what she claimed it to be.” Appellant respectfully disagrees.

Pursuant to Rule 901(b)(4), SCRE, “[a]pppearance, contents, substance, internal patterns, or other distinctive characteristics, taken in conjunction with circumstances” may serve to authenticate evidence. Recently, this Court addressed the authentication of social media messages through circumstantial evidence. State v. Green, 427 S.C. 223, 830 S.E.2d 711 (Ct. App. 2019), aff’d as modified State v. Green, 432 S.C. 97, 851 S.E.2d 440 (2020). This Court held the state authenticated Facebook messages despite neither the sender nor the recipient testifying. Id. at 232-233, 830 S.E.2d at 715-716. Rather, a witness testified that a co-defendant, who was not on trial, used the name “Ruby Rina” on Facebook. Id. at 228, 830 S.E.2d at 713. The witness claimed he saw the co-defendant and the defendant “laughing while texting.” Id. Later that day, the deceased arrived at the co-defendant’s home. Id. Subsequently, the police found the deceased’s body. Id. The police learned of the messages from the deceased’s father. Id. at 227, 830 S.E.2d at 712. The father claimed he had the deceased’s Facebook password and viewed the messages after the deceased went missing. Id. Among the messages was an invitation from Ruby Rina to the deceased on the day of his death for a sexual rendezvous at her home. Id. at 227, 830 S.E.2d at 712-713.

This Court held “the content of the messages was distinctive enough that a reasonable jury could find [co-defendant] wrote them.” Id. at 233, 830 S.E.2d at 715. According to this Court,

Numerous facts link[ed] the Facebook messages to [co-defendant] and, consequently, Green: the use of the screen name ‘Ruby Rina,’ which [a witness] testified was [co-defendant]’s; reference to ‘Julissa’ on the messages, which testimony showed was [co-defendant]’s sister’s name; Ruby Rina’s invitation to her home, which she stated was at 108 Queens Circle; [the deceased]’s reference to Ruby Rina as [co-defendant] ...; comments throughout the messages about Ruby Rina’s erstwhile boyfriend that were consistent with her relationship with Green; the timing of the messages; and the tragic fact that [deceased] disappeared shortly

after Ruby Rina invited him to 108 Queens Circle, where his blood was later discovered.

Id. at 233, 830 S.E.2d at 715-716. This Court held that “[t]aken together, these circumstances serve as sufficient authentication to meet the low bar Rule 901(b)(4), SCRE, sets.” Id. at 233, 830 S.E.2d at 716.

Shortly after deciding Green, this Court addressed the authentication of text messages. State v. Benton, 435 S.C. 250, 865 S.E.2d 919 (Ct. App. 2021). The state introduced text messages allegedly sent and received by Benton. Id. at 261, 865 S.E.2d at 924. There was even evidence in the record that others used Benton’s phone to send messages. Id. This Court held “sufficient distinctive characteristics and accompanying circumstances existed to authenticate the text messages.” Id. at 261, 865 S.E.2d at 925. Although this Court noted the trial court erred by stating the fact that the messages were sent from Benton’s phone provided sufficient proof to establish Benton was the author, this Court found the timing, distinctive characteristics, and a witness’s identification of certain messages provided the circumstantial evidence necessary for authentication. Id. at 263, 865 S.E.2d at 926.

This Court explained that “[d]uring the time Benton concede[d] he was in possession of his phone, he frequently sent text messages to a phone number saved in his phone as ‘My Love.’” Id. at 263-264, 865 S.E.2d at 926. Leading up to the day of the alleged crime, Benton frequently sent messages to this person using similar language. Id. at 264, 865 S.E.2d at 926. Also during that time period, there were text messages from Benton’s phone to others involved in the alleged crime; thus, this Court concluded, “[t]he contents of the text messages to [his love interest] provide[d] circumstantial evidence from which a reasonable jury could find Benton was in possession of his phone and sent the text messages to others during this same period. Id.

Other jurisdictions addressing authentication of text messages and social media posts have noted the difficulty of authenticating these forms of evidence. Holding a printout of a MySpace page was not authenticated, the Maryland Court of Appeals noted the significant challenges presented from authenticating social media posts due to the ease of creating fictitious accounts. Griffin v. State, 19 A.3d 415, 420-424 (Md. 2011). Likewise, the Mississippi Supreme Court explained “[t]he authentication of social media poses unique issues regarding what is required to make a prima facie showing that the matter is what the proponent claims.” Smith v. State, 136 So.3d 424, 432 (Miss. 2014). See also United States v. Vayner, 769 F.3d 125 (2nd Cir. 2014) (holding a profile page was not authenticated); Commonwealth v. Mangel, 181 A.3d 1154, 1162 (Pa. Super. Ct. 2018) (discussing the “additional challenges” presented by “[s]ocial media evidence” “because of the great ease with which a social media account may be falsified, or a legitimate account may be accessed by an imposter”); Com. v. Williams, 926 N.E.2d 1162, 1172-1173 (Mass. 2010) (finding error in the admission of messages sent via MySpace where there was no evidence of the identity of the sender of the messages).

Here, contrary to this Court’s holding, the state failed to authenticate the text message contained within State’s Exhibit #25. This Court relied upon Garvin’s testimony “she received a phone call from and spoke to McKnight.” This Court held that “Garvin’s statements regarding this prior conversation with McKnight that same night provided circumstantial evidence sufficient to support a finding that the text message was what she claimed it to be.” Therefore, this exact exchange between the solicitor and Garvin is critical:

Q. Did anything else happen after you got to your apartment? Did you get any other phone calls?

A. Oh. Yeah, I got a call from Johnny - - Johnny McKnight saying - - calling and said that Hard and his girlfriend was on the back of my daughter apartment fiddling with the door. And then, I called her and I told her. She just still - -

R. 75, ll. 6-12. At this point, defense counsel objected, the state consented, and the testimony was stricken from the record. R. 75, ll. 12-15. After Garvin testified that she received a text message from Johnny McKnight “known as Johnny Blaze,” the solicitor asked if the text message went to her phone. R. 75, ll. 20-24. Garvin testified, “It came to my phone.” R. 76, l. 25.

This Court’s opinion presupposes – and requires – that Garvin used the same phone for the phone call with McKnight as the text message. However, the record is devoid of *any* evidence that the phone on which Garvin received a voice call from McKnight was the same phone on which she received the text message. Similarly, there is no evidence in the record that the name programmed in her phone, “Johnny Blaze,” for McKnight was the name that appeared when she took the phone call. Garvin did not even testify that she could recognize McKnight’s voice – in order to identify the caller – based on any prior experience with McKnight.

She never indicated that she communicated with Blaze using that phone number or that she recognized the style of writing. In fact, the writer of the text message used a signature of “GOD S GIFT,” not anything related to “Johnny,” “McKnight,” or “Blaze.” This was a far cry from what is required to authenticate evidence. The state simply failed to show how Garvin knew the author of the text message. Appellant respectfully requests this Court rehear this matter pursuant to Rule 221(a), SCACR, to address the significant factual and legal points overlooked or misapprehended when this Court rendered its opinion.

Hearsay & not harmless

As previously noted, Appellant agrees with this Court’s analysis concerning hearsay. Appellant agrees the trial judge erred in admitting the text message because it was hearsay and did not fall within any of the hearsay exceptions. Nevertheless, Appellant respectfully disagrees with this

Court's determination that admission of the text message was harmless. Appellant respectfully requests this Court rehear and reconsider whether the admission of the message was harmless.

This Court held "admitting the content of the text message was harmless error because the evidence establishing [Appellant]'s guilt was overwhelming." Appellant disagrees.

The South Carolina Supreme Court recently clarified when evidence is considered overwhelming regarding guilt of the accused. Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018). The Court explained that "for the evidence to be 'overwhelming' ... the evidence must include something conclusive, such as a confession, DNA evidence demonstrating guilt, or a combination of physical and corroborating evidence so strong." Id. at 191, 810 S.E.2d at 845.

In the instant matter, it was undisputed that Appellant killed the deceased. The question was whether Appellant was justified in using deadly force. This Court concluded that the evidence showed the state disproved the elements of self-defense beyond a reasonable doubt without consideration of the text message. Appellant respectfully disagrees.

The state relied upon the text message in closing argument to claim Appellant was at fault for bringing on the difficulty. R. 389, l. 24 – R. 390, l. 15. As the solicitor explained, the text message, which was communicated by Garvin to the deceased, showed that Appellant was "behind the house, trying something." R. 390, ll. 11-15; R. 390, ll. 19-24. According to the solicitor, this meant Appellant "started the whole thing." R. 390, l. 19; R. 390, l. 25 – R. 391, l. 2. The state went so far as to claim that Appellant "started it" "when he was trying to get in her house." R. 391, ll. 16-19.

Furthermore, Appellant respectfully disagrees with this Court's conclusion that the evidence "conclusively showed no person of ordinary firmness and courage would have entered the same belief" – being scared when confronted by the deceased and her crew. Earlier in the day

on May 10, 2016, the deceased punched Appellant. R. 136, ll. 22-24; R. 137, ll. 19-21; R. 334, ll. 14-22; Defense Exhibit #1. Her friends, Kywana Bradley and Yhantyse “Daisy” Priester, joined in to help the deceased. R. 136, ll. 22-24; R. 137, ll. 19-21; R. 334, ll. 14-22; Defense Exhibit #1.

That night, Appellant and his girlfriend, Javasha Forrester, were walking down the street, going home. R. 101, ll. 14-18; R. 337, l. 12 – R. 338, l. 1. A car drove past then, slammed on brakes, backed up, and then pulled into a parking lot within inches of the pair. R. 101, ll. 22-25; R. 180, ll. 10-13; R. 193, ll. 12-24; R. 338, ll. 10-24. From the car emerged Harrington, Priester, and two young men named Randy White and Marquis Alston. R. 102, ll. 11-17; R. 110, ll. 23-25; R. 181, ll. 7-8; R. 338, ll. 18-19; R. 339, ll. 14-18.

Harrington was in “full effect” and immediately started threatening Appellant and Forrester. R. 101, l. 24 – R. 102, l. 2; R. 107, ll. 2-8; R. 194, ll. 8-11; R. 340, ll. 1-11. Even according to White, Harrington was “full of rage.” R. 107, l. 25; R. 181, l. 22. Harrington wanted to fight and was intent on doing violence. R. 111, ll. 1-4; R. 117, ll. 1-3; R. 125, ll. 13-15; R. 180, ll. 14-15; R. 199, l. 25 – R. 200, l. 1. Appellant put Forrester behind him to shield her from Harrington and the two backed up. R. 102, ll. 3-4; R. 110, ll. 23-25; R. 111, ll. 16-19; R. 112, ll. 12-15; R. 187, ll. 3-5; R. 340, ll. 12-18. Harrington’s boyfriend, Randy White, was “right beside” Harrington as she continued to approach Appellant and Forrester. R. 111, ll. 20-24; R. 125, ll. 16-18; R. 341, ll. 3-8; R. 341, ll. 18-22. Harrington’s other compatriots were not far behind them. R. 341, l. 23 – R. 342, l. 1. When Forrester repeatedly assured Harrington that she did not want to fight, Harrington turned her ire toward Appellant. R. 180, ll. 15-16; R. 183, ll. 5-7; R. 191, l. 22; R. 341, ll. 9-13. Harrington even told Appellant that she had a gun in her car. R. 341, ll. 13-15.

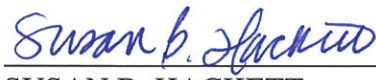
This Court ignored this evidence and relied on the deceased being skinny and unarmed to conclude no person of ordinary firmness and courage would have entertained the belief that he

was in imminent danger of death or serious bodily injury. Appellant respectfully requests this Court rehear the matter to consider this evidence and the undisputed evidence that the deceased was threatening Appellant and his girlfriend.

This Court also determined “the evidence ... conclusively showed he could have avoided the danger without using deadly force.” This Court ignored the evidence in the record that Appellant could not “simply leav[e].” Appellant explained that there was a building behind him and the foursome had him cornered. R. 342, ll. 2-7. In short, he had no avenue of retreat. R. 342, ll. 2-12. Despite Appellant’s repeated requests that the foursome, led by Harrington, leave them alone, the group continued its advance. R. 343, ll. 9-22. At that point, Appellant did the only thing he could do – he pulled his gun and shot Harrington. R. 345, ll. 15-17. Appellant and Forrester then ran to safety. R. 345, l. 18 – R. 346, l. 7. Appellant respectfully requests this Court rehear this matter based on the material evidence overlooked or misapprehended by this Court in arriving at its conclusion.

The state’s evidence against Appellant to disprove self-defense beyond a reasonable doubt was far from conclusive so as to be considered overwhelming evidence of guilt. Instead, the evidence showed the deceased physically assaulted Appellant earlier in the day on May 10, 2016, and her friends helped her. The evidence showed the deceased and three other people confronted Appellant while he and his girlfriend were walking down the street. Further, the evidence showed the deceased threatened the deceased and his girlfriend – she was ready for a fight. Finally, the evidence showed Appellant had no means of escape. Based on these reasons, Appellant respectfully requests this Court rehear the matter to address these significant points overlooked or misapprehended by this Court in arriving at its conclusion regarding harmless error.

Respectfully Submitted,



SUSAN B. HACKETT

Appellate Defender

This 28th day of July, 2022.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Hampton County

Carmen T. Mullen, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

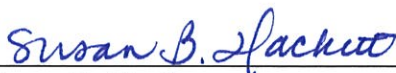
GREGORY SANDERS,

APPELLANT

APPELLATE CASE NO. 2018-000911

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Petition for Rehearing in the above-entitled case has been served upon Julianna E. Battenfield, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), which is juliannabattenfield@scag.gov; and Gregory Sanders, #314824, at Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210, this 28th day of July, 2022.



Susan B. Hackett
Appellate Defender

ATTORNEY FOR APPELLANT

The South Carolina Court of Appeals

The State, Respondent,

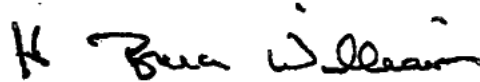
v.

Gregory Sanders, Appellant.

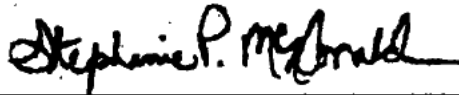
Appellate Case No. 2018-000911

ORDER

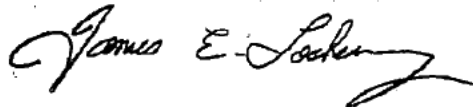
After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.



J.



J.



A.J.

Columbia, South Carolina

cc:

Alan McCrory Wilson, Esquire
 Melody Jane Brown, Esquire
 Susan Barber Hackett, Esquire
 Michael Douglas Ross, Esquire
 Donald J. Zelenka, Esquire

Isaac McDuffie Stone, III, Esquire
Julianna E. Battenfield, Esquire
The Honorable Carmen T. Mullen

FILED
Aug 12 2022

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to the Court of Appeals
Appeal from Hampton County
Carmen T. Mullen, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

GREGORY SANDERS,

PETITIONER

Opinion No. 2022-UP-298 (S.C. Ct. App. filed July 13, 2022)

APPELLATE CASE NO. 2018-000911

PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS

SUSAN B. HACKETT
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

RECEIVED

Sep 01 2022

S.C. SUPREME COURT

INDEX

INDEX	i
CERTIFICATE OF COUNSEL	1
QUESTIONS PRESENTED.....	2
STATEMENT OF THE CASE.....	3
ARGUMENT	
I.	
The Court of Appeals erred in concluding a text message entered into evidence by the state was properly authenticated where the text message was allegedly written by a person who did not testify and the record contained no circumstantial evidence, such as appearance, contents, substance, internal patterns, or other distinctive characteristics, to show the message was what the state claimed.....	8
II.	
The Court of Appeals erred in concluding a text message entered into evidence by the state was harmless despite the fact that it was inadmissible hearsay where the state used the message to argue Petitioner was not without fault in bringing on the difficulty to defeat his claim of self-defense.....	14
CONCLUSION.....	18

CERTIFICATE OF COUNSEL

Counsel for Petitioner certifies that the petition for rehearing was made and finally ruled on by the Court of Appeals on August 12, 2022. App. 25-26.

QUESTIONS PRESENTED

- I. Did the Court of Appeals err in concluding a text message entered into evidence by the state was properly authenticated where the text message was allegedly written by a person who did not testify and the record contained no circumstantial evidence, such as appearance, contents, substance, internal patterns, or other distinctive characteristics, to show the message was what the state claimed?
- II. Did the Court of Appeals err in concluding a text message entered into evidence by the state was harmless despite the fact that it was inadmissible hearsay where the state used the message to argue Petitioner was not without fault in bringing on the difficulty to defeat his claim of self-defense?

STATEMENT OF THE CASE

Petitioner and Tyhira Harrington were friends. R. 132, ll. 16-20; R. 172, ll. 13-18. On May 10, 2016, Petitioner was aware that there were rumors going around Estill that were damaging his friendship with Harrington. R. 333, l. 21 – R. 334, l. 2. As a result, Petitioner went to visit with Harrington to clear his name. R. 136, ll. 13-14; R. 177, ll. 1-2; R. 333, l. 25 – R. 334, l. 13. Harrington had been drinking all day. R. 181, ll. 22-23; R. 192, ll. 2-23. Initially, the two engaged in a civil discussion, however, Harrington punched Petitioner and her friends, Kywana Bradley and Yhantyse “Daisy” Priester, joined in to assist Harrington. R. 136, ll. 22-24; R. 137, ll. 19-21; R. 334, ll. 14-22; Defense Exhibit #1. Eventually, Petitioner was able to get out of Harrington’s apartment. R. 334, ll. 23-24.

Later that evening, Petitioner and his girlfriend, Javasha Forrester, were walking down the street, going home. R. 101, ll. 14-18; R. 337, l. 12 – R. 338, l. 1. A car drove past them, slammed on brakes, backed up, and then pulled into a parking lot within inches of the pair. R. 101, ll. 22-25; R. 180, ll. 10-13; R. 193, ll. 12-24; R. 338, ll. 10-24. From the car emerged Harrington, Priester, and two young men named Randy White and Marquis Alston. R. 102, ll. 11-17; R. 110, ll. 23-25; R. 181, ll. 7-8; R. 338, ll. 18-19; R. 339, ll. 14-18.

Petitioner was scared. R. 339, ll. 1-2; R. 344, ll. 6-7. Harrington was in “full effect” and immediately started threatening Petitioner and Forrester. R. 101, l. 24 – R. 102, l. 2; R. 107, ll. 2-8; R. 194, ll. 8-11; R. 340, ll. 1-11. According to White, Harrington was “full of rage.” R. 107, l. 25; R. 181, l. 22. Harrington wanted to fight and was intent on doing violence. R. 111, ll. 1-4; R. 117, ll. 1-3; R. 125, ll. 13-15; R. 180, ll. 14-15; R. 199, l. 25 – R. 200, l. 1. Petitioner put Forrester behind him to shield her from Harrington and the two backed up. R. 102, ll. 3-4; R. 110, ll. 23-25; R. 111, ll. 16-19; R. 112, ll. 12-15; R. 187, ll. 3-5; R. 340, ll. 12-18. Harrington’s

boyfriend, Randy White, was “right beside” Harrington as she continued to approach Petitioner and Forrester. R. 111, ll. 20-24; R. 125, ll. 16-18; R. 341, ll. 3-8; R. 341, ll. 18-22. Harrington’s other compatriots were not far behind them. R. 341, l. 23 – R. 342, l. 1.¹ When Forrester repeatedly assured Harrington that she did not want to fight, Harrington turned her ire toward Appellant. R. 180, ll. 15-16; R. 183, ll. 5-7; R. 191, l. 22; R. 341, ll. 9-13. Harrington even told Petitioner at she had a gun in her car. R. 341, ll. 13-15.

Petitioner explained that there was a building behind him and the foursome had him cornered. R. 342, ll. 2-7. In short, he had no avenue of retreat. R. 342, ll. 2-12. Despite Appellant’s repeated requests that the foursome, led by Harrington, leave them alone, the group continued its advance. R. 343, ll. 9-22. At that point, Petitioner did the only thing he could do – he pulled his gun and shot Harrington. R. 345, ll. 15-17. Petitioner and Forrester then ran to safety. R. 345, l. 18 – R. 346, l. 7.

On February 6, 2017, the Hampton County grand jury indicted Petitioner for possession of a weapon during the commission of a violent crime (2016-GS-25-177) and murder (2016-GS-25-178). R. 460-465. On May 7-9, 2018, the state, represented by Tameaka Legette and Bryan Hollen, called the case for trial before the Honorable Carmen T. Mullen and a jury. R. 1-2. Stephen T. Plexico represented Petitioner. R. 2.

During the trial, the state relied heavily upon a text message allegedly from an individual who did not testify. The text message was unauthenticated and hearsay.

Marilyn Garvin, the deceased’s mother, told the jury that on May 10, 2016, she and her boyfriend, Samson Williams, were moving out of the deceased’s apartment and into an

¹ Marquis Alston claimed that when the car stopped he got out and went to the home of a friend who lived nearby. R. 154, ll. 10-12; R. 155, ll. 17-24; R. 157, ll. 1-7. Yhantyse Priester claimed that she sent Alston and Randy White to get Kywana Bradley to calm Tyhira Harrington. R. 181, ll. 7-11.

apartment of their own. R. 74, ll. 4-12. Late that evening, Garvin went to her new apartment. R. 74, ll. 13-22. While at her new apartment, she allegedly received “a call from Johnny - - Johnny McKnight saying - - calling and said that Hard and his girlfriend [were] on the back of [the deceased’s] apartment fiddling with the door.” R. 75, ll. 6-12. Petitioner objected to the testimony as hearsay, moved to strike the testimony, and requested a curative instruction. R. 75, ll. 13-14. Although the solicitor had elicited the testimony, the solicitor agreed to “strike it.” R. 75, l. 15. The judge instructed the jury, “Ladies and gentlemen, that last comment is not appropriate. Someone cannot say what someone else has said.” R. 75, ll. 16-18.

The solicitor then asked if Garvin “also g[ot] a text message from anyone.” R. 75, ll. 20-21. Garvin responded, “Mr. Johnny McKnight. Johnny known as Johnny Blaze.” R. 75, l. 20. She further explained that she had “Mr. McKnight programmed” into her phone “under Johnny Blaze.” R. 76, ll. 1-3. Garvin claimed she knew “his telephone number when it came in.” Tr. 76, ll. 4-6. She later stated she could recognize the text message “[b]ecause they programmed in my phone as Johnny Blaze, and the same text is in my phone.” R. 77, ll. 3-5. According to Garvin, she called the deceased and told her what McKnight allegedly said to her via text message. R. 77, ll. 10-14; R. 77, ll. 21-22. Garvin claimed the deceased had no reaction and simply hung up the phone. R. 77, ll. 23-24.

During the examination, the solicitor instructed Garvin not to say “what he said.” R. 77, l. 15. While this instruction appeared to demonstrate the solicitor’s understanding that what McKnight said to Garvin via text message was inadmissible hearsay and was not authenticated, the solicitor then sought to introduce the message into evidence. R. 77, l. 25 – R. 78, l. 2. Defense counsel immediately objected, explaining the text message itself was hearsay and unauthenticated because the sender was unknown. R. 78, ll. 3-6; R. 78, ll. 11-13. The state

defended its request for admission by arguing, “she knows that it was her phone, and it - - the text message came to her phone.” R. 78, ll. 7-9. Ultimately, the trial judge allowed the text message to be admitted into evidence. R. 78, l. 23 – R. 79, l. 7; R. 459.

Subsequently, Garvin read the text message to the jurors: “I just seen Hard girlfriend walking behind apartment. He’s probably behind her to[o] trying something.” R. 79, ll. 23-25. According to Garvin, the message meant “that Hard was trying, him and his girlfriend, trying to lure [her] baby out the house.” R. 80, ll. 1-5. The solicitor then had Garvin repeat that in response to receiving the text message, she called the deceased and said, “Johnny just text me and said that Hard and his girlfriend - - Mr. Sanders and his girlfriend was going back behind your apartment.” R. 80, ll. 20-24.

After hearing this testimony, the jury found Petitioner guilty as charged. R. 454 l. 21 – R. 455, l. 2. Judge Mullen sentenced Petitioner to life imprisonment without the possibility of parole for murder and to five years imprisonment for the weapon. R. 456, l. 21 – R. 457, l. 4; R. 460-465. She ordered the sentences to be served concurrently. R. 457, l. 5; R. 460-465.

On May 14, 2018, Petitioner filed his notice of appeal. On appeal, Petitioner challenged the trial court’s ruling that the text message allegedly received by Garvin from Johnny McKnight was admissible as evidence to be considered by the jury against Petitioner. After briefing, the Court of Appeals heard argument on November 10, 2021. On July 13, 2022, the Court of Appeals issued an unpublished opinion. State v. Sanders, 2022-UP-298 (S.C. Ct. App. filed July 13, 2022); App. 1-12.

The Court held that although the text message was properly authenticated, it was inadmissible hearsay. State v. Sanders, 2022-UP-298 (S.C. Ct. App. filed July 13, 2022); App. 1-12. Nevertheless, the Court concluded the erroneous admission of the text message was

harmless. State v. Sanders, 2022-UP-298 (S.C. Ct. App. filed July 13, 2022); App. 9-12. On July 28, 2022, Petitioner filed his petition for rehearing requesting the Court of Appeals rehear its decision that the state presented sufficient evidence to authenticate the text message and its determination that although the text message was hearsay, its introduction was harmless. App. 13-24. On August 12, 2022, the Court of Appeals denied Petitioner's request for rehearing. App. 25-26. This petition for writ of certiorari follows.

ARGUMENT

I. The Court of Appeals erred in concluding a text message entered into evidence by the state was properly authenticated where the text message was allegedly written by a person who did not testify and the record contained no circumstantial evidence, such as appearance, contents, substance, internal patterns, or other distinctive characteristics, to show the message was what the state claimed.

This Court should grant certiorari to clarify the law regarding authentication in the age of digital media. While authentication in general is not necessarily a novel question, how to properly authenticate materials created digitally is a novel question for this Court. When this issue was presented to the Court two years ago, this Court simply “affirmed the trial court’s authentication determination and admission of social media posts without further comment.” See State v. Green, 432 S.C. 97, 99, 851 S.E.2d 440, 440 (2020). This Court should take this opportunity to put the final word on what satisfies the requirement of authentication in the novel area of materials created and obtained from digital media. See Rule 242(b)(1), SCACR. In this modern age of omnipresence of digital media in every aspect of life, the circuit courts in South Carolina are inundated with material from digital media that the various parties propose to admit into evidence for consideration on the ultimate question before the judge or the jury. Thus, clarity from this Court for circuit judges and litigants regarding the proper way to authenticate materials gained from digital media is necessary.

