

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Mar 24 2026
S.C. SUPREME COURT

Certiorari to Charleston County

Honorable Jocelyn J. Newman, Circuit Court Judge

MARK LORENZO BLAKE, JR.,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-000420

APPENDIX

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VOLUME II OF II

PAGES 501-745

INDEX

INDEX	i
MOTION TO DISMISS HEARING TRANSCRIPT DATED APRIL 3, 2017	1
TRIAL TRANSCRIPT DATED NOVEMBER 13-15, 2018	25
APPLICATION FOR POST-CONVICTION RELIEF	659
RETURN AND MOTION FOR MORE DEFINITE STATEMENT	666
AMENDED RETURN AND MOTION TO SIMPLIFY ISSUES	672
ORDER OF CONTINUANCE DATED MARCH 14, 2024	678
ORDER OF CONTINUANCE DATED SEPTEMBER 5, 2024	679
POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED DECEMBER 19, 2024 ..	680
ORDER OF DISMISSAL	733
INDICTMENT	743
SENTENCE SHEET	745

1 trying to maybe go around me. So I pull over, try to let this
2 car go.

3 So after I pull over, this is car pulls over. And we
4 like in the front, in the center, in the middle of Best Buy
5 parking lot. So the car pulls over behind me. It's real dark
6 that night. I recall it being real dark within that parking
7 lot. So after the car pulls behind me, I'm looking in the
8 rearview mirror. So I'm thinking like maybe this is the girl,
9 maybe this is her. So we had a standstill at this point. I'm
10 like, I am not ready to go out of the car. Let her call me.
11 So we are parked at this time now. I'm feeling it ain't right.
12 So I call her number, and she don't answer. So I'm like
13 looking in the rearview mirror. I'm like, that's crazy. So I
14 call her back again. And she didn't answer again for the
15 second time.

16 So now I'm just looking in my rear view mirror and
17 nobody is getting out of the car, nothing. We both just
18 literally standing right there. So I pulled up maybe, like,
19 two feet, stopped. And then this car behind me did the same
20 exact thing. So after that, I just -- I said, something ain't
21 right. So I just sped out of the parking lot. I sped out of
22 the parking lot doing maybe, like, roughly 45, 50. And I made
23 my way on Dupont Road. Once I made my way on Dupont Road going
24 up towards Savannah Highway, I was probably hitting up to maybe
25 about 65. And at that point, I think I had shook the vehicle

1 that was behind me. And at that point, I made my way up by
2 Savannah Highway and Dupont Road.

3 So amongst me making my way up towards the corner, the
4 light was yellow, so I turned right. And I had the
5 right-of-way. So at this point, I'm by the Honda dealership on
6 Savannah Highway. And the light was red. And it then turned
7 green and there were a couple of cars in the middle. So I was
8 in my left lane and I crossed over to my right lane and then I
9 crossed back over to my left lane. So amongst all of that, I'm
10 calling this female again. And this female is not answering.
11 So now I mean, I'm just getting some type of funny feeling once
12 again. So I'm like, you know what, I'm just going back home.

13 Amongst me making my way passed the McDonald's and the
14 Motel 6 on Savannah Highway and I'm entering the ramp, I get
15 maybe halfway or maybe a good bit up the ramp. And all of a
16 sudden, my car just cuts off. My car cuts off and the wheel
17 locks left. So at this point, it's drifting over left and I'm
18 trying to straighten the wheel up so I avoid a bad accident.
19 So the car ended up crashing. And once the car crashed, I
20 looked around in the car. And all of a sudden, I looked up in
21 the rearview mirror and I see this other car coming up full
22 speed ahead behind me. And I'm thinking like, darn, this car
23 ain't stopping, seem like it's just sailing. So only option is
24 I jar the door. And I remember leaving my phone in the car.
25 And at this point, I had a firearm on me, of course. And it

1 was tucked on my side, on my right side. As I remember, it
2 wasn't showing or nothing because my shirt was over and I had a
3 jacket on.

4 And I jumped over the railing. And once I jumped over
5 the railing, I'm like going down a ramp, adjacent ramp. So my
6 momentum is going forward. I didn't even intended to go all
7 the way down. My momentum is going forward at this point and
8 I'm underneath a bridge, I-526 bridge at this point. And next
9 thing you know, I hear somebody saying, Stop. So I look back.
10 I try to look back and peer over my shoulder, but it's
11 pitch-black dark. And I see a person in all dark-colored
12 clothing. So I don't know if this is the same person that was
13 behind me or this is a different person. I don't know who this
14 person is. I'm just hearing this person saying, Stop, stop.
15 I can't identify this person.

16 So I'm trying to running at the same time going down
17 this ramp. And there's all type of debris. So I'm more
18 precaution for my safety as far as making sure I don't get a
19 sprained ankle trying to get down this ramp. That was my main
20 focus and concern at the time. And I got all the way down the
21 ramp. And I heard this person saying -- I believe I heard him
22 saying, Stop, again. So now I'm looking back. And he's like
23 maybe, give or take, maybe 15 feet away, 15 or 20 feet in
24 between away from me. So I'm running.

25 And this is the crazy thing. It's a Saturday night.

1 And I'm familiar with West Ashley area. Okay? Now, we are in
2 the middle of Sam Rittenburg Boulevard and Savannah Highway.
3 At this particular point, ain't no cars coming down nowhere.
4 It's just pitch-black dark. There's nothing illuminating the
5 roads or nothing. As I'm running, I see a Comfort Inn Suites
6 that I'm approaching. And the area that the Comfort Inn
7 Suites, the parking lot area is lit. So my concern is running
8 to safety from whoever this is pursuing me.

9 So after I get up by the Comfort Inn Suites and I'm
10 crossing the street that goes up to the rear of Comfort Inn
11 Suites, after that, I make it to the sidewalk. And after I
12 make it to the sidewalk, I hear shots ringing. I hear a few
13 shots ringing. And after a few shots rung from the back, I
14 think -- can I demonstrate, Judge?

15 THE COURT: Yes.

16 THE WITNESS: So I'm running. Every motion I do at
17 this point is simultaneously. So as I'm running, I hear the
18 shots. I'm ducking. And at the same time, I'm grabbing for my
19 weapon. And then next thing I know, one of the shots hit me in
20 my right leg. So after the shot hit me in my right leg and
21 I'm on my left leg, okay, and I come down on my right leg, and
22 after I come down on my right leg, my leg gives out and
23 buckles. After it buckles, my momentum is sliding me towards
24 here.

25 So I got a gun in my hand. Coming down on my right

1 leg, my leg buckles, because I've been shot, of course. I
2 think I broke a bone. And after that, it swing me. One only
3 thing I could do at this point was blind fire to get this
4 person off me. So I blind fire. Boom, boom, boom. I remember
5 that. And after that, my leg still was locked. And after it
6 was locked, I did a 360 and fell, fell like this. (Witness
7 indicates.) Okay?

8 When I fell like that, the gun was out. So at this
9 point, there's no more shots going off. So I'm on the ground,
10 gun right there. I grabbed the gun. So I'm thinking the
11 shooter already fleeing. So at this point, no longer shots
12 going off. I don't hear nothing. So I tried to get up on my
13 knees. Tried to get on my right leg. And as I'm trying to get
14 on my right leg, I can remember it is snapping and cracking.
15 So I fall again. Now I'm face down again.

16 So I'm like, man, this is crazy. So after that, I get
17 up, I try to get on my left knee. And at this point, I try to
18 get up and balance myself on my left leg. And I'm putting all
19 my body pressure on my left leg. Okay? Now I'm trying to get
20 up. I get up half way, and then I come down again, and my leg
21 gave out on me and I hear crack noise again.

22 So at this point, I'm still laying on my stomach. So
23 now, I'm like, well, look, I'm going to try to get up a
24 different way. So I roll over on my back. And once I roll
25 over on my back, I try sitting up. And I didn't even sit up

1 all the way. I'm sitting up halfway. I see a person standing
2 in the middle of Sam Rittenburg Boulevard, gun in hand locked
3 on me, fires a weapon. It hit me in my left arm.

4 The momentum was so impactive, it knocked me down at
5 this point. So I'm knocked down. So I'm just laying there.
6 So I'm thinking to myself, if I get up again, next shot is
7 going to be a fatal shot; I'm going to be dead. So at this
8 point, I just start blind firing to get this person off me.

9 So I'm out of bullets after I blind fire. There's no
10 more shots going off. And something told me to take a chance
11 and look again. So I look up. And when I look up like this,
12 I'm on my right arm. And my left arm, there's no feeling at
13 all. It's like I had a manikin arm on me at this point,
14 because of the nerve damage. I didn't have no feeling in my
15 left arm. So I look up. And I see a person in all dark
16 clothing the middle of Sam Rittenburg Boulevard. And now they
17 are like in a crouched position. And then I see him fall down
18 to the ground like this. So I'm looking him.

19 And then I see cars coming and they are illuminating.
20 Their lights are illuminating the road. And all I remember
21 seeing that first glance is just a bunch of shells hanging
22 around this person. So I'm still looking up. Cars coming
23 towards me. And I'm breathing hard. And I see my vision was
24 kicking in. And this looked like a police officer. So I lay
25 back down, trying to get myself together. And next thing you

1 know, I hear another shot. So I jump up again. So I come to
2 the conclusion -- I came back to the conclusion that I don't
3 have no more rounds at this point. So I'm like, oh, man, I got
4 to try to get to safety. This person will finish me off. I
5 have no more rounds.

6 So I try getting up. I roll over on my stomach again.
7 And after that, I tried getting up again, pushing up. And I
8 try getting on my left leg again. And after that, I lifted up
9 and I came down again and fell again. And I was face down.
10 And after I was face down, only thing I could recall after that
11 was hearing a woman's voice in the background. And I was just
12 happy to hear that voice.

13 And next thing you know, moments later, I saw a
14 flashlight hovering over me. So this person comes up and he
15 checks my pulse. And I'm breathing hard. So I tell him, I
16 said, hey, whoever this is, you know, I've been shot and I
17 don't know whoever that is still out there or not, you know,
18 but I've been shot. And then all I can recall, that officer
19 saying after that was -- the exact accusation as I can
20 remember, he said, Shut up, Nigger, before I let you bleed out
21 or die.

22 So after that, I thought my life was over. You know,
23 I thought whoever this person was, had it been an officer, he
24 really was going to let me bleed out and die that night. So
25 after that, luckily some more officers came around and put me

1 in handcuffs. And then EMS came. I heard the EMS. And they
2 took me in and asked me a couple of questions. And then I just
3 answered a couple of questions to try to keep me conscious.

4 I don't know if y'all have ever been shot before, but
5 if you've ever been shot before, the pain is just so extreme
6 that you just want to close your eyes. But they just try to
7 keep you up. So that's what they did for a little while. And
8 after that, that's the only thing I can recall.

9 And after maybe, like, two days later, I woke up from
10 surgery. And I saw two detectives sitting across the from me.
11 And I don't know how -- I don't think I had handcuffs on,
12 because I just got out of surgery. And I went back to sleep.
13 And then I woke back up. And after I woke back up, I think
14 there were some detention center officers in the room next to
15 me.

16 And only thing I recall next is, I think maybe it was
17 Agent Ryan Kelly tried to interview me about the incident. And
18 at that point in time, I was on heavy medication. So I wasn't
19 willing to give a good statement of what happened. And,
20 therefore, I declined to give any information regarding the
21 incident without my lawyer being present at that time. So
22 that's the only thing -- that's all I remember from that night.

23 My intentions that night were definitely not to --
24 definitely not looking for trouble. It's a rental car I was
25 in. One of my best friends, she rented a car for me. I was

1 trying to pursue a job that I ended up landing at a dealership
2 on Ashley Phosphate Road at the time. And my intentions that
3 night was just to rendezvous with this female, have a couple of
4 drinks. But I did not step out of my house that night to get
5 involved in this big act of violence that got me right here
6 right now. That's my testimony.

7 THE COURT: Cross.

8 CROSS-EXAMINATION

9 BY MS. LINDER:

10 Q. All right. Mr. Blake, I want to start by kind of
11 going through and making sure that I understand, make sure I am
12 not misunderstanding anything that you just testified to.
13 Okay?

14 A. Okay.

15 Q. That's how I want to kind of start going through this.

16 A. Okay. That's cool.

17 Q. So you're leaving your apartment, about to get into
18 the vehicle, right?

19 A. Yes, after I step out of my apartment.

20 Q. All right. So when you are getting into that
21 vehicle -- your friend rented it for you?

22 A. That's correct.

23 Q. And you didn't rent it because why?

24 A. At that time, I don't really -- I can't remember the
25 reason. But what it was, I think I was going through a whole a

1 lot around that time. So she offered to provide me with a
2 rental car, you know. So I just took up her offer. And that's
3 just what it was, as a friend.

4 Q. So you are going to meet a female who you had met the
5 day before, right?

6 A. Yeah, it was the day before, that Friday.

7 Q. And she worked at that Wells Fargo on Sam Rittenburg
8 by the Best Buy?

9 A. Yeah, correct, she did at that time.

10 Q. What's her name?

11 A. I just knew her first name. Her first name was
12 Shundra (ph). I forgot her last name.

13 Q. Do you know how that's spelled?

14 A. Shundra, I would have to say S-h-u-n-d-r-a maybe.

15 Q. You don't know her last name?

16 A. No, I don't know her last name. I didn't get to know
17 her that good to know her last name. When I'm meeting women,
18 I'm trying to keep up with the first name.

19 Q. Do you know about how old she was?

20 A. I was 26. She seemed older. She seemed older. She
21 seemed like maybe she, like, was a couple of years older than
22 me, maybe like 28.

23 Q. And she worked at that Wells Fargo? What did she do
24 at that Wells Fargo?

25 A. When I met her, she was assisting me on getting some

1 financial documents. So I guess she was like, you know, when
2 you go into a bank, they assist you, and then you've got to sit
3 in the cubicle.

4 Q. I'm sorry. Go ahead and finish.

5 A. Yeah, I don't really know those people, I don't know
6 if they call them bankers. I'm not familiar with the job
7 title.

8 Q. I thought you just testified that you met her on
9 Friday night at a bar, and you were going to meet up with her
10 Saturday night at a bar?

11 A. No, I never met up with her at the bar. I initially
12 met her Friday before the incident. So we was trying to
13 rendezvous Saturday. That's when she was supposed to be, I
14 guess, available.

15 Q. Okay. So what area of town did she live in?

16 A. I believe it was like either Summerville or Goose
17 Creek. It was one of those areas.

18 Q. And did she have any kids or anything?

19 A. You are talking like grandkids or just kids in
20 general?

21 Q. Did she have children?

22 A. I think she said she had one child at the time.

23 Q. You said you didn't remember her last name. Do you
24 remember anything about social media, you know, her Instagram
25 account or Facebook account or anything? How did you all first

1 get into that?

2 A. How did we get into --

3 Q. Were you friends on Facebook or anything?

4 A. No. At the time, I didn't have a Facebook. And we
5 didn't have any -- we didn't exchange no Facebook or social
6 media. I don't recall us exchanging any -- I think I had a
7 Twitter or something like that. But we didn't exchange through
8 social media. We exchanged through numbers, phone numbers.

9 Q. And so the plan on Saturday was that you were going to
10 go meet her at the bar?

11 A. Correct.

12 Q. What time were you supposed to meet her?

13 A. I think she called me around 10-ish maybe. And she
14 told me -- as a matter of fact, let me rephrase that. She
15 never called me. She texted me. She texted me that she was on
16 her way and she was not too far from King Street Grill.

17 Q. And who picked that spot?

18 A. I think we both decided on it, because, I mean, I
19 definitely like that spot. That was one of my spots.

20 Q. She was coming from Summerville, though, right?

21 A. Yeah, she was coming from Summerville, around that
22 area. So she agreed to come all the way to where I was at.

23 Q. All right. So you are driving this rental car. And
24 you are not an authorized driver on the rental car, right?

25 A. See, at that time, I was unaware, I was uninformed

1 that I wasn't an unauthorized driver of this rental car.

2 Q. I'm going to show you State's 129. It's already been
3 admitted into evidence. If you can't see it because of the
4 glare, let me know. And you can look at it closer up. Okay.
5 Can you read this line right here?

6 A. States: No other drivers permitted.

7 Q. Okay. And you already said you weren't the one who
8 rented the car?

9 A. That's correct.

10 Q. So you weren't allowed to be legally driving the car,
11 right?

12 A. Yeah, we agreed.

13 Q. So you weren't allowed to be legally driving the car?
14 According to that legal contract, you were not allowed to
15 legally be driving that car, right?

16 A. Well, first of all, I never read the contract, so I
17 was still uninformed. When we came together, as far as the
18 rental car situation, she never -- it was in between us, me
19 being misinformed and uninformed, so I definitely did not read
20 the contract.

21 Q. All right. Did you have a driver's license at the
22 time or was it suspended?

23 A. Did I have a driver's license? I did have a driver's
24 license.

25 Q. Suspended?

1 A. No, it wasn't suspended, not to my recollection it
2 wasn't.

3 Q. So --

4 A. As a matter of fact, it couldn't have been suspended,
5 because I'm working at a dealership. And, I mean, they run all
6 that stuff. So I couldn't have got possibly hired as a
7 salesman if I'm operating vehicles. So, to my knowledge, my
8 license was not suspended at that point in time.