The proponent of evidence must satisfy “[t]he requirement of authentication or identification as a condition precedent to admissibility.” Rule 901(a), SCRE. This requirement “is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.” Id. While the burden is not high, the proponent must offer a satisfactory

foundation to permit the jury to conclude the evidence is authentic. Deep Keel, LLC v. Atlantic Private Equity Group, LLC, 413 S.C. 58, 64-65, 773 S.E.2d 607, 610 (Ct. App. 2015) (citing United States v. Hassan, 742 F.3d 104, 133 (4th Cir. 2014)).

The Court of Appeals held the state properly authenticated the text message allegedly sent by Johnny McKnight and received by Garvin by showing the text message “contained distinctive characteristics and the like.” See Rule 901(b)(4), SCRE; App. 6-7. The Court of Appeals. relied on Garvin’s testimony, which was admittedly inadmissible and stricken from the record, that “she received a phone call and spoke to McKnight.” App. 6-7. According to the Court of Appeals, “Garvin’s statements regarding this prior conversation with McKnight that same night provided circumstantial evidence sufficient to support a finding that the text message was what she claimed it to be.” App. 7.

Pursuant to Rule 901(b)(4), SCRE, “[a]pppearance, contents, substance, internal patterns, or other distinctive characteristics, taken in conjunction with circumstances” may serve to authenticate evidence. Recently, the Court of Appeals addressed the authentication of social media messages through circumstantial evidence. State v. Green, 427 S.C. 223, 830 S.E.2d 711 (Ct. App. 2019), aff’d as modified State v. Green, 432 S.C. 97, 851 S.E.2d 440 (2020). The Court held the state authenticated Facebook messages despite neither the sender nor the recipient testifying. Id. at 232-233, 830 S.E.2d at 715-716. Rather, a witness testified that a co-defendant, who was not on trial, used the name “Ruby Rina” on Facebook. Id. at 228, 830 S.E.2d at 713. The witness claimed he saw the co-defendant and the defendant “laughing while texting.” Id. Later that day, the deceased arrived at the co-defendant’s home. Id. Subsequently, the police found the deceased’s body. Id. The police learned of the messages from the deceased’s father. Id. at 227, 830 S.E.2d at 712. The father claimed he had the deceased’s Facebook password and

viewed the messages after the deceased went missing. Id. Among the messages was an invitation from Ruby Rina to the deceased on the day of his death for a sexual rendezvous at her home. Id. at 227, 830 S.E.2d at 712-713.

The Court held “the content of the messages was distinctive enough that a reasonable jury could find [co-defendant] wrote them.” Id. at 233, 830 S.E.2d at 715. According to the Court,

Numerous facts link[ed] the Facebook messages to [co-defendant] and, consequently, Green: the use of the screen name ‘Ruby Rina,’ which [a witness] testified was [co-defendant]’s; reference to ‘Julissa’ on the messages, which testimony showed was [co-defendant]’s sister’s name; Ruby Rina’s invitation to her home, which she stated was at 108 Queens Circle; [the deceased]’s reference to Ruby Rina as [co-defendant] ...; comments throughout the messages about Ruby Rina’s erstwhile boyfriend that were consistent with her relationship with Green; the timing of the messages; and the tragic fact that [deceased] disappeared shortly after Ruby Rina invited him to 108 Queens Circle, where his blood was later discovered.

Id. at 233, 830 S.E.2d at 715-716. The Court held that “[t]aken together, these circumstances serve as sufficient authentication to meet the low bar Rule 901(b)(4), SCRE, sets.” Id. at 233, 830 S.E.2d at 716.

Shortly after deciding Green, the Court of Appeals addressed the authentication of text messages. State v. Benton, 435 S.C. 250, 865 S.E.2d 919 (Ct. App. 2021). The state introduced text messages allegedly sent and received by Benton. Id. at 261, 865 S.E.2d at 924. There was even evidence in the record that others used Benton’s phone to send messages. Id. The Court held “sufficient distinctive characteristics and accompanying circumstances existed to authenticate the text messages.” Id. at 261, 865 S.E.2d at 925. Although the Court noted the trial court erred by stating the fact that the messages were sent from Benton’s phone provided sufficient proof to establish Benton was the author, the Court found the timing, distinctive characteristics, and a witness’s identification of certain messages provided the circumstantial evidence necessary for authentication. Id. at 263, 865 S.E.2d at 926.

The Court explained that “[d]uring the time Benton concede[d] he was in possession of his phone, he frequently sent text messages to a phone number saved in his phone as ‘My Love.’” Id. at 263-264, 865 S.E.2d at 926. Leading up to the day of the alleged crime, Benton frequently sent messages to this person using similar language. Id. at 264, 865 S.E.2d at 926. Also during that time period, there were text messages from Benton’s phone to others involved in the alleged crime; thus, the Court concluded, “[t]he contents of the text messages to [his love interest] provide[d] circumstantial evidence from which a reasonable jury could find Benton was in possession of his phone and sent the text messages to others during this same period. Id.

Other jurisdictions addressing authentication of text messages and social media posts have noted the difficulty of authenticating these forms of evidence. Holding a printout of a MySpace page was not authenticated, the Maryland Court of Appeals noted the significant challenges presented from authenticating social media posts due to the ease of creating fictitious accounts. Griffin v. State, 19 A.3d 415, 420-424 (Md. 2011). Likewise, the Mississippi Supreme Court explained “[t]he authentication of social media poses unique issues regarding what is required to make a prima facie showing that the matter is what the proponent claims.” Smith v. State, 136 So.3d 424, 432 (Miss. 2014). See also United States v. Vayner, 769 F.3d 125 (2nd Cir. 2014) (holding a profile page was not authenticated); Commonwealth v. Mangel, 181 A.3d 1154, 1162 (Pa. Super. Ct. 2018) (discussing the “additional challenges” presented by “[s]ocial media evidence” “because of the great ease with which a social media account may be falsified, or a legitimate account may be accessed by an imposter”); Com. v. Williams, 926 N.E.2d 1162, 1172-1173 (Mass. 2010) (finding error in the admission of messages sent via MySpace where there was no evidence of the identity of the sender of the messages).

Here, contrary to the opinion issued by the Court of Appeals, the state failed to

authenticate the text message contained within State's Exhibit #25. The Court relied upon Garvin's inadmissible and stricken testimony "she received a phone call from and spoke to McKnight." The Court held that "Garvin's statements regarding this prior conversation with McKnight that same night provided circumstantial evidence sufficient to support a finding that the text message was what she claimed it to be." Therefore, this exact exchange between the solicitor and Garvin is critical:

Q. Did anything else happen after you got to your apartment? Did you get any other phone calls?

A. Oh. Yeah, I got a call from Johnny - - Johnny McKnight saying - - calling and said that Hard and his girlfriend was on the back of my daughter apartment fiddling with the door. And then, I called her and I told her. She just still - -

R. 75, ll. 6-12. At this point, defense counsel objected, the state consented, and the testimony was stricken from the record. R. 75, ll. 12-15. After Garvin testified that she received a text message from Johnny McKnight "known as Johnny Blaze," the solicitor asked if the text message went to her phone. R. 75, ll. 20-24. Garvin testified, "It came to my phone." R. 76, l. 25.

The Court of Appeals' opinion presupposes – and requires – that Garvin used the same phone for the phone call with McKnight as the text message. However, the record is devoid of *any* evidence that the phone on which Garvin received a voice call from McKnight was the same phone on which she received the text message. Similarly, there is no evidence in the record that the name programmed in her phone, "Johnny Blaze," for McKnight was the name that appeared when she took the phone call. Garvin did not even testify that she could recognize McKnight's voice – in order to identify the caller – based on any prior experience with McKnight.

She never indicated that she communicated with Blaze using that phone number or that she recognized the style of writing. In fact, the writer of the text message used a signature of

“GOD S GIFT,” not anything related to “Johnny,” “McKnight,” or “Blaze.” This was a far cry from what is required to authenticate evidence. The state simply failed to show how Garvin knew the author of the text message. The Court of Appeals erred in opining that the state presented sufficient evidence to authenticate the text message. Petitioner respectfully requests this Court grant certiorari to review the erroneous opinion issued by the Court of Appeals. \

II. The Court of Appeals erred in concluding a text message entered into evidence by the state was harmless despite the fact that it was inadmissible hearsay where the state used the message to argue Petitioner was not without fault in bringing on the difficulty to defeat his claim of self-defense.

This Court should grant certiorari to review the erroneous harmless error analysis conducted by the Court of Appeals. As detailed in great detail below, the Court of Appeals concluded the erroneous admission of a text message was harmless because of overwhelming evidence of guilt. The analysis conducted by the Court of Appeals conflicts with this Court's decision in Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018), wherein this Court explained what overwhelming evidence of guilt means. See Rule 242(b)(3), SCACR. This Court should grant certiorari to reiterate that the Court of Appeals must follow the opinions issued by this Court, including those regarding when the state has presented overwhelming evidence of guilt.

As previously noted, the Court of Appeals held the text message was inadmissible hearsay. Petitioner, of course, agreed with the Court's analysis and conclusion concerning hearsay. Petitioner did not challenge that portion of the opinion in his petition for rehearing, and Petitioner does not challenge that portion of the opinion now. Notably, the state did not file a petition for rehearing challenging the holding by the Court of Appeals that the text message was inadmissible hearsay. Thus, the only dispute on appeal as it relates to the hearsay aspect of the text message is whether the introduction of the message was harmless.

The Court of Appeals held "admitting the content of the text message was harmless error because the evidence establishing [Appellant]'s guilt was overwhelming." This was error.

This Court recently clarified when evidence is considered overwhelming regarding guilt of the accused. Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018). This Court explained that "for

the evidence to be ‘overwhelming’ ... the evidence must include something conclusive, such as a confession, DNA evidence demonstrating guilt, or a combination of physical and corroborating evidence so strong.” *Id.* at 191, 810 S.E.2d at 845.

In the instant matter, it was undisputed that Petitioner killed the deceased. The question was whether Petitioner was justified in using deadly force. For purposes of the harmless error analysis, the question was whether a combination of physical and corroborating evidence presented by the state was so strong as to defeat self-defense beyond a reasonable doubt. The Court of Appeals concluded that the evidence showed the state disproved the elements of self-defense beyond a reasonable doubt without consideration of the text message. However, the record, especially the closing argument made by the solicitor, belies the Court of Appeals’ contention.

The state relied upon the text message in its closing argument to claim Petitioner was at fault for bringing on the difficulty. R. 389, l. 24 – R. 390, l. 15. As the solicitor explained, the text message, which was communicated by Garvin to the deceased, showed that Petitioner was “behind the house, trying something.” R. 390, ll. 11-15; R. 390, ll. 19-24. According to the solicitor, this meant Petitioner “started the whole thing.” R. 390, l. 19; R. 390, l. 25 – R. 391, l. 2. The state went so far as to claim that Petitioner “started it” “when he was trying to get in her house” and the only evidence to support this contention was the text message allegedly sent by Johnny McKnight claiming that Petitioner and his girlfriend were near the apartment. R. 391, ll. 16-19.

Furthermore, the Court of Appeals erred in concluding that the evidence “conclusively showed no person of ordinary firmness and courage would have entered the same belief” – being scared when confronted by the deceased and her crew. The record evidence showed that earlier

in the day on May 10, 2016, *the deceased punched Petitioner*. R. 136, ll. 22-24; R. 137, ll. 19-21; R. 334, ll. 14-22; Defense Exhibit #1. Her friends, Kywana Bradley and Yhantyse “Daisy” Priester, joined in to help the deceased. R. 136, ll. 22-24; R. 137, ll. 19-21; R. 334, ll. 14-22; Defense Exhibit #1.

Late at night on May 10, 2016, Petitioner and his girlfriend were walking home. R. 101, ll. 14-18; R. 337, l. 12 – R. 338, l. 1. Suddenly, a car drove past them, slammed on its brakes, backed up, and then pulled into a parking lot within inches the two. R. 101, ll. 22-25; R. 180, ll. 10-13; R. 193, ll. 12-24; R. 338, ll. 10-24. Harrington, Priester, White and Alston jumped from the car. R. 102, ll. 11-17; R. 110, ll. 23-25; R. 181, ll. 7-8; R. 338, ll. 18-19; R. 339, ll. 14-18.

Harrington was in “full effect” and “full of rage.” R. 101, l. 24 – R. 102, l. 2; R. 107, ll. 2-8; R. 107, l. 25; R. 181, l. 22; R. 194, ll. 8-11; R. 340, ll. 1-11. She immediately started threatening Petitioner and his girlfriend. R. 101, l. 24 – R. 102, l. 2; R. 107, ll. 2-8; R. 194, ll. 8-11; R. 340, ll. 1-11. Harrington wanted to fight. R. 111, ll. 1-4; R. 117, ll. 1-3; R. 125, ll. 13-15; R. 180, ll. 14-15; R. 199, l. 25 – R. 200, l. 1. Petitioner shielded his girlfriend from Harrington as the two backed up from the gang of four. R. 102, ll. 3-4; R. 110, ll. 23-25; R. 111, ll. 16-19; R. 112, ll. 12-15; R. 187, ll. 3-5; R. 340, ll. 12-18. White was “right beside” Harrington as she continued to approach Petitioner and his girlfriend. R. 111, ll. 20-24; R. 125, ll. 16-18; R. 341, ll. 3-8; R. 341, ll. 18-22. The others were not far behind. R. 341, l. 23 – R. 342, l. 1. R. 180, ll. 15-16; R. 183, ll. 5-7; R. 191, l. 22; R. 341, ll. 9-13. Harrington even told Petitioner that she had a gun in her car, which was nearby. R. 341, ll. 13-15.

The Court of Appeals ignored this evidence and relied on the deceased being skinny and unarmed to conclude no person of ordinary firmness and courage would have entertained the

belief that he was in imminent danger of death or serious bodily injury despite the undisputed evidence that the deceased was threatening Petitioner and his girlfriend. See App. 9-12.

The Court of Appeals also determined “the evidence ... conclusively showed he could have avoided the danger without using deadly force.” App. 11. The Court ignored the evidence in the record that Petitioner could not “simply leav[e].” Petitioner explained that there was a building behind him and the foursome had him cornered. R. 342, ll. 2-7. In short, he had no avenue of retreat. R. 342, ll. 2-12. Despite Petitioner’s repeated requests that the foursome, led by Harrington, leave them alone, the group continued its advance. R. 343, ll. 9-22. At that point, Petitioner did the only thing he could do – he pulled his gun and shot Harrington. R. 345, ll. 15-17.

The state’s evidence against Petitioner to disprove self-defense beyond a reasonable doubt was far from conclusive so as to be considered overwhelming evidence of guilt. Instead, the evidence showed the deceased physically assaulted Petitioner earlier in the day on May 10, 2016, and her friends helped her. The evidence showed the deceased and three other people confronted Petitioner while he and his girlfriend were walking down the street. Further, the evidence showed the deceased threatened the deceased and his girlfriend – she was ready for a fight. Finally, the evidence showed Petitioner had no means of escape. Based on these reasons, Petitioner respectfully requests this Court grant the petition for writ of certiorari to address the flawed opinion issued by the Court of Appeals.

CONCLUSION

Petitioner respectfully requests this Court grant the petition for writ of certiorari and order full briefing on the issues presented.

Respectfully Submitted,

A handwritten signature in cursive script, reading "Susan B. Hackett", is written over a horizontal line.

Susan B. Hackett
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

This 1st day of September, 2022.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to the Court of Appeals
Appeal from Hampton County
Carmen T. Mullen, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

GREGORY SANDERS,

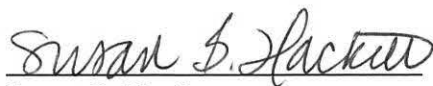
PETITIONER

Opinion No. 2022-UP-298 (S.C. Ct. App. filed July 13, 2022)

APPELLATE CASE NO. 2018-000911

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Petition for Writ of Certiorari to the Court of Appeals and Appendix in the above-referenced case has been served upon Julianna E. Battenfield, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), which is juliannabattenfield@scag.gov; and the South Carolina Court of Appeals; and on Gregory Sanders, #314824, at Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210, this 1st day of September, 2022.



Susan B. Hackett
Appellate Defender

ATTORNEY FOR PETITIONER

Oct 13 2022

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
In the Supreme Court

On Petition for Writ of Certiorari to the Court of Appeals
APPEAL FROM HAMPTON COUNTY
Honorable Carmen T. Mullen, Circuit Court Judge

Appellate Case No. 2022-001227
Opinion No. 2022-UP-298 (S.C. Ct. App. filed July 13, 2022).

THE STATE, ...RESPONDENT,

v.

GREGORY SANDERS, ... PETITIONER.

**RETURN TO PETITION
FOR WRIT OF CERTIORARI**

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General

JULIANNA E. BATTENFIELD
Assistant Attorney General
S.C. Bar No. 103135

Post Office Box 11549
Columbia, SC 29211-1549
(803) 734-6305

ISAAC MCDUFFIE STONE, III
Solicitor, Sixteenth Judicial Circuit

ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

	Page
TABLE OF CONTENTS.....	i
PETITIONER’S QUESTIONS PRESENTED	1
RESPONDENT’S QUESTIONS PRESENTED	2
STATEMENT OF THE CASE.....	3
STATEMENT OF FACTS	4
STANDARD OF REVIEW	8
 ARGUMENT:	
 I.	
The Court of Appeals correctly affirmed the trial court’s authentication ruling because a jury could conclude the text message was what the victim’s mother said it was: the man from whom she received it called her moments before from the same number, the number was programed into her phone, and she testified she recognized his voice on the call at trial. Further, other witnesses who testified were with him when he sent the text message in question. This was a satisfactory prima facie showing under our rules.....	10
 II.	
The Court of Appeals correctly held the admission of a text message was harmless error where other convincing evidence establishing Petitioner’s guilt was overwhelming, the hearsay in the text message was cumulative evidence that no one disputed, and the State disproved all four elements of self-defense beyond a reasonable doubt at trial.....	12
CONCLUSION.....	15

PETITIONER'S QUESTIONS PRESENTED

1. Did the Court of Appeals err in concluding a text message entered into evidence by the state was properly authenticated where the text message was allegedly written by a person who did not testify and the record contained no circumstantial evidence, such as appearance, contents, substance, internal patterns, or other distinctive characteristics, to show the message was what the state claimed?
2. Did the Court of Appeals err in concluding a text message entered into evidence by the state was harmless despite the fact that it was inadmissible hearsay where the state used the message to argue Petitioner was not without fault in bringing on the difficulty to defeat his claim of self-defense?

RESPONDENT'S QUESTIONS PRESENTED

1. Whether the Court of Appeals erred by affirming the trial court's authentication ruling because a jury could (and did) conclude the text message was what the victim's mother said it was: the man who texted her had called her moments before he sent the text from the same number, his number was programmed into her phone, and she testified she recognized his voice on the call.
2. Whether the Court of Appeals correctly held the admission of a text message was harmless error where other clear and convincing evidence establishing Petitioner's guilt was overwhelming, the hearsay in the text message was cumulative evidence that no one disputed, and the State disproved all four elements of self-defense beyond a reasonable doubt at trial.

STATEMENT OF THE CASE

On May 7, 2016, Petitioner Gregory Sanders passed the victim's mother while walking to a store and yelled, "You better get a black dress because I'm going to kill your daughter." R. 66. Petitioner was angry about something the victim had done in Allendale previously. R. 66. Two days later, Petitioner burst into the apartment where the victim, Tyhira Harrington, lived and verbally berated her, then threw down a blue gang bandana, saying "it's on the five." R. 73, R. 88, R. 134-137, R. 177-178, R. 198. Later that day, a friend of the victim noticed someone was fiddling with the victim's doorknob and called to tell her. R. 140. A man named Johnny McKnight (who was in the apartment with the friend) also simultaneously called the victim's mother to report the same thing. He followed the call up with a text message: "I just seen Hard gf walkn behind da apts. He probably hidn 2. Tryn sum." R. 75, R. 459. (emphasis added).

Hours later, Petitioner held a gun less than two inches from the victim's head and fired, killing her. R. 301. The victim had been riding in a vehicle with her three friends when they came upon Petitioner and his girlfriend. R. 125, R. 183, R. 191. The friends got out but even though the victim and Petitioner were the only ones who approached each other, Petitioner told one of her friends, "Leave, you don't want to be a witness." R. 103, R. 128. Everyone else stood in the background. R. 103. 105-pound Ms. Harrington had not threatened Petitioner, made no advances toward Petitioner, and had no weapon with her. R. 103, R. 121, R. 182-183. No one else at the scene did either. *Id.* Petitioner admitted he was at the scene and to the shooting at trial: the text message only served to confirm his presence at the apartments 20 minutes earlier.

Petitioner was indicted at the February 2016 term of the grand jury for Hampton County for murder and possession of a weapon during the commission of a violent crime. (2016-GS-25-00178, 2016-GS-25-00177; R. 460-465). The case was prosecuted by Assistant Solicitors

Tameaka Legette, Esq., and Bryan Hollen, Esq., and Petitioner was represented by Stephen T. Plexico, Esquire. R. 2. Petitioner proceeded to trial by jury from May 7 to 9, 2018, after which he was found guilty as charged. R. 454-455. The Honorable Carmen T. Mullen sentenced him to life without parole and five concurrent years for the weapon charge. R. 456-457.

Petitioner timely filed a notice of intent to appeal his convictions and sentence along with a supporting brief, and oral arguments were heard at the South Carolina Court of Appeals on November 10, 2021. The Court of Appeals affirmed through an unpublished per curium opinion on July 13, 2022. *State v. Sanders*, 2022-UP-298 (S.C. Ct. App. filed July 13, 2022). After his July 28, 2022 petition for rehearing was denied on August 12, 2022, Petitioner filed his petition for writ of certiorari with this Court. This Return of Respondent now follows.

STATEMENT OF FACTS

For purposes of this Return, Respondent relies on the summary of the facts of the crime, investigation, and trial as the South Carolina Court of Appeals set out in their direct appeal unpublished, per curium opinion:

In the early morning hours of May 10, 2016, Sanders shot and killed Tyhira Harrington. A Hampton County grand jury indicted Sanders for murder and possession of weapon during the commission of a violent crime. At a jury trial in May of 2018, Sanders testified in his own defense and admitted to the shooting but claimed he was acting in self-defense.

At trial, Marilyn Garvin, Harrington's mother, testified she knew Sanders because he had spent time at an apartment she shared with Harrington, and Harrington did his hair. Garvin explained that a few days prior to the murder, she came across Sanders while she and her boyfriend, Samson Williams, were walking to the store. Garvin testified Sanders stated, “[Y]ou better get you a black dress, because I'm going to kill your daughter, because she took me to Allendale to try to get me set up.”

Garvin testified that on the night of the shooting, she was in the process of moving out of the apartment she shared with Harrington. She stated Sanders came to Harrington's apartment earlier in the evening while she, Harrington, Kywana Bradley, Yhantyse “Daisy” Priester, and a man named Alexander were there. Garvin heard Harrington deny setting Sanders up to be robbed. Garvin recalled that Sanders “threw a bandana down on the floor” and said “it's on the five” but she did not know what that meant. She stated no one struck Sanders while he was in the apartment and he walked out unharmed after the encounter.

Garvin then testified she received a text message from Johnny McKnight, who was saved as a contact in her cellphone under the nickname, “Johnny Blaze.” Garvin identified State's Exhibit 25 as a screenshot of the text message and agreed the message had not been changed or altered, and it was a “fair and accurate ... copy of the text message.”

She stated she recognized State's Exhibit 25 “[b]ecause they [sic] programmed in my phone as Johnny Blaze, and the same text [wa]s in my phone.” Garvin further indicated she still owned the same phone and could access the text message. When the State moved to enter the text message into evidence, Sanders objected, arguing the text message was inadmissible hearsay and questioning who created the text message. The trial court admitted the text message into evidence subject to Sanders's objection.

Garvin then read the text message aloud for the jury: “I just seen [Sanders's girlfriend] walkn behind da apts. He's probably hidn 2. Tryn sum. GOD S GIFT.” She interpreted the text message to mean that Sanders and his girlfriend were “trying to lure [Harrington] out [of her] house.” Without objection, Garvin explained she then called Harrington to tell her that McKnight had sent her a text message indicating that “[Sanders] and his girlfriend w[ere] going back behind [Harrington's] apartment.” A few hours later, Garvin learned Harrington had been shot.

Bradley testified that earlier in the evening of the shooting, she, Priester, and Harrington had gone to a club and when they returned to Harrington's home, Sanders was there "to clear his name." Bradley recalled Harrington confronted Sanders about what he said to Garvin and the conversation led to an argument. Bradley stated there was no fighting, no one hit Sanders, and Sanders left when he was asked to leave.

Bradley testified that after Sanders left, Harrington and Priester also departed to take Garvin home. Bradley stated she stayed behind, and while sitting in the apartment, she heard someone "playing with" the front doorknob. Bradley explained she did not know who it was at the time but called Harrington to warn her that someone was trying to get into her apartment and to be careful.

Priester, Randy White, and Marquis Alston, all of whom were with Harrington when she drove back to the apartments, also testified at trial. White, who was dating Harrington, testified Harrington picked him up on the night of the shooting and Priester and Alston were already in the car. White recalled Harrington received a phone call, hung up, and sped off towards the apartments. He stated they then saw Sanders and his girlfriend standing by a laundromat, and Harrington stopped and parked the car right in front of them.

White testified the four of them got out of the car and Harrington started walking toward Sanders, who began backing up. According to White, after they got out of the car, Priester stayed close to the car but White followed Harrington as she advanced toward Sanders because he was trying to keep her from getting too close to Sanders. White testified Harrington was "full of rage" but the only people who were arguing were Harrington and Sanders.

He stated no one tried to strike Sanders, no one was standing in Sanders's way, and he could have walked away. **White testified Sanders told him: "[G]o away; you don't want to be no witness."** He stated Sanders "pulled out a gun and shot [Harrington] and then walked away with his girlfriend." White recalled he never saw Harrington with a weapon that night and never knew her to carry a weapon.

Alston testified he knew Harrington and Priester through White. Alston, although initially stating he did not remember much from the night of the shooting, testified that when Harrington stopped the car, he got out and went next door to see Bradley. He stated there was no fighting going on. He recalled he heard the gunshot but denied telling law enforcement he saw Sanders with a gun. Later during trial, Investigator Donald Hipp of the Hampton County Sheriff's Office testified he interviewed Alston, and during the interview, Alston stated he heard and saw Sanders shoot Harrington and walk away calmly.

Priester testified similarly to Bradley and Garvin as to Sanders's visit to Harrington's apartment earlier on the night of the shooting and recalled he had come to "clear his name." Consistent with White's testimony, Priester stated that while in the car with Harrington, Harrington received a call that someone was "at the back door trying to get in, shaking the back door" of Harrington's apartment. Priester testified Harrington drove back to the apartments and when she saw Sanders and his girlfriend near the laundromat, Harrington swung into the laundromat and they all got out of the car. Priester stated she tried to calm Harrington down because Harrington was angry and had been drinking all day.

She recalled Sanders, his girlfriend, and Harrington were all standing in the street. Priester testified, “I guess he moved in the road to—to get what angle he would really want to shoot her at.” Priester explained that when he moved, Sanders asked Harrington: “[A]ll these people out here, and how many people you think are gonna ride for you?” and then he shot her. Priester testified Sanders did not appear to be in fear of his safety at the time. She recalled that after he shot Harrington, he pointed the gun at her for a few moments and then ran away. Priester indicated Harrington was the only one confronting Sanders and his girlfriend. She testified Harrington had no weapon and made no reference to a gun.

Chief Mark Collins testified he arrested Sanders on May 10, 2016, and that during the arrest, he found a gun wrapped in a bundle of clothing near Sanders. Captain Alexander Williams testified he assisted with Sanders's arrest and gave Sanders Miranda warnings. Captain Williams recalled Sanders made a statement referring to his eye, which was bloodshot and “a little swollen,” explaining his girlfriend caught him cheating.

Paul Greer, a firearms examiner with the South Carolina Law Enforcement Division (SLED) testified the projectile recovered from the wound to Harrington's head was fired by the gun found during Sanders's arrest. Ila Simmons, also with SLED, opined the gun had to have been within about two inches of Harrington's skin when it was fired. Similarly, Dr. Ellen Riemer, who performed Harrington's autopsy, opined the gunshot came from a distance of three or four inches up to a couple of feet from Harrington's head.

Sanders denied saying anything to Garvin about “buying a black dress” or threatening to kill Harrington. He testified he went to Harrington's earlier on the day of the shooting to “clear [his] name.” Sanders stated Harrington punched him in the eye and Bradley, Harrington, and Priester “lynched” him inside the apartment. He claimed he fought his way to the door and left. Sanders testified he met up with his girlfriend afterwards and around midnight or 1:00 a.m., they left to walk home. Sanders explained that while they were walking home, a car drove past them, slammed on the brakes, backed up, and pulled up close to where they were.

He stated all four of the occupants got out. Sanders testified Harrington said, “we about to f*** you all up.” He recalled he stood in front of his girlfriend and started backing up. Sanders testified Harrington said she wanted to fight his girlfriend but because his girlfriend did not want to fight, Harrington said she wanted to fight Sanders. He stated Harrington then said, “I ain't worried about nothing, I got my iron in the seat” and he believed Harrington was referring to a gun. Sanders stated he did not really have an avenue of retreat because the car was in front of them and the laundromat was behind them.

Sanders recalled he then told everyone to leave them alone and go home. He testified that in response, Harrington kept “running off at the mouth”; White was right beside her and every time she moved up, he moved up; Priester was on the other side of Harrington but did not move; and Alston was still standing beside the car. Sanders stated he was afraid that he and his girlfriend would be seriously injured because she was “short” and “real skinny” and they were outnumbered. He testified that when they “moved up and they got closer” he fired so that he and his girlfriend could get away. Sanders recalled that after he fired, White ran away, Priester stood there, and Alston ducked behind the car.

During cross-examination, Sanders admitted to shooting and killing Harrington. He stated he only fired once, and he identified the gun that matched the projectile taken from Harrington's body as his gun. Sanders explained he shot at Harrington because she was “the main one that was causing the whole everything” and “she was closer.”

The jury found Sanders guilty as indicted, and the trial court sentenced him to life in prison for murder and five years' imprisonment for the weapon conviction, to run concurrently. This appeal followed.

State v. Sanders, Case No. 2022-UP-298 (S.C. Ct. App. filed July 13, 2022, reh'g denied August 12, 2022).

STANDARD OF REVIEW

“The admission or exclusion of evidence is a matter addressed to the sound discretion of the trial court and its ruling will not be disturbed in the absence of a manifest abuse of discretion accompanied by probable prejudice.” *State v. Douglas*, 369 S.C. 424, 429, 632 S.E.2d 845, 847-848 (2006) (cleaned up) (emphasis added). “An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law.” *State v. Pagan*, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006).

“To warrant reversal based on wrongful admission of evidence, the complaining party must prove resulting prejudice.” *State v. McDonald*, 343 S.C. 319, 325, 540 S.E.2d 464, 467 (2000) (emphasis added). “Whether an error is harmless depends on the circumstances of the particular case . . . [e]rror is harmless when it ‘could not reasonably have affected the result of the trial.’” *State v. Key*, 256 S.C. 90, 180 S.E.2d 888 (1971).

ARGUMENT

First, in order for this Court to grant Petitioner a writ of certiorari, he must prove one of the requirements of Rule 242, SCACR, have been met. He has failed to do so. Petitioner claims he presents novel questions of law, but they aren't: Text messages are old news, and how to properly authenticate them in court has been litigated already. Authenticating text messages and authenticating social media posts are two very different things. Harmless error analyses concerning the admission of evidence by the trial court have also already been litigated. The unpublished opinion from the Court of Appeals was per curiam: there was no dissent. The opinion is not in conflict with a previous decision from this Court. No substantial constitutional issues are directly involved, and no federal question looms. No intervening opinion has come out that would affect the Court of Appeals' decision since their opinion. This Court should deny the petition for writ of certiorari.

I.

The Court of Appeals correctly affirmed the trial court's authentication ruling because a jury could (and did) conclude the text message was what the victim's mother said it was: the man who texted her had called her right before he sent the text from the same number, his number was programed in her phone, and she testified she recognized his voice on the call.

Petitioner argues the Court of Appeals erred by affirming the trial court's authentication ruling.¹ The State disagrees and submits Petitioner's argument is without merit. In order for Petitioner to obtain relief from this Court, he must prove the trial court manifestly abused its discretion by finding the text was properly authenticated and that but for the authentication error he would have been found not guilty. This he has not and cannot do. The burden to authenticate a piece of evidence is extremely low: as long as a jury *could* conclude the evidence is what the

¹ The bench conference on the text message can be found at R. 90-93.

proponent claims it is and the trial court agrees a prima facie showing has been made, the ruling will not be disturbed. *State v. Anderson*, 386 S.C. 120, 687 S.E.2d 35 (2009); Rule 901(a), SCRE. No enhanced level of proof is needed, especially since the power of cross-examination was still alive and well at trial. *United States v. Davis*, 918 F.3d 397, 402 (4th Cir. 2019).

Here, the State made a prima facie showing that the text message was from the mother's friend Johnny McKnight: she said his number was programmed into her phone, she spoke to him on the phone and recognized his voice right before he sent the text, the message came from the same number, and she testified he was a friend of hers: that is the requisite personal knowledge contemplated by Rule 901(b)(1), SCRE. She still had the phone and could look at it and the text message still in it at the time of trial. That is more than enough of a satisfactory foundation for a jury to conclude the text was authentic. *Deep Keel, LLC v. Atlantic Private Equity Group, LLC*, 413 S.C. 58, 64-65, 773 S.E.2d 607, 610 (Ct. App. 2015). A trial court requires only a prima facie showing that the "true author" is who the proponent claims it to be, and the showing may be made by direct or circumstantial evidence. *United States v. Hassan*, 742 F.3d 104, 133 (4th Cir. 2014). The Court of Appeals correctly affirmed the trial court.

The defense argues this case is like *State v. Benton*, 435 S.C. 250, 865 S.E.2d 919 (Ct. App. 2021) (certiorari granted September 7, 2022). However, in *Benton*, who sent the text message was a material issue directly related to the defendant's guilt. Here, while Respondent firmly maintains the text message was properly authenticated (especially considering Petitioner did not argue at trial that someone else sent it), *who* sent the text message did not ultimately matter. The text only corroborated other evidence presented, which showed that Petitioner and his girlfriend were at the apartments half an hour before the shooting (a fact Petitioner does not dispute.) *How* the State used it at trial was cumulative to other evidence: The assertion that

Petitioner was at the apartment and was “hiding” or “tryn sum” paled in comparison to his threat to the victim’s mother that he was going to kill her daughter, and the altercation he had with her in her apartment earlier that morning, among other things. This Court should deny the petition.

II.

The Court of Appeals correctly held the admission of a text message was harmless error where other convincing evidence establishing Petitioner’s guilt was overwhelming, the hearsay in the text message was cumulative evidence that no one disputed, and the State disproved all four elements of self-defense beyond a reasonable doubt at trial.

Petitioner argues the Court of Appeals erred by finding the admission of the text message was harmless error because the content of the text (hearsay) materially served to defeat his claim of self-defense. Respondent disagrees and submits this argument is without merit. It is Petitioner’s burden to show prejudice and he has not shown how the result of the trial would have been different but for the admission of this singular text, mostly because the text is cumulative to other evidence. *State v. Jennings*, 394 S.C. 473, 716 S.E.2d 91 (2011). Other clear and convincing evidence as to his guilt was also admitted such that he cannot prove prejudice.

The text was cumulative. Kywana Bradley testified she called the victim when she heard someone fiddling with their doorknob from inside her apartment at the same time the text was sent to the victim’s mother. R. 139-140. Johnny McKnight was with Bradley in her apartment when she made the phone call to the victim, and Bradley testified to this. R. 140. Randy White, who was with the victim, testified she received a phone call and floored it back to her apartment and found Petitioner and his girlfriend outside of it right before the shooting (about 20 minutes after the text was sent.) R. 100-101. A woman named Daisy also testified the victim received a call that someone was at the back door, so the victim and her friends therefore returned to the apartment and found Petitioner there. R. 180. Multiple witnesses testified that Johnny McKnight was the one who drove the victim to the hospital after the shooting. R. 141.

The Court of Appeals properly affirmed the trial court by conducting the proper harmless error analysis and concluding the content of the text message was harmless error because the “evidence establishing Sander’s guilt was overwhelming.” *Sanders*, 2022-UP-298 at 6. “An insubstantial error not affecting the result of the trial is harmless where guilt has been conclusively proven by competent evidence such that no other rational conclusion can be reached.” *State v. Vick*, 384 S.C. 189, 199, 682 S.E.2d 275, 280 (Ct. App. 2009). They went through the four elements of self-defense² and included facts and law showing how the State disproved each element at trial beyond a reasonable doubt apart from the text message. This demonstrated how Petitioner could not show prejudice. In order to prevail on this issue, he must show how the State failed to disprove each element apart from the text message and he has not done so.

(1) The defendant was without fault in bringing on the difficulty. Petitioner told the victim’s mother a few days before the shooting that she had “better get you a black dress because I’m going to kill your daughter.” He had also stormed into the victim’s apartment earlier that day and thrown down the gauntlet – he threw a blue bandana down on the floor and said, “it’s on the five.” While the meaning of this was not testified to at trial, a reasonable hearer could draw his or her own conclusions. Difficulties were brewing before the final encounter that night.

(2 & 3) Possibly more persuasively, no person of ordinary firmness and courage would have entertained the belief that Petitioner or his girlfriend were in imminent danger of losing their lives or suffering serious bodily harm that night. The victim pulled up with three other friends near Petitioner and his girlfriend while they were walking. However, only the victim approached the Petitioner – the other three stayed quiet in the background. The victim did not

² From *State v. Dickey*, 394 S.C. 491, 499, 716 S.E.2d 97, 101 (2011).

rush at Petitioner, threaten him, or brandish a weapon; the two merely argued. Her body was found in the middle of the street, showing that Petitioner was not cornered. She did not attempt to strike him. The victim was 105 pounds and short, and the Petitioner was considerably bigger than her. Petitioner, therefore, was not justified in using deadly force under our stand your ground laws.

(4) Petitioner also had other probable means of avoiding the danger. He was not trapped – he could have walked away. Petitioner did not dispute the victim was unarmed and did not maintain a belief that anyone else was armed besides himself. There was plenty of room to move around where the parties were standing. No one prevented him from leaving.

The Court of Appeals found that the inadmissible hearsay in the text message was harmless error because its admission did not affect the States' disproving of the elements of self-defense beyond a reasonable doubt. Therefore, a reasonable jury would not have found him not guilty had they not seen the text message. This Court should deny the petition.

CONCLUSION

For all of the foregoing reasons, the State respectfully requests that the judgment, conviction, and sentence of the lower court be affirmed.

Respectfully submitted,

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General

JULIANNA E. BATTENFIELD
Assistant Attorney General
S.C. Bar No. 103135

ISAAC MCDUFFIE STONE, III
Solicitor, Sixteenth Judicial Circuit

BY: s/Julianna E. Battenfield
Julianna E. Battenfield
S.C. Bar No. 103135

Attorney for Respondent
Post Office Box 11549
Columbia, SC 29211-1549
(803) 734-6305

OFFICE OF THE ATTORNEY GENERAL

Columbia, South Carolina
October 13, 2022

RECEIVED**Oct 24 2022**

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to the Court of Appeals
 Appeal from Hampton County
 Carmen T. Mullen, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

GREGORY SANDERS,

PETITIONER

Opinion No. 2022-UP-298 (S.C. Ct. App. filed July 13, 2022)

APPELLATE CASE NO. 2022-001227

PETITION FOR WRIT OF CERTIORARI
 TO THE COURT OF APPEALS

REPLY TO RETURN TO PETITION FOR WRIT OF
 CERTIORARI TO THE COURT OF APPEALS

SUSAN B. HACKETT
 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

INDEX

INDEX.....	i
ARGUMENT.....	1
I.	
The Court of Appeals erred in concluding a text message entered into evidence by the state was properly authenticated where the text message was allegedly written by a person who did not testify and the record contained no circumstantial evidence, such as appearance, contents, substance, internal patterns, or other distinctive characteristics, to show the message was what the state claimed.....	4
II.	
The Court of Appeals erred in concluding a text message entered into evidence by the state was harmless despite the fact that it was inadmissible hearsay where the state used the message to argue Petitioner was not without fault in bringing on the difficulty to defeat his claim of self-defense.	7
CONCLUSION.....	10

ARGUMENT

As an initial matter, the state's mischaracterization of the facts must be addressed. Although the statement of facts contained in the return to the petition for writ of certiorari is a simple three-plus page block quote from the opinion issued by the Court of Appeals, the state included various "facts" in its statement of the case that are not supported by the record. For example, the state claimed that "Petitioner burst into the apartment where the victim, Tyhira Harrington, lived and verbally berated her, then threw down a blue gang bandana, saying 'it's on the five.'" Ret. at 3. In support of this sentence, the state provided multiple citations; however, none support the state's mischaracterization of what occurred that day.

Nothing in the record supports the state's claim that Petitioner "burst" into the apartment. Marilyn Garvin, the deceased's mother, testified that after she heard a knock on the door and learned it was Petitioner knocking, the deceased "let him in." R. 73, ll. 7-8. In fact, Garvin claimed she argued with the deceased regarding her allowing Petitioner into her apartment, but the deceased insisted that it was her house and she would allow him in if she wanted to do so. R. 73, ll. 8-13. Yhantyse Priester testified that Petitioner entered the apartment to clear his name. R. 177, ll. 1-4. Priester made no suggestion or insinuation that Petitioner burst into the apartment.

Nothing in the record supports the state's claim that Petitioner "verbally berated" the deceased when he entered the apartment. According to Garvin, when Petitioner entered the apartment, other people "started asking him why would he lie and say that [the deceased] took him to Allendale to be robbed." R. 73, ll. 13-16. To this, Petitioner "responded," but Garvin did not "remember exactly what he said." R. 73, ll. 16-17. Later, the state asked Garvin if there had been an argument in the apartment. R. 88, l. 14. Garvin claimed the only conversation was: "like I said

before, they said why did [the deceased] - - he asked me why did you take me to Allendale to have me set up.” R. 88, ll. 15-17. This was the “only thing that was said.” R. 88, ll. 17-18.

Randy White testified there was no confrontation or argument. R. 136, ll. 15-17. Petitioner told the deceased that he wanted to “clear his name” and insisted he did not tell Garvin to wear a black dress.” R. 136, l. 12 – R. 137, l. 4. This conversation was “calm at first.” R. 137, ll. 19-21. Then, Petitioner and Garvin’s boyfriend began discussing gangs. R. 137, l. 22 – R. 138, l. 7. When the deceased told Petitioner to leave, he left. R. 147, ll. 8-14. Priester’s testimony was similar to White’s in that Priester stated Petitioner “talk[ed] about some stripes” with Garvin’s boyfriend. R. 177, ll. 5-9. According to Priester, Petitioner left when asked to do so. R. 178, ll. 12-19.

No one attributed “it’s on the five” to Petitioner. Garvin testified that Petitioner “threw a bandana down on the floor and said you put it all under whatever the gang names.” R. 73, ll. 18-19. She also claimed Petitioner “put it on that, and he put it on there.” R. 73, ll. 19-21. Another male allegedly asked Petitioner to pick up the bandana. R. 73, ll. 21-22. Using pronouns, Garvin claimed: “And he said, no, it’s on there on the five.” R. 73, ll. 22-23. Garvin did not identify this speaker, however, she claimed that thereafter, the other male said, “it’s on the five.” R. 73, l. 23.

The state’s mischaracterizations did not end there. According to the state, that although the deceased’s three friends got out of the car, Petitioner and the deceased were the only ones who approached each other. Ret. at 3. Yet, the testimony showed otherwise. Randy White testified that he was advancing on Petitioner and his girlfriend with the deceased. R. 111, ll. 20-24. When defense counsel asked if the deceased were going forward toward Petitioner and his girlfriend, White testified affirmatively. R. 111, ll. 20-22. Defense counsel then asked if White were “coming along” with the deceased, and White again testified affirmatively. R. 111, ll. 23-24. White also explained that Marquis Alston was “around us” referring to himself and the deceased while Priester

was standing near the car, which was a few steps away. R. 125, l. 19 – R. 126, l. 4. At one point White made it very clear: “As we start moving up, they kept going back, going back, going back.” R. 112, ll. 12-15.

Similarly, the state took more liberties with the record by claiming the deceased “had not threatened Petitioner, made no advances toward Petitioner, and had no weapon with her.” Ret. at 3. The record easily refutes these claims. Again, Randy White, the deceased’s boyfriend testified that when the deceased got out of the car, she wanted to fight Petitioner’s girlfriend and then she wanted to fight Petitioner. R. 111, ll. 5-9. Contrary to the state’s claim that the deceased made no advances toward Petitioner, White was clear that the deceased was going toward Petitioner and his girlfriend. R. 111, ll. 20-22. According to White, he heard the deceased “offer[ed] violent acts to those people, [Petitioner] and his girlfriend.” R. 117, ll. 18-20.

The state’s mischaracterization of the record must not be allowed to stand. The state may not claim ignorance or imprecision here in light of its choice to block quote the opinion issued by the Court of Appeals as its statement of facts. There, as re-typed by the state, the Court of Appeals recounted White’s testimony that White “followed [the deceased] as she advanced toward [Petitioner].” Ret. at 6 (quoting State v. Sanders, 2022-UP-298 (S.C. Ct. App. filed July 13, 2022)).

Not only did the state incorrectly and inaccurately recite the facts in the case, the state also incorrectly and inaccurately relayed the law to this Court. The state claimed that “in order for this Court to grant Petitioner a writ of certiorari, he must prove one of the requires of Rule 242, SCACR, have been met.” Ret. at 10. This is categorically false. According to the Rule, “[a] writ of certiorari ... will granted only where there are special and important reasons.” Rule 242(b), SCACR. The Rule then provides a list that is “neither controlling nor fully measuring the Supreme Court’s discretion or power to grant review.” Rule 242(b), SCACR. In fact, the list is an indication

of “the character of reasons” that this Court will consider in its certiorari decision. Rule 242(b), SCACR. As the text of the Rule makes clear, the Rule does not contain “requirements” a petitioner must “prove” in order for this Court to grant its constitutional, statutory, and inherent powers to grant writs.

I. The Court of Appeals erred in concluding a text message entered into evidence by the state was properly authenticated where the text message was allegedly written by a person who did not testify and the record contained no circumstantial evidence, such as appearance, contents, substance, internal patterns, or other distinctive characteristics, to show the message was what the state claimed.

In its argument, the state asserts that in order for Petitioner “to obtain relief from this Court, he must prove the trial court manifestly abused its discretion by finding the text message was properly authenticated and that *but for the authentication error he would have been found not guilty.*” Ret. 10 (emphasis added). This is manifestly incorrect. Petitioner is not required to show that but for the error he would have been found not guilty. Such a bar is too high for anyone to meet. Rather, the law is abundantly clear that an appellant in a criminal case must show reversible error in most cases, it is not necessary for an appellant to show he would have been found not guilty but for the error. “In order to constitute reversible error, the reviewing court must be satisfied that there are reasonable grounds for supposing that the jury might have been misled to the prejudice of the appellant.” State v. Murphy, 214 S.C. 517, 523, 53 S.E.2d 402, 405 (1949). Put another way, “[t]o warrant reversal based on the admission or exclusion of evidence, the appellant must prove both the error of the ruling and the resulting prejudice, i.e., that there is a reasonable probability that the jury’s verdict was influenced by the challenged evidence or the lack thereof.” Fields v. Reg’l Med. Ctr. Orangeburg, 363 S.C. 19, 26, 609 S.E.2d 506, 509 (2005).

In light of the actual law concerning reversible error, the state's issue statement becomes of preeminent importance. According to the state, the "jury could (and did) conclude the text message was what [Garvin] said it was." Ret. at 10. Thus, the state has conceded that if error in this case exists, then the error was reversible because the jury did conclude the text message was a message from Johnny McKnight insisting that Petitioner and his girlfriend were trying to break into the deceased's home.

Additionally, the state claimed "[t]he text only corroborated other evidence presented, which showed that Petitioner and his girlfriend were at the apartments half an hour before the shooting (a fact Petitioner does not dispute)." Ret. at 11. This statement is remarkable for its intent to mislead. The text message's purpose was not simply to corroborate other evidence that Petitioner and his girlfriend were at the apartment complex thirty minutes before the shooting. According to Garvin, the message read: "I just seen Hard girlfriend walking behind apartment. He's probably behind her to[o] trying something." R. 79, ll. 23-25. And, according to Garvin, the message meant: "that Hard was trying, him and his girlfriend, trying to lure [her] baby out the house." R. 80, ll. 1-5. The solicitor then had Garvin repeat that in response to receiving the text message, she called the deceased and said, "Johnny just text me and said that Hard and his girlfriend - - Mr. Sanders and his girlfriend was going back behind your apartment." R. 80, ll. 20-24. While Petitioner admitted he was at the apartment complex, he absolutely disputed that he was attempted to break into the deceased's apartment or "trying something" related to the deceased's apartment.

Further, the state's argument on appeal concerning the significance of the text message is undercut by the argument put forward by the state to the jury during closing argument. The state relied upon the text message in its closing argument to claim Petitioner was at fault for bringing

on the difficulty. R. 389, l. 24 – R. 390, l. 15. As the solicitor explained, the text message, which was communicated by Garvin to the deceased, showed that Petitioner was “behind the house, trying something.” R. 390, ll. 11-15; R. 390, ll. 19-24. According to the solicitor, this meant Petitioner “started the whole thing.” R. 390, l. 19; R. 390, l. 25 – R. 391, l. 2. The state went so far as to claim that Petitioner “started it” “when he was trying to get in her house” and the only evidence to support this contention was the text message allegedly sent by Johnny McKnight claiming that Petitioner and his girlfriend were near the apartment. R. 391, ll. 16-19.

II. The Court of Appeals erred in concluding a text message entered into evidence by the state was harmless despite the fact that it was inadmissible hearsay where the state used the message to argue Petitioner was not without fault in bringing on the difficulty to defeat his claim of self-defense.

In arguing that Petitioner failed to establish prejudice, the state again misstated the law. According to the state, Petitioner would have to show “how the result of the trial would have been different but for the admission of this singular text.” Ret. at 12. As Petitioner has refuted this claim thoroughly supra, Petitioner will not belabor the argument here except to note that the case cited by the state for this proposition, State v. Jennings, 394 S.C. 473, 716 S.E.2d 91 (2011), accurately conveys the law, but the state simply refused to put that into its return. This Court explained that the improper admission of hearsay “is deemed harmless when it could not have reasonably affected the result of the trial.” State v. Jennings, 394 S.C. 473, 478, 716 S.E.2d 91, 93 (2011). Notably, Jennings does not require an appellant to show “how the result of the trial would have been different but for the” error. See Ret. at 12.

The state also asserted that Petitioner was required to “show how the state failed to disprove each element [of self defense] apart from the text message” in order to establish prejudice in the admission of the text message. Ret. at 13. Again, this is not the test. To show reversible error, an appellant must show the reasonable likelihood that the error contributed to the jury’s verdict.

This portion of the state’s return is not without its own mischaracterizations of the record either. The state alleged that White testified that when the deceased received a phone call she “floored it back to her apartment and Petitioner and his girlfriend outside of it right before the shooting (about 20 minutes after the text was sent).” Ret. at 12. For this proposition, the state cites to pages one hundred and one hundred and one of the record. A review of those pages easily

shows the state's erroneous characterization of the testimony. White was clear the deceased hung up the phone "and stomped the car." R. 100, ll. 24-25. He clarified that she drove fast. R. 101, ll. 1-2. According to White, she drove to the projects, but he did not know the exact address or name of the apartment complex. R. 101, ll. 3-7.

White then said the occupants of the car saw Petitioner and his girlfriend "standing right there." R. 101, ll. 16-17. The solicitor asked for clarification: "Standing right where?" R. 101, l. 18. White explained that Petitioner and his girlfriend were standing by the "[d]ryer/washer," and agreed the location was the laundromat. R. 101, ll. 29-31. Thus, White testified that he, the deceased, and the others in the car found Petitioner and his girlfriend outside of the apartment complex, but he did not testify to finding them outside of the deceased's apartment, which was the mischaracterization given to his testimony by the state. The state hopes its mischaracterizations of the record convince this Court that any error in the admission of the hearsay text message was cumulative to other evidence in the record. The state's liberties with the record should not be allowed to misled this Court.