9 THE COURT: We are going to stop soon to accommodate
10 that juror. So let me know when we get to a --

11 MS. LINDER: Judge, if you would like, I'm happy to
12 stop now, but I think this is going to take awhile with him.

13 THE COURT: Okay. All right. Give me a minute. All
14 right. Ladies and gentlemen, I want you to be back at 3:15 in
15 the jury room. I'm not sure if we will be able to start right
16 then or not. And I'm going to try to get all of the evidence
17 in today. Hopefully, we can do that.

18 I told you yesterday there may be some extended
19 breaks, things that come up even beyond that day that I did not
20 know about. So I have to break now and ask you to be back at
21 3:15 in the jury room. Don't discuss the case.

22 And, Mr. Brown, will you stay so I can talk to you a
23 second. All right. Thank you.

24 (Whereupon, the jury leaves open court at 12:45 p.m.)

25 THE COURT: If there's any way you can reschedule any

1 of this, like the lab work or whatever is not essential for
2 your health, would you please try to do that?

3 JUROR 35: Yeah, I can try, but it's never been done
4 before.

5 THE COURT: I understand.

6 JUROR 35: Yeah, let me try. I could try. But I want
7 to -- I'm going to need those injections this week and ought to
8 be finished around 5. And they are so busy. You know, I just
9 never tried to interrupt the schedule.

10 THE COURT: All right. Well, if you could, tell the
11 person that you are on a jury. Don't tell them what kind of
12 case, and the judge asked if you could please --

13 JUROR 35: I got you.

14 THE COURT: They don't care. That might make it
15 worse, but I am not talking about any person or hospital in
16 particular, but I understand. They are very busy.

17 JUROR 35: Yeah.

18 THE COURT: Just see what you can do. Try to expedite
19 it, if you can. If you can reschedule some of it, whatever you
20 can do to get back here as quick as you can.

21 And you got his phone number?

22 JUROR 35: I will see if I can try for tomorrow. I
23 can see if they can reschedule for tomorrow.

24 THE COURT: Can you do that now?

25 JUROR 35: I will try.

1 THE COURT: Can you call them now?

2 JUROR 35: Yeah.

3 THE COURT: We will just wait on you then. Tell the
4 rest of the jurors -- have they left?

5 THE BAILIFF: Not yet.

6 THE COURT: Tell them to stay in the jury room. Take
7 him somewhere where he can call in quiet. We will be at ease
8 until we find out.

9 (Whereupon, a recess transpired.)

10 THE COURT: I think he got it set up for tomorrow.
11 He's rearranged it for tomorrow. And I told the jury -- they
12 are trying to call jurors now to tell them to be back at 2:15.
13 So we are in recess until 2:15. Thank you.

14 (Court's Exh. 6, Jury note, was marked for
15 identification.)

16 (Whereupon, a recess transpired.)

17 THE COURT: Bring the jury, please.

18 (Whereupon, the jury returns to open court at 2:17
19 p.m.)

20 THE COURT: I appreciate everybody responding to our
21 change in plans.

22 You may continue.

23 MS. LINDER: Thank you, Your Honor. May it please the
24 Court.

25 BY MS. LINDER:

1 Q. All right. Mr. Blake, I believe where we left off was
2 you driving this rental car when you didn't have permission to
3 drive it, right? You didn't have permission, according to the
4 contract, to drive it?

5 A. Document, yeah, that's what it states, I wasn't an
6 authorized driver.

7 Q. And your license was suspended, right?

8 A. I mean, I just don't recall my license being
9 suspended. I just had picked up a job the day before working
10 at a dealership that required me to operate vehicles. And they
11 ran all of that information. And, therefore, it wasn't
12 suspended. I never had a driving under suspension ever in my
13 life according to this incident. So I never was fully aware at
14 all that my license was subpoenaed. So this is new to me.

15 (State's Exh. 170, Mark Blake's driving record, was
16 marked for identification.)

17 BY MS. LINDER:

18 Q. I'm going to show you what's been that marked State's
19 Exhibit 170. Do you recognize that?

20 A. Yes. It's a photo printout of my license,
21 apparently.

22 Q. Okay.

23 A. My driving record, I'm sorry, my driving record.

24 Q. And can you -- on the first page of the driving
25 record, can you read what I highlighted up there, what it said

1 about whether your license was suspended or not?

2 A. Yes, it does say suspended.

3 Q. It says suspended?

4 A. It does.

5 Q. And I think you just testified that you never had your
6 driver's license suspended for anything?

7 A. Never.

8 Q. Okay. So I would like you to look at the next page.
9 I would like you to read the highlighted part and what that
10 says.

11 A. Okay. It says, S-U-S-B. I'm guessing that's the
12 abbreviation for suspension, driving under the influence.

13 Q. So is it your testimony that your license was not
14 suspended when you got convicted for a DUI?

15 A. Well, based on I never got sanctioned for a DUS, I
16 didn't have indication my license was suspended. I caught that
17 charge we're referring to, it was back maybe 2012, and it was a
18 magistrate by the name of Bonnie Koontz. And they wanted --
19 they was trying to suspend my license. And I stipulated to
20 her, and I guess it was like a prosecutor within her office in
21 the magistrate, I said, I couldn't have my license suspended at
22 this point because I need my licenses. And they was like, we
23 need you to plead guilty to this. And I said, I am not
24 pleading guilty to this, I'm taking it to trial. And at this
25 point, we came to an agreement that they would -- if I pled

1 guilty on it, then they would drop it down as a refusal to
2 blow. And, therefore, I would just have to be required to pay
3 the ticket, which I thought was unfair because I already had
4 bonded out on that and then they want me to pay an extra
5 thousand dollars.

6 So I told the lady, I was like, if I pay this extra
7 thousand dollars, then won't my license be suspended? And she
8 was like, no. So she was like, well, what we are going to do
9 is, we are going to have it at your discretion, whenever you
10 can, sign up for a class. She never informed me whatsoever
11 whether it was mandatory at the time or not. So at this point,
12 I'm still thinking my license is good, because they gave me
13 discretion issue to where I can sign up to this class to get
14 this thing all cleared up. And that was part of the
15 stipulation and agreement. But that's what I get for not doing
16 a follow-up on it and trusting in my, I guess, higher public
17 officials, as you say.

18 THE COURT: Hold on. Ladies and gentlemen, I need to
19 give you a limiting instruction. I told you earlier that there
20 was evidence that had been admitted related to other wrongs or
21 acts alleged to have been done by Mr. Blake in operating a
22 vehicle. At this point, I need to give you a limiting
23 instruction, which, again, means that the evidence that you
24 just heard was admitted for a limited purpose. And if you use
25 that evidence for any purpose, you can only use it within the

1 limited purpose of which it's submitted.

2 I charge you, ladies and gentlemen, that the evidence
3 of other crimes, wrongs or acts, is not admitted to prove the
4 character of an accused in order to show acts in conformity
5 with that character. In other words, the fact that someone may
6 have been involved in a prior bad act cannot be used to prove
7 that he had the character to commit another bad act. This
8 evidence was admitted for a limited purpose. And if you
9 conclude it to be true, you can only use it for the limited
10 purposes that the rules of evidence allow.

11 It may only be used, if at all, in assessing the
12 following issues, I told you earlier, you could assess that
13 other evidence related to motive or intent. And I need to add,
14 you could evaluate this, if you conclude it to be true, on the
15 issue of the credibility of the witness, and for no other
16 purpose. Evidence of alleged bad driving is not to be used for
17 any other purpose.

18 You may continue.

19 MS. LINDER: Thank you, Your Honor.

20 BY MS. LINDER:

21 Q. Isn't it true then that on June 27, 2012, is when you
22 pled guilty to the DUI in magistrate court; right?

23 A. That's incorrect. I told you, me, the judge and I
24 think it was like a prosecutor that we came to an agreement
25 that, verbal agreement, that they would not suspend my license

1 and they would drop the DUS down to a refusal to blow. And,
2 therefore, I could keep my license at the time. I would just
3 have to go to class and pay a thousand dollar fine, which I
4 already paid a fine prior to that. So I really thought the
5 penalty was really stiff.

6 Q. So, Mr. Blake, you are not disputing that you pleaded
7 guilty to a driving offense. You are saying it was -- you were
8 pleading guilty to a refusal to blow as opposed to a DUI?

9 A. That's correct. And that's how it's supposed to be in
10 the record.

11 Q. Okay. But you entered a guilty plea that day, isn't
12 that true?

13 A. I did.

14 Q. And that guilty plea then ended up suspending your
15 license, as you read off of the driving record?

16 A. Okay. I was very uninformed of that, because I never
17 caught a charge for DUS.

18 Q. All right. So I want to take you back. You were
19 talking about when you were driving that rental car you weren't
20 supposed to and driving at all were you weren't supposed to --

21 A. I never said nothing about I wasn't supposed to --

22 Q. You pulled into the Citadel Mall parking lot. I want
23 to make sure. You said when you were testifying that you
24 pulled through there, but you said King Street Grill and Planet
25 Fitness was open, correct?

1 A. That's correct, approximately around, like, 10,
2 10-ish.

3 Q. Would it surprise you to know that Planet Fitness
4 didn't open until 2015?

5 A. 2015? What Planet Fitness are you talking about?

6 Q. The Planet Fitness at the Citadel Mall opened in 2015.

7 A. Planet Fitness in Citadel Mall did not open in 2015.
8 I've been actually inside the Planet Fitness. I mean, I go to
9 the mall every day just for leisure time when I don't have
10 nothing to do. So that's incorrect. You got to show me
11 documented proof on that. I mean, I know a few people that had
12 memberships at Planet Fitness. I used to go to King Street
13 Grill almost every week to get lunch. I mean, show me some
14 document on that.

15 Q. All right. So when you left the mall, you said that
16 you stopped at that stop sign, and you got a text. And this
17 girl Shundra, right -- Shundra or Shaundra?

18 A. I believe it was pronounced Shundra, Shundra.

19 Q. She worked at the Wells Fargo and helped you with all
20 your financial documents the day before?

21 A. That's correct.

22 Q. And she texted you saying that, you know, she was
23 going to go to the Wells Fargo, even though it was 10:30 at
24 night, because she was going to get money out, right?

25 A. That's what she, yeah, stipulated in a text.

1 Q. So then you ended up leaving the mall parking lot.
2 And you never went in King Street Grill? You left the mall
3 parking lot?

4 A. I left the mall parking lot and never pulled up to
5 King Street Grill.

6 Q. And then you said, I believe, and correct me if I'm
7 wrong, I believe on your testimony you said that you were
8 stopped at the red light at Orleans Road and Sam Rittenburg; is
9 that right?

10 A. That's correct.

11 Q. And talk to me about that, about the lighting at that
12 corner. What's around that corner? If you are sitting there
13 on Orleans Road and you got the stop light at Sam Rittenburg,
14 what is directly to your right? Isn't that Harrell Square?
15 Isn't there like a Panera and stuff in there?

16 A. Yeah, there's another shopping center at that light,
17 yeah, there is.

18 Q. And all those lights were on, right?

19 A. I can't say, because I was not paying attention. I
20 was at the light and looking at my phone. So I cannot say. I
21 don't know.

22 Q. Who was behind you at that stop light?

23 A. I don't know. I just know it was a car at that point.
24 I didn't know who it was at the stop light when I was stopped.
25 There was a car behind me.

1 Q. Oh. I didn't -- I thought in your testimony you were
2 just stopped at that light, and then you didn't notice this car
3 until it made a left behind you into the Best Buy parking lot?
4 Is that not true now?

5 A. I mean, I know I was in traffic. So, obviously
6 there's cars behind me. I'm saying this particular car that
7 pulled up behind me, I didn't notice, you know what I'm saying,
8 car was following me at this point and riding me.

9 Q. All right. So when the light turned green, you went
10 straight. Is it your testimony that you used all the proper
11 signals when you turned left into Best Buy?

12 A. That's correct.

13 Q. And car made a left behind you; is that right?

14 A. That's correct.

15 Q. And describe that car to me.

16 A. The car? I can't really describe the car to you. It
17 looked like a new model car, to the best of my ability, the way
18 I could see it in my rearview. And the parking lot -- I recall
19 the parking lot being very dark. And I'm familiar with the
20 West Ashley area. Like, Sam Rittenburg Boulevard is just a
21 dark road, especially the closer you get to Savannah Highway.
22 Just always been like that. So when I pulled up in the parking
23 lot and this is car was behind me, I'm thinking -- this is a
24 conjecture -- this is a new model vehicle that's behind me. I
25 couldn't really tell you what type of vehicle.

1 Q. Was it light or dark?

2 A. The car?

3 Q. Yes.

4 A. Like I said, it was a dark setting. So I don't know
5 whether this car was blue, black. I don't know. I can't -- I
6 couldn't tell you.

7 Q. With your brake lights illuminated and with your turn
8 signal illuminated, when you were turning in, you couldn't see
9 that along with the headlights of that car behind you?

10 A. I wasn't looking in the rearview mirror the whole
11 time. I was looking back and forth and back and forth. And I
12 could not identify -- I couldn't even see a figure when I
13 was -- when I was looking through. So, I mean, I couldn't see.

14 Q. All right. So you are saying that this newer model
15 vehicle, unsure what color, was riding your bumper as you were
16 going through that Best Buy parking lot; is that right?

17 A. That's correct.

18 Q. And you said that you pulled over because you thought
19 that dark -- or, I'm sorry, you thought that that vehicle,
20 unknown color, was going to try to go around you?

21 A. Yeah, because usually it's just typical driving, in my
22 experience. Even when somebody is trying to ride you, I mean,
23 nine out of ten, either -- they are trying to, you know, go
24 around you. So that's just what I thought it was.

25 Q. The Best Buy was closed, though, right?

1 A. Yeah, at that point, Best Buy was closed.

2 Q. I don't remember if Michael's was there at that point.
3 Was that Michael's closed too? All the businesses there were
4 closed for people to be walking in and out of them?

5 A. Talking about Michael's? Talking about the store
6 exactly across the street from the mall?

7 Q. Michael's is attached to Best Buy. Am I right?

8 A. See, I don't know. I thought that was kind of
9 like a -- you are talking like the store, if I'm facing -- you
10 are talking about a little smaller store on the side of Best
11 Buy? I know it's a bookstore. There was a bookstore and then
12 there was a Best Buy and a smaller store.

13 Q. You know, Mr. Blake, my years are off. I believe you
14 are right. There's a bookstore, Books-A-Million, before that
15 that closed. People stopped reading books. And before that
16 happened, you know, that was next-door to that. So were people
17 walking out of Books-A-Million or walking in and out of the
18 Best Buy at 10:30⁸ night, or the business was closed?

19 A. I would to say that -- and, I mean, you know the
20 answer. The business, clearly established it was closed. I
21 mean, it's ten o'clock.

22 Q. Okay. So is it your testimony that there are not
23 overhead lights within the parking lot of Best Buy?

24 A. To say that there's not?

25 Q. Yeah. Is that your testimony?

1 A. I am not saying that it's not. I'm saying it's poorly
2 lighted, from my recollection of the night of that incident. I
3 have very good eyes. And I just did not -- everything that
4 night was dark.

5 Q. All right. So this dark vehicle was behind you. And
6 you said you had a bad feeling; is that right?

7 A. Yeah. Well, it was initially I had a bad feeling,
8 before I jumped in the car. Then it came back on at this
9 point, yeah.

10 Q. When you had a bad feeling and there was this new
11 model who-knows-what-color car behind you in the Best Buy
12 parking lot, why didn't you call the police for help?

13 A. Well, to tell you the truth, it was happening so fast
14 that that wasn't on my mind for calling police for help at that
15 point. Maybe I'm thinking this person behind me has the wrong
16 person. Maybe they are mistaking me for somebody else's,
17 maybe. I don't know. But that didn't even come to mind of
18 calling the police. I just went with my first mind is trying
19 to ...

20 Q. So your testimony is that when you came to a complete
21 stop and this is newer model, unknown color in the Best Buy
22 parking lot with lights, but you are saying they weren't on or
23 however, you are saying nobody in the car behind you started to
24 get out?

25 A. Nobody. I mean, we was parked for a while. And it

1 was -- I couldn't see no other cars passing by. And me and
2 this other car behind me were, like, the only two cars in that
3 parking lot. And I was looking up periodically the whole time
4 between looking at my phone and looking at the rear view. And
5 nobody ever got out of the car.

6 Q. And is it your testimony then that you did not see the
7 police car was behind you in the Best Buy parking lot?

8 A. That's correct. I did not know that that was a police
9 car at that point in time that was behind me within that Best
10 Buy parking lot.

11 Q. And is it your testimony that you did not see blue
12 lights in that Best Buy parking lot?

13 A. It's my testimony that I absolutely did not see blue
14 lights when I was in that parking lot.

15 Q. Is it your testimony that you did not hear a siren
16 from a police car from right behind you in that Best Buy
17 parking lot?

18 A. Even though my radio was on, it was low, but I
19 definitely did not hear a siren.

20 Q. All right. So you then made the decision. I believe
21 you said you sped out of the lot. You approximated your speed
22 at 45, 50 miles per hour; is that right?

23 A. Yeah, that's about right.

24 Q. And you turned off your headlights?

25 A. I don't recall turning off my headlights.

1 Q. All right. So you didn't turn off your headlights and
2 you started speeding away from this new model, unknown color,
3 out of this business parking lot. And I believe it's your
4 testimony, you took Dupont towards Savannah. And you were
5 going about 65 miles per hour; is that right?

6 A. Yeah, that's about right.

7 Q. So for that stretch down Dupont all the way to
8 Savannah Highway, is it your testimony that you did not see
9 blue lights at all that whole time down Dupont Road?

10 A. I'm trying to tell you, from beginning all the way to
11 the end, I never seen blue lights activated.

12 Q. Okay. And so is it your testimony that you never
13 heard any sirens that entire way, all the way down Dupont from
14 when you sped away from this new model, unknown color car in a
15 business parking lot, with your suspended license and a rental
16 car you weren't supposed to drive, you did not hear sirens the
17 whole way down Dupont; is that right?

18 A. I have to say this again, all the way from the
19 beginning to the end, I never, ever heard sirens. I never -- I
20 was uninformed that my license was suspended. I was in between
21 misinformed and uninformed that I was not a listed driver of
22 the vehicle. Little small charges like that, I don't care
23 about. I mean, I will take my charge for that. I mean, I am
24 not going to run from nothing small like that.

25 Q. Okay. Again, like I said, Mr. Blake, I'm just trying

1 to make sure that the jury understands every single one of
2 these details what you are saying happened.

3 A. Okay.

4 Q. You said that once you got on Savannah Highway, you
5 said -- I think you said you thought you shook the vehicle
6 behind you; is that right? Is that what you testified to?

7 A. Yeah. As I was setting on Dupont and made that right
8 on Savannah Highway, and at this point, I did not see the same
9 particular looking vehicle in sight. So I automatically
10 thought that I shook this vehicle.

11 Q. What vehicles did you see on Savannah Highway?

12 A. I saw vehicles in front of me, which was traffic in
13 front. And it was some vehicles coming, like, further behind
14 down Savannah Highway. I think maybe that's behind Captain
15 D's. I think they were at the light.

16 Q. All right. I have to ask, though, if you just know it
17 was a newer model car and you don't know the color, how do you
18 know that you shook this vehicle?

19 A. Well --

20 Q. Or is that the feeling you had?

21 A. Well, I wasn't too sure really whether it was a newer
22 model car. I just assumed it was because, I guess maybe a
23 little bit of the body, maybe if it was. But how do I know I
24 was sure? Because, I mean, I didn't see this person on my tail
25 at that point when I got on Savannah Highway. So that's how I

1 thought I shook the car.

2 Q. So after you shook the car, I mean, wouldn't you turn
3 your headlights back on?

4 A. Well, once again, I don't recall ever my highlights
5 being on. Now, I am not saying that -- I am not going to
6 dispute whether my headlights were on or not. But, I mean, I
7 could have been going so fast behind the wheel to the point
8 that I knocked the headlights off. So, I mean, I can't say
9 that my headlights weren't off, but definitely it wasn't an
10 intentional act by myself.

11 Q. All right. So I believe the next thing you testified
12 about is after you shook that vehicle, and you are on Savannah
13 Highway, you are in the left lane and the right lane and the
14 left lane, and you said you tried to call that female, and she
15 didn't answer; is that right?

16 A. Yeah, for the third time, I called her and she did not
17 answer the phone again.

18 Q. And, again, I was taking as many notes as I could.
19 You said that you had a funny feeling about it, so you headed
20 home, is that right?

21 A. Yeah, I had a gut feeling as if, I don't know, like
22 I'm -- kind of like I'm-being-set-up type of feeling.

23 Q. All right. So when you had that funny feeling, why
24 didn't you call the police for help then?

25 A. Well, just like I said -- I probably have to get into

1 it. I'm from -- how I came up as a boy, I grew up in a
2 downtown area, stuff like that. And people of my, I guess, my
3 age level and stuff like that, and being in the neighborhood, I
4 mean, when trouble arises, I mean, we never, ever really looked
5 at it like our first option is calling a cop or nothing like
6 that. So I don't know, it grew on me as a teenager that's not
7 my personal initial thing is to call a cop. I didn't really
8 think it was that serious to call a cop.

9 If my car get stolen, I mean, I did call a cop when my
10 car got towed. I remember experiencing that situation, but
11 that just came to my mind at the time.

12 Q. Is that because, kind of as you said, as you grew up,
13 cops wouldn't really help you?

14 A. Yeah. And being in my youth, you know, you encounter
15 harassments from cops all the time. It's normal where I grew
16 up in. It's kind of like an urban culture environment, stuff
17 like that. So, like, you know, our viewpoints and stuff like
18 that just kind of little different on law enforcement.

19 Q. Okay. Do you remember in 2011, it was October of 2011
20 when City of Charleston Police Department contacted you? They
21 contacted you because they found your wallet. Do you remember
22 that? They contacted you because they found your wallet. It
23 had your license. It had a card in it and it had \$1,000 cash.
24 And they called you to return it. Do you remember that?

25 A. They called me to return it? You said they called me

1 to return it?

2 Q. They called the number for you.

3 A. Yeah.

4 Q. And then you ended up getting your wallet returned to
5 you from the City, do you remember that, 2011?

6 A. Yeah, I do remember. I do remember that incident.

7 Q. So the police did something good for you?

8 A. Actually, it was -- when I got down to the police
9 department, it was a guy that was in a laundromat. He pulled
10 up in a Mercedes-Benz. And I looked to the left of him and I'm
11 like, this guy is in a Mercedes-Benz, what are you doing in a
12 laundromat? Anyway, it was that same guy who turned my wallet
13 in to the police. And that's what the police department told
14 me anyways.

15 Q. I bet you were happy you got that money back and your
16 wallet, right?

17 A. Yeah, I have to say I was. I woke up to that call.
18 And my dad called me and told me something about my wallet
19 being missing, which I didn't even know at the time. And then
20 after that, I got in touch with the City of Charleston Police
21 Department. And they told me the situation. And I was on my
22 way to work at the time. And I actually got to work late. And
23 I got it. And I was thankful. And I told my employees and
24 stuff like that how grateful I was that all my stuff was in --
25 still in the same place.

1 Q. All right. So even though that happened less than a
2 year and a half before, you just didn't want to call the
3 police, no matter how you were feeling that night with
4 everything, right, because of how you grew up, what you've just
5 testified to?

6 A. Can you repeat that question, please?

7 Q. Because of how you grew up, which is what you've just
8 testified to, you didn't want to call the police that night,
9 even though you had a funny feeling, you had a bad feeling,
10 funny feeling, you used a bunch of different words to describe
11 for that night?

12 A. Well, it wasn't the fact that I didn't want to call
13 the police. It's just that didn't come to my mind. Just going
14 on, like, so fast. You know what I mean? Like, I was absent
15 minded in regards to that.

16 Q. All right. So then I believe you testified that you
17 had passed McDonald's and Motel 6 and you were starting to go
18 up the ramp. Am I right so far?

19 A. That's correct.

20 Q. You were going up the ramp, and the car cuts off. The
21 wheel locks left and you crash; is that right?

22 A. That's correct.

23 Q. How fast were you going up that ramp?

24 A. At that point, I broke my speed down. So I wasn't
25 going that far up the ramp -- I mean, that fast up the ramp. I

1 think it had to be maybe between 35, 40 miles per hour maybe.

2 Q. When you get a rental car, they usually don't rent old
3 cars to you, do they? They usually rent new cars to you,
4 right?

5 A. Depending on the rental company.

6 Q. The Elantra, the rental car you were driving that
7 night, that was a new car, right?

8 A. It was, yeah, a newer model car.

9 Q. And, in fact, the odometer when it was rented only had
10 600 miles on it at that point.

11 A. Yes.

12 Q. But the car just cut off on you? All of a sudden, it
13 made you crash? Is that what you are saying?

14 A. Mysteriously, I don't know what happened. I don't
15 know if I took off too fast. I mean, it was like a
16 four-cylinder. So I don't know if it a factory defect. I
17 don't know. I can't say. I'm not a car expert.

18 THE COURT: Folks, can we take a break? I've got
19 something that's come up. Ladies and gentlemen, please step
20 into your jury room, just in case.

21 (Whereupon, the jury leaves open court at 2:45 p.m.)

22 THE COURT: We'll be at ease for a few minutes.

23 (Whereupon, a recess transpired.)

24 THE COURT: I'm sorry. I had a personal matter.
25 Ready for the jury?

1 MS. LINDER: The State's ready.

2 MR. KING: Your Honor, I hate to interject. I know
3 he's on the stand and I can't discuss his testimony, but can I
4 discuss a legal issue with him?

5 THE COURT: Yes.

6 (Whereupon, a brief precess is taken.)

7 THE DEFENDANT: Your Honor, I just want to say that
8 regarding that whole -- me being on the stand and Ms. Linder
9 presenting documentation as far as my driving record, referring
10 to the DUI, I just want to move for a mistrial at this point.
11 I don't know how that even came into play.

12 And Brian Kelly from SLED's testimony regarding me
13 remaining silent, which was my absolute constitutional right to
14 do so, he was trying to, I guess, question me about the
15 incident that day at the hospital.

16 THE COURT: Well, you discussed that in your direct
17 testimony, about not talking to the police. And that witness's
18 testimony was a long time ago and there was no mistrial motion
19 at that point.

20 With regard to her asking you about your driving
21 record, I've given curative instructions. And the motion for
22 mistrial is denied.

23 THE DEFENDANT: I just can't recall the evidence being
24 admitted.

25 THE COURT: I can't hear you.

1 THE DEFENDANT: I never recall one time the evidence
2 being admitted of this evidence in this trial.

3 THE COURT: It was admitted when you went on the
4 stand. Have a seat up here. There was no objection to it
5 contemporaneously when it was offered. But aside from that,
6 I've given a curative instruction. The motion is denied.

7 Now get on the stand.

8 Bring the jury.

9 THE DEFENDANT: I would also like to preserve --

10 THE COURT: You don't talk to me while you are walking
11 away from me.

12 THE DEFENDANT: I would just like to preserve for the
13 record, Judge.

14 THE COURT: Everything is preserved for the record.

15 (Whereupon, the jury returns to open court at 3:15
16 p.m.)

17 THE COURT: You may continue.

18 MS. LINDER: Thank you, Your Honor.

19 BY MS. LINDER:

20 Q. So I think where we left off, we were talking about
21 when you went on the on-ramp. You said the car cuts off and
22 your wheel locks left; is that correct?

23 A. That's correct.

24 Q. And then you said at this point, as you had previously
25 testified, during Best Buy parking lot, you kept looking in

1 your rearview mirror; is that right?

2 A. That's correct.

3 Q. You are looking in your rearview mirror and saw a car
4 full speed behind you; is that right?

5 A. At what point in time is this?

6 Q. You said when you are on the on-ramp.

7 A. Oh, okay, at this point, yeah.

8 Q. Describe that vehicle for me.

9 A. The vehicle, I can't really describe. It was going so
10 fast. And that ramp was dark. So, I mean, I just saw the
11 headlights. And it was kind of like fast. So after I glanced
12 at it and saw it for a second coming real fast and it wasn't
13 stopping, slowing up. I took my eyes off my rearview mirror
14 and drove.

15 Q. And are you aware that Motel 6 is right there and they
16 have some lights, right?

17 A. Yeah.

18 Q. And this car that was coming full speed right behind
19 you, is this that same new model, unknown color car from
20 before, or is this a different car?

21 A. At this point, it's going fast. And I just glanced at
22 it. You know? So, I mean, I really can't say.

23 Q. All right. So I believe at that point your testimony
24 was that you left your phone and then you said, I believe, I
25 had a firearm on me, of course; is that right?

1 A. Yeah, I did say that.

2 Q. All right. And you are aware that you are not allowed
3 to have a firearm?

4 A. Well, based upon I never signed an act, I mean, I am
5 not fully aware, because I never signed my act saying I would
6 never, ever carry a firearm in the state of South Carolina.
7 But to answer your question --

8 Q. You don't have to sign something for you to not be
9 allowed to have a firearm. Do you understand that?

10 A. Not fully.

11 Q. So talking about this gun, what kind of gun was it?

12 A. It was a Glock.

13 Q. Where did you get the gun?

14 A. Well, I got the gun -- where did I get the gun?

15 Q. Yes.

16 A. I got the gun from -- I believe it was like a mutual
17 friend, mutual party, third-party person.

18 Q. A gun salesman?

19 A. Well, he wasn't a gun salesman. From my
20 understanding, he collected guns. And friend of mine had knew
21 him. I don't even remember the guy's name. I only seen him
22 one time, and that was to purchase, I believe, firearm from the
23 guy.

24 Q. When did you buy that gun?

25 A. I believe it was bought, like, beginning of that year,

1 if I'm not mistaken.

2 Q. How much did you pay for the gun?

3 A. I believe he sold it to me for maybe 4-, 450, around
4 that area.

5 Q. So are you disputing that you were not allowed to have
6 a gun?

7 A. You say am I disputing that?

8 Q. Yes.

9 A. I mean, if you say I wasn't allowed to have a gun, I
10 mean, okay.

11 Q. So you left your phone, which your phone could have
12 been used to call police, right?

13 A. You said if I left my phone, my phone could have done
14 what now?

15 Q. You left your phone in the car. Your phone could have
16 been used to call the police?

17 A. Could have been.

18 Q. But you already testified that's not what you do,
19 right?

20 A. I mean, yeah, I testified that's not usually what I
21 do, but at the same time, this situation was happening so fast,
22 my mind was racing. So my mind at that point was not on
23 calling a police officer, period.

24 Q. When that car came up real fast on you, did it hit
25 your car?

1 A. No, I don't believe it did.

2 Q. Did that car stop?

3 A. After -- I mean, I would have to say it never stopped.

4 At what point it stopped, I don't recall what point it stopped.

5 Q. So why did you grab your gun?

6 A. Why did I grab my gun?

7 Q. Why did you grab that gun you weren't supposed to
8 have?

9 A. Why did I grab? At what point?

10 Q. Why did you grab it when you were getting out of your
11 car?

12 A. Because -- I grabbed it because, obviously, I'm
13 already feeling some type of way about somebody suspected of
14 following me, so why wouldn't I bear arms to try to protect
15 myself.

16 Q. I thought you shook the person back on Savannah
17 Highway; wasn't that your testimony?

18 A. That's correct.

19 Q. And so you shook the person back on Savannah Highway,
20 so the issue, the threat was over. And then you yourself, in
21 your vehicle, wrecked that car, right, because it locked up on
22 you, right?

23 A. Well, I do take partial responsibility, but, I mean, I
24 am not fully, because me, myself, it's not like I ran into a
25 ramp intentionally. I mean, the car locked up. I tried to

1 secure my safety by turning the wheel so it wouldn't be that
2 bad of an accident.

3 Q. But you don't know if that -- but that car didn't hit
4 your car?

5 A. Which car are you talking about?

6 Q. This mysterious car that showed up on the on-ramp.

7 A. No, it did not.

8 Q. Where did it drive?

9 A. I don't recall ever hitting that go car.

10 Q. All right. Where was that car that showed up on the
11 on-ramp? Where were you and where exactly did it drive? At
12 what point -- where was that car on the on-ramp when you had
13 enough time and thought to grab a gun you weren't allowed to
14 have and get out of your car? Where was that other car that
15 you can't describe?

16 A. Linder, you got to understand, I'm running underneath
17 the bridge. It's pitch-black dark. I am not viewing -- it's
18 not like I'm running backwards looking at where the car was and
19 whether it hit it or not. I am not focused on that. I'm
20 focused on my safety. So I can't tell you and describe to you
21 exactly where -- what particular point where it was at. I'm
22 running underneath the bridge in pitch-black dark.

23 Q. All right. Mr. Blake, I thought earlier you said you
24 went up the ramp, the car cuts off, your wheel locks left,
25 crash. You're looking in your rearview mirror and you see

1 another car full speed behind coming at you. That's when you
2 left the phone, but you had a firearm on you, of course, the
3 one you weren't allowed to have. I'm asking you, at what point
4 and where was this other car that all of a sudden appeared when
5 you had the mindset to grab your gun from wherever it was in
6 the car and then get out? Was the car at that point behind
7 you, since your car already crashed? Had it already continued
8 up the on-ramp to 526? Where was this other car?

9 A. I mean, the car was coming -- of course, it was coming
10 behind me at a full rate of speed. When I jumped out of the
11 car, I suspect that the car that was behind me still was
12 coming. I didn't see at what point that it stopped.

13 Q. Okay. So you don't know if that car stopped?

14 A. I mean, as me knowing the incident as I do today,
15 obviously, the car stopped.

16 Q. So you left your phone, which could have been used for
17 many reasons. You thought you shook this new model, unknown
18 colored car from Best Buy. And then another car shows up that
19 you can't describe from your memory from that night. And you
20 grab the gun that you weren't allowed to have and decided to
21 take off running; is that right?

22 A. Yeah, correct.

23 Q. All right. So you jump the railing with this gun.
24 You said you put the gun on your right side; is that right?

25 A. That's correct.

1 Q. You got a holster?

2 A. I didn't have a holster.

3 Q. Where did you put the gun?

4 A. It was on the waistband, inbetween my boxer area and
5 my jeans.

6 Q. All right. So you put it in there and you start
7 running. I believe you testified, and correct me if I'm wrong,
8 you jump the railing, and your momentum was taking you forward
9 because it was down that hill.

10 A. Correct.

11 Q. Okay. At what point did you start hearing that
12 person, being, entities, whatever, yell, Stop. You said you
13 heard someone yell, Stop. Where were you?

14 A. At that point, we were underneath the I-526 underpass.
15 We were directly underneath it when I first heard a person
16 saying, Stop.