When discussing the elements of self-defense, the state asserted "only the victim approached the Petitioner – the other three stayed quiet in the background." Ret. at 13. At least, the state finally confessed the deceased approached Petitioner, but the state continued to misrepresent the record. As already discussed, White testified that he along with the deceased advanced toward Petitioner as Petitioner and his girlfriend backed up. Furthermore, White testified that Alston was very close to where he and the deceased were while the two advanced toward Petitioner.

Finally, the state inexplicably claimed Petitioner "was not justified in using deadly force under our stand your ground laws." Ret. at 14. The Protection of Persons and Property Act, S.C.

Code Ann. § 16-11-410, et seq., is often referred to as South Carolina’s “Stand Your Ground” law. See State v. Jones, 416 S.C. 283, 299, 786 S.E.2d 132, 140 (2016). Petitioner has never sought immunity from prosecution under the Act, and does not seek such on appeal. The Act is inapplicable to this Court’s consideration of Petitioner’s request for the issuance of a writ of certiorari.

CONCLUSION

Petitioner respectfully requests this Court issue a writ of certiorari to review the decision issued by the Court of Appeals in this case.



Susan B. Hackett
Appellate Defender

ATTORNEY FOR PETITIONER

This 24th day of October, 2022.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to the Court of Appeals
 Appeal from Hampton County
 Carmen T. Mullen, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

GREGORY SANDERS,

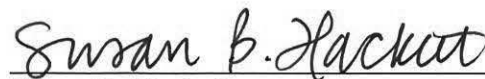
PETITIONER

Opinion No. 2022-UP-298 (S.C. Ct. App. filed July 13, 2022)

APPELLATE CASE NO. 2022-001227

 CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Reply to Return to Petition for Writ of Certiorari to the Court of Appeals in the above-referenced case has been served upon Julianna E. Battenfield, Esquire at the primary e-mail address listed in the Attorney Information System (AIS), which is juliannabattenfield@scag.gov this 24th day of October, 2022.



Susan B. Hackett
 Appellate Defender

South Carolina Commission on Indigent Defense
 Division of Appellate Defense
 PO Box 11589
 Columbia, SC 29211-1589

RECEIVED**Oct 24 2022**

S.C. SUPREME COURT

ATTORNEY FOR PETITIONER

The Supreme Court of South Carolina

The State, Respondent,

v.

Gregory Sanders, Petitioner.

Appellate Case No. 2022-001227

ORDER

Based on the vote of the Court, the petition for a writ of certiorari is denied.

FOR THE COURT

BY Patricia A. Howard
CLERK

Columbia, South Carolina

June 27, 2023

cc:

Alan McCrory Wilson, Esquire

Melody Jane Brown, Esquire

Michael Douglas Ross, Esquire

Donald J. Zelenka, Esquire

Isaac McDuffie Stone, III, Esquire

Julianna E. Battenfield, Esquire

David Alexander, Esquire

The Honorable Jenny Abbott Kitchings



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

CATHERINE S. HARRISON
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

June 29, 2023

The Honorable Mylinda D. Nettles
PO Box 7
Hampton SC 29924-0007

REMITTITUR

Re: The State v. Gregory Sanders
Lower Court Case No. 2016GS2500177, 2016GS2500178
Appellate Case No. 2018-000911

Dear Clerk of Court:

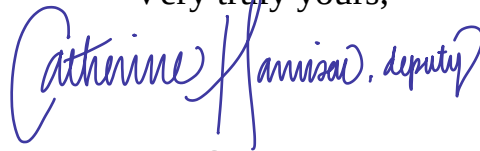
The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

The following exhibits were filed in this appeal:

State's Exhibit #8 (Photograph), State's Exhibit #9 (Photograph), State's Exhibit #10 (Photograph), State's Exhibit #19 (Photograph), State's Exhibit #21 (Photograph), and Defendant's Exhibit #1 (Photograph)

It will be necessary for the Attorney General's office, or their designee to pick up these exhibits from the Clerk's office within 30 days of the date of the remittitur, for return to the trial court clerk.

Very truly yours,

A handwritten signature in blue ink that reads "Catherine Hamisai, deputy". The signature is fluid and cursive, with the first name "Catherine" being more prominent.

CLERK

Enclosure

cc: Alan McCrory Wilson, Esquire
Melody Jane Brown, Esquire
Michael Douglas Ross, Esquire
Donald J. Zelenka, Esquire
Isaac McDuffie Stone, III, Esquire
Julianna E. Battenfield, Esquire
David Alexander, Esquire

STATE OF SOUTH CAROLINA)

County of Hampton)Gregory Sanders JR (314824))

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

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2023. CP. 25. 230

APPLICATION FOR

POST-CONVICTION RELIEF

FILED
JUL 28 2023
MYLINDA D NETTLES
CLERK OF COURT
HAMPTON COUNTY

INSTRUCTIONS - READ CAREFULLY

FILED
JUL 28 2023
12:40 AM
AMPM

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 Broad River Correctional Institution
2. Name and location of Court which imposed sentence Hampton County
General Sessions Court
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) 2016-GS-25-00177
 - (b) 2016-GS-25-00178

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) may 9th 2018 Life without parole plus 5 yrs
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ☒ _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. 8 South Carolina Supreme Court
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. was denied in Supreme Court
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. June 27th 2023
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Unknown
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective assistance of trial counsel and appeal counsel
- (b) Constitutional violation and statutory violation
- (c) Prosecutorial Misconduct
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) I will amend to my PCR application later on with
- (b) my issues after I get an attorney
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. N/A
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. N/A
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

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

(d) the date of each such disposition:

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

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

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

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

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

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

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

- i. _____
- ii. _____
- iii. _____

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

(a) _____
 (b) _____
 (c) _____

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

(a) your arraignment and plea? Steven T. Plexico
 (b) your trial, if any? Steven T. Plexico
 (c) your sentencing? Steven T. Plexico
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Susan B. Hackett and David Alexander
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
Susan B. Hackett and David Alexander

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. Steven T. Plexico
P.O. Box 546 Hampton S.C. 29924
 ii. Susan B. Hackett
P.O. Box 11589 Columbia, SC 29211
 iii. David Alexander
P.O. Box 11589 Columbia, SC 29211
 (b) the proceedings at which each such attorney represented you:
 i. Arraignment, plea, trial and sentencing
 ii. Direct Appeal oral Argument writ of certiorari
 iii. Direct Appeal writ of certiorari

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

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

no

STATE OF SOUTH CAROLINA)

County of Hampton)

VERIFICATION

I, Gregory Sanders JR #314824, 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.

Gregory Sanders JR #314824

SWORN to and subscribed before me this July
day of 25, 2023

[Signature] (L.S.)
Notary Public

My Commission Expires: 8/30/2026

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

I, Gregory Sanders Jr #314024, 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.

Gregory Sanders Jr #314024
Applicant

SWORN or affirmed to and subscribed before me this
20 day of July, 2013
[Signature]
Notary Public

My Commission Expires: 10-4-38

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

County of HamptonGregory Sanders JR #314824

Full name and prison number (if any) of Applicant

2023 CP.25-309

FILED

AM/PM

APPLICATION FOR

State of South Carolina

OCT - 2 2023

POST-CONVICTION RELIEF

MYLINDA D NETTLES
CLERK OF COURT
HAMPTON COUNTY, SCINSTRUCTIONS - 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 Hampton County Detention Center - V
Charleston County Detention Center
2. Name and location of Court which imposed sentence Hampton County
Courthouse 1 Elm St W Hampton SC. 29924
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) 2016-GS-25-00177
 - (b) 2016-GS-25-00178

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

(a) May, 9th 2018 Life without parole plus 5 yrs

(b) _____

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty _____

(b) after a plea of not guilty ✓

(c) after a plea of nolo contendere _____

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

yes

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

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

i. the South Carolina Supreme Court

ii. South Carolina Court of appeals

iii. Supreme Court

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

i. affirmed

ii. affirmed

iii. ~~affirmed~~ Denied certiorari

(c) the date of each such result:

i. July 13th 2022

ii. June 27th 2023

iii. August 12, ~~2022~~ 2022

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

results:

i. ???

ii. ???

iii. ???

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

(a) _____

(b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Denial of due process
- (b) Ineffective assistance of appellate counsel
- (c) ineffective assistance of defense counsel
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) failure to give 10-day written notice of life sentence
- (b) failure to raise argument on prosecutorial misconduct
- (c) Failure to object to closing arguments statements
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? no
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? no
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? no
- (d) any other petitions, motions or applications in this or any other Court? no
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

i. _____

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

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

no

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

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

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

(a) _____
 (b) _____
 (c) _____

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

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

yes

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

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

- i. Steven T. Plexico P.O. Box 506 Hampton ^{MISS} SC
29924
- ii. Susan B Hackett Division of Appellate defense
1330 Ladystreet, Suite 401 Columbia, SC 29201
- iii. David Alexander Division of Appellate defense
1330 Ladystreet, Suite 401 Columbia, SC 29201

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

- i. Steven T. Plexico A, B, and C
- ii. Susan B Hackett D and part of E
- iii. David Alexander E the remainder

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

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

NO

STATE OF SOUTH CAROLINA)

VERIFICATION

County of Hampton)

I, Gregory Sanders JR #314824, 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.

Gregory Sanders JR #314824

SWORN to and subscribed before me this 27
 day of September, 2023

[Signature] (L.S.)
 Notary Public

My Commission Expires: 8/30/2026

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

I, Gregory Sanders Jr #314824, 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.

Gregory Sanders Jr #314824
Applicant

SWORN or affirmed to and subscribed before me this
27 day of September 2023
[Signature]
Notary Public

My Commission Expires: 8/30/2026

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF HAMPTON	)	FOURTEENTH JUDICIAL CIRCUIT
	)	
Gregory Sanders, Jr., #314824,	)	Case No.: 2023-CP-25-00230
	)	
Applicant,	)	
	)	
v.	)	RETURN AND MOTION FOR A
	FILED	MORE DEFINITE STATEMENT
	)AM/PM	(Counsel already appointed)
State of South Carolina,	)	
	MAR 14 2024	
Respondent.	)	
		MYLINDA D NETTLES
		CLERK OF COURT
		HAMPTON COUNTY, SC

In response to the application for post-conviction relief (PCR) filed by Gregory Sanders, Jr. (Applicant) on July 28, 2023, Respondent makes the following return and motion for a more definite statement:¹

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections serving a life sentence. In February 2017, the Hampton County Grand Jury indicted Applicant for possession of a weapon during a violent crime (2016-GS-25-00177) and murder (2016-GS-25-00178). These charges arose from the fatal shooting of Tyhira R. Harrington (Victim) during the early hours of May 10, 2016. Police arrested Applicant later the same morning.

From May 7 to 9, 2018, Applicant proceeded to a jury trial before the Honorable Carmen T. Mullen. Assistant Public Defender Stephen T. Plexico represented Applicant. Assistant

¹ Respondent's return to the application was due within 90 days of service. See Rule 12(a), SCRPC ("[T]he State of South Carolina shall answer or otherwise respond to an application for post-conviction relief within 60 days after service of the application, if it arises out of a guilty plea, and 90 days if it arises out of a trial."). Now, having completed the return and in light of no demonstrable prejudice to Applicant, Respondent respectfully asks this Court to accept this return as timely filed. See S.C. Code Ann. § 17-27-70(a) (establishing that the Court may fix the time in which the State must respond and that "respondent shall file with its answer the record or portions thereof that are material to the questions raised in the application."); *Guinyard v. State*, 260 S.C. 220, 195 S.E.2d 392 (1973) (holding the time limit prescribed by the statute is discretionary, not mandatory, and the court may extend the time for filing).

Solicitors Tameaka Legette and Bryan Hollen prosecuted the case. The jury found Applicant guilty as indicted. Judge Mullen concurrently sentenced Applicant to life for murder and five years for the weapon charge.

Applicant filed a timely notice of appeal, which was perfected by Appellate Defender Susan B. Hackett. On appeal, Applicant argued the trial court erred in admitting text messages that were inadmissible hearsay and were not authenticated. The South Carolina Court of Appeals affirmed, finding the trial court did not abuse its discretion in finding the texts were authenticated, and further finding that although the court abused its discretion in admitting the texts over a hearsay objection, the error was harmless. State v. Sanders, 2022-UP-298 (S.C. Ct. App. filed July 13, 2022). Applicant filed a petition for rehearing, which was denied. Thereafter, Applicant filed a petition for a writ of certiorari in the South Carolinian Supreme Court, which was also denied. The remittitur was sent June 24, 2023.

CURRENT PCR APPLICATION (2023-CP-25-00230)

On July 28, 2023, Applicant filed this current PCR application alleging the following grounds for relief:

1. "Ineffective assistance of trial counsel and appeal counsel."
2. "Constitutional violation and statutory violation."
3. "Prosecutorial Misconduct."

Applicant did not set forth any facts to support his allegations but stated he would amend his application once he obtained counsel. Applicant did not request any specific form of relief.

On October 2, 2023, Applicant filed another PCR application (2023-CP-25-00309) alleging the following grounds for relief:²

1. Denial of Due Process
 - a. "Failure to give 10-day written notice of life sentence"

² Respondent has filed a motion to merge the second action (2023-CP-25-00309) into the current action (2023-CP-25-230).

2. Ineffective Assistance of Appellate Counsel
 - a. "Failure to raise argument on Prosecutorial Misconduct"
3. Ineffective Assistance of Defense Counsel
 - a. "Failure to object to closing arguments"

Applicant did not request any specific form of relief.

Attached to this return and incorporated by reference are the Hampton County Clerk of Court records of the underlying convictions; Applicant's records from the South Carolina Department of Corrections; the trial transcript; and Applicant's appellate records. Respondent reserves the right to amend this return upon receipt of any additional relevant materials.

DENIAL OF DUE PROCESS

Applicant contends he was denied due process by not receiving ten-days notice of the State's intent to seek life without parole. "Due Process is not a technical concept with fixed parameters unrelated to time, place, and circumstances; rather, it is a flexible concept that calls for such procedural protections as the situation demands." State v. Legg, 416 S.C. 9, 13, 785 S.E.2d 369, 371 (2016) (citing Mathews v. Eldridge, 424 U.S. 319, 334, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976)). The provisions of the South Carolina and United States Due Process Clauses "provide that no person shall be deprived of life, liberty, or property without due process of law." State v. Binnarr, 400 S.C. 156, 165, 733 S.E.2d 890, 894 (2012); U.S. Const. amend. XIV, § 1; S.C. Const. art. I, § 3. "The procedural component of the state and federal due process clauses requires the individual whose property or liberty interests are affected to have received adequate notice of the proceeding...." Dangerfield v. State, 376 S.C. 176, 179, 656 S.E.2d 352, 354 (2008).

A solicitor must provide at least ten days' notice prior to trial if he or she intends to seek a life sentence under section 17-25-45. S.C. Code Ann. § 17-25-45(H). The purpose of section 17-25-45(H) is to ensure "a defendant and his counsel have actual notice the State is seeking a sentence under the recidivist statute." James v. State, 372 S.C. 287, 294-95, 641 S.E.2d 899, 903

(2007). The requirements of this statute are satisfied as long as the defendant and his counsel possess actual notice of the State's intention at least ten days prior to trial. Id. "[U]nder such notice statutes, the law only requires actual notice." State v. Washington, 338 S.C. 392, 398, 526 S.E.2d 709, 712 (2000).

This allegation probably raises questions of fact that the record does not conclusively refute. Therefore, Respondent requests an evidentiary hearing. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

INEFFECTIVE ASSISTANCE OF COUNSEL

In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland v. Washington, 466 U.S. 668. First, Applicant must prove that counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing

Strickland, 466 U.S. at 690). The Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. Here, the allegation of ineffective assistance of counsel likely raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing once Applicant has amended his application to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

Failure to Object to Closing Arguments

Applicant further contends counsel was ineffective for failing to object to the solicitor's closing arguments. Failing to object does not automatically constitute ineffective assistance of counsel. See Millidge v. State, 422 S.C. 366, 374, 811 S.E.2d 769, 800-01 (2018) (stating an applicant must prove both deficiency and prejudice to establish ineffective assistance of counsel for failing to preserve an issue); see also id. at 380. ("[T]he proper inquiry for determining prejudice...is whether there is evidence in the record to support the trial court's finding... if so, an appellate court would necessarily have affirmed the trial court's [ruling]....").

Additionally, an appellant bears "the burden of proving he did not receive a fair trial because of [an] alleged improper argument." Simmons v. State, 331 S.C. 333, 338, 503 S.E.2d 164, 166 (1998) (citing Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997)). "Improper comments do not automatically require reversal if they are not prejudicial to the defendant." Id.; State v. Copeland, 321 S.C. 318, 468 S.E.2d 620 (1996). "The relevant question is whether the prosecutors' comments 'so infected the trial with unfairness as to make the resulting conviction a denial of due process.'" Darden v. Wainwright, 477 U.S. 168, 181, 106 S. Ct. 2464, 2471 (1986).

INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL

Just as a defendant is entitled to effective representation during his general sessions proceeding, a defendant is also entitled to effective assistance of appellate counsel. Tisdale v. State, 357 S.C. 474, 476, 594 S.E.2d 166, 167 (2004) (citing Southerland v. State, 337 S.C. 610, 615, 524 S.E.2d 833, 836 (1999)). To prevail on a claim of ineffective assistance of appellate counsel, an applicant must establish both deficiency and prejudice as outlined above. Southerland, 337 S.C. at 616, 524 S.E.2d at 836. If an applicant can establish both deficiency, according to professional norms and prejudice to the extent that he would have been successful on appeal, he is entitled to a new trial. Ezell v. State, 345 S.C. 312, 316, 548 S.E.2d 852, 854 (2001); Southerland, 337 S.C. 615-16, 524 S.E.2d at 836; see also Simpkins v. State, 303 S.C. 364, 401 S.E.2d 142 (1991) (post-conviction relief of a new trial granted based on appellate counsel's failure to raise an issue on appeal that constituted reversible error).

Although ineffective assistance of appellate counsel claims for failure to raise a particular issue on direct appeal can be successful, the United States Supreme Court has reiterated that it is "difficult to demonstrate that counsel was incompetent." Smith v. Robbins, 528 U.S. 259, 288 (2000). While appellate counsel is required to provide effective assistance of counsel, "appellate counsel is not required to raise every non-frivolous issue that is presented by the record." Thrift v. State, 302 S.C. 535, 539, 397 S.E.2d 523, 526 (1990) (citing Jones v. Barnes, 463 U.S. 745 (1983)). "For judges to second-guess reasonable professional judgments and impose on . . . counsel a duty to raise every 'colorable' claim suggested by a client would disserve the very goal of vigorous and effective advocacy . . ." Jones, 463 U.S. at 754. Additionally, our South Carolina Supreme Court has expressly rejected the notion that appellate counsel has an obligation to raise all meritorious issues on appeal. Tisdale, 357 S.C. at 476, 594 S.E.2d at 167. "Generally, only when ignored

issues are clearly stronger than those presented, will the presumption of effective assistance of counsel be overcome." Smith, 528 U.S. at 288 (quoting Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986)). Here, the allegation of ineffective assistance of counsel likely raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing once Applicant has amended his application to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

MOTION FOR A MORE DEFINITE STATEMENT

Respondent moves for a more definite statement. The PCR Act requires an applicant to "specifically set forth the grounds upon which the application is based." S.C. Code Ann. § 17-27-50 (1985). Applicant has not set forth any facts to "support each ground" or to explain with any specificity the facts upon which his claims are based. Thus, Respondent requests Applicant be required to amend his application to set forth the factual allegations to support his claims. Specifically, Respondent requests Applicant amend his application to set forth facts showing the alleged prosecutorial misconduct he believes should have been raised on appeal. Respondent further requests Applicant amend his application to set for the specific portions of the solicitor's closing argument he believes should have been objected to and the legal basis for such objection. Finally, Respondent requests Applicant set forth with specificity the law and facts supporting any additional ground he wishes to proceed on at the PCR hearing.

ANY FUTURE AMENDMENTS AND INVOCATION OF DISCOVERY PROCESS

Respondent requests Applicant specify any claims he intends to raise at the evidentiary hearing in advance of the hearing. Furthermore, Respondent requests all potential exhibits and materials used to produce potential expert witness testimony be sent to Respondent in advance of the evidentiary hearing. Respondent likewise requests Applicant provide a list of witnesses he

intends to call at the hearing and provide any evidence he intends to introduce at the hearing in advance of the hearing. Respondent reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice.

ALL OTHER ALLEGATIONS

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

CONCLUSION

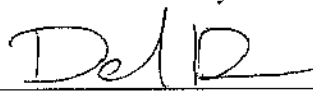
WHEREFORE, Respondent respectfully requests this Court require counsel to amend the application with a more definite statement of Applicant's claims, and that an evidentiary hearing be held.

Respectfully submitted,

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

DANIELLE DIXON
Assistant Attorney General

By: 
Danielle Dixon
ATTORNEYS FOR RESPONDENT
Office of the Attorney General
P.O. Box 11549
Columbia, S.C. 29211

March 7, 2024

Vickie Hall, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS FOR
COUNTY OF HAMPTON) THE FOURTEENTH JUDICIAL CIRCUIT
))
Gregory Sanders, Jr., #314824,) Case No.: 2023-CP-25-00309
))
Applicant,)
))
v.) **FILED**) **RETURN AND MOTION TO MERGE**
) **AM/PM**) (Counsel already appointed)
))
State of South Carolina,) **MAR 14 2024**
))
Respondent,) **MYLINDA D NETTLES**
) **CLERK OF COURT**
) **HAMPTON COUNTY, SC**

In response to the application for post-conviction relief (PCR) filed by Gregory Sanders, Jr. (Applicant) on October 2, 2023, Respondent makes the following return and motion to merge:¹

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections serving a life sentence. In February 2017, the Hampton County Grand Jury indicted Applicant for possession of a weapon during a violent crime (2016-GS-25-00177) and murder (2016-GS-25-00178). These charges arose from the fatal shooting of Tyhira R. Harrington (Victim) during the early hours of May 10, 2016. Police arrested Applicant later the same morning.

From May 7 to 9, 2018, Applicant proceeded to a jury trial before the Honorable Carmen T. Mullen. Assistant Public Defender Stephen T. Plexico represented Applicant. Assistant Solicitors Tameaka Legette and Bryan Hollen prosecuted the case. The jury found Applicant guilty as indicted. Judge Mullen concurrently sentenced Applicant to life for murder and five years for

¹ Respondent's return to the application was due within 90 days of service. See Rule 12(a), SCRPC ("[T]he State of South Carolina shall answer or otherwise respond to an application for post-conviction relief within 60 days after service of the application, if it arises out of a guilty plea, and 90 days if it arises out of a trial."). Now, having completed the return and in light of no demonstrable prejudice to Applicant, Respondent respectfully asks this Court to accept this return as timely filed. See S.C. Code Ann. § 17-27-70(a) (establishing that the Court may fix the time in which the State must respond and that "respondent shall file with its answer the record or portions thereof that are material to the questions raised in the application."); *Guinyard v. State*, 260 S.C. 220, 195 S.E.2d 392 (1973) (holding the time limit prescribed by the statute is discretionary, not mandatory, and the court may extend the time for filing).

the weapon charge.

Applicant filed a timely notice of appeal, which was perfected by Appellate Defender Susan B. Hackett. On appeal, Applicant argued the trial court erred in admitting text messages that were inadmissible hearsay and were not authenticated. The South Carolina Court of Appeals affirmed, finding the trial court did not abuse its discretion in finding the texts were authenticated, and further finding that although the court abused its discretion in admitting the texts over a hearsay objection, the error was harmless. State v. Sanders, 2022-UP-298 (S.C. Ct. App. filed July 13, 2022). Applicant filed a petition for rehearing, which was denied. Thereafter, Applicant filed a petition for a writ of certiorari in the South Carolian Supreme Court, which was also denied. The remittitur was sent June 24, 2023.

CURRENT PCR APPLICATION (2023-CP-25-00309)

On October 2, 2023, Applicant filed this current PCR application alleging the following grounds for relief:²

1. Denial of Due Process
 - a. "Failure to give 10-day written notice of life sentence"
2. Ineffective Assistance of Appellate Counsel
 - a. "Failure to raise argument on Prosecutorial Misconduct"
3. Ineffective Assistance of Defense Counsel
 - a. "Failure to object to closing arguments statements"

Applicant did not request any specific form of relief.

Attached to this return and incorporated by reference are the Hampton County Clerk of Court records of the underlying convictions; Applicant's records from the South Carolina Department of Corrections; the trial transcript; and Applicant's appellate records. Respondent reserves the right to amend this return upon receipt of any additional relevant materials.

² On July 28, 2023, Applicant filed a PCR application (2023-CP-25-230) challenging the same convictions; that action is still pending.

MOTION TO MERGE

Applicant has filed two PCR applications from the same 2018 conviction. He filed his first application on July 28, 2023 (2023-CP-25-0230). While that action was pending, he filed the current application challenging the same conviction.

An applicant is generally not allowed to have multiple PCR proceedings from the same conviction. See Aice v. State, 305 S.C. 448, 452, 409 S.E.2d 392, 395 (1991) (providing PCR rules "contemplate adjudication on the merits of the original petition, one bite of the apple as it were"); Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981) (providing successive applications for PCR are strongly disfavored); S.C. Code Ann. § 17-27-90 ("All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental, or amended application."). Accordingly, Respondent moves to have this action merged (2023-CP-25-309) into Applicant's first PCR action (2023-CP-25-00230), and treat this application as an amendment to the application filed July 28, 2023.

[Conclusion and signature page follows]

CONCLUSION

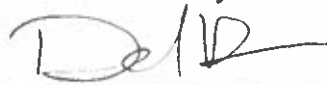
WHEREFORE, Respondent respectfully requests this Court merge this application (2023-CP-25-309) into Applicant's first PCR application (2023-CP-25 -230) and dismiss this case upon the merger of the two actions.