17 Q. Okay. So you are under the underpass. You are
18 hearing, Stop. Earlier when I asked you, you testified that
19 Motel 6 has got some lights, right?

20 A. I mean, yeah, Motel 6 got lights, of course.

21 Q. And I believe on your -- when you testified
22 previously, before I got the opportunity to come up here, you
23 testified that that Comfort Suites had a bunch of lights,
24 right?

25 A. Yeah. But you got to understand, like, the lights

1 that's within these hotels that you are discussing, they are
2 within that proximity. They are not like a bunch of lights
3 where it is lighting up a whole, you know, football-field type
4 of outside of the establishments. Those lights are within.

5 Q. All right. So you heard somebody else, Stop. You
6 said you -- I believe you testified that you looked back, but
7 you said it was pitch black, right?

8 A. It was pitch-black dark.

9 Q. So when you looked back, where did you look back?
10 Where were you looking back to? What area were you looking?

11 A. You said when I initially looked back?

12 Q. Yep?

13 A. When I initially looked back, when I heard the guy
14 saying, Stop, behind me, I looked back and I peered over my
15 right shoulder.

16 Q. Where are you looking? You are looking back toward
17 where you just left, where you were running from initially?

18 A. Yeah. When I looked back, I glanced, and then I kept
19 going.

20 Q. So you were looking back toward the on-ramp?

21 A. Yeah, I was.

22 Q. All right. And did you notice Officer Flaherty's blue
23 lights flashing on his car there?

24 A. At that point, I didn't. I didn't see any blue lights
25 at that point when we were underneath the bridge.

1 Q. Okay. So you said you looked back and you saw the
2 person had on dark clothing?

3 A. That's correct.

4 Q. And you testified with me and I think also previously
5 that you have good vision.

6 A. Yeah.

7 Q. So you have good vision. You look back. You can see
8 dark clothes, but you can't see blue lights from Flaherty's car
9 on the on-ramp, right?

10 A. Initially, no, I did not see blue lights.

11 Q. So you are running. You said there's a bunch of
12 debris when you go down the on-ramp, and you were trying not to
13 sprain your ankle. Is that what you were testifying to?

14 A. Yeah. As I was running, I heard the guy saying, Stop.
15 And I looked back, glanced. And I just saw a person in
16 all-dark clothing. And at that point, I felt the gravel uneven
17 on my way down. So I was like, man, I got to focus on what's
18 in front of me before I start tumbling down like a tumbleweed.

19 Q. Are you saying there's gravel underneath that area?

20 A. Yes, at that point in time there was.

21 Q. So after you made it through the grassy area, I
22 believe it was your testimony that you already made it through,
23 I guess, the gravel area you are now saying, you made it down
24 the ramp, the angled part. And then when you were -- you said,
25 and it was kind of crazy, because you said there were no cars.

1 There was nothing right there, like, where the on-ramp came
2 off?

3 A. There was no cars and nothing. The first time I ever
4 seen anything like that at that point in time on a Saturday.
5 Usually you have traffic back and forth coming off I-526 on
6 Savannah Highway, Sam Rittenburg. There was no cars in sight
7 at all. I thought it was crazy.

8 Q. No cars. All right. And you said at that point, you
9 heard, Stop, again, right?

10 A. I did hear, Stop.

11 Q. And you said you looked back?

12 A. Yeah.

13 Q. And with your good vision, you could tell that person
14 was 15 to 20 feet behind you?

15 A. Give or take, yeah. He was a good distance, yeah,
16 good distance behind me.

17 Q. And when you look back with your good vision, you
18 could tell this person was 15 to 20 feet behind you. At this
19 point, could you see Officer Flaherty's blue lights that had
20 been going on on the on-ramp for your whole run?

21 A. I seen -- when I glanced back, I think when I heard,
22 Stop, once again, I think at this point, I was like almost by
23 the Comfort Inn Suites. Like, I was right across the street.
24 And when I glanced back, I saw blue lights at this point, but I
25 was already by the Comfort Inn Suites.

1 Q. Okay. So you saw blue lights around the same time you
2 heard, Stop?

3 A. You said I heard blue lights --

4 Q. You saw blue lights --

5 A. Yeah.

6 Q. -- when you glanced back?

7 A. Uh-huh.

8 Q. And this was close to the same time that you heard,
9 Stop?

10 A. Yeah. After I -- I heard, Stop. And then after that,
11 I glanced back. And then as I glanced back, I saw, like, a
12 blue light illuminating. And I kept going. I mean, I don't
13 know whoever this guy is that's still chasing me.

14 Q. Okay. So you said -- you testified as you approached
15 the Comfort Inn Suites, that parking lot was well-lit, right?
16 The parking lot of Comfort Inn Suites was well-lit?

17 A. Yes, Comfort Inn Suites inside is well-lit.

18 Q. You said by -- I just want to make sure, because this
19 is where, you know, you are getting really, really specific
20 with everything. So I want to make sure I'm right here. You
21 said by the time you made it to the sidewalk, when you say
22 sidewalk, do you mean like those pictures we saw earlier where
23 that sidewalk starts, where I guess it's kind of Sam
24 Rittenburg, that part that curves at the Comfort Inn Suites, is
25 that what you mean when you say you made it to the sidewalk?

1 Is that the sidewalk you are talking about?

2 A. You got to give me a better --

3 Q. You betcha. I will show you a picture. I want to
4 make sure we are on the same page.

5 A. I want to make sure I'm answering the question
6 correctly.

7 Q. I appreciate that, Mr. Blake. Just give me a second.
8 All right. I'm going to show you State's 89. All right. So
9 this is the on-ramp. And you were running.

10 A. Hold on. Hold on. Where is the on-ramp? This is,
11 like, underneath the bridge right here.

12 Q. So you said you were running --

13 A. Okay. Go ahead.

14 Q. My question is, when you said you made it to the
15 sidewalk, is this the sidewalk you are talking about?

16 A. Yeah, down this side. Yeah, that's the sidewalk.

17 Q. All right. I just want to make sure.

18 A. I don't know how to erase that.

19 Q. All right. So it's your testimony that when you made
20 it to the sidewalk, this person who yelled, Stop, was 15 to 20
21 feet behind you?

22 A. Uh-huh.

23 Q. And when you glanced back, you saw a blue light?

24 A. Yes.

25 Q. On the on-ramp?

1 A. Yeah.

2 Q. And at that point, I believe you said when you made it
3 to the sidewalk, you heard shots?

4 A. That's correct.

5 Q. From behind you?

6 A. That's correct.

7 Q. So 15 to 20 feet behind you is kind of like across the
8 street, still, like, near that underpass, right?

9 A. 15 to 20 feet behind me? I can't really say. I can't
10 really recall exactly where this person running behind me at
11 the time was his location. I just know that I made it to the
12 other side of the hotel. And I was on that sidewalk. So this
13 person, he was gaining ground on me, definitely. But I don't
14 know where exactly he was at positioned. Because, like I said,
15 I was peering over my shoulders. I'm trying to do this and
16 trying to run. I can't get a good visual lock on this person.

17 Q. Sure. Sure. But you said -- I believe you testified
18 previously when you made it to the sidewalk, you heard shots
19 fired from behind?

20 A. That's correct.

21 Q. Okay. And I believe you said you heard, boom, boom;
22 you heard two shots fired?

23 A. It was like a few.

24 Q. A few?

25 A. Yeah.

1 Q. So you heard a few shots fired by the time you made it
2 to that sidewalk?

3 A. Yeah, that's correct.

4 Q. All right. Just making sure. And then you said, I
5 think you said then, like, every motion was simultaneous, I
6 think. You said at that point, after the, boom, boom, I
7 believe you testified, and correct me if I am wrong, you said
8 there was a break, and then you began ducking and grabbing for
9 your gun; is that right?

10 A. Yeah, I done all that simultaneously.

11 Q. So, and then you were hit in your right leg from
12 behind?

13 A. That's correct.

14 Q. How far down the sidewalk were you at this time?

15 A. At this point, I had to have been -- I had to get
16 probably another visual to answer it.

17 Q. Do you think you were about halfway down from where
18 that sidewalk started?

19 A. Halfway? I guess, yeah, if I had to say, I would
20 probably say halfway.

21 Q. Okay. I'm going to try my best. I'm trying to grab
22 three pictures so we can see them all. All right. I'm going
23 to show you State's 90. And if you will just wait, I will show
24 you them all and try to overlap them a little bit. So State's
25 90, okay, this is the edge of that sidewalk where it first

1 starts. Do you agree with that?

2 A. Yeah, that's edge where it starts at, correct.

3 Q. This is the sidewalk we are talking about, right?

4 A. Correct.

5 Q. So if you look at this white van in State's 90 --

6 A. Okay. I believe I was way farther than that, yeah.

7 Q. Okay. So now I want you to look at State's 91. Here
8 is the white van again. So you have kind of an idea -- I can't
9 really zoom out. Here's the white van again. And here's the
10 giant stretch of the sidewalk. Right? So you are along here
11 then?

12 A. At this angle, I can't really identify. Can you
13 present something, like, as far as where, exactly where the --
14 like, where I was kind of positioned where they found me at?
15 That will be a better recollection for me.

16 Q. Well, I'm just trying to go from what you testified to
17 when you spoke with the jury. And how you explained it was you
18 made it to the sidewalk, when you just made it to the sidewalk,
19 you were 15 to 20 feet behind, you looked back, you saw it was
20 a dark figure, because you have good vision, you heard two
21 shots, boom, boom. And then you, simultaneously, I believe you
22 said, started ducking and grabbing for your gun?

23 A. Uh-huh.

24 Q. So if it's when you made it to the sidewalk is when
25 you heard the, boom, boom, you looked back and saw the one blue

1 light --

2 A. Yeah.

3 Q. And you heard somebody 15, 20 feet behind yelling
4 stop?

5 A. Uh-huh.

6 Q. I want to know, how far down was it in that
7 simultaneous movement you did, to duck and grab for your gun
8 that you weren't supposed to have?

9 A. Best way I'm going to give you, most accurate way I
10 can answer that question.

11 Q. Okay.

12 A. Where they found me laying at, where testimony where
13 they found me laying at, it was not too far from where they
14 found me laying at.

15 Q. Okay. So you were ducking and grabbing for your gun
16 after there were two shots from the beginning of the sidewalk
17 area. And then I believe you testified that after that, you
18 were hit in your right leg from behind; is that right?

19 A. Well, the shooting happened from behind. It did.

20 Q. Okay.

21 A. Now, as far as where I was actually hit at, I was hit
22 on my side, side angle of my right leg. As I was kicking up,
23 like, my right foot is going up, that's when I felt it, I felt
24 the impact of, you know, the impact, I felt it.

25 Q. So you are running. You make it to the sidewalk.

1 Well, you are running. You glance back. You hear someone
2 yell, Stop. You see dark clothing. That's what you testified
3 to, right?

4 A. That's correct.

5 Q. So then you run more. You make it to the sidewalk?

6 A. Uh-huh.

7 Q. You hear, Stop. You glance back. You see a blue
8 light, right?

9 A. Yeah.

10 Q. And when you make it to the sidewalk, someone from
11 that direction, you hear two gunshots, boom, boom, two shots
12 fired at you?

13 A. Well, you keep going into two shots. Maybe when I did
14 my demonstration, I was just trying to give indicating shots
15 were fired. But they weren't exactly two shots. They were
16 like three shots.

17 Q. Okay. Two or three shots, is that fair, Mr. Blake?

18 A. That's fair.

19 Q. All right. So two or three shots were done when you
20 first made it to the sidewalk?

21 A. Yes.

22 Q. But those did not hit you, right?

23 A. Which ones?

24 Q. The first two or three when you were running, when you
25 first made it to the sidewalk?

1 A. Well, I can't say, because I don't know whether if the
2 bullet skidded off the ground and ricocheted and hit me in my
3 leg or it was a direct hit. I was running, so I can't say.
4 But I know it kind of like -- if I would have to say, I would
5 have to say probably would have been a ricochet, because it's
6 not like I heard the shots and then actually next thing, you
7 know, I'm hit.

8 Q. Okay. Again, Mr. Blake, you know, this whole thing,
9 we've been talking about the order, the order, the order of
10 things. You've been very focused on that. That's why I'm
11 trying to be focused on that now. And that's why I'm asking
12 you. And I want to make sure I've got your testimony correct.

13 A. Uh-huh.

14 Q. You made it to the sidewalk. You heard shots from
15 behind, two or three?

16 A. Uh-huh.

17 Q. And then you said, again, correct me if I am wrong,
18 then every motion simultaneous, you were ducking and grabbing
19 for your gun, and then you were hit in your right leg from
20 behind and your leg buckled?

21 A. That's correct.

22 Q. Okay. So were you hit in your leg back at that first
23 part of that sidewalk when you first heard it?

24 A. Yeah.

25 Q. You were then, or you were not?

1 A. You are saying was I hit when I first intended the
2 sidewalk?

3 Q. Correct.

4 A. No. It wasn't when I first hit the sidewalk. It was
5 like -- just like I said, where I was laying at, the best
6 answer I can give you is where I was laying at, I got to the
7 point where I was laying at, that's where I made it all the way
8 up to when shots started going off.

9 Q. Okay. So shots happened from behind you?

10 A. Yeah.

11 Q. When you made it to the sidewalk?

12 A. Uh-huh.

13 Q. But you were not hit?

14 A. Yeah, I was hit. I was hit when I was -- you know,
15 like, when I crossed over. And then, you know, shots go off
16 and then I was hit.

17 Q. So -- I am not -- I am not -- I'm trying to
18 understand. So you were or you were not hit when you first
19 made it to the sidewalk and those two to three shots came from
20 behind you, when the guy yelled, Stop, and there was a blue
21 light?

22 A. Listen. When I first made it to the sidewalk, okay,
23 now, first entering the sidewalk is one thing. I'm running
24 past the first -- you know, those little segments you say when
25 it first enters. I'm running past that part. Now I'm all the

1 way up. Shots go off little way after that.

2 Q. The first round of shots or the second round of shots?

3 A. The first round of shots.

4 Q. Okay. So when you testified earlier that when you
5 made it to the sidewalk, the shots happened, when you first
6 made it to the sidewalk, that's not accurate. What is accurate
7 is you made it to the sidewalk, you looked back, you saw the
8 blue light, you heard, Stop, saw a dark figure 15 to 20 feet,
9 and then a little further down is when you were actually hit?
10 Is that when the first shots went off, you are saying?

11 A. Yeah. It was a little further down. Like I said, not
12 too far from where I was laying.

13 Q. Okay. You know, that's different than you said
14 earlier. So I'm just trying to make sure. I hope you
15 understand, I'm trying to make this as clear as possible.

16 A. Well, my main objective was to let you know that I
17 made it, actually made it to the other side. And I don't know
18 exactly, the person who was pursuing me at the time exactly
19 where he was positioned at. But I know I had made it to the
20 other side. Now, I can't tell you whether it was halfway to
21 the other side or it was three-fourths. You know what I'm
22 saying? I am not good when it comes down to measurements and
23 stuff like that, dealing with yardage and stuff like that.

24 Q. Okay. So after you were hit from behind, after this
25 person is chasing you, yelling, there's blue lights, and you

1 are hit from behind, and there's been two or three shots, we
2 don't know if that's at the front of the sidewalk or further
3 down or if it's the first or second sequence is when you were
4 hit, but you were hit in the leg, is what you are saying?
5 Right?

6 A. Yeah.

7 Q. So after you were shot then, I believe you said you
8 had to blind fly it, boom, boom, boom, boom, you did a 360?

9 A. No, I said blind fire.

10 Q. Blind fire?

11 A. Yeah.

12 Q. Okay. That's why I'm asking. So you had to blind
13 fire it. And I believe you were demonstrating that you were
14 running and your leg and you kind of did this kick up and you
15 just shot? Is that pretty much what you did?

16 A. You said I was running and my leg buckled, correct, it
17 did.

18 Q. And you did a 360?

19 A. My momentum from my leg buckling, it turned me toward
20 that direction.

21 Q. And you did a 360 and you fired that gun, right? Is
22 that what you are saying?

23 A. Well, at that point, I was turning around facing the
24 person who was pursuing me. So as I'm turning around facing
25 the person pursuing me, my right hand is extended. And I'm

1 blind firing. And as I'm still standing on the leg I'm shot
2 on, I am not even conscious and aware that all my weight is on
3 this leg that got shot. And next thing I know, I just go down
4 360 down to the ground facedown.

5 Q. And -- okay. I think I kind of understand what you
6 are trying to say.

7 A. I know it sounds like an action movie, but, I mean,
8 that's exactly how it happened.

9 Q. So I think then you said you fell onto the ground and
10 the gun was on the ground; is that right?

11 A. Yeah. When I fell, the gun came out of my hand.

12 Q. And you never held it again?

13 A. Yeah, I held it again.

14 Q. But I thought you testified earlier that when you fell
15 on the ground, the gun was on the ground. It fell out of your
16 hand, the gun was on the ground, and you had already fired all
17 your bullets?

18 A. No, that's incorrect. I said after the gun fell on
19 the ground, I was laying face down. Okay? The gun was
20 probably not too far from me. It was in arm's reach. I got
21 short arms, so it was in arm's reach. I saw it in front of me,
22 reached up, grabbed it at this point. I'm trying to get up.

23 Q. Okay. So, like an action movie, you were trying to
24 get up on your right knee, and you heard a crack. You tried to
25 get up on your left knee. You got up halfway. You fell again.