Respectfully submitted,

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

DANIELLE DIXON
Assistant Attorney General

By: 

Danielle Dixon
ATTORNEYS FOR RESPONDENT
Office of the Attorney General
P.O. Box 11549
Columbia, S.C. 29211

March 7, 2024

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF HAMPTON	)	FOR THE FOURTEENTH JUDICIAL
	)	CIRCUIT
Gregory Sanders, Jr., #314824,	)	
	)	Case No.: 2023-CP-25-00230
Applicant,	)	
	)	
v.	)	Certificate 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 to the Application for Post-Conviction Relief and Motion to Merge, in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Chelsey Faith Marto, Esquire
The Law Office of Chelsey F. Marto
PO Box 8795
Columbia, SC 29201

DATED this 7th day of March, 2024.

Vickie Hall, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA
COUNTY OF HAMPTON

Gregory Sanders, Jr., #314824,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS FOR
THE FOURTEENTH JUDICIAL CIRCUIT

Case No.: 2023-CP-25-00230
2023-CP-25-00309

FILED

AM/PM

APR - 1 2024

MYLINDA D NETTLES
CLERK OF COURT
HAMPTON COUNTY, SC

ORDER TO MERGE

Applicant in the above-captioned matters has filed with the Court two actions for post-conviction relief from the same convictions; the first was filed on July 28, 2023 (2023-CP-25-00230), and the second on October 2, 2023 (2023-CP-25-00309). An applicant is not generally allowed to have multiple post-conviction relief proceedings regarding the same conviction. See Aice v. State, 305 S.C. 448, 452, 409 S.E.2d 392, 395 (1991) (PCR rules “contemplate adjudication on the merits of the original petition, one bite as the apple as it were.”); Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981) (successive applications for post-conviction relief strongly disfavored); S.C. Code Ann. § 17-27-90 (“All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application.”). Accordingly, this Court hereby orders that the two proceedings be merged and that the application for post-conviction relief filed October 2, 2023, be considered an amendment to the application for post-conviction relief filed July 28, 2023.

[Signature on following page]

IT IS THEREFORE ORDERED that the Hampton County Clerk of Court merge 2023-CP-25-309 into 2023-CP-25-230, with docket number 2023-CP-25-00230 being the surviving case. All future pleadings shall bear the surviving docket number **2023-CP-25-00230**. Docket number 2023-CP-25-00309 will be dismissed upon the merger.

AND IT IS SO ORDERED this 15 day of March, 2024.



ROBERT J. BONDS
Chief Administrative Judge – Common Pleas
Fourteenth Judicial Circuit

Wboro, South Carolina

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF HAMPTON) FOR THE FOURTEENTH JUDICIAL CIRCUIT

Gregory Sanders, #314824,
Applicant.

FILED Case No.: 2023-CP-25-00230
AM/PM

v.
State of South Carolina,
Respondent.

APPLICANT'S AMENDED APPLICATION
APR - 9 2025,

Jvonndra Brooks-Creech
Clerk of Court
Hampton County SC

NOW COMES Applicant, Gregory Sanders, amending his application filed July 28, 2023. In addition to the allegations raised in his initial application, Mr. Sanders, through PCR Counsel, submits the following:

1. Ineffective Assistance of Counsel for:

- a. Failure to properly prepare Applicant for testifying.
- b. Failure to show Applicant a copy of the discovery and to discuss it with him.
- c. Failure to call Applicant's girlfriend to testify.
- d. Failure to properly advise Applicant about the State's anticipated witnesses.
- e. Failure to convey a 0-17-year offer.
- f. Failure to properly communicate with Applicant concerning his options between pleading and going to trial.
- g. Failure to ensure Applicant was properly served with an LWOP notice.
- h. Failure to renew proposed voir dire.
- i. Failure to effectively cross-examine the State's witnesses.
 - i. Failure to point out that Applicant could not both be poor and be set up to be robbed.
 - ii. Failure to properly cross-examine the victim's family and friends concerning their monetary disputes, criminal activities, and drug

abuse.

iii. Failure to follow up on Randy White's admission that this could have constituted self-defense.

j. Failure to object to texts entered.

k. Failure to request a stand your ground/immunity hearing.

l. Failure to object to the prosecutor's closing statement for inflaming the emotions of the jury.

m. Failure to request voluntary and involuntary manslaughter jury instructions.

n. Failure to argue that the State failed to establish proximate cause.

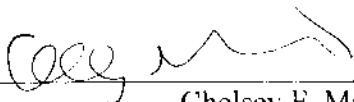
2. Prosecutorial misconduct for:

a. Inflaming the emotions of the jury during closing argument.

b. Failing to disclose a connection with a juror.

Conclusion

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


Chelsey F. Marto
Attorney at Law
S.C. Bar No. #104191

The Law Office of Chelsey F. Marto, LLC
P.O. Box 8795
Columbia, SC, 29201

(864)-404-5583
info@chelseymarto.com

Apr. 14 2025

For Applicant Gregory Sanders

STATE OF SOUTH CAROLINA
COUNTY OF HAMPTON

) IN THE COURT OF COMMON PLEAS
) FOR THE FOURTEENTH JUDICIAL CIRCUIT

) **FILED**

) **AM/PM**

Gregory Sanders, #314824,
Applicant.

) Case No.: 2023-CP-25-00230

v.

APR - 9 2025

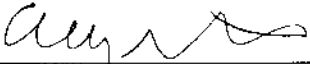
) Affidavit of Service by Mail

State of South Carolina,
Respondent.

Jvonndra Brooks-Creech
Clerk of Court
Hampton County SC

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

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



Attorney for Applicant

April 9, 2025

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
2023-CP-25-00230

Gregory Sanders,

Plaintiff,

VS.

State of South Carolina,

Defendant.

-----)

TRANSCRIPT OF HEARING

April 14, 2025
Beaufort, South Carolina

B E F O R E:

The Honorable Frank Addy, Jr., Judge Presiding

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

For the Applicant -
Chelsey Marto, Esquire
1122 Lady Street, Suite 206
Columbia, South Carolina 29201
864-404-55

For the State -
Danielle Dixon, Esquire
Assistant Attorney General
1000 Assembly Street
Columbia, South Carolina 29201
803-734-3970

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

I N D E X

	PAGES
Proceedings	03
Examination of Witnesses:	
Gregory Sanders	
Direct Examination by Ms. Marto	05
Cross-examination by Ms. Dixon	35
Tameaka Legette	
Direct Examination by Ms. Dixon	36
Cross-examination by Ms. Marto	38
Redirect Examination by Ms. Dixon	40
Brian Hollen	
Direct Examination by Ms. Dixon	41
Steven Plexico	
Direct Examination by Ms. Dixon	44
Cross-Examination by Ms. Marto	53
Redirect Examination by Ms. Dixon	57
Judge's Ruling (Took under advisement.)	58
Certificate of Reporter	59

I N D E X O F E X H I B I T S

Applicant's 1	Witness List	23
Applicant's 2	Text Messages	27
Applicant's 3	Paper from Applicant	29

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

2 * * * * *

3 THE COURT: All right, we will be on the
4 record, and I think the next case is 2023-CP-25-
5 00230 involving Mr. Sanders; am I correct?

6 MS. DIXON: That is correct, Your Honor,
7 this is Gregory Sanders v. State, Docket Number
8 2023-CP-25-00230. Mr. Sanders is currently serving
9 a life sentence. He was indicted in February 2017
10 by the Hampton County Grand Jury for possession of a
11 weapon during a violent crime and murder. Those are
12 Indictment Numbers 2016-GS-25-00177 and 178. He
13 proceeded to a jury trial before the Honorable
14 Carmen Mullen May 7th to 9th, 2018. He was
15 represented by Public Defender Stephen Plexico, and
16 this case was prosecuted by Assistant Solicitors
17 Tameaka Legette and Brian Hollen.

18 The jury convicted Mr. Sanders as indicted,
19 and he received concurrent sentences of life for
20 murder and five years for the weapon charge. He did
21 file a timely notice of appeal, which was perfected
22 by appellate defender Susan Hackett. She raised an
23 issue whether the trial court erred in admitting
24 text messages that were inadmissible hearsay and not
25 authenticated. The Court -- the South Carolina

1 Court of Appeals affirmed on the merits. They did
2 find that the messages were improperly admitted, but
3 that the error was harmless. He filed a petition
4 for re-hearing which was denied, and then a petition
5 for a Writ of Cert in the South Carolina Supreme
6 Court which was also denied. The remittitur was
7 sent June 24th, 2023. He timely filed this current
8 PCR application -- application, raising allegations
9 of ineffective assistance of both trial counsel and
10 appellate counsel, as well as general constitutional
11 violations and prosecutorial misconduct. Your
12 Honor, it is our understanding that they are not
13 going forward on any claims against appellate
14 counsel at this time. They did file an amendment
15 pretty recently, and it's our understanding that
16 they are going forward on the allegations here,
17 which are primarily ineffective assistance of
18 counsel claims, and then also prosecutorial
19 misconduct claims.

20 THE COURT: Okay. And correct me if I'm
21 wrong, Ms. Marto, that it's the April 14th, 2025,
22 document that you're looking to move forward?

23 MS. MARTO: April 4th, yes, Your Honor.

24 THE COURT: 4th, okay, I'm sorry, April
25 4th. That L looked like a one, so I -- so April

1 4th, very good.

2 MS. MARTO: Mr. Sanders -- we'd like to
3 call Mr. Sanders.

4 THE COURT: Come on up, sir.

5 (Witness sworn.)

6 * * * * *

7 Gregory Sanders, Jr.,
8 having been duly sworn,
9 testifies as follows:

10 * * * * *

11 DIRECT EXAMINATION

12 BY MS. MARTO:

13 Q. Good afternoon, sir.

14 A. Good afternoon.

15 Q. So what charges did you go to trial on?

16 A. Murder and possession of a weapon during
17 a violent crime.

18 Q. And who represented you?

19 A. Stephen Plexico.

20 Q. And what -- what happened at the trial?
21 What was the result?

22 A. I got life without parole, plus five for
23 weapon.

24 Q. So you got -- you were found guilty as
25 charged, right?

1 A. Right.

2 Q. How do you feel like counsel did
3 representing you?

4 A. I felt he could have asked more
5 questions, like question the witnesses more.

6 Q. What did you want him to question the
7 witnesses on?

8 A. Well, one of the witnesses is Randy
9 White. Even Randy White kept saying that he felt
10 like it was self-defense, even though he was
11 somebody that was actually there. They tried to
12 make it seem like because he didn't know nothing
13 about self-defense, like -- like try to question him
14 on that, but at the end of the day he was the one
15 that was there. And he said he felt like it was
16 self-defense, and then ---

17 Q. So just so that, you know, we're
18 breaking it down. You wanted counsel to, I guess,
19 follow-up on ---

20 A. Yes.

21 Q. -- that statement?

22 A. Yeah, I wanted him to question him, when
23 he said he felt like it was like self-defense, I
24 wanted him to ask him to explain why he felt like it
25 was self-defense, being that the Solicitor was

1 trying to make it seem like, oh, well, he don't know
2 nothing about law, how would he know it's self-
3 defense? So I wanted him to ask him like explain
4 some more why he felt like it was self-defense, if
5 he'd just ask him do you think it was self-defense
6 being that you was a witness? And he said yeah.
7 And then he'll be like no further questions. And
8 then he got up there and made it seem like, oh, he
9 don't know nothing about law, how would he know
10 about self-defense, and he just left it like that.
11 But, the whole -- throughout his whole testimony on
12 the stand, it was evident that it was self-defense
13 from what he was saying, even -- even on the part
14 when he was like -- when he asked him what he think
15 would have happened or would he have been a witness
16 to the self-defense? He said, yeah, all right, and
17 that was the end of that, but when she got up there
18 and said he don't nothing about the law, how would
19 he know self-defense? If he would have got back up
20 there and questioned him, or asked him, "Well, why
21 do you think it was self-defense, he could have been
22 able to explain his side from what he saw, that --
23 that would have been able to prove my self-defense
24 claim. See what I'm saying? So that's just with
25 Randy White. And then with Kywana Bradley, when she

1 was up there testifying, she said that they was on
2 the way to the hospital, and the people on the
3 ambulance told them to stop on the side of the road
4 and wait for the ambulance. So Legette asked her
5 what -- what did he do while they were stopped?
6 They said they were talking to -- they were talking
7 to her, and she was saying, uh-huh, you know,
8 complaining with a bullet in her head. Now, all of
9 a sudden she gets to the hospital, and she's
10 pronounced dead on arrival, which is why we're
11 bringing up the proximate cause.

12 Q. So you wanted counsel to argue that; is
13 that correct?

14 A. Right. I had wanted him to like -- like
15 bring that out more.

16 Q. Now, the lay witnesses that saw what
17 happened, what did you want counsel to bring out in
18 terms of like their lifestyles, or ---

19 A. That as far as the mother and Sampson
20 was involved, both of them are drug addicts.
21 They're both drug addicts. So -- they didn't --
22 he's the only one on the -- and so by him not really
23 questioning him on -- as far as like the credibility
24 or non-credibility of their own witnesses, I felt
25 like he -- that should have really been like

1 questioned him on, because when it come to like how
2 all that came about was because she was -- she's --
3 like I said, she's a drug addict, she would buy
4 drugs from me, right? And she had owed it and was
5 supposed to have paid that night. She told me that
6 she never got her check cashed, but during that
7 night when I saw them, they was coming from Nickle
8 Pumpers, which is a gas station, with two cases of
9 beer. So, obviously, how you say you didn't get
10 your check cashed when you got all the beer right
11 here? See all the -- don't worry about it, my
12 daughter said she's gonna take care of you. I said
13 this ain't your daughter -- this ain't -- this ain't
14 got nothing to do with your daughter. You see what
15 I'm saying? So she kept going on, and I left it
16 like that. Whatever she texted her in that text
17 message after that, I ain't had nothing to do with
18 her, which is why I went over there that night that
19 I got jumped, that she made it seem like that never
20 happened. I got jumped in that apartment that
21 night, you see what I'm saying? So I went over
22 there 'cause everybody was saying, oh, they're
23 saying that you said you're gonna kill her. They're
24 saying she took you to Allendale to get you robbed.
25 So I went over there that night, which I already

1 testified to in the transcript, oh, he wanted to
2 clear his name. So I went over there, I knocked on
3 the door, they came to the door, I came in the
4 apartment. I was like, look, I'm hearing people
5 saying talking about you talking about getting me
6 set up. I'm hearing people say that I'm supposed to
7 be killing you or something. Her mama, oh, yeah,
8 that's what he's saying to us. So I'm like -- so
9 she was like, mama, let me talk to him, but the
10 whole time the Mary lady kept telling her to put me
11 out. So I kept talking to her, then all of a
12 sudden, Daisy Cheeks, she came from upstairs and
13 just punched me. When she punched me, I just
14 grabbed her here, and threw her little ass, you know
15 what I'm saying? And I threw her, and then they all
16 tried to come at me so I left the house, that's the
17 part that he left off, and that's the part I'm
18 trying to get him to bring up more. If he would
19 have -- like he -- he called them -- he called
20 Kywana and Samson both on the stand to admit to it,
21 but they didn't actually admit to it, see what I'm
22 saying? When he asked Samson about it, Samson's
23 like, oh, well, I left for a little while, see what
24 I'm saying. Like, if you would have questioned him
25 more, he would -- he would have maybe actually like

1 see, if that makes sense.

2 Q. Concerning allegations that they're drug
3 addicts and engaged in -- in all their criminal
4 activity, what did -- what difference do you think
5 that would have made at trial?

6 A. Because the simple fact that they kept
7 -- at first they kept trying to make it seem like I
8 was homeless. Then he kept saying, oh, we fed him,
9 we should do his hair, this, that and this. So if
10 they all tried to put me off as being homeless, or a
11 homeless person, how could I possibly get set up to
12 be robbed, you see what I'm saying? Y'all are
13 saying, oh, he took it out of there trying to rob
14 them. Okay, well, that is not consistent with y'all
15 painting a picture of me being homeless, living in
16 an abandoned house, and getting my hair done by her,
17 and getting fed by her, yet y'all still try to get
18 me -- y'all are saying that I -- y'all supposedly
19 took me out there to get me robbed, it didn't add
20 up. I wanted him to question them more on both of
21 those theories, because they said both of those like
22 at trial.

23 Q. Do you think it would have brought their
24 credibility into question?

25 A. Yes.

1 Q. Now, do you feel like you were prepared
2 to testify in this case?

3 A. Not really, not really, 'cause like at
4 the end of the day, when it came to that testifying
5 part, it was either me or -- or Jervasy (Ph) up
6 there, and he was like, "Well, this will give you a
7 chance to tell your -- tell your version. At the
8 hearing, Kywana up there, and Randy up there,
9 Marquise up there, I'm like, well, let me go up
10 there and I'll just tell my name. So when I got up
11 there and -- and they was questioning me, I answered
12 their questions, but I didn't fully answer the
13 questions to the point where it was -- and
14 explanation mode, you see what I'm saying? I was
15 answering enough of the questions. What I mean by
16 that is, when she was asking me, oh, well, where was
17 so and so standing, or where was so and so standing?
18 I was like she tried to like reverse it like, oh,
19 well, he said that she was standing here and here,
20 and he didn't tell me to back up, he didn't tell me
21 to move and none of that. Like what that's got to
22 do with it? Like it was like he was trying to cross
23 up my words, you see what I'm saying? And I felt
24 like if he would have questioned me more, or
25 prepared me for the questions that were gonna be

1 asked, you see what I'm saying? And she kept
2 saying, oh, he's methodical, he's meticulous, he had
3 two years to think about this. So as I'm sitting
4 there answering these questions and all that's
5 playing in my head, they're not gonna believe me
6 anyway, you see what I'm saying? But I feel like he
7 should have prepared me more for the testimony to
8 know what he was gonna be speak on, if that makes
9 sense.

10 Q. Now, did you discuss your discovery with
11 Mr. Plexico?

12 A. He sent me the discovery the first time
13 of something about the -- the bullets, something
14 about the bullets. I had no statements. I had none
15 of the pictures that ended up being at the trial. I
16 didn't have -- I had some written statements, but I
17 had none of the investigative report, like the one
18 she did in April when she re-interviewed them, and
19 she coached them on what to say on the stand, I
20 didn't have none of that until after the trial.

21 Q. Did you feel I guess prepared to go to
22 the trial? Did you know what was going to happen at
23 the trial?

24 A. As far -- to be honest, when I -- when
25 we -- when was going back and forth when he used to

1 come visit me in the County, and I was going to do a
2 stand your ground, I was going to do self-defense
3 and all that, I had it all mapped out. Because at
4 the end of the day, this whole trial they raised --
5 there was no fact, it was all emotion. They were
6 playing on the emotions of the jury, if it makes
7 sense. Because when I re-read and re-read and re-
8 read the transcript, the only -- there's no evidence
9 in this -- in this whole trial, there's no evidence.
10 Only thing they're claiming she was wanting justice
11 for her daughter. It's two years since the
12 incident, which is like an anniversary. It was like
13 they were just playing with the emotions of the
14 jury. The only thing they had as far as evidence
15 was they said they had the gun. They said they had,
16 what, like the picture that he had, but as far as
17 like actual evidence, they didn't have actual
18 evidence.

19 Q. Now ---

20 A. And -- and the evidence that they did
21 have showed self-defense. There's four people in a
22 car, it's just me and my girlfriend, they rode past
23 us, they slammed on the brakes, they backed up, they
24 pulled in on us. They all four got out. I put my
25 girlfriend behind me, and they just kept -- so I --

1 I kept telling them, man, go on about your business,
2 go on about your business. I don't know how you get
3 to, oh, I told them, don't be -- you don't want to
4 be a witness. I didn't say you don't want to be a
5 witness, I said, go on about your business is what I
6 said. And they wanted -- they just kept coming,
7 kept coming. So when I shot once, one person, and
8 we left. Now, as far as this being a self-defense
9 case, like I said, we never did a preliminary
10 hearing, never did a stand-your-ground hearing,
11 never did none of that. Well, if they're ready to
12 go to the trial saying it's self-defense, we never
13 did none of those.

14 Q. Did you want an immunity hearing in this
15 case?

16 A. I would have needed one, yes.

17 Q. Now, when it comes to playing on the
18 emotions of the jury, are you referring to the
19 State's closing?

20 A. The closing, the closing arguments. She
21 kept -- she kept constantly telling them I've got
22 the eyes of a cold-blooded killer, that I am a cold-
23 blooded killer, to find me not guilty is a lapse of
24 defense. She said I'm cold-blooded. What else?
25 There's a lot she was saying though, but she kept

1 telling them, like, this is not self-defense, this
2 is murder. This is not self-defense, this is
3 murder. Once you constantly referring to something
4 over and over and over, eventually, it's gonna get
5 stick -- stuck in somebody -- in somebody's head,
6 and she kept painting -- painting a picture of me as
7 being a murderer, if it makes sense. Now, if self-
8 defense is a law, then I can protect myself and
9 others, which I had my girlfriend behind me. So how
10 -- you know what I'm saying, like why was she -- why
11 was she so busy painting a picture -- even when she
12 started off the opening argument ---

13 Q. Did ---

14 A. Then she kept -- she brought something
15 up about her daddy being a man of his word, and I'm
16 like what does her dad got to do with me being on
17 trial? This is my life that is on trial. So you
18 paint this picture of your daddy and him being a man
19 of his word, trying to compare us, and then turn
20 around and say, oh, well, I'm in no way trying to
21 compare the two, then what's the point of bringing
22 that up? What's that got to do with this trial?
23 There's nothing that they ever said during the whole
24 trial was about the facts of the case, it was all
25 emotions for the jury.

1 Q. Now, you mentioned your girlfriend was
2 there, did you want her to testify?

3 A. She was at the -- she was at the -- she
4 was at court, they never called her. She was at
5 court. She was in the holding cell the whole time.
6 All the days that I was in court, she was in the
7 holding cell.

8 Q. And why wasn't she called?

9 A. She wasn't -- Legette was supposed to
10 have been calling her, she was gonna be on the
11 Solicitor's side, as far as a witness. He asked me,
12 he said, do you want -- want to put her up there? I
13 said, I ain't gonna put her up there, I'm gonna go
14 ahead and testify. Well, this -- after all that,
15 she pulls that card when she Arnold, Yancey (Ph),
16 and all of them got called. But my thing was my
17 whole reason I think that she didn't call her,
18 'cause the whole time she's playing, oh she's 105
19 pounds, oh, she's a female, oh, she's skinny. If
20 they would have seen how little Jevasia was, then
21 that little argument would have went right out the
22 window. She's smaller than you, but she said, oh,
23 she's 105 pounds, he's only shot the 105 pound
24 person. It's not about the pounds or her being
25 female. It's the fact that she was the aggressor,

1 she was the main one that egged everything on. And
2 even when she asked Randy White that in the
3 transcript, he said, so in order for him to get
4 away, once he saw that he was able to get away? He
5 said, yeah. Are you saying they were able to get
6 away before that? No. It's in the transcript.
7 That's what I'm saying, he could have questioned --
8 he could have questioned him even more, even though
9 they had him as Legette's own witness, he could have
10 got the man to question him better to get better
11 answers.

12 Q. Now, did you talk to counsel about the
13 options between pleading and going to trial in this
14 case?

15 A. Yeah, he came to me, he was like, we've
16 got, at first he said he had plea for zero to 30. I
17 was like I'm not taking no zero to 30. Then he
18 said, well, we've got a plea for voluntary
19 manslaughter, zero to 25, nothing over 25. So I
20 told him, I said, man, I might as well go to trial,
21 'cause I already know by going in with a zero to 25,
22 they'd give me 25. He said, well, if you want to go
23 to trial, that's when I brought up the stand your
24 ground and self-defense. And he was like, all
25 right, so we started going -- he's like start

1 communicating back and forth, okay, we're going to
2 self-defense, and that -- that was that, you see
3 what I'm saying? Like then like when I talked to my
4 cousin last year, he said he talked to Bruce Davis,
5 which lives in the area where we live at. He said
6 he told him in the grocery store he don't know why I
7 didn't take the zero to 17 plea. Nobody told me
8 about a zero to 17. If they told me about zero to
9 17, I would have took the zero to 17. Which brings
10 me back to that ten-days notice, if I -- if they
11 would have come to me with that ten-day notice of
12 life without parole, which they never gave me and I
13 never signed. If they came to me and told me -- let
14 me know that they're trying to seek life without
15 parole, I probably would have took the zero to 25.

16 Q. Did you know you were facing up to life
17 in prison?

18 A. No. He told me if I would lose, I was
19 going to get 30. That's why when they found me
20 guilty, she's like, well, I'm asking for 30 years.
21 She just took it upon herself, she said, oh, no, I
22 don't want him to get no 30, I want him to be locked
23 up for the natural remainder of his life because I
24 don't want anybody else's death on my conscious.
25 I'm like -- you failed me then. On top of that like

1 the whole -- it's like -- I don't know, it's like
2 when she said she was gonna give me a chance before
3 back when I was 17, when I had charges, I had a YOA,
4 I came home from that, nobody went back on that, and
5 it came back, and I've been locked up since then,
6 that's what 2010, so it ended up like the beginning
7 of 2010, or the beginning of 2009, beginning of
8 2010, when I came home from the YOA sentence. I
9 never went back to prison. And yet still she said I
10 gave him numerous opportunities and then she's going
11 to tell the Judge, oh, yeah, I want him to be gone
12 for the rest of his natural remainder of his life,
13 'cause I don't want nobody else's death on my
14 conscious. This is my first time ever having a type
15 of charge like this. So for her to say that, and
16 then the Judge agreed with that, oh, yeah, we'll
17 give him life without parole. If you can't see
18 self-defense, if you can't read this transcript, and
19 you can't see self-defense in this transcript, then,
20 like, I don't get it. What's the point of having
21 laws if they don't work for certain people?

22 Q. Did you want counsel to ask for lesser
23 included instructions?

24 A. Yes, ma'am, he was supposed to ask for
25 the voluntary manslaughter, he never did. He --

1 when she brought it up, even the Judge said -- even
2 the Judge said she feel like this could be handled
3 with just manslaughter. Even if the Solicitor
4 offered me the plea of voluntary manslaughter, she
5 was like no -- at first she was like, oh, if the
6 Solicitor didn't get a directed verdict and all, we
7 won't want the manslaughter either. And I got life
8 without parole.

9 Q. Did you want him to request an
10 involuntary manslaughter instruction?

11 A. Yes, ma'am.

12 Q. Now, who did you think was gonna testify
13 for the State?

14 A. Well, he gave me a witness list that
15 just had Yancy, Marquis, that's right, Yancy,
16 Marquis, Jevasia, Johnny McKnight. He'd already
17 been locked up for a murder charge, so -- and I
18 think there were three more, or two more. Jevasia,
19 Yancy, Marquis, Randy, Johnny McKnight. I think it
20 was Donald -- Donald -- Donald Hipp, or something
21 like that.

22 MS. MARTO: Judge, if I may approach?

23 THE COURT: Please.

24 BY MS. MARTO:

25 Q. Do you recognize this, sir?

1 A. (Reviews document.) Yes, ma'am, that's
2 it right there.

3 Q. And what is that?

4 A. That's supposed to be the witness list.
5 That's the one I got in the first motion for
6 discovery that I got.

7 Q. And is this the list of people that were
8 called at your trial?

9 A. No, ma'am, there's a long list.

10 Q. You mean there were more people called
11 at trial that was on the list?

12 A. Yes, ma'am. They don't even got Emtise
13 (Ph), or Marilyn Dobbin, none of them, Samson
14 Williams, none of them on here.

15 Q. And if you had known all the witnesses
16 that would have testified against you, would that
17 have impacted anything?

18 A. It might have would. It might have
19 would.

20 Q. How?

21 A. Because if -- like -- like by me knowing
22 of the actual witness list, I would have been able
23 to prepare myself more, if that makes sense, because
24 I didn't expect for them to put no Samson, no
25 Marilyn, but Samson to get up there, and sit there,

1 and -- and just say what he was saying, he knew it
2 was lies. That's why he -- when he asked him about
3 what happened in the apartment, he said, so what
4 about one of the times that was assaulted in the
5 apartment? Oh, I wasn't there for that, I was at
6 the doctor's. But then the whole time he kept
7 making it seem, oh, it never happened, oh, it never
8 happened. So he was like, well, so you mean to tell
9 me y'all are just saying it never happened because
10 y'all didn't want to get in trouble or what? And
11 then they just went along with whatever they said.

12 MS. MARTO: Judge, we'd like to enter this
13 as Applicant's Exhibit Number 1.

14 MS. KANEALEY: No objection.

15 THE COURT: This one will be in evidence.
16 (Applicant's Exhibit Number 1, Witness List, is
17 marked and entered without objection.)

18 BY MS. MARTO:

19 Q. Knowing the number of witnesses --

20 THE COURT: Hold on a second.

21 BY MS. MARTO:

22 Q. -- would have impacted your --

23 THE COURT: One second. Do you need to
24 find exhibit markers?

25 COURT REPORTER: I'm good, thank you.

1 THE COURT: You're good?

2 COURT REPORTER: Yes, sir.

3 THE COURT: Okay, sorry, go ahead.

4 MS. MARTO: I'm sorry.

5 BY MS. MARTO:

6 Q. Would knowing how many witnesses would
7 have testified impacted your decision to go to
8 trial?

9 A. Yes, ma'am, because it -- by them -- by
10 the different people who they said was gonna be up
11 there, I kind of would have been able to put
12 together some kind of -- figure out a way to just
13 like to find me guilty. So, yeah, by me knowing
14 they had all these extra people on there, I might
15 would have went ahead and took that plea. Between
16 that and if they'd ever gave me that ten-day notice,
17 those two things might would have been enough for me
18 to take zero to 25.

19 Q. Now, you also raised an allegation that
20 counsel should have effectively objected to the
21 texts that were entered, correct?

22 A. Right.

23 MS. MARTO: Judge, if I may approach?

24 THE COURT: Go ahead.

25 BY MS. MARTO:

1 Q. Can you identify these two pages for me,
2 sir?

3 A. (Reviews document.) Yes, ma'am, this
4 one here came from Johnny McKnight.

5 Q. Yeah.

6 A. This is the one with -- I don't even
7 know how they allowed this one in, because his first
8 text said, my bad, wrong number, trying to spend 200
9 with my lady. Then turn around and text, oh, I'd
10 just seen her up there walking behind the
11 apartments. She's probably hiding, too, trying
12 something. Like for one, the apartments, they've
13 got a row behind the apartment. My cousin stays in
14 19. They stay further up in the apartments right
15 there, so if you see me or my girlfriend walking
16 behind the apartment, that's because we're leaving
17 or coming from my cousin's house. So for him to
18 even text that and then for two, and like I say, she
19 -- she asked him -- or asked him how they knew that
20 it was him. The first text should have -- should
21 have been enough to raise that -- that question of
22 whether y'all can authenticate this or not. The man
23 said, my bad, wrong number. But then the mama said,
24 oh, he was programmed into my phone. Well, if he
25 was programmed into your phone, why does the first

1 text say, my bad, wrong number? And then the second
2 text which is from the -- the mama, she texts at
3 12:04, talking about you're sitting there playing
4 with that motherfucker getting hired, he's talking
5 about killing you, but you took him out there to set
6 him up, no response. It was 1:03, a whole hour
7 later. I'm a ride or die motherfucker, he'd better
8 recognize all it takes is a phone call. I love him
9 in spite of all the bullshit. So when he was
10 saying, oh, she stirred it up yesterday, she stirred
11 that up.

12 Q. Now, what do you think counsel could
13 have done to keep those from being entered?

14 A. Well, that first -- that first --- that
15 first one shouldn't have been entered at all, 'cause
16 it said, my bad, wrong number. And I don't even
17 know what it's trying to prove, like what -- what
18 does it even prove? Nothing. With how the projects
19 are set up, like I said, my cousin is on the end,
20 and it's Apartment 19, it's blocked -- not this
21 block, not this block, not this block. My cousin
22 stay on the end down here, you've got inside where
23 the apartment's at, the back side is where the road
24 is at. They in like the second block. So being on
25 the second block when you see my girlfriend walking

1 behind -- walking -- walking behind the apartments,
2 yeah, she's walking on the road going back across
3 the track. Just 'cause you don't see her -- how --
4 how -- what would make you think I'm hiding trying
5 something? You don't see her with me, but we always
6 be together.

7 MS. MARTO: We'd like to enter this as
8 Applicant's Exhibit Number 2, please.

9 MS. DIXON: No objection.

10 And I guess for the record, those were
11 entered at trial I think as Exhibits 25 -- is it 25
12 and 26?

13 THE COURT: Very good, they will be in
14 evidence.

15 (Applicant's Exhibit Number 2, Text Messages, is
16 marked and entered without objection.)

17 BY MS. MARTO:

18 Q. Now, you wanted the prosecutor to
19 disclose the connection they had with a juror; is
20 that correct?

21 A. You're talking about the one that worked
22 for them -- used to work for the Solicitor and all
23 that?

24 Q. Yeah.

25 A. Yeah, they -- I think they still -- I

1 think they had still used her. 'Cause one --
2 somebody had -- they had used the alternate jurors,
3 or whatever, I think they ended up having to use
4 that lady, but my main thing, like I -- that's why
5 I've been trying to get the audio transcript from
6 the trial. And I remember the Clerk of Court asking
7 them about an audio transcript of the trial, they
8 told me that they threw the audio transcript away
9 after a year. If they -- if -- if I could have got
10 the audio transcript of that trial and played her
11 total argument, you would have seen them throwing
12 stuff around the courtroom, and doing all this extra
13 antics in the courtroom or whatnot. It seemed like
14 as soon as she did all of that, and then they went
15 back, they were only back there for 36 minutes.
16 They came out with a guilty verdict. After she said
17 what she said and did what she did, do all that
18 stuff around the courtroom, doing her little water
19 container, like why are you doing all that for?

20 Q. You wanted counsel to, I guess, renew
21 their request for a voir dire question; is that
22 correct?

23 A. Renew their what?

24 Q. Renew requested question on voir dire;
25 is that correct?

1 A. Oh, yeah, that's the paper I gave you.

2 Q. Can you identify that for me, sir?

3 A. Yes, ma'am, that's what I just gave this
4 morning. See they're -- when they were asking them
5 all the questions, he asked her if she could read
6 number 11, and asked, are there any member of the
7 jury panel who believes that the act of killing
8 another person is such that anyone taking a life
9 should always be punished? Money say she's not
10 going to read that.

11 Q. And you wanted counsel to remove that
12 request?

13 A. Right. She -- he asked her to read
14 that. She told him, she -- he wouldn't do it, she
15 wasn't going to do it.

16 MS. MARTO: I'd like to enter this as
17 Applicant's Exhibit Number 3.

18 MS. DIXON: No objection.

19 THE COURT: It'll be in evidence.

20 (Applicant's Exhibit Number 3, Paper from Applicant,
21 is marked and entered without objection.)

22 BY MS. MARTO:

23 Q. And I think the final question or issue
24 you mentioned to me this afternoon, you had an issue
25 with your sentencing sheet; is that correct?

1 A. Yes, ma'am. On there it's the -- on top
2 of the sentencing sheet you've got 30 to life, but
3 she gave me -- I ended up getting life without
4 parole.

5 Q. Will you identify that for me?

6 A. Yes, ma'am. And I was looking at
7 the ---

8 Q. What is that document?

9 A. This is my sentencing sheet.

10 Q. Okay.

11 A. And I got 30 to life at the top of it.
12 You know what I'm saying, when the Judge -- when
13 it's time for sentencing, the Judge -- like she told
14 us, she read I'd be gone for the natural remainder
15 of my life, she didn't want anybody else's death on
16 her conscious, but the sentencing sheet was saying
17 30 to life. I ain't too good with the law, but in
18 my definition that seemed like a sentencing answer.

19 Q. Is that the first time you heard that
20 you were facing 30 to life?

21 A. That's the first time. When I got my
22 rule -- my motion for discovery after the trial and
23 all of that, and I saw that, that -- that's what
24 made me look at it. I didn't know what I was going
25 to get. Really, I thought I was gonna get found not

1 guilty from the self-defense, but he told me if I
2 did get found guilty -- if I did get found guilty,
3 I'd get 30 years. So when they found me guilty he
4 asked the Judge, can we give him the 30 years? She
5 wasn't going for it.

6 Q. Did you also have issue with the fact
7 that you didn't sign the sheet?

8 A. Yeah, I never signed that.

9 Q. And why do you think that's important?

10 A. I know I never signed it.

11 Q. Okay.

12 MS. MARTO: We'd like to enter this as
13 Applicant's Exhibit Number 4.

14 MS. DIXON: No objection.

15 THE COURT: It's in the record.

16 (Applicant's Exhibit Number 4, Sentencing
17 Sheet, is marked and entered without objection.)

18 BY WITNESS:

19 A. And I never got the ten-day notice paper
20 thing either, and I wrote the Clerk of Court asking
21 them, did they -- did I -- did they -- was one of
22 them in my motions? They sent me three notices.
23 The first time they sent me two blank ten-day
24 notices. So I wrote back, I said, I'm trying to see
25 if -- if -- if there's anyone -- anyone on file

1 rather Plexico gets them or whatever. They sent me
2 back three more blank sheets of the ten-day notice
3 papers. And 17-25-45(H) say if you -- if your
4 intent is to seek life without parole, I need a
5 *ten-day notice.

6 Q. Are there any other issues we haven't
7 talked about that you ---

8 A. The proximate cause.

9 Q. Right.

10 A. You talked about it, but we didn't go
11 into as much detail as far as I did with the
12 transcript, where the part where even though I shot
13 him, you can't say I called to tell them. Because
14 yeah, I shot him. When they stopped beside the
15 road, and the pathologist, she said -- what she
16 said, if somebody would have received that -- that
17 type of injury, they're supposed to die immediately,
18 that's in the transcript, that's what she testified
19 to, supposed to die immediately, yet still she
20 talked to Kywana Bradley and them. They told her
21 they was still talking to her, and she was saying,
22 hmm, hmm. Now, this happened at 1:05 in the
23 morning, she didn't get pronounced dead until 1:45,
24 which in or out, if you're on the road going to the
25 hospital, the ambulance on another road coming to

1 the scene, they tell you to stop on the side of the
2 road, y'all get out, y'all talk to her, and y'all
3 are playing with a bullet in her head. And all of a
4 sudden y'all get to the hospital, she's dead on
5 arrival.

6 Q. So you're saying playing with a bullet
7 in her head was kind of an intervening cause; are
8 you in agreement?

9 A. Yeah, and not only that, before --
10 before even all of that, when they picked up and put
11 her in the car, it's a -- it's a witness statement.
12 I've got a witness statement that she -- she'd seen
13 them pick somebody up and put them in the car, seen
14 the person fall out of the car, get picked back up
15 and get put back in the car, and then they drove
16 off. So if this is -- y'all picked her up -- y'all
17 picked her up and put her in the car, she fell out
18 of the car, y'all picked her up and put her back in
19 the car, y'all drive one way going to the hospital,
20 the ambulance come another way to the scene, they
21 tell y'all to stop on the side of the road, y'all
22 are talking to her, and playing with a bullet in her
23 head, then all of a sudden y'all get to the hospital
24 and she's pronounced dead on arrival, but the
25 pathologist said, oh, anybody that would sustain any

1 type of these injuries is supposed to die
2 immediately. But if the incident happened at 1:05,
3 which she didn't get pronounced dead until 1:45, and
4 it's at least a 15, 20-minute drive from Estill to
5 Varnville where the hospital is at, not even
6 including the time it took them just sit side the
7 road. And they're saying she was still alive, and
8 they was talking to her. She was say, hmm, hmm.
9 And then in your transcript you stated played with a
10 bullet in her head, and all of a sudden she gets to
11 the hospital, and she's dead on arrival. If they
12 wouldn't have moved her, I would probably have been
13 charged with attempted murder, but they're saying
14 she's supposed to -- she's supposed to have died
15 immediately, but there's no telling how long she'd
16 been alive before all the picking up and falling
17 out, and all of them playing with a bullet in the
18 head. If she was still alive on the side of the
19 road while you're on the phone with the ambulance,
20 if y'all would have just left her where she's at, I
21 probably would have just had attempted murder.

22 Q. Anything else?

23 A. We already did prosecutorial conduct,
24 right?

25 Q. Yes.

1 A. With all that calling me a cold-blooded
2 killer.

3 Q. Right.

4 A. Eyes of a cold-blooded killer to find me
5 not guilty that lacked common sense.

6 Q. Uh-huh.

7 A. Yep.

8 MS. MARTO: Nothing further, Your Honor.

9 THE COURT: Hold on one second, sir.

10 MS. DIXON: Very briefly.

11 **CROSS-EXAMINATION**

12 BY MS. DIXON:

13 Q. So your -- your primary complaint about
14 the closing argument was that the Solicitor called
15 you a cold-blooded killer, said you had the eyes of
16 a killer, said it was murder, not self-defense?

17 A. And that she said that to find me not
18 guilty is to lack common sense.

19 Q. Gotcha.

20 MS. DIXON: Nothing further.

21 THE COURT: You can step down, sir, thank
22 you.

23 MS. MARTO: No further witnesses.

24 THE COURT: Attorney General?

25 MS. DIXON: Nothing -- oh, I do have a

1 further one. I'm sorry, Your Honor, yes.

2 THE COURT: Okay.

3 MS. DIXON: The State would call Tameaka
4 Legette.

5 THE COURT: Come on up, please, ma'am.

6 (Witness sworn.)

7 * * * * *

8 Tameaka Legette,

9 having been duly sworn,

10 testifies as follows:

11 * * * * *

12 THE COURT: The previous witness referenced
13 -- the Applicant in this case referenced a witness
14 in the trial and pronounced her name, and I just
15 want a spelling, it's K-Y-W-A-N-A Bradley. I think
16 that's who he was referencing about five minutes ago
17 in his testimony. Attorney General?

18 MS. DIXON: One moment, Your Honor.

19 THE COURT: Sure.

20 MS. DIXON: All right, may it please the
21 Court?

22 THE COURT: Yes, ma'am.

23 **DIRECT EXAMINATION**

24 BY MS. DIXON:

25 Q. Ms. Legette, how are you today?

1 A. I'm doing well. How are you?

2 Q. Good, thank you.

3 A. Yes.

4 Q. And what was your role in this case?

5 A. I was one of the prosecutors in this
6 case. I think I may have been the lead prosecutor.

7 Q. Okay. And do you recall ever making a
8 zero to 17-year offer?

9 A. I do not.

10 Q. Okay. And they've alleged prosecutorial
11 misconduct against you for failing to disclose a
12 connection with a juror. To your knowledge, did you
13 have any connections with the jurors?

14 A. Not any of the jurors on the actual jury
15 panel.

16 Q. Uh-huh.

17 A. Not those jurors. There was a juror in
18 I think the voir dire who I believe used to work for
19 our office, and she disclosed that during the voir
20 dire questions.

21 Q. And do you recall whether the Court
22 excused her?

23 A. I don't recall, but she was not on the
24 jury.

25 Q. Okay. But if the record reflects ---

1 MS. DIXON: And, Your Honor, it's page 115.

2 BY MS. DIXON:

3 Q. -- that the Court excused her because
4 she used to be a former Solicitor, does that seem
5 accurate?

6 A. That does seem accurate, yes, ma'am.

7 Q. And if you knew a juror on the panel,
8 what would you do?

9 A. I would let the Court know. I would
10 also let Mr. Plexico know ---

11 Q. Okay.

12 A. -- prior to us actually putting the
13 juror on the actual panel.

14 Q. All right. Nothing further. Thank you.

15 A. Thank you.

16 **CROSS-EXAMINATION**

17 BY MS. MARTO:

18 Q. Did you do the closing argument in this
19 case?

20 A. I did, yes, ma'am.

21 Q. Would you agree that a lot of the
22 language you used was inflammatory?

23 A. I would not.

24 Q. So you don't think it was inflammatory
25 at all?

1 A. I do not.

2 Q. Do you think it was emotionally charged?

3 A. I do not.

4 Q. Why do you feel like it wasn't
5 emotionally charged?

6 A. I was actually -- Mr. Sanders testified,
7 and so whenever he testified, I got to cross-examine
8 him. And the reason why I talked about his eyes
9 because one of the questions I remember asking him
10 was for him to show me how he did it. And at that
11 point something in his eyes just kinda flared up at
12 me, and the way he turned -- the way he smiled when
13 he was describing how he actually shot the victim,
14 and then he got off the witness stand, I think I
15 asked him, and he turned around to run. It was as
16 if he were -- he was living in the moment, and his
17 eyes to me suggested that he had the eyes of a
18 killer. So what I was able to see and what I
19 believe the jury was able to see when he testified,
20 and when he made those movements, was -- were facts.

21 Q. Do you think the transcript is the best
22 reflection of what you said during closing argument?

23 A. I believe it is, yes.

24 Q. Okay. Did you throw anything around the
25 courtroom?

1 A. There was a black dress. One of the
2 witnesses testified that Mr. Sanders said that her
3 mother should buy a black dress because he was going
4 to kill her daughter. And I did have a black dress
5 in the courtroom, yes. And so at some point when I
6 was doing my closing argument, that dress, I did put
7 that dress down on the -- I believe in front of the
8 jury, yes.

9 Q. Do you recall throwing a notepad or a
10 water jug?

11 A. I do not.

12 MS. MARTO: Nothing further, Your Honor.

13 MS. DIXON: One very quick, brief matter.

14 **REDIRECT EXAMINATION**

15 BY MS. DIXON:

16 Q. He's raised some issues with not getting
17 statutory notice of your intent to seek life without
18 parole. Is this a case that you were seeking life
19 pursuant to the Recidivist Statute?

20 A. It was not, no, ma'am. He did not have
21 the requisite prior record, no, ma'am, we did not
22 file that notice.

23 Q. So this is a -- a situation where the
24 Judge sentenced him within her discretion?

25 A. That's correct, yes, ma'am.

1 MS. DIXON: Nothing further.

2 MS. MARTO: No recross.

3 THE COURT: All right, Ma'am. Thank you.

4 WITNESS: Thank you, Your Honor.

5 THE COURT: Take care. Attorney General?

6 MS. DIXON: Your Honor, the next witness

7 we're gonna call is the virtual witness ---

8 THE COURT: Okay.

9 MS. DIXON: -- Mr. Hollen.

10 MR. HOLLEN: Good afternoon, Your Honor.

11 THE COURT: Good afternoon. All right,

12 Madam Clerk, can you put him under oath since I've

13 got to be muted?

14 CLERK: Sure.

15 (Witness sworn.)

16 * * * * *

17 Brian Hollen,

18 having been duly sworn,

19 testifies as follows (via Webex):

20 * * * * *

21 DIRECT EXAMINATION

22 BY MS. DIXON:

23 Q. How are you today, sir?

24 A. I'm well, thank you for asking.

25 Q. And what was your role in this case?

1 A. I was co-counsel with Ms. Legette, who
2 was lead counsel on the prosecution of Mr. Sanders.

3 Q. Got you. And were you involved before
4 her kind of early on?

5 A. I was. I don't know if I was the one
6 who drafted the indictment or not, but I was the
7 lead prosecutor on the matter before I was
8 transferred out of the County to a different county.

9 Q. And were you the one responsible for
10 producing most of the discovery?

11 A. I believe so, yes.

12 Q. And do you recall whether you produced
13 that?

14 A. I -- I don't have any specific
15 recollection of providing discovery in this case,
16 but that would have been my practice to provide
17 discovery in every case that I was involved in.

18 Q. And then in terms of negotiations, did
19 you ever make an offer of zero to 17 years?

20 A. No. No, I did not.

21 Q. Okay. And in terms of the jury issue,
22 did you know anyone on the jury panel?

23 A. I did not, no.

24 Q. And if you had known -- if you had
25 known ---

1 A. If I had -- if I had known anybody, I
2 would have had to notify the Court and the opposing
3 counsel, and I would have done so.

4 Q. All right. Thank you.

5 MS. DIXON: Nothing further from the State.

6 MS. MARTO: No questions, Your Honor.

7 THE COURT: Mr. Hollen, thank you very much
8 for coming. Take care.

9 WITNESS: Thank you, Your Honor, appreciate
10 it.

11 THE COURT: Yes, sir.

12 Freda, you can stop recording, and I think
13 we're done with the Webex part, right?

14 MS. DIXON: We are, Your Honor.

15 THE COURT: Okay. You can log off, Freda,
16 unless you want to just hang around. She logged
17 off.

18 Attorney General?

19 MS. DIXON: May it please the Court? The
20 State calls Stephen Plexico.

21 THE COURT: You're still under oath from
22 the hearing earlier this afternoon, so ---

23 * * * * *

24 Stephen Plexico,

25 having been previously sworn,

1 testifies as follows:

2 * * * * *

3 DIRECT EXAMINATION

4 BY MS. DIXON:

5 Q. How are you this afternoon?

6 A. Just fine, ma'am.

7 Q. And what was your role in this case?

8 A. I was his counsel.

9 Q. And do you recall how far in advance you
10 got this -- assigned to this case before the trial?

11 A. Yes, we got it in -- and he was arrested
12 in May, we got it at the end of August.

13 Q. And do you recall how many times you met
14 with him, just kind of a ballpark?

15 A. Well, I have -- I don't make great
16 notes, but I have 11/8/16, I've got we were prepared
17 for a prelim on 11/17, but they forgot, this is
18 2016, they forgot to bring him. I was interviewing
19 him in Charleston, then they moved him to Florence,
20 then they moved him back to Charleston. I have I
21 saw him again on 2/8/17. We got DMH orders back in
22 April. I interviewed him right -- three days after
23 I got that back. Answered all his questions. I
24 made a note to get discovery, and I made a note wait
25 until October 17th, because I think they said it

1 would take six months for them to get everything
2 back. In June he wanted to come back to Hampton
3 County. Then I couldn't -- couldn't get him back.
4 I saw him again on 6/29/17, 8/9/17. Then I saw him
5 11/7. I saw him, again, 11/14/2017, 1/22/18. I was
6 checking for discovery and talking with her. I saw
7 him right after that 1/26/18. I saw him on
8 11/14/17, 2/6/18, 4/6/18, 4/24/18. On 5/2 he was
9 still in Charleston. On 5/6 they had brought him
10 back to trial. That was -- I interviewed him 5/2,
11 too. I went to Charleston and on 5/6/18 I saw him
12 over there at the jail and went to trial on 5/9,
13 Monday morning.

14 Q. All right. And during these meetings
15 did you have an opportunity to review the discovery
16 with him?

17 A. Yes.

18 Q. And specific to that, did you review the
19 State's potential witnesses, and what they -- the
20 statements that you had as to what they might say?

21 A. Yes.

22 Q. And in terms of the allegation that you
23 did not call his girlfriend to testify, do you
24 recall discussing a girlfriend with him?

25 A. Yes. The last line of her statement,

1 they made notes on the narrative when they talked
2 with her. She made a comment in this interview,
3 that Greg didn't have to shoot at her. And what she
4 meant was, she made the comment in this interview,
5 Greg didn't have to shoot at that car.

6 Q. And, of course, what would that have
7 done to your -- to your defense strategy?

8 A. It would have destroyed it.

9 Q. And in terms of preparing him, he did
10 testify at this trial, correct?

11 A. Yes.

12 Q. And did you have time to discuss with
13 him what his testimony would be?

14 A. Yes.

15 Q. Let's see, do you recall a zero to 17-
16 year ---

17 A. There was no zero to 17, it was zero to
18 25. Zero to 25 was presented to me on February 5th,
19 signed by Ms. Legette, okay? And he rejected the
20 offer on the next day. I was prompt. He rejected
21 the offer the next day on 2/6/18, which coincides
22 with my note on the outside of the jacket, that I
23 went to Charleston the very next day and took the
24 him the plea offer.

25 Q. And did you talk to him when you

1 conveyed the offers about his options in terms of
2 accepting the offers versus proceeding to trial?

3 A. Well, I mean if you're not gonna take
4 the plea offer, you're going to trial unless they
5 dismiss it. I mean, you know ---

6 Q. Right.

7 A. -- you're going to trial.

8 Q. Right. And then to your recollection
9 was this a case where the State was seeking life
10 pursuant to the Recidivist Statute?

11 A. No, it was not.

12 Q. Okay. And then he's raised an
13 allegation that you didn't renew proposed voir dire.
14 You did, in fact, submit voir dire to the Court,
15 correct?

16 A. Yes.

17 Q. And did you request the Judge to read
18 one of the specific ones that she didn't read?

19 A. I -- I believe I did. I don't remember
20 that specifically. It would be in the transcript
21 what I said.

22 Q. All right. And then in terms of cross-
23 examination, what's your general approach for cross-
24 examination?

25 A. Get what you want and sit down before

1 they change your mind -- their mind about it. And
2 I'm not being cavalier about that statement because
3 that happens, that's experience speaking.

4 Q. And then specific to Mr. White, do you
5 recall cross-examining him about his admission that
6 this could have been self-defense?