1 You are laying on your stomach; is that right?

2 A. That's correct.

3 Q. You said you roll on your back and tried to sit up.

4 What's happening during all of this? Is it just kind of

5 silence, or are you just hanging out?

6 A. It was complete silence. There was nobody saying
7 nothing. You know, that supposed blue light that I glanced at,
8 thought I may have seen, I don't know where this person was at,
9 but, you know, the shooting going on, seems like, if that's the
10 case, they would have been more closer. And so it was a big
11 pause for a second. And at this point, I don't even know where
12 this person -- I thought he fled, because there wasn't nothing
13 else, no more shots going on or nothing. And I figured he had
14 to flee, because I'm laying down on the ground and I'm trying
15 to get up. An attack at that point had me at a huge
16 disadvantage where I could have been executed.

17 Q. Right. So somebody could have killed you if they
18 wanted to, right?

19 A. Of course. Man, I was ...

20 Q. All right. So and then you roll on your back and you
21 are trying to sit up. And you said that's when you saw a
22 person with a gun on Sam Rittenburg; is that right?

23 A. Yeah, after I made a few attempts trying to get up and
24 was unsuccessful, I then turn over on my back. And then after
25 that, I sat up, and not even all the way sitting up. I then

1 see same dark person, dark-colored clothes in the middle of Sam
2 Rittenburg Boulevard, and a gun point position both hands on
3 his gun and lining me up. And then I got shot in my arm after
4 that.

5 Q. And how do you know it was the same person?

6 A. That's the crazy thing. I mean, I don't know if it
7 was the same person at that point.

8 Q. You said it was, like, pitch-black where you were when
9 this was happening, right?

10 A. Yeah.

11 Q. So you just testified that you saw the same person,
12 but now you are saying it wasn't the same person; you don't
13 know?

14 A. You said I testified I saw the same person. I said,
15 this person had on dark-in-colored clothing. I don't know the
16 identity of this attacker until later on when car started
17 coming down and this guy is laying in the middle of the street.
18 That's when I kind of glance and get an identification.

19 Q. So you saw this person in the middle of Sam Rittenburg
20 in the pitch-dark, but you could see a gun?

21 A. It was a shadow. And based on the shadow I saw and,
22 you know, I used to go to the gun range, and I could determine
23 that this person was in the middle of the street in the shadow,
24 in dark-colored clothing, and he was standing in a gun
25 position.

1 Q. And so you see this person -- where are they standing
2 in Sam Rittenburg?

3 A. Standing in the middle of the road.

4 Q. The very middle of the road?

5 A. Very middle of the road. And no cars were coming.
6 That's the crazy thing about it.

7 Q. Okay. And you said then that person in the pitch-dark
8 shadow, in the pitch-dark, you could see that person fired and
9 hit your arm, and it knocked you down?

10 A. Knocked me down.

11 Q. All right. And at that point, you testified that you
12 were worried because you were out of bullets post-blind-fire;
13 is that right?

14 A. No. At this point when he knocked me down, I still
15 had ammunition.

16 Q. So we need to believe now that you still had
17 ammunition, not what we heard, like an hour ago, when you said
18 that you were worried because you were out of bullets
19 post-blind-fire?

20 A. Linder, you are jumping ahead of yourself. I told you
21 after I got knocked down, then the next thing I was thinking
22 about was me sitting back up again. And next shot being a
23 fatal shot. So what I did was, I did not get back up. Still
24 had the gun in my right hand, so I blind fired.

25 Q. A second time?

1 A. Second time, off, yeah, trying to get this person off
2 of me still.

3 Q. So you then testified that you looked up again and you
4 saw a person in the pitch-black with dark clothes on the ground
5 in the middle of Sam Rittenburg Boulevard; is that right?

6 A. Yeah, that's correct. After I blind fired for the
7 second time, I ran out of ammunition. And it was -- at this
8 point, it was no -- there was no more firing going on. And
9 amongst me blind firing, I was hearing shots -- you know what
10 I'm saying? -- coming right past me. So at that point, I was
11 out of ammunition. And I decided to lift my neck halfway up
12 maybe so I wouldn't -- you know what I'm saying? -- get hit
13 again. And now I'm seeing this dark, you know, figure,
14 shadow-type individual in the middle of Sam Rittenburg. And
15 now he seemed like he's, like, in a stumbling, falling
16 position, not too far from falling. And next thing I know, he
17 just falls to the ground, in that exact same position that I'm
18 in.

19 Q. And you said in your testimony initially that you saw
20 he was crouched in dark clothes. He fell to the ground. And
21 you could see this because cars were going by and they had
22 lights. And so you also could see all the casings at that
23 point; is that right?

24 A. Yeah. At that point, when he went down to the ground,
25 I think a car came off of, if I'm not mistaken, 526, and they

1 turned right. So they was coming toward the direction. And
2 after that, I saw -- the first thing I saw illuminating was the
3 lights and nothing but shells surrounding him, the actual
4 person that was on the ground. And then as I looked on, as the
5 car came closer, it looked like to seem like it was a law
6 enforcement official at that point.

7 Q. And now, when this dark figure, shadowy figure, when
8 he was shooting at you, how was he? Was he moving around? Was
9 he just firing straight at you? What was happening?

10 A. At what point in time?

11 Q. Throughout.

12 A. Throughout the whole from beginning to end?

13 Q. Sure.

14 A. Okay. Ask me that question again. What did you say?

15 Q. Tell me the positions and how this dark, shadowy
16 figure was shooting at you?

17 A. Well, the first time when I got shot in my leg, I
18 don't know -- I don't know what position he was in. I can't
19 tell you that. I mean, I know -- I don't know if he stopped.
20 I don't know if he still was running. I mean, I don't know
21 what position the first time he was in. But I know what
22 position he was in the second time when I was on the ground.

23 Q. Okay. Go ahead. What was that position?

24 A. It was like I said, him having both his arms extended
25 and facing towards me and --

1 Q. Was he standing still?

2 A. Yes, at this point, looked like he was standing still,
3 had his target locked and standing still.

4 Q. All right. So I believe you testified that after the
5 visual kicked in and you thought it was a police officer, you
6 laid down to gather your thoughts. And then I believe you said
7 you were trying to crawl to make it to safety; is that right?

8 A. Well, I mean, I just was planning on laying down at
9 this point and catching my breath and stuff like that. And I
10 didn't start crawling back for safety until I heard another
11 shot go off after, you know, after I was out of ammunition.

12 Q. And you were trying to get up. And then you fell.
13 And you were trying to get up. I believe you were showing you
14 were trying to get up like this, almost like a push-up?

15 A. Yeah. I was on my back when I heard the shot, that
16 last shot. And just like I said, just going passed me. And
17 then I got myself together. And then I turned on my stomach,
18 and I was trying to attempt to try to get back up again. I was
19 just trying to get out of the way.

20 Q. And can you show us even from there, how were you
21 trying to get up?

22 A. When I was trying to get up --

23 Q. Pushing up?

24 A. Yes. Second time, I was trying to do -- I was pushing
25 up with my arms. I got on my left leg a little bit. And then

1 trying to get back on my right leg. And, I mean, I just was
2 just -- at this point, that was the most pitiful point in my
3 life. You ever heard the terminology, you fall and you can't
4 get up? It was that type of situation.

5 Q. So when you were pushing up with both your arms, did
6 your left arm all of a sudden just start feeling better?
7 Because I thought you said moments prior, when you had a visual
8 kicking that it was a police officer, you heard a shot, and you
9 said your arm had no feeling. You thought your arm was blown
10 off. And then moments later, you are trying to get up. You
11 just showed us.

12 A. Yeah.

13 Q. Trying to get up with both arms?

14 A. Yeah.

15 Q. But you didn't have feeling in your arm?

16 A. No, I didn't. See, before I actually turned over, my
17 arm was hanging like this. Right? Okay. Now, I didn't have
18 no feeling in my arm. So what I did was, I took my right arm,
19 and then I brought it over. And I rolled over. And at this
20 point, so when I'm trying to push up, I'm trying to push up off
21 of both arms, but I don't have no feeling on my left arm.

22 Q. All right. So, ultimately, the shooting stopped,
23 right?

24 A. Yeah, shooting had stopped at that point.

25 Q. And who was this mysterious woman in the background?

1 You said you heard a woman's voice in the background. Who was
2 this mysterious woman? Was this a shadowy figure or who was
3 she?

4 A. That, I never saw this woman, because I was laying
5 down. That's the first voice I heard, yeah.

6 Q. So I just want to make sure that we are understanding
7 this. It's your testimony that you never saw blue lights or
8 heard sirens in the Best Buy parking lot?

9 A. I did not.

10 Q. Is that correct?

11 A. That's correct, I did not.

12 Q. And it's your testimony that you never saw blue lights
13 or sirens all the way down Dupont Road; is that right?

14 A. That's correct.

15 Q. And it's your testimony that you never -- that there
16 was a car that, more or less, was coming up to ram you when you
17 were on the on-ramp; is that correct?

18 A. That's correct.

19 Q. And it's your testimony that you chose to pick up a
20 gun that you weren't allowed to have, and you left your cell
21 phone in your car when you took off running, right?

22 A. That's correct.

23 Q. And it's your testimony that when you were running
24 under the bridge, I guess you said, or under that overpass, you
25 heard someone yelling stop and you looked back; isn't that

1 right?

2 A. That's correct. I got to correct you on that. I
3 never said that I wasn't allowed to have a gun. You said that.
4 That wasn't my testimony.

5 Q. Are you disputing that?

6 A. I am not disputing it. I'm just correcting you. You
7 said that I testified that I said that I wasn't allowed to have
8 a gun. And that wasn't my testimony.

9 Q. Are you saying you are allowed to have a gun?

10 A. No, I'm saying that you said that. That's what I'm
11 saying.

12 Q. Are you saying that you are allowed to have a gun?

13 A. Linder, I'm saying I am not disputing that issue. I'm
14 disputing the issue that that's not what I testified to. I'm
15 playing the A on that. You said that -- I didn't say that.

16 Q. Okay.

17 A. And I told you. And I said clearly, I am not
18 disputing that, but if that's what you say, that's what it is.
19 Did I not say that?

20 Q. I believe you said something like that. I just didn't
21 really hear that as you agreeing that, in fact, you were not
22 allowed to have a gun. Are you agreeing that you were not
23 allowed to have a gun?

24 A. I am not saying that I'm agreeing. I can basically
25 disagree to agree. If that's what you say, why are you trying

1 to make me say that? I am not disputing you. So why are you
2 trying to make me say that?

3 Q. You are disputing if you are not acknowledging,
4 Mr. Blake. That's why I'm asking you. I'm trying to just get
5 through this last part to make sure that we all are of the same
6 understanding of what you are saying in your testimony. And
7 that, Mr. Blake, is why I'm asking you, do you agree that you
8 were not allowed to have a gun?

9 A. I'm going to tell you like this. I'm going to go into
10 the gun situation. The reason why I was toting a firearm that
11 night, this incident happened to me in 2010 where I got robbed
12 and I got shot for nothing. Okay? I was at a friend's house.
13 And I was walking to my daughter's mom's house. And an
14 incident kicked off to where I didn't have a firearm. Okay?
15 And two guys approached me. Right? And when they approached
16 me, they were wearing dark-colored clothing at this point,
17 young-looking guys. And I was on my phone. So they wanted
18 money. And I said, look, just take my money and leave me my
19 phone. So they wanted everything. So at this point, they
20 shoot me when they leave.

21 So at this point, I go to the hospital. I'm
22 questioned by City of Charleston Police Department, who these
23 guys are. And next thing you know, the next day on the news
24 is, I guess, it's -- police write it off as a drug deal gone
25 bad. And that was not clearly the issue. So at that point

1 particular point in time, I had to clarify that. And I said to
2 myself that I would not go without having a firearm again. And
3 that's just as to why I present to have a firearm.

4 So you are telling me -- so I went into the issue why
5 I had a firearm protecting my life. I don't tote firearms just
6 looking around, looking for trouble, trying to shoot cops.
7 That's not my MO.

8 So your dispute is, well, am I saying that I am not
9 allowed to have -- that's not my testimony. That was your
10 testimony. And I don't understand why you are trying to make
11 me say that.

12 Q. Mr. Blake, I was not asking you the reason for your
13 justification for having a firearm. What I was asking you is,
14 were you allowed by law to have a firearm back on March the
15 30th of 2013?

16 A. Linder, I answered your question. I mean, how do you
17 want me to answer that question? I answered the question
18 three, four different times the same way.

19 Q. All right. So you ended up running with this firearm.
20 And you heard, Stop. And you looked back?

21 A. Correct.

22 Q. And you kept running. You heard, Stop. You looked
23 back 15 to 20 feet. You saw someone. And you saw a blue
24 light, right? That's what you've just testified to, Mr. Blake?

25 A. I said I saw someone and I saw blue light? This was

1 already after the fact. You are asking me the same questions
2 over and over. I'm surprised the judge ain't even saying
3 nothing about this. But you are asking me if I saw a blue
4 light at this point in time. I already told you, I was by the
5 Comfort Inn Suites when I glanced and I saw blue lights. I was
6 not too far from the Comfort Inn Suites.

7 THE COURT: For your information, I rule on
8 objections. I haven't heard an objection, so I haven't ruled.

9 THE WITNESS: Okay. I didn't know I was allowed to
10 object while testifying. I need somebody to object for me.

11 BY MS. LINDER:

12 Q. And then it's your testimony that there were multiple
13 shots, two to three shots from behind at you, around the area
14 of the beginning of the sidewalk?

15 A. That's correct. And I explained why the bullet holes
16 were behind me.

17 Q. And it was only after you were shot that you
18 simultaneously ducked, spun, grabbed your weapon and started
19 blind firing?

20 A. I answered that question already. I answered it
21 twice. I explained it when I got on testimony and told the
22 story. You asked me that and I got into that.

23 Q. And is it your testimony that you never stopped and
24 turned and pointed your firearm at Officer Goldstein?

25 A. You said at any point in time did I ever turn and fire

1 my firearm at Office Goldstein?

2 Q. My question, Mr. Blake, is at any point, did you turn
3 with your arms outstretched, and have your firearm pointed at
4 the chest of Officer Goldstein?

5 A. I can't say my arm was all the way stretched. It was
6 in a swing motion. So it was swing. It wasn't all the way
7 fully extended. No, it wasn't.

8 Q. Mr. Blake, is it your testimony that you did not hear
9 Officer Goldstein instruct you, Don't move?

10 A. I never heard -- Officer Goldstein never quoted, Don't
11 move. The only thing I heard from him, same testimony as Sean
12 Riner, Stop. That's the only thing I heard.

13 Q. Is it your testimony that you never said anything when
14 you turned around facing Officer Goldstein?

15 A. I never said anything when I turned around.

16 Q. So is it your testimony that you never said anything
17 when you turned around and faced Officer Goldstein?

18 A. It's my testimony that me and this man never spoke,
19 ever.

20 MS. LINDER: Beg the Court's indulgence.

21 THE COURT: Yes, ma'am.

22 MS. LINDER: I don't have anything further for
23 Mr. Blake.

24 THE COURT: Mr. Blake, you can respond to whatever she
25 went over.

1 THE WITNESS: I can respond from here?

2 THE COURT: Yes, sir.

3 THE WITNESS: Okay. Only thing I could respond to is,
4 I think I outlined all of them gray areas in this case. I
5 think I answered all the questions correctly to the best of my
6 ability.

7 MS. LINDER: Judge, I would ask for him not to give a
8 closing summation to the jury and just if he's clearing up
9 something from my cross.

10 THE COURT: Go ahead.

11 THE WITNESS: And I answered all the questions
12 correctly, no contradicting testimony whatsoever. That's my
13 solid testimony that night of the incident. That's all I got
14 to say, Judge.

15 THE COURT: Recross?

16 MS. LINDER: None, Judge.

17 THE COURT: Thank you, sir. You may step down.

18 Ladies and gentlemen, we will take a short break. It
19 won't be very long at all. I will give you a short break so
20 you can stretch your legs. Don't discuss the case. Follow the
21 bailiff.

22 (Whereupon, the jury leaves open court at 4:03 p.m.)

23 THE COURT: We are at ease.

24 (Whereupon, recess transpired.)

25 THE COURT: Do you have more witnesses?

1 THE DEFENDANT: Yeah. I want to call Leah Bryant.

2 THE COURT: All right. Bring in the jury, please.

3 (Whereupon, the jury returns to open court at 4:22

4 p.m.)

5 THE COURT: Call your next witness, please.

6 THE DEFENDANT: Leah Bryant.

7 THE COURT: Come around, please, ma'am.

8 LEAH BRYANT,

9 having been duly sworn, testifies as follows:

10 THE CLERK: Please state your name and spell your last

11 name for the record, please.

12 THE WITNESS: My name is Leah Jaunita Bryant,

13 B-r-y-a-n-t.

14 DIRECT EXAMINATION

15 BY THE DEFENDANT:

16 Q. How are you doing, Ms. Bryant?

17 A. I'm doing great. How are you doing?

18 Q. I'm great. Okay. Ms. Bryant, will you please brief

19 the Court on your relations to myself?

20 A. I'm Mr. Blake's aunt.

21 Q. Okay. And which side of the family are my aunt on?

22 A. He's my nephew through my sister, Elaine Blake.

23 Q. What is your opinion on my reputation, your absolute

24 opinion on my reputation on peacefulness?