7 A. Yes. If you could -- I didn't mark
8 that, if you could go back. The Court's indulgence,
9 please.

10 THE COURT: Yes, sir.

11 BY MS. DIXON:

12 Q. I believe 290 might be what you're
13 looking for.

14 A. Two what?

15 Q. 290 of the transcript.

16 A. Thank you. Thank you. Well, what I
17 finally got out of him toward the end on 290 is, you
18 could have been a witness to self-defense in that --
19 in that situation. Now, you nodded your head in the
20 affirmative, yes? Isn't that correct? And Mr.
21 White's answer was correct. But he might shut up
22 and sit down. Thank you, sir, you helped me.

23 Q. And is there a risk to asking an
24 additional question at that time?

25 A. Yeah. Well, we don't -- don't give him

1 time to change his story. Shut up and sit down.

2 That's the Solicitor's job, not mine.

3 Q. And then in terms of the allegation that
4 you failed to object to texts entered, do you recall
5 objecting to those texts?

6 A. I thought I did a good job of objecting
7 to the texts.

8 Q. And do you recall whether that was the
9 issue raised on direct appeal?

10 A. I don't know.

11 Q. You don't know, that's fine, ---

12 MS. DIXON: Just for the record, Your
13 Honor, the Court did find it was error, but harmless
14 error ---

15 THE COURT: All right.

16 MS. DIXON: -- as to the text messages.

17 THE COURT: I am aware of that.

18 BY MS. DIXON:

19 Q. Any reason that you might choose not to
20 request an immunity hearing if you're proceeding on
21 self-defense?

22 A. Well, I mean yeah, it's -- if -- my
23 client shot an unarmed girl, okay? Your -- your
24 chances are not great on something like that, all
25 right? Of course, I did the wolfpack, the wolf

1 being attacked by the wolfpack, lynching, you know,
2 self-defense theory, okay? But, hey, the only proof
3 that anybody had a gun was by that's a pretty
4 powerful determinant. So I mean I think the jury
5 frowned on that, but to the immunity hearing I mean
6 you're not gonna win that anyway, and you're just
7 cooking you're guy -- you're putting your guy on the
8 grill twice for the Solicitor to add barbecue to,
9 how much barbecue sauce they're gonna put on him, so
10 I mean that's -- it's -- philosophically, I think,
11 you know, it's actually quite hard to win an
12 immunity hearing ---

13 Q. Now, in terms ---

14 A. -- in my experience, and what I've seen
15 of -- I've seen judges that ---

16 Q. Uh-huh.

17 A. I mean I -- I've been appalled at some
18 I've read, so I mean it's -- you're just letting
19 them beat your guy up twice, and what they missed
20 the first time, they'll darn sure get the second
21 time.

22 Q. Right.

23 A. They'll go home and study that. These
24 are professional, hard-working Solicitors, and
25 they're well-funded and well-staffed.

1 Q. And then in terms of the allegation
2 failed to object to the prosecutor's closing
3 argument, did you see anything objectionable in her
4 closing argument?

5 A. No, everybody has their deal. She's
6 more dramatic than most people, so -- but, you know,
7 and some people are so drab you might not think they
8 were awake, but I mean she just has her style. I
9 didn't see anything. And, you know, the more
10 dramatic you are, that turns some people off, so
11 it's six -- but other people love it. So I mean
12 it's six of one and half dozen of the other, and,
13 you know, I didn't see anything damaging that, you
14 know, to my client. I didn't think that she was
15 doing anything that I regard as causable.

16 Q. And then if you would -- do you have a
17 copy of the transcript?

18 A. Yes, ma'am.

19 Q. If you would look at page 581, around
20 line 17 through 19.

21 A. Yes.

22 Q. Do you recall opposing the voluntary --
23 or the manslaughter charge?

24 A. Yes. All right, what I was saying was
25 -- and this is important, you know, we -- me and my

1 client were opposed to charging the jury of
2 manslaughter, Your Honor. So you just want me to
3 charge murder and possession of a weapon, correct?
4 My answer, yes. Well, and then I said -- a charge
5 is out of the question. My client -- I would only
6 say that if my client did not want that. That means
7 I -- I don't have a -- but I would not say that,
8 okay, unless I talked to my client, and that's
9 again, splitting the baby. So, you know, if you've
10 got murder for not guilty, well, you did shoot an
11 unarmed woman, even if it's -- okay, well, they were
12 provocative, well, they'll probably settle on the
13 manslaughter. Okay, you're going to get a bunch of
14 years, and my clients just can't get that -- a whole
15 bunch of years is better than a -- is not nearly as
16 bad as a whole bunch of years plus even more time.

17 Q. Okay.

18 A. They just -- they can't -- their brains
19 can't conceive of 25 years, 30 years.

20 Q. The last allegation, do you recall the
21 pathologist's testimony?

22 A. Yes, I think so, I mean ---

23 Q. And ---

24 A. -- generally.

25 Q. If you -- if you go to page 560. Do you

1 recall if she testified to what caused the victim's
2 death?

3 A. Yeah, gunshot -- well, actually, she was
4 a great help to me, and she -- she got the gun away
5 from my client's head as from the execution mode to
6 where the victim was merely approaching, and my
7 client was not pressing the gun right on her head
8 and killing her. Yeah, I mean shot her through the
9 head. You know, I think it stopped, it didn't come
10 right out. I mean you're not gonna survive that,
11 it's just gonna be over. That's it.

12 Q. Right, so no dispute that the gunshot is
13 what killed the victim in this case?

14 A. Not in my mind.

15 Q. Okay. Nothing ---

16 A. No reasonable dispute.

17 Q. No reasonable dispute.

18 MS. DIXON: Nothing further, Your Honor.

19 THE COURT: Cross?

20 MS. MARTO: Yes, Your Honor.

21 **CROSS-EXAMINATION**

22 BY MS. MARTO:

23 Q. Did you discuss with Mr. Sanders how he
24 could have gotten life if he went to trial?

25 A. Yes, I did that. The first note on the

1 inside of my jacket, I have on the top right of the
2 -- of the left-hand page of the folder advised of
3 rights and penalties two and three strikes.

4 Q. Did you tell him that he would get 30
5 years if he went to trial if he's found guilty?

6 A. At least 30, day for day to life. There
7 is nothing more greater than this.

8 Q. Did you anticipate the State pushing for
9 life during sentencing?

10 A. I mean they don't need to. We have some
11 really tough judges in the 14th Circuit.

12 Q. So do you think Mr. Sanders appreciated
13 the likelihood of getting life if he was found
14 guilty based upon your conversations?

15 A. Well, I mean I -- I told him that, so it
16 was something he was aware of, but I don't think
17 that anybody can really grasp that when they're in
18 that position of being a defendant. Or my clients
19 can't. They're not mature enough.

20 Q. What did you think your chances of
21 winning this case were?

22 A. I mean we had a shot. I mean, yeah, I
23 don't put odds on it. I mean we had a shot. My
24 theory was the dog pack. Well, you know, obviously
25 they were out hunting in the middle of the night,

1 and if you put the bits and pieces together that
2 came out at the trial, okay, the texts helped my
3 client oddly because it just made him look like
4 absolutely redneck trash. Okay? These people came
5 from Allendale, which at that point in time was a
6 place where I live, and no, it is a much more
7 violent culture than Hampton County. And they had
8 transferred over to Estill which has some -- it's
9 extremely -- it's not -- Estill is not what it used
10 to be. It's a very declining community over the
11 last 30 or so years. Well, it's leveled off now,
12 okay? They've lost a lot of population. And what
13 it is is they sort of moved their Allendale problems
14 over to Estill, obviously. They were hanging out at
15 a strip club, boy, I love that. Okay, if they were
16 hanging out and drinking at a strip club, all right?
17 Then they went home, then they have this craziness
18 from the mother, okay? All right, they're drinking.
19 Probably they went out looking for smoke, you know,
20 come on, all right? So this is -- this is my dream
21 group of people coming after my client, okay? I
22 mean it doesn't really get much better, but, you
23 know, it's like nobody's saying they had -- they had
24 a gun out, or anything like that, that would be my
25 client, okay? And, basically, he's got two -- two

1 known thuggy guys, they're gang-like women, okay,
2 who fit the -- the stereo typical profile, okay?
3 They're coming after my guy and his girl in the
4 middle of the night, okay? Completely, he doesn't
5 do anything to cause it, so I mean, but that's -- he
6 did shot an unarmed woman. I mean, goodness, shoot
7 her in the foot. I mean you're that close, why did
8 you shoot her in the head? I mean I think that's
9 what the jury was thinking, that made it a hard
10 defense.

11 Q. And you testified on direct that you
12 don't have any distinct memories on discussing
13 lesser included offense charges, right?

14 A. No, no, no. That's not -- what we did
15 was, if you look at the transcript, all right, let's
16 talk about a lesser included -- let's talk about any
17 lesser included charge of voluntary manslaughter,
18 that is the court. I say, we didn't get the
19 directed verdict, we would oppose the charging of
20 the jury of -- on manslaughter, okay, manslaughter.
21 So she says, okay, so you just want me to charge
22 murder and possession of a weapon, correct? I say
23 yes. And that means I've talked to my client about
24 it. Or I damn well -- excuse me, I certainly would
25 not have -- I certainly would not have stood up and

1 said that. I know I talked to my client, do I have
2 a specific memory? No, not on that part.

3 Q. Do you have a specific memory about
4 discussing an immunity hearing in this case?

5 A. No, I don't.

6 Q. And you'd agree that if the jury found
7 him guilty of voluntary, that would have been better
8 than the position he's in now, right?

9 A. Oh, yes, but, you know, you -- your
10 client has a right to make a choice. They have a
11 right -- Judge Buckner talked about when he was a
12 young judge that a lawyer told him that his client
13 -- reminded him his client had every right to make
14 the wrong decision, but it's their decision.

15 MS. MARTO: One moment, Your Honor.
16 Nothing further, Your Honor.

17 MS. DIXON: Just real brief.

18 **REDIRECT EXAMINATION**

19 BY MS. DIXON:

20 Q. You did testify that you conveyed plea
21 offers to him, correct?

22 A. Absolutely.

23 Q. And whose decision was it to reject
24 those?

25 A. That was his decision, and I put

1 Defendant rejects plea offer, 268, the day after I
2 got it, I rode to Charleston.

3 MS. DIXON: Nothing further.

4 THE COURT: All right, sir. Thank you.
5 You can step down.

6 MS. DIXON: No other witnesses.

7 THE COURT: All right, nothing else?

8 MS. MARTO: Nothing else.

9 THE COURT: Very good. Like the other
10 cases, I'll take it under advisement and try to get
11 y'all an order in the coming days after I've taken a
12 closer look at some of the testimony in the
13 transcript, and we will let y'all know.

14 MS. MARTO: Thank you, Judge.

15 MS. DIXON: Thank you, Judge.

16 THE COURT: Thank y'all very much.

17 (The hearing was concluded.)

18 - - -END OF TRANSCRIPT- - -

19

20

21

22

23

24

25

CERTIFICATE OF REPORTER

I, Cathy L. Young, CVR-M, for the
Fourteenth Judicial Circuit of the State of South
Carolina, do hereby certify that the foregoing is a
true, accurate and complete Transcript of Record of
introduced in the hearing of the captioned case,
relative to appear, in the Circuit Court for
Beaufort County, South Carolina, on the 14th day of
April, 2025.

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

A handwritten signature in black ink that reads "Cathy L. Young". The signature is written in a cursive style and is positioned above a horizontal dashed line.

Cathy L. Young, CVR-M

Court Reporter and Notary

Public in and for South Carolina

My Commission expires: 3-28-2029

**STATE OF SOUTH CAROLINA
COUNTY OF HAMPTON**

IN THE COURT OF GENERAL SESSIONS
Indictment No.(s): 2016-GS-25-00177, 178

The State of South Carolina,

Plaintiff,

v.

Witness List

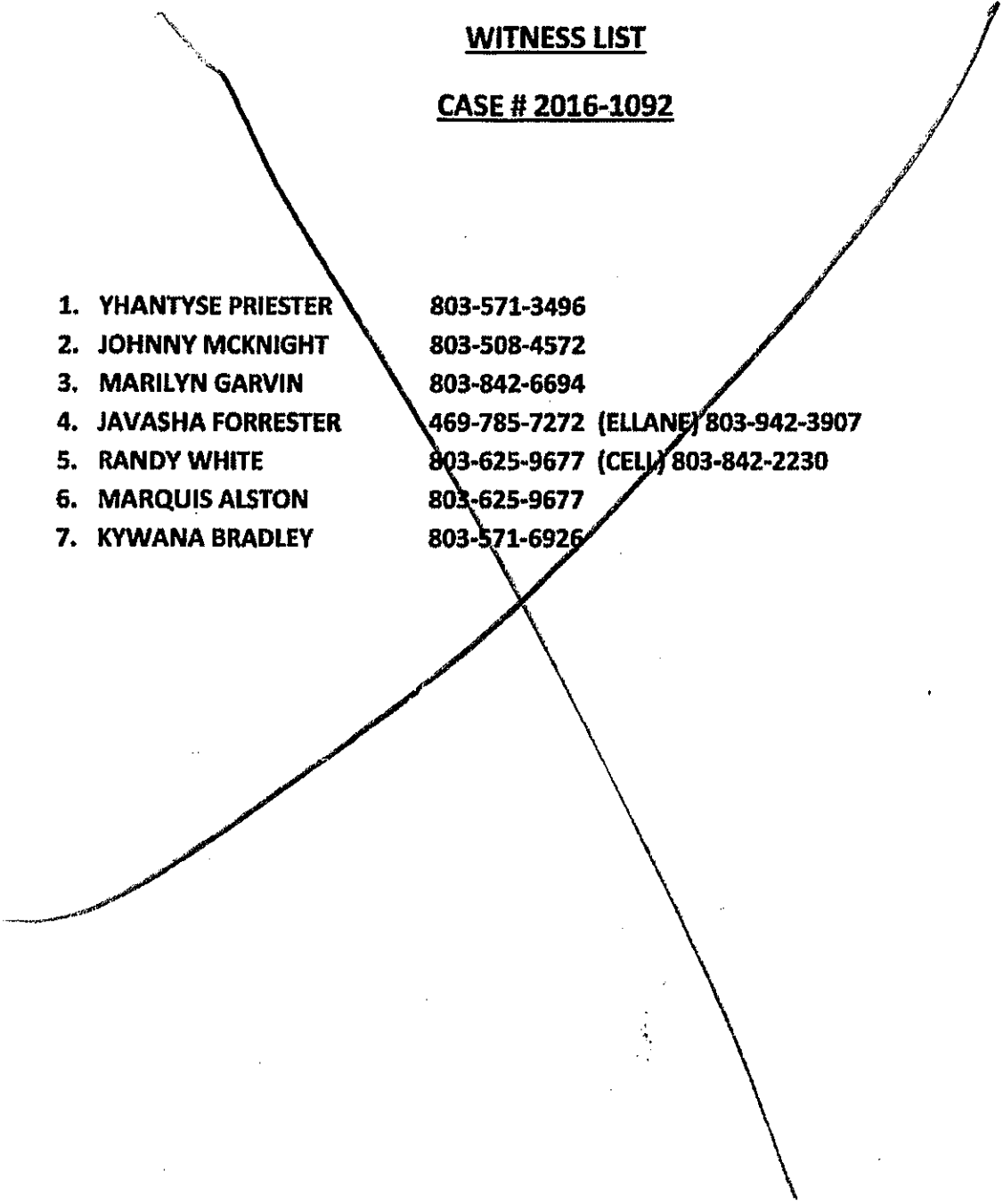
Gregory Sanders,

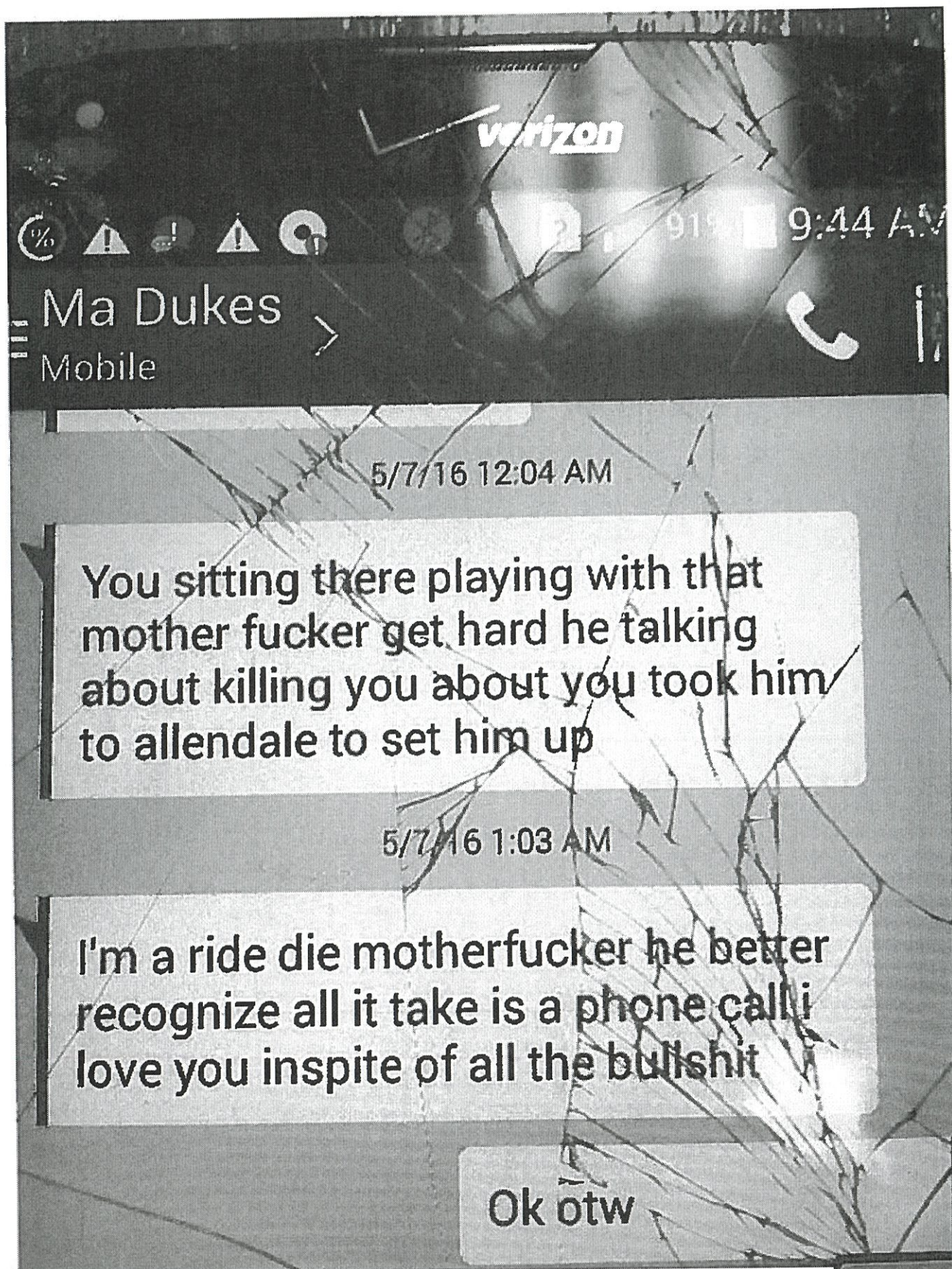
Defendant.

1. Javasha Forrester, (Hampton, SC)
2. Randy White (Estill, SC)
3. Marquis Alston(Estill, SC)
4. Yhantyse Priester (Allendale, SC)
5. Donald Hipp (14th Circuit Solicitors Office)

Stephen T. Plexico, Esq on May 7th, 2018
Stephen T. Plexico, Esquire
Attorney for Defendant

WITNESS LIST**CASE # 2016-1092**

- 
- | | |
|----------------------|------------------------------------|
| 1. YHANTYSE PRIESTER | 803-571-3496 |
| 2. JOHNNY MCKNIGHT | 803-508-4572 |
| 3. MARILYN GARVIN | 803-842-6694 |
| 4. JAVASHA FORRESTER | 469-785-7272 (ELLANE) 803-942-3907 |
| 5. RANDY WHITE | 803-625-9677 (CELL) 803-842-2230 |
| 6. MARQUIS ALSTON | 803-625-9677 |
| 7. KYWANA BRADLEY | 803-571-6926 |



EXHIBIT

State 29
5-7-18

WHR

Johnny Blaze >

Mobile

5/8/16 6:22 AM

My bad. wrong num. Tryna spend
200 with my lady
GOD S GIFT

5/10/16 12:41 AM

I just seen hard gf walkn behind da
apts. He probably hidn 2. Tryn sum
GOD S GIFT

EXHIBIT

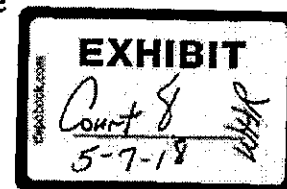
State 25
6-7-18

THE STATE OF SOUTH CAROLINA	)	IN GENERAL SESSIONS COURT
COUNTY OF HAMPTON	)	FOURTEENTH JUDICIAL CIRCUIT
	)	
	)	Ind. Nos. 2016-GS-25-00177, 178
THE STATE	)	
	)	
V.	)	Requested Voir Dire
	)	
Gregory Sanders	)	

The Defendant respectfully requests that the Jury Panel be put on its oath and that the court propound the following questions, in addition to the statutory questions required by South Carolina Code 14-7-1020:

1. Is any member of the jury panel related by blood or marriage to, or a good friend or acquaintance of a member of any law enforcement agency?
2. Is any member of the jury panel employed by, related by blood or marriage to or a good friend or a close acquaintance of anyone employed by the the Solicitor or his employees?
3. Is any member of the jury panel employed by, related by blood or marriage to of a good friend or a close acquaintance of anyone employed by any state or federal prosecution office?
4. Has any member of the jury panel ever been employed by any civilian or military law enforcement agency?
5. Is any member of the jury panel employed by, related by blood or marriage to or a friend or acquaintance of any prospective witness in this case?
6. Has any member of the jury panel, a close friend or family member ever been the victim of a violent crime, a serious assault and battery, a murder or a burglary?
7. Is any member of the jury panel a member of or a financial contributor to any group which has as its primary concern the promotion of law enforcement or victim's rights? Some of these groups would be, but are not limited to: CAVE (Citizens against Violence), CADRE (Citizens Advocating a Return to Ethics), CODA (Citizens Opposed to Domestic Abuse), and MADD, SADD or similar groups or organizations?
8. Has any member of the jury panel ever been a witness in a criminal trial? Were you a witness for the State or the Defense?
9. Is there any member of the jury panel who would give special credence and weight to the testimony of a law enforcement officer simply because of his position as a law enforcement officer?
10. Is there any member of the jury panel who believes that a Defendant must be guilty of the crime that he is accused of committing or he would have not been arrested?
11. Is there any member of the jury panel who believes that the act of killing another person is such that the individual taking the life should always be punished?

Respectfully submitted on May 7th, 2018 ; By Stephen T. Plexico, Esq.
 Stephen T. Plexico, Esquire
 Attorney for the Defendant



30-Life

969

STATE OF SOUTH CAROLINA

COUNTY OF Hampton

STATE

vs. Gregory Sanders, Jr

AKA: B Race: B Sex: M Age:

DOB: [REDACTED] SS#:

Address: [REDACTED]

City, State, Zip: 215404000 EST 11, SC

DL# SID#

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was TO: Murder

In violation of § 16-03-10 of the S.C. Code of Laws, bearing CDR Code # 0116

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45

The charge is: ☒ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (def.'s initials)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: [Signature] 70550
Solicitor 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 life 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 SCDOC.

☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.
Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ plus 20% fee: \$ days/hours Public Service Employment

Payment Terms:
☐ Set by SCDPPPS Obtain GED ☐
Attend Voc. Rehab. Or Job Corp.

Recipient: May serve W/E beginning
Substance Abuse Counseling ☐

*Fine: \$ Random Drug/Alcohol Testing ☐
§14-1-206 (Assessments 107.5%) \$ Fine may be pd. in equal consecutive weekly/monthly
§14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100.00 pmts. of \$ Beginning
§14-1-211 (A)(2)(DUI Surcharge) \$100 \$ \$ Paid to Public Defender Fund

§56-5-2995 (DUI Assessment) \$12 \$
§56-1-286 (DUI Breath Test) \$25 \$
Proviso (Public Def/Probation) \$500 \$
§14-1-212 (Law Enforce. Funding) \$25 \$ 25.00

§14-1-213 (Drug Court Surcharge) \$150 \$
§50-21-114 (BUI Breath Test Fee) \$50 \$
§56-5-2942(J) (Vehicle Assessment) \$40/ea \$
3% to County (if paid in installments) \$ 3.75

TOTAL \$ 128.75

Clerk of Court/Deputy Clerk McLinda D. Wooters
Court Reporter: Wanda Kabe
Presiding Judge
Judge Code: 2192
Sentence Date 5-9-18

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF HAMPTON
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2023-CP-25-00230

GREGORY SANDERS, JR. **FILED**
AM/PM

STATE OF SOUTH CAROLINA

APPLICANT

MAY 12 2025

DEFENDANT

Submitted by: COURT Jvonndra Brooks-Oresch
Clerk of Court
Hampton County SC

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.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):** ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

This matter came before the Court on April 14, 2025 for a trial on Applicant's petition for Post-Conviction Relief. Mr. Sanders was present and represented by Chelsey Marto, Esq. The State was represented by Assistant Attorney General Danielle Dixon. The Court finds as follows:

Applicant's stated grounds for relief are due to 1) Failure to object to closing arguments and 2) failure to raise argument on prosecutorial misconduct. As to the first ground, Applicant's trial counsel, Stephen Plexico, Esq. testified that at trial, as the transcript reflects, he did not see anything objectional during closing argument.

As to the second ground, Stephen Plexico, Esq. testified that Solicitor Tameaka Legette's closing statement was not objectionable as he saw it. Additionally, Solicitor Tameaka Legette and Solicitor Brian Hollen, counsel who tried the case, both testified. After reviewing the trial transcript and listening to testimony, it is clear that the Defendant suffered no harm due to any alleged prosecutorial misconduct or counsel's failure to raise an argument alleging prosecutorial misconduct.

At the hearing, Applicant also raised the following issues concerning the trial which he felt were grounds for relief:

1. A witness, Randy White, said he felt like Applicant acted in self-defense and counsel should have expanded on that;
2. Applicant wanted counsel to argue that the shot was not the proximate cause of decedent's death;
3. Applicant didn't feel like he was prepared to testify or that counsel was prepared for trial;
4. Lack of actual evidence and Applicant's girlfriend was not called;
5. Offer of 17 years was not conveyed to him;
6. No notice for LWOP and not informed of the witnesses against him; and
7. Failure to disclose the connection which the state had with a juror.