25 A. Peacefulness?

1 Q. Yeah, peacefulness.

2 A. He's always been a peaceful young man, gentle, very
3 compassionate, understanding and caring.

4 Q. What is your opinion on -- your absolute opinion on my
5 reputation for honesty?

6 A. Honesty? He's always been honest with me. We talked
7 a lot during his childhood and up until his adolescencehood
8 (sic) and we discussed a lot of things. He's always been
9 faithful and trustworthy as far as talking and honesty about
10 discussing things.

11 Q. Ms. Bryant, moving forward, disregarding this incident
12 that brings us here today, do you recall any life-threatening
13 misfortunes that I've suffered in the past?

14 A. Life-threatening?

15 Q. Yeah.

16 A. I'm trying to think. Not right offhand, no more than
17 the incident that I mentioned about your apartment being
18 vandalized and your residency stuff being placed in the
19 newspaper. But life-threatening, no, not up to this event.

20 Q. Okay. So you said particular misfortune, I guess,
21 would be --

22 A. The invasion of privacy as far as concerning your
23 residency.

24 Q. Okay. And can you recall about how long this said
25 incident occurred?

1 A. That incident that I'm speaking about?

2 Q. Yeah, correct.

3 A. Honestly, between eight and seven years. I could be
4 off a little.

5 Q. Approximately seven years?

6 A. Yeah, yeah.

7 THE DEFENDANT: All right. Ms. Bryant, that's all
8 I've got for you. Thank you.

9 THE COURT: Any questions of the witness?

10 MR. SOWARDS: No, Your Honor.

11 THE COURT: Thank you, ma'am. You may step down.

12 Do you have any other witnesses?

13 THE DEFENDANT: Yes, I call Harry Malloy.

14 THE COURT: Come around, please.

15 HARRY MALLOY,

16 having been duly sworn, testifies as follows:

17 THE CLERK: Please state your name and spell your last
18 name for the record, please.

19 THE WITNESS: Harry Julius Malloy, M-a-l-l-o-y.

20 DIRECT EXAMINATION

21 BY THE DEFENDANT:

22 Q. How are you doing, Mr. Malloy?

23 A. I'm doing well.

24 Q. That's good. Okay. Would you please brief the Court
25 on your relations to myself?

1 A. I'm your uncle.

2 Q. Okay. And what side of the family are you my uncle
3 on?

4 A. On my brother's side, which is your father.

5 Q. About how long have you been knowing myself?

6 A. Your entire life.

7 Q. So safe to say you may know me better than I know
8 myself, right?

9 A. Yes.

10 Q. What is your opinion of my reputation of peacefulness?

11 A. Well, like I stated earlier, you are a very
12 intelligent person, as I am. You are quiet, as I am. And I'm
13 glad that you found God in your life.

14 Q. You would say at that point that I'm very peaceful?

15 A. Right.

16 Q. What is your opinion on me being -- your opinion on my
17 reputation for honesty? What would you say about that?

18 A. Repeat that, please.

19 Q. I said, what is your opinion on my reputation for
20 honesty?

21 A. Good.

22 Q. Good reputation?

23 A. Yes.

24 Q. Okay. Disregarding this incident that brings us here
25 today, do you recall any life-threatening misfortunes I've

1 suffered from in the past?

2 A. No.

3 THE DEFENDANT: All right. Mr. Malloy, that's all
4 I've got for you. Appreciate it.

5 THE COURT: Any questions for this witness?

6 MR. SOWARDS: No, Your Honor.

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

8 Any other evidence from the defense?

9 THE DEFENDANT: No, Judge. I believe that's it.

10 THE COURT: Any reply testimony from the State?

11 MS. LINDER: No, Your Honor.

12 THE COURT: All right. Ladies and gentlemen of the
13 jury, I told you at the outset of the trial that when we
14 finished certain stages, I had to talk to the attorneys --
15 excuse me, to the parties about matters of law. And we've
16 reached one of those stages. I've got to make some decisions
17 about how we are going to proceed, how far we are going to
18 continue tonight, what time we will start back in the morning.
19 So I have to send you out of the courtroom while I discuss
20 these legal issues.

21 While you are back there, if you have any conflict
22 tonight or early in the morning tomorrow at all, please send me
23 a note. Put your name and your juror number on it so that we
24 can mark it as part of the record. Again, I can't please
25 everybody, but I do want to know what impact I may be having

1 upon you as I make these decisions. So if you please do that
2 for me, I would appreciate it. I will get back to you as
3 quickly as I can. Follow the bailiff. Don't discuss the case.

4 (Whereupon, the jury leaves open court at 4:32 p.m.)

5 (Court's Exh. 7, Stipulation, was marked for
6 identification.)

7 THE COURT: Are there motions?

8 THE DEFENDANT: Yes, Judge. Motion for directed
9 verdict, I want to renew my motion. The State failed to prove
10 elements of my self-defense and elements of the crime itself of
11 malice aforethought regarding attempted murder.

12 THE COURT: All right. They are jury issues created
13 as to the charge against the defendant, as well as the defense
14 of self-defense. Anything else?

15 THE DEFENDANT: That's it, Judge.

16 THE COURT: Thank you. All right. I know we are not
17 supposed to argue and charge after four o'clock, but I'm going
18 to get these notes from the jury and see where we are. I have
19 a rough draft of a charge. I'm going to have my law clerk
20 print this out and give a copy to you. Go over it. And I will
21 collect these notes and see where we are and see how far we can
22 proceed today.

23 The appointment the juror has tomorrow is at 2:15 in
24 Mount Pleasant. He says he has to keep this appointment for
25 the injections due to his health. And I will just have to make

1 a decision as to how to proceed, as to whether I have to remove
2 him from the jury or not. So y'all give some thought to that
3 as well as you make decisions about anything you want to raise
4 to my attention.

5 We are at ease.

6 (Whereupon, a recess transpired.)

7 (Defendant's Exh. 5, Photograph, was agreed in
8 evidence.)

9 (Court's Exh. 8, Jury note, was marked for
10 identification.)

11 (Court's Exh. 9, Jury note, was marked for
12 identification.)

13 THE COURT: All right. First thing I want to address
14 is that we got two notes from the jurors that were shared
15 marked as Court's exhibits. One is from a juror that indicated
16 he plans to leave to go to Seneca tomorrow afternoon. And the
17 other one is from a lady who has a small child. And she just
18 had some issues about needing to take periodic breaks. I think
19 we can work around her.

20 My preference is to keep going. And that's what I
21 plan to do. Do you all want to put anything on the record
22 about that? When I say "keep going", I mean keep going
23 tonight.

24 MR. SOWARDS: No, Your Honor. I think we've had
25 adequate time, so the State has no objection.

1 THE COURT: Do you want to put anything on the record
2 about that?

3 THE DEFENDANT: No objection, Judge.

4 THE COURT: All right. Second thing I need to cover
5 with you is the proposed charge. My law clerk distributed to
6 the defendant, stand-by counsel, and to the Solicitor's Office
7 a draft of the proposed charge. And I would be happy to hear
8 any comments you may make about the charge. We begin with the
9 State.

10 MR. SOWARDS: Thank you. I'll start page 1 at the
11 bottom. The State is just a little bit concerned about the
12 implication of the sentence, you may consider the lack of
13 evidence presented by the State. We are just concerned that
14 implies there is a lack of evidence. Perhaps may consider -- I
15 don't know how to word it. But kind of jumped off the page as
16 creating an implication that there is a lack of evidence.

17 THE COURT: I will change "the" to "any". I know I'm
18 probably the only judge that charges it like that, but I've
19 been charging like that for decades. I will change to, you may
20 consider any lack of evidence.

21 MR. SOWARDS: Thank you, Your Honor.

22 And then page 8, in the malice aforethought --

23 THE COURT: Hold on a second. Malice aforethought,
24 okay.

25 MR. SOWARDS: Yes, sir. Paragraph begins, intent

1 means intending the result which actually occurs, not something
2 that occurs accidentally or involuntarily. The next sentence
3 says, the State must prove expressed malice.

4 And, Your Honor, I think the statute says the State
5 must prove either expressed or implied malice.

6 THE COURT: I thought there was a case that said that
7 you had to prove deliberate intention to kill.

8 MR. SOWARDS: I think, Your Honor, that can be either
9 expressed by words or actions or implied. And the statute
10 itself says expressed or implied. That would just be our
11 request on that one.

12 THE COURT: I pulled this from a case I did somewhere
13 previously. And my recollection of it was that that came from
14 a case, I could be wrong, but there was a case that dealt with
15 whether you had to have a specific intent to kill. It wasn't
16 too long ago it was decided.

17 MR. SOWARDS: I think that's *State v. King*, Your
18 Honor. It was last year. And the State would absolutely agree
19 that it's required to prove specific intent to kill. But as
20 far as the malice aforethought aspect of it, it could be either
21 be expressed or implied.

22 THE COURT: I don't disagree with you that murder can
23 be expressed or implied malice. Maybe the word "expressed" has
24 a different meaning than I was thinking it was used in that
25 case. Let me see if I can find it.

1 All right. I'm reading *State v. King*. They are
2 citing Supreme Court of Nevada: Attempted murder can be
3 committed only when the accused's acts are accompanied by
4 expressed malice, malice in fact. One cannot attempt to kill
5 another with implied malice because there is no such criminal
6 offense as an attempt to achieve an unintended result.

7 I can keep reading.

8 MR. SOWARDS: That's fine, Your Honor. That's fine.

9 THE COURT: So then later in the opinion they say,
10 while we have not expressly addressed this in South Carolina,
11 we basically find that Nevada was correct and that under the
12 common law -- and I think that's where I got that language
13 from. I realize at first it sounds a little odd.

14 MR. SOWARDS: I think our last issue, Your Honor, or
15 request would be under your self-defense charge.

16 THE COURT: Yes, sir.

17 MR. SOWARDS: The State has the burden of proving
18 beyond a reasonable doubt that the defendant did not act in
19 self-defense. Obviously, that's accurate. But no quibble with
20 that. Just in light of --

21 THE COURT: Can you tell me what page you are on?

22 MR. SOWARDS: Sorry, Your Honor. Page 10, first
23 paragraph of the self-defense. And, obviously, the opening
24 statements, Your Honor, in his opening statement, the defendant
25 made clear that he believes that the State is not required to

1 prove -- disprove one but is required to disprove all the
2 elements of self-defense. And I think the law is that if we
3 disprove one element of self-defense, then we've disproven the
4 self-defense claim. So we would respectfully ask that Your
5 Honor add the State must only disprove one element.

6 THE COURT: This charge came from the charge book.
7 And I don't think it's confusing. You may want to argue that
8 to the jury, make sure that's clear in their minds, perhaps.
9 But I don't think there's any confusion. Should be -- I think
10 I tell them that they have to -- wait a minute. I'm going to
11 read it like this. Anything else?

12 MR. SOWARDS: That's it from the State, Your Honor.

13 THE COURT: Defense?

14 MR. KING: May I hand it up, Judge?

15 THE COURT: All right. The defense is requesting a
16 charge of *State v. Starnes* on self-defense that reads: Once
17 the right to fire in self-defense arises, a defendant is not
18 required to wait until his adversary is on equal terms or until
19 he has fired or aimed his weapon in order to act.

20 Similarly, the accused doesn't have to wait until his
21 assailant gets the drop on him. He has the right to act under
22 the law of self-preservation and prevent his assailant (sic)
23 getting the drop on him, cites *State v. Rash*.

24 The evidence presented by the defense was that he was
25 shot first.

1 THE DEFENDANT: Yeah, that's correct.

2 THE COURT: So I don't understand why I would charge
3 that. I think the concept is adequately covered, the right to
4 act on appearances.

5 THE DEFENDANT: Okay. I add that in, Judge, because
6 the victim in this case is stating that I initiated the
7 situation. I think that was --

8 THE COURT: But that's not what you said happened.
9 You said you were shot from behind.

10 THE DEFENDANT: Yeah, I know what I said. I'm talking
11 about the victim's testimony, because, obviously, state of
12 mind --

13 THE COURT: I think the concept is adequately covered
14 in the right to act on appearances.

15 Then there's a request to charge right to resist. It
16 says, an individual, under the appropriate circumstances, has
17 the right to utilize the amount of resistance reasonably
18 necessary to prevent himself in the event excessive force is
19 utilized incident to a lawful arrest.

20 You want to be heard on that?

21 MR. SOWARDS: From the State, Your Honor? The State's
22 position would be that defense's story is that he did not know
23 he was being pursued by a law enforcement officer. I don't
24 know how he could be resisting an unlawful arrest.

25 THE DEFENDANT: Goes back to what I was saying, Judge,

1 on that, was that the victim's is opposite of mine, his account
2 or of his testimony.

3 THE COURT: I will charge that self-defense, a man has
4 the right to defend himself from an unlawful arrest, and for
5 the purpose of so protecting himself, he has the right to use
6 whatever force is necessary, even to the taking of life, the
7 life of him who is seeking to make the unlawful arrest, if that
8 be apparently necessary, and if it would have been apparently
9 necessary to a man of ordinary courage in the circumstances. I
10 charge you that, where one is defending his person from an
11 unlawful arrest, he had the right to use just so much force as
12 is apparently necessary to accomplish his deliverance and no
13 more. He has not the right to use excessive force unless
14 excessive force not only be apparently necessary to him, but
15 would have been to a man of ordinary courage so situated.

16 That's a 2001 case using that language? Seems like it
17 was written in the 1800s. I am not charging it.

18 Being in unlawful possession of a weapon at the time
19 of a shooting does not necessarily conclude a claim of
20 self-defense. A person can be acting lawfully even if he is in
21 unlawful possession of a weapon if he was entitled to arm
22 himself in self-defense at the time of the shooting. Cites
23 *State v. Burris*.

24 That's close to a charge on facts. Do you want to be
25 heard?

1 MR. SOWARDS: That would be the State's objection,
2 Your Honor.

3 THE COURT: I will have to read that case. I don't
4 dispute that concept. I've got some issues with how it applies
5 to the facts that are alleged in this case, because -- I guess
6 the question is where the self-defense would have begun, where
7 the -- if it was during the chase or if it was at the time of
8 the, under the defendant's version, the shots started.

9 All right. This instruction is printed out here.
10 There's an expert opinion charge, which I've got an expert
11 opinion charge.

12 THE DEFENDANT: Oh, yeah, no, Judge, I believe it's
13 the ones that got checked, 7, 8, 9, I believe.

14 THE COURT: You must consider as evidence any
15 statements made by the State during the trial. Statements made
16 by the State do not constitute evidence. This rule applies to
17 both the State's opening statements and closing argument.

18 THE DEFENDANT: Oh, Judge, I'm sorry about that.
19 Apparently, it's been a typo. It's supposed to say "must not".

20 THE COURT: All right. I always address that in the
21 opening remarks I make to the jury. I always explain that to
22 them. I did not in this case because I didn't have an attorney
23 speaking on one side. I always would say, what the lawyers
24 say is not evidence. I can try to fashion something to put in
25 a charge to make sure that the jury understands that what is

1 said and the role of an attorney is not evidence. The evidence
2 comes from the witnesses and the exhibits.

3 The next one, pro se defendant had the absolute legal
4 right and duty to bring matters to the attention of the Court
5 by way of objection. Do not inferentially or otherwise become
6 upset or disturbed by pro se defendant by virtue of objections.

7 I think it means trial procedure includes the
8 objection process as a means of control of evidence, letting in
9 proper evidence and keeping out improper evidence by objecting
10 in the trial of the case. Once the Court makes a ruling on an
11 objection, the jury is bound by that ruling. If the objection
12 is sustained, the question is improper. If objection is
13 overruled, the question is proper. I am not going to charge
14 that. I've got that explained to the jury in different terms,
15 but same concept.

16 Ninth number on here is, it is the pro se defendant's
17 constitutional right to charge exercised by him, ruled on by
18 the Court, as well as the benefit of an appointed stand-by
19 counsel.

20 I guess that means to act pro se. I am not going to
21 charge that either. So I will mark these three that I am not
22 going to charge as Court's exhibits and note the objection of
23 the defense. And then I will work something into the charge.
24 Y'all have to object after the charge to preserve your
25 objections.

1 All right. So the State is going to go first, the
2 defense in the middle, and the State last, or do you want to
3 let him go first and you go last?

4 MS. LINDER: I'm fine with them going first and I'm
5 going last.

6 THE DEFENDANT: I think I'm opposite. I think I'm
7 fine with her going first and we going last. Flip a coin
8 maybe.

9 THE COURT: Doesn't work that way. All right. These
10 notes from the jury I will have to address with the jurors when
11 they come out briefly. And then I will tell them some things
12 and then I will let y'all make closing arguments.

13 Bring the jury in.

14 (Court's Exh. 10, Self-defense charge, was marked
15 for identification.)

16 (Court's Exh. 11, McGowan self-defense charge, was
17 marked for identification.)

18 (Court's Exh. 12, Requested Charge, was marked for
19 identification.)

20 THE COURT: We've gone through all we needed to go
21 through and we are ready to proceed. I told you I would make a
22 call how I needed to proceed. And I can't make everybody
23 happy. I got two notes from the jurors. I got a note from
24 Juror 289.

25 Just let us know what you need to do to accommodate

1 you and we will do it.

2 Juror No. 209, I've taken what you put in
3 consideration about your plans for tomorrow. And I've talked
4 with everybody about how best to proceed. In light that we
5 have one other conflict with a juror, what I plan to do is keep
6 going tonight. I plan to keep going.

7 Now, I don't know exactly how long it will be before
8 you get the case. On my charge, where I tell you the law, is
9 right at 15 pages. So it's going to be about 28, 29 minutes to
10 charge you the law. You will hear two closing arguments before
11 that. And then shortly after that, the case is given to you to
12 decide. How long you deliberate is completely up to you,
13 obviously.

14 Now, we will order your dinner. I think it's going to
15 be pizza, but we are going to order dinner for you during the
16 break between the closings, between closing and the charge
17 probably. I think we have two choices. I think it's either
18 pizza or subs. I think it's usually pizza.

19 Now, I told you at the outset that in opening
20 statements, the parties could not engage in argument. What I
21 tried to explain to you then is that in opening statement, all
22 that they are allowed to do is to say to you what they believe
23 the evidence will show. In the closing arguments, they are
24 permitted to use the art of advocacy to attempt to get you to
25 see things how they would like you to see things on behalf of

1 their respective positions. The way this works is, the defense
2 goes first. And since the State has the burden of proof, the
3 State goes last. Sometimes I take a break between the
4 closings. Sometimes I wait until the last one is done and then
5 take a break. But I always take a break before we bring you
6 out. I invite your close attention.

7 There's one other thing that I need to make sure you
8 understand, and I was going to try to work it into the charge.
9 I always say this in the opening, but I got a little
10 discombobulated. I want to make sure you understand that when
11 I told you where the evidence comes from, I told you it comes
12 from the sworn testimony of the witnesses and the exhibits
13 admitted in the trial. Well, that's correct. Usually I add in
14 there that you need to understand that what a lawyer says is
15 not evidence. So in this instance, you have Mr. Blake acting
16 as his own attorney. So whatever he may have said acting in
17 the role as his own attorney, representing himself, that's not
18 evidence. The evidence comes from the sworn testimony of the
19 witnesses and the exhibits admitted in the trial. Likewise,
20 what either of the solicitors may have said is not evidence.
21 Evidence comes from the witnesses and the exhibits.

22 Mr. Blake, are you ready?

23 THE DEFENDANT: Yes. Ladies and gentlemen, as my
24 closing argument and as last bite of my defense, consists of
25 both a general overview of this trial and general overview of

1 said incident.

2 First and foremost, let us recollect and observe the
3 law enforcement officers' testimonies given here before you.
4 In regards to their version of events within said incident,
5 were both inconsistent and contradicting beyond a minimum where
6 you have both the City of Charleston Police Department,
7 Detective Burckhardt, and South Carolina finest law enforcement
8 division, Agent Kelly, coincidentally both conspired a false
9 narrative and unsupported pretense within both search and
10 arrest warrant affidavits before thoroughly investigating and
11 establishing the facts of the events within said incident.

12 Then after getting both sham affidavits signed off by
13 a magistrate judge on the date of April 1st, 2013, after them
14 both ultimately committing perjury under sworn oath. In
15 addition and adding more insult to injury, on April 4th, 2013,
16 approximately three days after the execution of both said
17 warrants, Officer Ferguson, also from City of Charleston Police
18 Department, took it upon herself and decided to ride the wave
19 of this same false narrative, both created and conspired by
20 both Detective Burckhardt and Agent Kelly and approved by
21 Officer Ferguson's former supervisor and now current solicitor
22 of the 9th judicial circuit, David Osborne.

23 Furthermore, both the alleged victim and the State
24 witness, Cory Goldstein, finally submits his statement April
25 8th, 2013, approximately nine days after said incident,

1 clarifying the initial said false version of events of myself
2 firing first and himself returning fire. In place of the
3 initial said false narrative, Officer Goldstein stated in his
4 statement conducted by the City of Charleston's Police
5 Department professional standards office that he himself cannot
6 recall who shot first, which now both constricts and traverses
7 the initial said false narrative of said incidents and,
8 therefore, changes both circumstances and outlook upon this
9 whole scenario.

10 In speaking of which and now crossing over to the
11 subject matter of the said incident. Let us now recollect and
12 observe the night of the said incident. All responding
13 officers and State witnesses, including the alleged victim,
14 Officer Cory Goldstein, testified how excessively dark it was
15 the night of the incident and photos admitted into evidence
16 also to support that said testimony. And not to mention the
17 dark-in-color uniform that Officer Goldstein was wearing the
18 night of said incident which made it too far, too challenging
19 for myself to distinguish the presence of law enforcement
20 official versus a pedestrian.

21 Based upon, once again, the pitch-black dark setting
22 the night of said incident and photos regarding Officer
23 Goldstein's dark-in-color uniform are also admitted into
24 evidence amongst your convenience for observation to support
25 said fact.

1 Moving forward and observing both Officer Goldstein's
2 statements and verbal testimony regarding his alleged verbal
3 acknowledgement of him properly identify himself as a law
4 enforcement official amongst the course of said incident, which
5 in while, State's witness, Sean Riner, both written and verbal
6 testimonies, ultimately contradicts Officer Goldstein's
7 testimony regarding Officer Goldstein's alleged verbal
8 acknowledgement of properly identifying himself as a law
9 enforcement official, which is a very critical and vital key
10 factor to both said incident and the State's case. Because the
11 last time I recollect, it was an undisputable fact that an
12 unannounced law enforcement official, dressed in dark-in-color
13 clothing, within a pitch-black dark surrounding, both pursuing
14 and commanding a pedestrian, such as myself, to stop, does not
15 clarify nor establish proper acknowledgement of a law
16 enforcement official.

17 Ladies and gentlemen, when the State presents incident
18 witnesses to testify in support the State's claim and their
19 testimony regarding the version of events within an incident
20 doesn't coincide with one another, then the State has both
21 proven reasonable doubt and, therefore, ultimately failed to
22 meet their obligated burden of proof.

23 And speaking of proof regarding my said counterclaim
24 of self-defense, folks, it doesn't take a rocket scientist to
25 conclude the fact that the night of said incident, the State's

1 witness and alleged victim, Officer Cory Goldstein, both
2 initiated and executed an ambush attack on my life based on the
3 bullet holes I sustained from the rear of my clothing the night
4 of said incident, which further left me no other choice or
5 alternative but to defend my life with exchange of gunfire.
6 And in support are both conclusive photographic evidence that
7 are also admitted into evidence amongst your convenience for
8 observation to corroborate said fact, which now further
9 concludes that Officer Goldstein's version of events of a
10 classical Western standoff between both him and myself was
11 nothing more than a mere delusional occurrence to only conceal
12 his malicious and malfeasant act by fabricating the truth to
13 protect the pursuance of his law enforcement career.

14 Ladies and gentlemen, a quick legal analysis breakdown
15 regarding the four times elements of self-defense. Based on
16 both said photographic evidence of myself sustaining both
17 multiple gunshots from the rear of my clothing and actual
18 serious bodily injury proves one of two and partially three, by
19 both testimony and cumulative evidence, regarding my
20 involvement of the exchange of gunfire of the said incident,
21 covers both remaining elements three and four therefore and
22 which the State failed to disprove beyond a reasonable doubt.

23 But also the State failed to connect the dots to the
24 case of attempted murder, which consists of the intention of
25 premeditation or malice to kill another person. Based on my

1 initial preventive action of running to safety, clearly doesn't
2 define malice to any degree.

3 Folks, in regards to this whole situation which brings
4 us here, that I chose to defend myself as my absolute last
5 alternative, because no one else seemed to possess the courage
6 to put up a fight against the State quite like myself to prove
7 my innocence, because the incident involved an officer,
8 regardless if I was in the right.

9 The whole truth to this matter is that the State never
10 had a solid case. But they couldn't afford to throw out the
11 case due to an officer being involved. So what does the State
12 do here when they are at a poor situation such as this? They
13 prolong my case for over five years to both build up the
14 courage and conspire a strategy on how they would get over the
15 loopholes within this case that clear and convincingly prove my
16 innocence.

17 They knew that Officer Goldstein's testimony alone
18 couldn't secure the State a win. Being that they knew that
19 everything including an alleged traffic stop within the
20 incident couldn't be physically produced due to the absence of
21 video equipment and being that no one else physically witnessed
22 the course of the events regarding alleged traffic violations.
23 That would be a gray area. In addition, being that I wasn't
24 charged with a weapon charge, that would be another hurdle for
25 the State to overcome to prove my actions to the matter were

1 unjustifiable.

2 And as far as the rental car, that was in my closest
3 friend's name that rented the car for me, misinformed myself
4 that my name was added as an authorized driver. So once the
5 State found that out, they later tried to coerce her into
6 saying that the car had been stolen by myself in order for the
7 State to pick up an additional charge.

8 MS. LINDER: Objection, Your Honor, facts not in
9 evidence.

10 THE COURT: You can't argue anything that's not in
11 evidence. Those facts are not in evidence.

12 Disregard the last statements about what this person
13 who rented the car may have done, any subsequent agreement that
14 was not put into evidence.

15 THE DEFENDANT: Throughout the five years, the State
16 were delaying disclosing me all evidence to the case, which
17 would keep me unbalanced during the preparation of this trial.
18 Once the State discovered the gunshots I sustained from the
19 rear of my clothing to prove myself not being responsible for
20 bringing on the difficulty of the charge of attempted murder,
21 they then would have to remedy that issue by having SLED
22 employee Kukila Wallace coerced to lying under oath regarding
23 her confirming the shots I sustained from my clothing were not
24 actual bullet holes as labeled, but only potential bullet holes
25 in order to sabotage my self-defense claim.

1 Once the State came to a conclusion that the incident
2 witness Sean Riner's testimony would not coincide with Officer
3 Goldstein's prior acknowledgement of himself as a law
4 enforcement officer, then they also had to curve their defense
5 by stipulating irrelevant matters into the picture, such as an
6 alleged failure to stop for blue lights, an actual charge that
7 the State did not want to go forward with. Reason being, if
8 they want forward with both charges together, it could slim
9 their chances of me getting found guilty of alleged failure to
10 stop for blue lights, for example, and not guilty for attempted
11 murder. The jury had an optional charge preference of what
12 they would find me guilty for.

13 But based on the jury having only one option of a
14 charge to convict on, then they would use that to both mislead
15 and confuse the jury to support convicting me of a false
16 motive, instead of the actual nature of attempted murder, which
17 is the only charge that brings us here today.

18 Folks, I'm here before you and took on alone two
19 arresting agencies within this trial and battled it out with
20 all the officials, all of the officers of the court, judge
21 included. So there's undisputable fact that I was clearly
22 outnumbered here today. And I didn't do this for me. I did
23 this for my kids. I had to prove to them that amongst all
24 circumstances, when it comes to getting back to them, I will
25 take the world on for them. And through my point, I am doing

1 that for them. And that's why I'm here today before you. I'm
2 taking on the world to get back to my family, over a big
3 mishap, a freak accident that I never planned on this whole
4 situation even occurring that night of that incident when I
5 left my house.

6 My only intention was just to get up. My whole
7 intention was to get a drink that night and just laugh with the
8 lady that was involved in the situation. I never intended on
9 this. I am not perfect, but I'm definitely not a cop killer.
10 Might be a lot of things, but I am not that. Never been a man
11 of violence, ever. I thank you all for your time.

12 THE COURT: The State is recognized for its closing
13 argument.

14 THE DEFENDANT: Judge, I want to object to a matter of
15 law before she starts.

16 THE COURT: Ladies and gentlemen, please go in the
17 jury room. Don't discuss the case.

18 (Whereupon, the jury leaves open court at 5:59 p.m.)

19 THE DEFENDANT: I want to object to the charge you
20 have, it's regard assault and battery of a high and aggravated
21 nature. I still consider that as a strike offense.

22 THE COURT: I understand it's a strike, but that's not
23 the question I have to ask in deciding how to craft the charge.
24 Whether it's a lesser-included offense, why didn't y'all tell
25 me this before? Are you objecting to me charging the

1 lesser-included offense?

2 THE DEFENDANT: Yes, Judge.

3 THE COURT: On what basis?

4 THE DEFENDANT: On the basis that it's a strike. I
5 mean, I don't want it to be a lesser-included offense
6 involved.

7 THE COURT: The State want to be heard?

8 MR. SOWARDS: Your Honor, in light of all of the
9 evidence presented in this case, the State thinks it's
10 appropriate to also charge the lesser-included assault and
11 battery of a high and aggravated nature.

12 THE COURT: Do you have anything else, Mr. Blake?

13 THE DEFENDANT: Judge, that's all I have for the
14 moment. I was meaning to arise (sic) this, but I was trying to
15 get myself together. And I had to go first with my closing
16 argument, so --

17 THE COURT: Well, it's not a flip of the coin. I
18 don't just arbitrarily do these things.

19 THE DEFENDANT: I understand, Judge. I just, please,
20 ask for you to honor my request.

21 THE COURT: All right. The statute reads that a crime
22 of attempted murder includes assault and battery of a high and
23 aggravated nature. It includes other things too, like assault
24 and battery in the first-degree. But that was not applicable
25 on what was presented in this case. And so assault and battery

1 of a high and aggravated nature does not require malice. And
2 it deals with a situation where a person inflicts great bodily
3 injury upon another knowingly and unlawfully.

4 The only way I could not charge it, in my view, is if
5 both sides agree not to charge it. I understand that it
6 doesn't help you from a strike standpoint. It's still a
7 strike. But that's not the inquiry for the Court. The inquiry
8 is whether it fits within the framework of the factual
9 allegations in the case from both sides. So the request to
10 remove it is denied.

11 THE DEFENDANT: I tried to get them reduced initially
12 within the trial.

13 THE COURT: Sir, I can't understand you. You have
14 your fingers in your mouth.

15 THE DEFENDANT: I initially tried to get it reduced
16 down within the trial. But then at that time, we didn't have
17 testimony by, I think it was, Stephanie Montgomery. And at
18 that point, I just left it alone. But I've been meaning to say
19 something about this. Like I said, it was -- I was mind
20 boggled upon to get myself to go first. I am not trying to go
21 for excuses. I'm saying I am not an attorney. And I did make
22 a lot of mishaps. But I'm accountable for mine. And I just
23 ask you to reconsider.

24 THE COURT: I don't think it's anything you did or did
25 not do. And I don't know that I can explain it any better. I

1 will try to just say this. It's not my job and I am not
2 permitted under the Constitution to invade the province of a
3 solicitor in deciding what to charge people with.

4 The question at the directed verdict stage, had there
5 been no evidence to support a conviction for attempted murder,
6 would be then whether the case would go to the jury with
7 attempted murder out and assault and battery of a high and
8 aggravated nature in. But there are jury issues there.

9 Now you raised that objection. And I understand that.
10 But I don't think there's any question. It may be a close call
11 about me letting in that information about you not being
12 entitled to have a pistol. That might have been something that
13 in hindsight I might have ruled differently. I think it was a
14 close call when I made it. I acknowledged that I might have
15 made an error. And if I did, I addressed that earlier in the
16 trial. It wasn't anything intentional. But it was based on
17 what I understood at the time.

18 But I don't think this is -- I don't think this is
19 something that has anything to do with you doing or failing to
20 do anything. It's just attempted murder is malice. And
21 assault and battery of a high and aggravated nature does not
22 require malice. And but it does require infliction of great
23 bodily injury, or there's another way it can be done too.

24 The charge I brought up to pattern this one after that
25 I've done in a previous case did not have ABHAN as a

1 lesser-included offense, but has assault and battery first
2 degree as a lesser-included offense because it occurred in a
3 burglary. So I don't get to pick and choose. The legislature
4 passes this stuff. I read it. I do the best I can.

5 Bring the jury.

6 Hold on. They want to be able to call their family
7 and tell them they are going to be late. We will be at ease.

8 (Court's Exh. 13, Jury note requesting to call
9 family.)

10 (Whereupon, recess transpired.)

11 THE COURT: Ready for the jury?

12 MS. LINDER: Yes, Judge.

13 THE COURT: Defense, ready for the jury?

14 THE DEFENDANT: Yeah.

15 THE COURT: Bring the jury, please.

16 (Whereupon, the jury returns to open court at 6:18
17 p.m.)

18 THE COURT: You're recognized for your closing
19 argument.

20 MS. LINDER: Thank you, Your Honor. Ladies and
21 gentlemen, I told you in the beginning of this case that this
22 case is about Mark Blake and his actions and his choices and
23 his decisions. The defendant has tried to bring out a few
24 points to you throughout the course of this. And I submit to
25 you those points are not relevant. Those are smoke and

1 mirrors. And those are distractions from what really matters
2 in this case. He's trying to distract you from the fact that
3 he attempted to kill Officer Goldstein.

4 A couple of the things that he's tried to bring up is,
5 well, that everything is a conspiracy. The world is against
6 him. Every person up there who took that stand was lying,
7 except him. If you believe the defendant's story, you are
8 saying that every other person up there was lying, I submit to
9 you, including myself and my entire office.

10 The other thing that he's talked a lot about is he
11 didn't know it was a police officer. Well, I would submit to
12 you, he just had an encounter with the police in the Best Buy
13 parking lot, that blue light and siren followed him the whole
14 way down, and there's a marked car. It was a fully uniformed
15 officer. I mean, who else would it have been?

16 When he testified to you, he even said that when he
17 looked back, one of the times he looked back, I noticed the
18 blue light and he heard, Stop. You had Officer Goldstein
19 testify about that fact, when he announced he was police, he
20 was yelling, Stop, he was running.

21 You had Sean Riner say from a lot of further away, 50
22 feet, I think he said 50 feet away, he could tell it was
23 police. He said -- I think he said because of the equipment,
24 the belt and the vest. And also you had Sean Riner even
25 further away who could see that blue light on the ramp before

1 the running even started.