The Court finds as follows with regard to these (arguably additional) grounds:

1. Witness White did state that he felt like it could be self-defense. Counsel explained that, when a witness gives you what you want, you don't press them further; you sit down. The Court agrees that this is valid cross examination strategy because to do otherwise invites an answer which could be very damaging to your case.
2. The proximate cause of death was clearly a gunshot wound and not a responder tapping on the head of the decedent. Counsel is not required to make an untenable argument when the evidence is clear.
3. Based upon the record as a whole, Applicant voluntarily chose to testify, and counsel was clearly prepared to try this case.
4. As counsel explained, Applicant's girlfriend was going to testify that "Greg didn't have to shoot that girl." That would not have been helpful.
5. The solicitors and counsel all stated that no 17 year offer was ever on the table. At best, a 0-25 year offer was made, communicated to Applicant, and he rejected it the next day.
6. The LWOP notice satisfied statutory requirements. The other aspects of this assertion concerning being informed of witnesses against him simply has no merit.
7. As the solicitor explained, one prospective juror had previously been a member of the solicitor's office. However, that juror was excused from the panel prior to jury selection.

The Court finds the testimony of counsel and the solicitors more credible than that of Applicant. To the extent additional objections or motions could have been made, Applicant has not shown any prejudice from counsel's omission.

Although not raised at the hearing or in his Application, the Court notes that Mr. Sanders received a 5 year sentence on the weapons charge while also receiving life on the murder conviction. Under 16-23-490(A), if a life sentence is imposed, the 5 year sentence should not be imposed on the weapons offense. This Court will leave it to the appellate courts as to how to address this issue since it was not raised at the hearing.

Accordingly, the Court finds that trial Counsel was not ineffective, and Mr. Sanders' application for PCR is denied. Attorney General Dixon is requested to prepare a more formal order within thirty (30) days reflecting this Court's ruling.

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

2159

Judge Code

May 4, 2025

Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

Chelsey Marto, Esq.

Danielle Dixon, Esq.

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter: Cathy Young

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.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF HAMPTON	)	FOURTEENTH JUDICIAL CIRCUIT
	)	
Gregory Sanders, Jr., #314824,	)	CASE NO. 2023 CP-25-00230
	)	
Applicant,	)	
	)	
v.	)	ORDER OF DISMISSAL
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

FILED
AM/PM

JUN 17 2025

Jvonndra Brock-Greath
Clerk of Court
Hampton County SC

THIS MATTER CAME BEFORE THE COURT by way of applications for post-conviction relief (PCR) filed by Gregory Sanders, Jr. (Applicant) on July 28, 2023, and October 2, 2023.¹ An evidentiary hearing was convened on April 14, 2025. Applicant was present and represented by Chelsey F. Marto, Esquire. Assistant Attorney General Danielle Dixon represented the State. At the hearing, the Court heard testimony from Applicant, Public Defender Stephen T Plexico (trial counsel), Assistant Solicitor Tamecka A. Legette, and Assistant Solicitor J. Brian Hollen. Following a thorough review of the records before this Court and the testimony and evidence presented at the evidentiary hearing, the Court finds Applicant did not meet his burden of proof. Thus, the Court denies and dismisses this application with prejudice.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections serving a life sentence. In February 2017, the Hampton County Grand Jury indicted Applicant for murder (2016-GS-25-00178) and possession of a weapon during the commission of a violent crime (2016-GS-25-00177). These charges arose from the fatal shooting of Tyhira R. Harrington (Victim) on

¹ By order dated April 1, 2024, the October 2023 action (case no. 2023-CP-25-00309) was merged into the above captioned July 2023 action.

May 10, 2016.

On May 7-9, 2018, Applicant proceeded to a jury trial before the Honorable Carmen Mullen. Public Defender Stephen Plexico represented Applicant, and Assistant Solicitors Tameaka Legette and Bryan Hollen prosecuted the case. The jury convicted Applicant as indicted, and Judge Mullen sentenced him to concurrent terms of life for murder and five years for the weapon charge.

Applicant timely filed a notice of appeal, which was perfected by Appellate Defender Susan B. Hackett. On appeal, Applicant argued the trial court erred in admitting text messages that were inadmissible hearsay and not authenticated. The South Carolina Court of Appeals affirmed, finding the trial court did not abuse its discretion in finding the texts were authenticated, and further finding that although the court abused its discretion in admitting the texts over a hearsay objection, the error was harmless. *State v. Sanders*, 2022-UP-298 (filed July 13, 2022). Applicant filed a petition for rehearing, which was denied. Applicant then filed a petition for a writ of certiorari in the South Carolina Supreme Court, which was also denied. The remittitur was sent June 24, 2023.

CURRENT APPLICATION

On July 28 2023, Applicant timely filed this application alleging:

1. Ineffective assistance of trial counsel and appellate counsel;
2. Constitutional violation and statutory violation;
3. Prosecutorial misconduct.

On October 2, 2023, Applicant filed another PCR application alleging:²

1. Denial of Due Process: Failure to give 10-day written notice of life sentence;
2. Ineffective Assistance of Appellate Counsel: "Failure to raise argument on Prosecutorial Misconduct";

² This action was merged into the July 2023 action.



3. Ineffective Assistance of Defense Counsel: “Failure to object to closing arguments statements.”

On April 9, 2025, Applicant filed an amended application alleging:

1. Ineffective assistance of counsel:

- a. Failed to properly prepare Applicant to testify;
- b. Failed to show Applicant a copy of discovery and discuss it with him;
- c. Failed to call Applicant’s girlfriend to testify;
- d. Failed to properly advise Applicant about the States’s anticipated witnesses;
- e. Failed to convey a 0-17-year offer;
- f. Failed to properly communicate with Applicant concerning his options;
- g. Failed to ensure Applicant was properly served an LWOP notice;
- h. Failed to renew proposed voir dire;
- i. Failed to effectively cross examine State’s witnesses, specifically (i) failing to point out Applicant could not be both poor and be set up to be robbed; (ii) failing to properly cross-examine the victim’s family and friends concerning monetary disputes, criminal activities, and drug abuse; (iii) failing to follow up on Rady White’s admission that this could have constituted self-defense;
- j. Failed to object to texts entered;
- k. Failed to request a stand your ground immunity hearing;
- l. Failed to object to the prosecutors’ closing statement for inflaming the jury;
- m. Failed to request voluntary and involuntary manslaughter jury instructions;
- n. Failed to argue that the State failed to establish proximate cause.

2. Prosecutorial misconduct:

- a. Inflamed the emotions of the jury during closing argument;
- b. Failed to disclose a connection with a juror.

At the hearing, Applicant proceeded only on the allegations of his April 2025 amended application. This Court finds Applicant has waived the remaining allegations.³

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

Ineffective Assistance of Counsel

In a PCR action, an applicant bears the burden of proving the allegations in his application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). To prove ineffective assistance of counsel, the applicant must show counsel was deficient, and the deficiency prejudiced applicant. *Strickland v. Washington*, 466 U.S. 668 (1984). When evaluating deficiency, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise

³ Although not raised at the hearing or in his application, the Court notes that Applicant received a five-year sentence on the weapon charge while also receiving life on the murder conviction. This contradicts the plain language of section 16-23-490(A) of the South Carolina Code. This Court will leave it to the appellate courts as to how to address this issue since it was not raised at the hearing.



of reasonable professional judgment.” Butler, 286 S.C. at 442, 334 S.E.2d at 814 (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. To prove prejudice, an applicant must prove counsel’s deficient performance prejudiced the applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Id. at 117-18, 386 S.E.2d at 625.

Failed to properly prepare Applicant to testify / properly advise / review discovery⁴

Applicant contends counsel was ineffective for failing to (1) properly prepare him to testify, (2) review discovery with him, (3) properly advise him about the State’s anticipated witnesses, and (4) properly communicate with him concerning his options. At the PCR hearing, he generally averred counsel was not prepared for trial. Applicant did not prove this ground.

At the PCR hearing, trial counsel testified he met with Applicant prior to trial and reviewed discovery with him. He stated they proceeded on a theory of self-defense. Based on this Court’s review of the record as a whole, counsel was clearly prepared to try this case. This Court finds counsel’s testimony about his discussions with Applicant more credible than Applicants’ testimony. Based on counsel’s credible testimony, this Court finds counsel sufficiently met with and reviewed discovery with Applicant, and counsel’s advice to Applicant was reasonable under prevailing professional norms and was not deficient. Further, this Court finds counsel’s examination of Applicant was reasonable under prevailing professional norms and not deficient. (Tr. 588-606). Finally, Applicant did not set forth how any additional discussion or preparation would have changed his testimony, trial strategy, or reasonably changed the outcome of trial.

⁴ This section combines allegations (1)(a), (b), (d), and (f), as set forth above.

Applicant thus did not prove deficiency or prejudice, and this claim is denied.

Failed to call Applicant's girlfriend to testify

Applicant next contends counsel was ineffective for not calling his girlfriend as a witness at trial. However, Applicant did not call her as a witness at the PCR hearing –thus leaving this Court to speculate as to what her testimony would have been and what impact, if any, it may have had at trial. Applicant thus did not prove prejudice. See *Glover v. State*, 318 S.C. 496, 498–99, 458 S.E.2d 538, 540 (1995) (“In order to support a claim that trial counsel was ineffective for failing to interview or call potential alibi witnesses, a PCR applicant must produce the witnesses at the PCR hearing or otherwise introduce the witnesses' testimony in a manner consistent with the rules of evidence. The applicant's mere speculation what the witnesses' testimony would have been cannot, by itself, satisfy the applicant's burden of showing prejudice.”). Further, at the PCR hearing, trial counsel credibly testified that, had he called the girlfriend, he expected her to testify that Applicant “didn’t have to shoot that girl.” He averred such testimony would not have been helpful. This Court agrees and finds counsel articulated a valid reason for not calling the girlfriend as a witness. Applicant thus did not prove deficiency or prejudice, and this claim is denied.

Failed to convey 0-17-year plea offer

Applicant contends counsel was ineffective for not conveying a 0-17 year offer. Applicant did not prove this ground. At the PCR hearing, the solicitor and trial counsel testified there was never a zero-to-seventeen-year offer. Rather, a zero-to-twenty-five-year offer was made and communicated to Applicant, and he rejected it. This Court finds trial counsel and the solicitor’s testimony here more credible than Applicant’s testimony. Based on the foregoing, Applicant did not prove the existence of any zero-to-seventeen-year offer, nor did he show counsel was ineffective in this regard. This allegation is thus denied.

Failed to ensure Applicant was timely served LWOP notice

Applicant contends counsel was ineffective for not ensuring he was served notice of the State's intent to seek life without parole in violation of section 17-25-45(H) of the South Carolina Code ("the Recidivist Statute"). This allegation patently lacks merit. Applicant was not sentenced to life pursuant to the Recidivist Statute; rather, the trial court exercised its sentencing discretion and imposed a life sentence for the offense of murder. Applicant has not shown deficiency or prejudice in this regard, and this claim is denied.

Failed to renew proposed voir dire

Applicant next contends counsel was ineffective for failing to "renew proposed voir dire." Applicant did not prove this ground. Initially, the trial court's voir dire was adequate, and there was, therefore, no reason for counsel to object or seek additional questions.⁵ (Tr. 81-102). Furthermore, and most importantly, Applicant did not set forth what additional questions he believes counsel should have requested the trial court ask the jury panel. Applicant thus did not prove deficiency or prejudice, and this claim is denied.

Failed to effectively cross-examine witnesses

Applicant asserts counsel was ineffective in cross-examining witnesses. Specifically, he contends counsel (i) failed to point out that Applicant could not both be poor and be set up to be robbed; (ii) failed to properly cross-examine the victim's family and friends concerning monetary disputes, criminal activities, and drug abuse; and (iii) failed to follow up on Randy White's admission that this could have constituted self-defense. Applicant did not prove this ground.

⁵ Trial counsel *did* request the court ask an additional question, but the court, in its discretion, declined to do so. (Tr. 99).



Initially, Applicant did not specifically set forth what witnesses should have been cross-examined about his income, nor did he introduce any evidence of what any witnesses would have said upon further questioning. Further, the argument that he was too poor to be set up to be robbed is too tenuous from the ultimate issue of whether he acted in self-defense to have any impact on the outcome. Applicant thus did not prove deficiency or prejudice in this regard.

Likewise, Applicant did not set forth the specific questions he believed counsel should have asked concerning monetary disputes, criminal activities, and drug abuse, nor did he set forth any credible evidence of what the witnesses would have said upon further questioning. Applicant thus did not meet his burden of proving deficiency or prejudice in this regard.

Finally, as to Randy White, White testified at trial that he believed this could be self-defense. (Tr. 290). At the PCR hearing, trial counsel explained that when a witness gives you what you want, you don't press them further; you sit down. This Court agrees this is a valid cross-examination strategy because to do otherwise invites an answer that could be very damaging to your case. This Court further finds counsel's cross-examination of White was reasonable under prevailing professional norms and not deficient. (Tr. 268-82, 287-90). Finally, Applicant did not offer any credible evidence of what White may have said had he been *further* questioned about this issue, leaving this Court to speculate about what further cross-examination would have shown. Applicant thus did not prove deficiency or prejudice, and this claim is denied.

Failed to object to texts

Applicant asserts counsel was ineffective for failing to object to text messages. However, counsel *did* object to the messages based on authenticity and hearsay. (Tr. 223, 237-39). In fact, this issue was raised on appeal and addressed on the merits by the Court of Appeals, which found (1) the court did not abuse its discretion in finding the text messages were authenticated, and (2)

although the court abused its discretion in admitting the messages over a hearsay objection, any error was harmless due to the overwhelming evidence of guilt. Applicant has not shown deficiency or prejudice in this regard, and this claim is denied.

Failed to request a pretrial immunity hearing

Applicant contends counsel was ineffective for not requesting a pretrial immunity hearing. Applicant did not prove this ground. At the PCR hearing, counsel credibly testified he did not believe a trial court would have granted immunity in this case where Applicant shot an unarmed girl. He further testified that putting Applicant on the stand for a pretrial immunity hearing would have provided the solicitors an opportunity to preview his testimony in preparation of trial, and “what they missed the first time, they’ll get the second time.” Based on the foregoing, this Court finds counsel articulated a valid reason for not requesting a pretrial immunity hearing and thus was not deficient. Further, this Court agrees with counsel’s assessment that under these facts, it is not reasonably probable a court would have granted Applicant immunity. Applicant thus did not prove deficiency or prejudice, and this claim is denied.

Failed to object to the State’s closing argument for inflaming the jury

Applicant asserts counsel was ineffective for not objecting to the State’s closing argument which purportedly inflamed the jury. At the PCR hearing, trial counsel testified he did not see anything objectionable during closing argument. This Court agrees and finds counsel was not deficient. See, e.g., State v. Busse, 439 S.C. 104, 109, 886 S.E.2d 208, 211 (2023) (“A prosecutor arguing forcefully during closing argument that the jury should believe a particular witness is well within her proper role as a zealous advocate, so long as the argument is based on evidence admitted during trial.”); *id.* at 111, 886 S.E.2d at 212 (“[A] prosecutor is expected to comment on the credibility of the witnesses when making a closing argument. Far from improper, as previously

explained, doing so is one of the fundamental responsibilities of a lawyer.”). Applicant has not pointed to anything objectionable about the State’s closing argument and thus failed to prove deficiency or prejudice. See *Fortune v. State*, 428 S.C. 545, 550, 837 S.E.2d 37, 40 (2019) (“Improper comments do not automatically require reversal if they are not prejudicial to the defendant. On appeal, the appellate court will view the alleged impropriety of the solicitor’s argument in the context of the entire record. . . . The appellant has the burden of proving he did not receive a fair trial because of the alleged improper argument. *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.*” (emphasis added)); *Darden v. Wainwright*, 477 U.S. 168 (1986) (concluding that although the solicitor’s references to the capital defendant as “an animal” whose head he wished had been blown off with a shotgun were improper, they did not so infect the trial with unfairness as to violate due process). Thus, this claim is denied.

Failed to request charges on lesser-included offenses

Applicant contends counsel was ineffective for not requesting a charge on lesser-included offenses. Applicant did not prove this ground. At trial, trial counsel told the court he did NOT want a charge on voluntary manslaughter. (Tr. 581). At the PCR hearing, counsel credibly testified he would not have said that unless Applicant agreed with it. Further, this Court finds counsel articulated a very valid trial strategy in not requesting a voluntary manslaughter charge. Specifically, counsel explained you don’t want to split the baby or provide the jury with a compromise verdict when the objective is an acquittal. This Court finds counsel articulated a valid reason for not requesting the lesser-included offense and was not, therefore, deficient.

Failed to argue the State did not establish proximate cause

At the PCR hearing, Applicant asserted counsel was ineffective for not arguing the shot

was not the proximate cause of decedent's death. This allegation patently lacks merit. The proximate cause of death was clearly a gunshot wound, not a first-responder tapping on the head of the decedent. (Tr. 560). Counsel is not required to make an untenable argument when the evidence is clear. Applicant has not shown deficiency or prejudice, and this claim is denied.

Prosecutorial Misconduct

When alleging prosecutorial misconduct, an applicant bears the burden of proof. *Alabama v. Smith*, 490 U.S. 794 (1989). Although a PCR applicant may present a claim based on constitutional violations other than ineffective assistance of counsel, such constitutional violations may only be alleged if the issue could not have been raised at trial or on direct appeal. *Gibson v. State*, 329 S.C. 37, 41 496 S.E.2d 426, 428 (1998); *Simmons v. State*, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1975) (“[A]n application for post-conviction relief is not a substitute for an appeal.”); *Drayton v. Ivatt*, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993) (“Issues that could have been raised at trial or on direct appeal cannot be asserted in an application for post-conviction relief absent a claim of ineffective assistance of counsel.”); *but see Fortune v. State*, 428 S.C. 545, 559, 837 S.E.2d 37, 44 (2019) (addressing issue of prosecutorial misconduct that implicated due process and was not adequately raised as a claim of ineffective assistance of counsel).

Closing argument

This Court finds this allegation is more properly framed as an allegation of ineffective assistance of counsel. As addressed above, Applicant did not point to any objectionable language in the solicitor's closing argument and thus did not meet his burden. This claim is thus denied.

Juror issue

Applicant contends the prosecutors failed to disclose a connection with a juror. Applicant did not prove this ground. At the PCR hearing and consistent with the trial record, Assistant

Solicitor Legette testified that a prospective juror, Juror 129, had previously worked for the solicitor's office, but Juror 129 was excused prior to selection.⁶ (Tr. 85-86, 116). Other than that individual, both solicitors credibly testified they did not have any connection with anyone on the jury. Applicant did not present any credible evidence (other than his self-serving testimony) to refute the solicitors' credible testimony and thus did not prove this ground.

CONCLUSION

Based on the foregoing, the Court concludes Applicant has not established any constitutional violations warranting this Court granting relief. Thus, this application is denied and dismissed with prejudice.

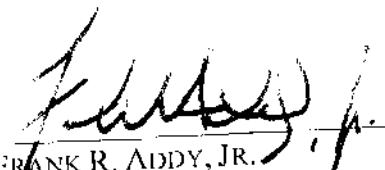
Should Applicant wish to secure appellate review, he must file and serve a notice of appeal within thirty days of receipt by counsel of written notice of entry of judgment. See Rule 203, SCACR. Applicant has the right to an appellate counsel's assistance in seeking review of the denial of PCR. *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991). If Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on applicant's behalf. Rule 71.1(g), SCRCP. Attention is directed to Rule 243, SCACR, for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

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

⁶ This was the only juror who stood when the court asked if anyone was related to, a close friend of, or had previously worked for an attorney involved in the case. (Tr. 85-86).

IT IS SO ORDERED THIS 4th day of June, 2025.


FRANK R. ADDY, JR.
Presiding Judge
Fourteenth Judicial Circuit

Greenwood, South Carolina

WITNESSES

Michael G. Thomas - Estill Police
Department

DOCKET NO. 2016GS2500177

The State of South Carolina

County of Hampton

COURT OF GENERAL SESSIONS

February Term 2017

THE STATE

vs.

Gregory Sanders

Indictment For

**Possession of Weapon During
Violent Crime**

SC Code: 16-23-490

CDR Code: 0549

VERDICT

TRUE BILL

Foreperson of Petit Jury

Date:

INDICT

987

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

Defendant

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

Defendant

Witness:

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

STATE OF SOUTH CAROLINA

INDICTMENT

COUNTY OF HAMPTON

2016GS2500177

At a Court of General Sessions, convened on February 6, 2017, the Grand Jurors of Hampton County present upon their oath:

Possession of Weapon During Violent Crime

That in Hampton County, South Carolina, on or about May 10, 2016, the Defendant, Gregory Sanders, did possess a firearm, visibly displayed what appeared to be a firearm, or visibly displayed a knife during the commission of a violent crime, to wit: Murder and Gregory Sanders was convicted of committing or attempting to commit a violent crime as defined in Section 16-1-60, to wit: Murder, all in violation of Section 16-23-490, et al. of the Codes of Law of South Carolina.

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



Solicitor

FILED

WITNESSES

Michael G. Thomas - Estill Police
Department

DOCKET NO. 2016GS2500178

The State of South Carolina

County of Hampton

COURT OF GENERAL SESSIONS

February Term 2017

THE STATE

vs.

Gregory Sanders

Indictment For

Murder

SC Code: 16-3-10

CDR Code: 0116

989

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

Defendant

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

Defendant

Witness:

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

ARREST WARRANT NUMBER

2016A2520200035

[Signature]
Foreperson of Grand Jury
Date: FEB 06 2017

VERDICT

TRUE BILL

Foreperson of Petit Jury
Date:

INDICT

STATE OF SOUTH CAROLINA)

INDICTMENT

COUNTY OF HAMPTON)

2016GS2500178

At a Court of General Sessions, convened on February 6, 2017, the Grand Jurors of Hampton County present upon their oath:

Murder

That in Hampton County, South Carolina, on or about May 10, 2016, the Defendant, Gregory Sanders, did, with malice aforethought, kill Tihara R. Harrington and Tihara R. Harrington did die as a proximate result of Gregory Sanders's actions, all in violation of Section 16-3-10, et al. of the Codes of Law of South Carolina.

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



Solicitor

JUNE 2017

5 years

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF

Hampton

STATE

VS. Gregory Sanders

AKA:

Race:

Sex:

Age:

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:

poss weapon during violent crime

In violation of §

16-23-490

of the S.C. Code of Laws, bearing CDR Code #

0549

☐ NON-VIOLENT

☐ VIOLENT

☐ SERIOUS

☐ MOST SERIOUS

☐ Mandatory GPS

☐ §17-25-45

The charge is:

☒ As indicted,

☐ Lesser Included Offense,

☐ Defendant Waives Presentment to Grand Jury.

(def.'s initials)

The plea is:

☐ Without Negotiations or Recommendation,

☐ Negotiated Sentence,

☐ Recommendation by the State.

ATTEST:

Solicitor

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 5 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 SCDoc.

☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP

Total: \$ plus 20% fee: \$

days/hours Public Service Employment

Payment Terms:

☐ Set by SCDPPPS

Obtain GED ☐

Attend Voc. Rehab. Or Job Corp.

Recipient:

May serve W/E beginning

Substance Abuse Counseling ☐

*Fine:

§14-1-206 (Assessments 107.5%) \$

§14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100.00

§14-1-211 (A)(2)(DUI Surcharge) \$100 \$

§56-5-2995 (DUI Assessment) \$12 \$

§56-1-286 (DUI Breath Test) \$25 \$

Proviso (Public Def/Probation) \$500 \$

§14-1-212 (Law Enforce. Funding) \$25 \$ 2500

§14-1-213 (Drug Court Surcharge) \$150 \$

§50-21-114 (BUI Breath Test Fee) \$50 \$

§56-5-2942(J) (Vehicle Assessment) \$40/ea \$

3% to County (if paid in installments) \$ 3.75

TOTAL \$ 128.75

Clerk of Court/Deputy Clerk

Court Reporter:

Melinda D. Nettles
Wanda Rowe

Presiding Judge

Judge Code:

Sentence Date

C. Muller
2142
5-9-18

30-Life

STATE OF SOUTH CAROLINA

COUNTY OF

Hampton

STATE

VS.

Gregory Sanders, Jr

AKA:

Race:

B

Sex:

M

Age:

DOB:

SS#:

Address:

City, State, Zip:

2000000000 EST 11, SC

DL#

SID#

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was TO: Murder

☒ CONVICTED OF or ☐ PLEADS

In violation of § 16-03-10 of the S.C. Code of Laws, bearing CDR Code # 0116

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45(CSC w/minor 1st or CSC w/minor 3rd)The charge is: ☒ As indicted, ☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury, (def.'s initials)The plea is: ☐ Without Negotiations or Recommendation,☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

SC Bar # 70550

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 life 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 SCDOC.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP

Total: \$ plus 20% fee: \$ days/hours Public Service Employment

Payment Terms:

☐ Set by SCDPPPSObtain GED ☐Attend Voc. Rehab. Or Job Corp.

Recipient:

May serve W/E beginning

Substance Abuse Counseling ☐

*Fine:

§14-1-206 (Assessments 107.5%) \$ §14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100.00§14-1-211 (A)(2)(DUI Surcharge) \$100 \$ §56-5-2995 (DUI Assessment) \$12 \$ §56-1-286 (DUI Breath Test) \$25 \$ Proviso (Public Def/Probation) \$500 \$ §14-1-212 (Law Enforce. Funding) \$25 \$ 25.00§14-1-213 (Drug Court Surcharge) \$150 \$ §50-21-114 (BUI Breath Test Fee) \$50 \$ §56-5-2942(J) (Vehicle Assessment) \$40/ea \$ 3% to County (if paid in installments) \$ 3.75TOTAL \$ 128.75

Clerk of Court/Deputy Clerk

Court Reporter:

Wanda Kabe
McLinda D. Wooten

SCCA/217 (04/2018)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2016-GS-25-00178

A/W#: 2016A 25202 000 35

Date of Offense: May 10, 2016

S.C. Code §: 16-03-10

CDR Code #: 0116

SENTENCE SHEET

Presiding Judge

Judge Code:

Sentence Date

2192
 5-9-18