2 Officer Goldstein told you that the defendant stopped,
3 turned and faced him from about 10 feet away. And he told you
4 about those words that were spoken from about 10 feet away.
5 You heard from Sean Riner. Sean Riner said that he saw the
6 front guy stop and turn prior to any shooting. It's important
7 to remember that.

8 Another thing that the defendant is trying to distract
9 you with about this issue, who shot first, who shot first, who
10 shot first, here's the thing, at the end of the day, it doesn't
11 matter. Officer Goldstein was legally allowed to have that
12 firearm. And Officer Goldstein was -- did what he was allowed
13 to do.

14 Officer Goldstein and Mr. Blake, frankly, they agree
15 on one thing, it happened fast. Imagine the actions of each
16 individual when you are back there based on the testimony that
17 you heard. Imagine what makes sense. Use your common sense
18 and use your personal life experience when you try to sort out
19 and sift through the facts of this case. Think about it.

20 Cory says he sees someone's back. He then says,
21 Police, don't move. And he starts to unsnap. He has to rock
22 his gun forward before he pulls it -- before he can pull it out
23 of the holster itself. Okay. Think about that.

24 Mark Blake has spun around and has already started
25 shooting. As Cory is unsnapping, rocking it and then pulling

1 it out, that's when he's hit in the chest. And he starts
2 moving off line. That's when he's hit in the pinky right here.
3 That's when he's hit in the arm that goes back. That's when
4 he's hit in the leg as he is moving. And now look, where he's
5 hit in the chest is covered. Think about it that way. Use
6 your common sense.

7 So another issue that Mr. Blake is bringing up is that
8 he was shot in the back. Look, Lieutenant Wallace labeled
9 things wrong. She told you that yesterday. And she told you
10 that again today. Is that ideal, frankly? In my situation,
11 no. I wish everything was labeled whole. You know, I remember
12 I used to have a really yucky, horrible dryer. And it would
13 tear little holes in my clothes. Finally had to go buy a new
14 one. There are tears and holes in clothing from anything, from
15 a dryer, from rolling around on the ground, and also from a
16 bullet hole. I am not saying that doesn't exist. I'm just
17 saying the labels were wrong. And she told you that.

18 But, you know, I urge you look at his clothes. He
19 talks about his jacket, how he was shot. You'll have that
20 jacket. There's a hole, sure. But that hole doesn't even go
21 through the lining of that jacket. So that must be a magic
22 bullet that goes through one layer but not both layers of the
23 jacket, much less his undershirt and his shirt all the way to
24 the body, because you heard the doctor, no shots in the back.

25 So Sean Riner said the defendant turned around before

1 any shots were fired. Officer Goldstein told you the defendant
2 turned around before any shots were fired. Mr. Blake's
3 injuries are consistent with that. You just need to think
4 about all of this stuff and use your common sense.

5 So I want to start by talking a little bit about the
6 law. Now, obviously, Judge Keesley, we are lucky to have him
7 visiting us, and he's the judge this week, he is the judge of
8 the law. So I'm going to tell you a little bit about the law.
9 And, you know, I kind of simplify it a little bit in how I talk
10 about it. But at the end of the day, he's the judge of the
11 law, so listen to him. But I want to talk you through a few of
12 the general ideas.

13 Okay. Attempted murder, attempted murder is a person
14 who, with the intent to kill another person with malice
15 aforethought, commits the act of attempted murder.

16 THE DEFENDANT: I object to that, Your Honor.

17 THE COURT: What?

18 THE DEFENDANT: Implied.

19 THE COURT: Hold or a second.

20 THE DEFENDANT: Implied and expressed.

21 THE COURT: Ladies and gentlemen, there's a difference
22 between -- as she just said, if there's a difference between
23 the solicitor's version of law and what I tell you, you have to
24 apply the law as I tell you. I am not in any way implying
25 anything. I'm just telling you that's the standard. It comes

1 from me, as she said. Go ahead.

2 MS. LINDER: So first thing you have to do is show
3 intent to kill. Intent to kill can be determined by acts,
4 words and conduct from the defendant and any other
5 circumstances from which you may naturally and reasonably infer
6 intent. And you do not have to prove it to a mathematical
7 certainty. You don't have to prove that intent to kill to a
8 mathematical certainty. So acts, words, conduct of him, and
9 then other circumstances.

10 So I would submit to you that other circumstances are,
11 you know, the acts of him. We saw he had turned around. We
12 saw him fleeing. We saw him arm himself before he fled. He
13 stopped. He turned. He ignored commands, so on and so forth.
14 Those are all actions of his. Words and conduct, all of those
15 things at the end of the day you can consider when it comes to
16 intent to kill.

17 And then for malice aforethought, it's kind of a weird
18 term. It's hatred, ill will, hostility. Sometimes it's called
19 wicked or depraved heart. And, more or less, that's what it
20 is. It's that malice. It's that hatred. It's that ill will
21 or hostility. And then that has to be just before or at the
22 time of the act. It doesn't have to exist for a long period of
23 time before the act. It can, frankly, happen right before the
24 act occurs. So as long as it happens at any moment before the
25 act itself occurs and obviously during the act.

1 Expressed malice is actions or words which expresses
2 hatred or ill will. Again, you've heard testimony from the
3 stand. And you have heard from many different people about
4 different actions and words that happened in this case. And I
5 already discussed the time element with you.

6 The judge is going to talk to you about types of
7 evidence. There are two types of evidence in every case.
8 There's direct and there's circumstantial. Direct evidence is
9 what you hear. It's testimony in here what you hear from a
10 person who actually knows, they know firsthand because the
11 senses, they saw, touched, tasted, heard, all of that. So
12 that's direct evidence.

13 Circumstantial is kind of a proof of a chain of events
14 and circumstances that indicates the existence of a fact. And
15 that is, frankly, just kind of how it sounds. If one thing
16 then leads to another then leads to another, all of those
17 things, when you put them together, it's like, huh, oh, yeah,
18 that does make sense, that is circumstantial evidence.

19 Reasonable doubt, reasonable doubt leaves you firmly
20 convinced of the defendant's guilt. And the State is not
21 required to show you proof beyond all doubt or beyond any
22 doubt. It's just supposed to show you beyond reasonable doubt,
23 which means you, as a juror, are firmly convince of the
24 defendant's guilt.

25 So I'm going to go over here. Reasonable doubt,

1 actually, is kind of funny, because when Agent Kelly was
2 testifying, I maybe laughed because it's usually my example I
3 use for reasonable doubt when he was talking about the rain.
4 So you are sitting inside, and you could use it for what he was
5 talking about or circumstantial evidence, reasonable doubt,
6 it's kind of one that everybody uses. We've been sitting
7 inside all day for the past three days. I have no idea if it's
8 been raining, not raining, sunny, cloudy. I have no clue
9 what's happening out there because there are no windows here in
10 this courtroom. But if we are sitting here and you see someone
11 walk in, and they are wearing a rain coat, and it has water
12 droplets on it, and then you see somebody else come in and they
13 have an umbrella and they are shaking it off within five
14 minutes and there are water droplets everywhere, and then you
15 walk out of this courtroom and you get to glimpse outside
16 through a window and you see the ground is wet, you could see
17 the sidewalk by the color is wet, and then you walk down the
18 first floor and out of this courthouse and, for some reason,
19 you take your shoes off, and you step in that little patch of
20 grass and that's wet, okay, you never saw it rain, but you are
21 firmly convinced that some time recently, it has rained,
22 because you could put together all those different things. And
23 that itself, that fact, leaves you firmly convinced.

24 I want to talk to you about self-defense. The
25 defendant in this case is claiming self-defense. Once the

1 defendant puts forward a claim of self-defense, then it's on
2 the State to disprove any one of those elements.

3 THE DEFENDANT: I object on that, Your Honor, on the
4 one element of self-defense.

5 THE COURT: In order for self-defense to exist, it has
6 to have all the elements established.

7 MS. LINDER: As Your Honor just indicated, in order
8 for self-defense to apply, all four of those elements must be
9 met. If the State disproves any one of those, then
10 self-defense does not apply in this case. So if you think
11 three applies, but not the fourth, self-defense cannot apply in
12 this case. So the State must disprove any one of those.

13 This is a lot of words. And you will hear them from
14 the judge. He may say it a little better than this.
15 Self-defense, let's talk about it. The first one: The
16 defendant is without fault in bringing about the difficulty;
17 and, the defendant must have been in actual imminent danger of
18 losing his life or sustaining serious bodily injury; or, he
19 must have actually believed he was in imminent danger of losing
20 his life or sustaining serious bodily injury; and then it talks
21 about if it's based on his belief or if it's based on actual, a
22 reasonably prudent person of ordinary firmness and courage,
23 would have entertained the same belief, or a reasonably prudent
24 person of ordinary firmness and courage, they would have acted
25 in same manner. That's important to remember. You got to

1 remember the reasonable aspect of things; and then the fourth
2 one is that the defendant had no other probable means of
3 avoiding the danger of losing his own life or sustaining
4 serious bodily injury.

5 Frankly, I think we disproved all four. I think the
6 clearest one is going to be number one, that he's without fault
7 in bringing about the difficulty. And I'm going to keep going
8 through why, in fact, that's true.

9 So the judge is also going to charge you, aside from
10 attempted murder, he's also going to give you the option if you
11 would like to convict the defendant of assault and battery of a
12 high and aggravated nature, what we call ABHAN. So for assault
13 and battery of a high and aggravated nature, it's a person who
14 unlawfully injures another, and the act is accomplished by
15 means likely to produce death or great bodily injury.

16 So legal jargon, which I don't even necessarily like,
17 what does that really mean? So we strip it all away.
18 Attempted murder means I have to show you the intent that the
19 defendant intended. And then there was the malice, and he
20 intended to kill him. This one, I don't. (Indicating.) This
21 is he's injuring somebody else, and it's accomplished by a
22 means likely to produce death or great bodily injury. So those
23 are the two differences. Again, please listen to the judge.
24 He is the judge of the law and much more eloquent than I when
25 it comes to that.

1 So I want to talk to you very briefly about the facts
2 of this case. And when I talk about the facts of the case, I'm
3 going to run through it. You have been such an attentive jury,
4 and I do thank you for that. And I just want to kind of make
5 sure that we are all on the same page. And I want to review a
6 few things with you.

7 Let's start. March 30th of 2013, it all started here.
8 The officer -- if I can make this work. No. Oh, these
9 screens. The officer is in that appliance parking lot, facing
10 out. The defendant drives this way, passing that beautiful,
11 reflective black-and-white marked cruiser, drives right past
12 him, windows tinted, turns right at this light. So at that
13 point, I would submit to you, that Mark Blake started getting a
14 little nervous, a little scared, because he sees that police
15 officer. And at that point alone, he already knows he is an
16 unauthorized driver on that car, as that rental agreement
17 shows. He is not allowed to be driving, period, as his license
18 was suspended. There is dark window tint. It's illegal on
19 that car. And he has a firearm that he's not allowed to have
20 in that vehicle with him. So right there, I submit to you that
21 even back then, he saw that police car, and he said, oh, no,
22 not tonight, not getting caught.

23 So turns right. Things keep moving on. And then the
24 officer, just like I said, told you and talked to you in very
25 opening of all of this, he talked about how he was trying to be

1 patient. And he was being reasoned. And he was being measured
2 in everything that he did. He doesn't just throw on those blue
3 lights and make it happen when he saw this dark tint. He
4 didn't all of a sudden say, whoa, look at this, these North
5 Carolina tags, it's a rental car, after he ran the tags, and
6 that made the tint even more concerning to him. But he wanted
7 to kind of check out what was happening. So that's exactly
8 what he did. In a reasonable and measured fashion, he
9 responded to the defendant's choices that night. And it
10 started with a choice, as simple as this.

11 So this map you will see it goes through. I can't
12 point it. About the center of the hole map, that's Orleans
13 Road. It goes down. And then about third of the way down, you
14 see to your left it goes into Target and the mall. So when the
15 defendant drives the car in there, the officer is watching. He
16 goes across the street and he's just checking it out. He's
17 watching what's happening. And sees no stops at the stop
18 lights, driving quickly through. And then he sees him pass
19 some stop signs and get on Orleans Road. Officer responds by
20 getting right on him.

21 There's testimony that you heard that on the corner of
22 Orleans Road and Sam Rittenburg that there's businesses, like a
23 strip mall. The lighting is there and we see who's behind. As
24 they continue along, ends up crossing over. Now we are
25 looking -- wish I had a pointer that worked -- about two-thirds

1 to three-quarters of the way over, the angled road there. That
2 is Orleans Road and that's Sam Rittenburg. Crosses over Sam
3 Ritt and turns, it would be left, but it looks like our right.
4 That big parking lot right there, that big, well-lit parking
5 lot, that's Michael's now, and Best Buy, used to be
6 Books-A-Million, the Wells Fargo is at the bottom. So that's
7 where all this happened.

8 So in this parking lot, this parking lot is where the
9 defendant chose to ignore the blue lights, causing the officer
10 to respond by putting on his siren. Then the defendant came to
11 a stop. It could have stopped there. I'm sure Officer
12 Goldstein wishes it stopped there with the citation or a
13 warning. But the defendant made other choices. He turned off
14 his headlights and he squealed those tires and he took off. He
15 took off the big white roof. It's just south of that. He took
16 off straight out that way, really fast, no headlights, turned
17 right on to Dupont, turned, took a right on to Dupont.

18 Officer Goldstein responded by putting on his blue
19 lights and sirens continuously, the whole way down. Toward the
20 top, you could see Best Buy, Michaels. That's Dupont that
21 whole road down, that entire road down, all the way to what I
22 can see is Boxcar Betty's. That's 17. All that way down,
23 that's the way that the defendant drove, that entire way. You
24 heard testimony, no cars in between the defendant and the
25 officer, that entire way down, blue lights and sirens going.

1 When the defendant came out and went southbound on
2 Savannah Highway, still had no headlights, still was speeding,
3 still driving erratically, Officer Goldstein responded. He
4 made a responsible choice. He terminated the pursuit. He
5 turned off his lights. He turned off his sirens, because he
6 had to think of other people, because that's what he did and
7 that's what he does. And that's a big reason, one of the main
8 great things about law enforcement. They don't love what they
9 are doing all moments, but they do it because that's what their
10 duty is.

11 So goes down southbound on 17, driving erratically,
12 driving erratically, driving erratically. And then as he's
13 driving erratically, we have Officer Flaherty who you heard
14 from. Flaherty, he marked on the map, and y'all have all this
15 stuff back there with you. He was at the light. And he X'd
16 kind of where the overpass is. He was at that light when he
17 saw the defendant driving south on Savannah Highway, no
18 headlights. So that's two people, no headlights, no
19 headlights, driving erratically, turn right to the on-ramp. So
20 those -- so that goes on the ramp. He immediately turns on his
21 blue lights. He's waiting for traffic to be safe. And before
22 he turns left, Officer Goldstein had caught up going down
23 Savannah Highway just driving with the flow of traffic, no
24 lights, no sirens. Goldstein pulled up. Flaherty directly
25 behind him.

1 You heard that this is what they came across, a
2 vehicle with a lot of damage to the front, a vehicle with no
3 headlights on. And then you heard again about what the
4 defendant's actions were at this point. He decided, even
5 though he thought he shook the guy in this unknown blue sedan
6 behind him on Savannah Highway, by the time he got up here, he
7 thought, wait, maybe again. So he decided to arm himself.

8 He didn't call the police. He didn't do any of that.
9 He ended up arming himself when he was not allowed to, and he
10 took off running. Officer Goldstein then took off running
11 after him, gun in holster. He starts at that underpass
12 yelling, Police, stop.

13 Now, everybody has different ways they pronounce
14 things. You know, I'm pretty articulate. So I say, Police,
15 but some people say, police, police, police. And it is kind of
16 sounds like a whispering please. I don't know. I don't know.

17 Listen, Officer Goldstein identified himself as police
18 and said that. He was chasing after him with his gun
19 holstered. Flaherty also told you that when Officer Goldstein
20 went running, his gun was holstered. Ernie Terrell also told
21 you that when Officer Goldstein was running, he had his gun
22 holstered. So those people are all lining up.

23 So we have this car. We have the ramp. That shows
24 the light -- that's not really the light. It's from this ramp.
25 This is the on-ramp. You can see the hotel. You can see all

1 of that. You can also see Ernie Terrell, where he is with that
2 well-lit Motel 6, and he's looking right over. You can see in
3 this picture, you see Flaherty's car is the one in the back
4 left. He identified that for you. That's his car with his
5 blue lights going. You can see this is Officer Goldstein's
6 car. This is clearly, I would submit to you, a marked cruiser.
7 This is the car you think of when you think of a police car.
8 This is the old-school Crown Vic, the black and white, the
9 blue, the big emblem. This is exactly what comes to mind when
10 you think of a police car. And this is the car that was behind
11 the defendant, blue lights and sirens on, and he failed to
12 notice, or the car he saw was a new model sedan, doesn't know
13 the color.

14 This perspective shows you, when Mark Blake decided to
15 arm himself and say, hey, let's go for it, and he took off
16 running, and you had Ernie, who saw the defendant and Officer
17 Goldstein, you had Flaherty, who didn't see any, either of
18 them, because he was making sure that car didn't have stuff in
19 it, so this is kind of the perspective from the on-ramp, you
20 could see the blue lights, all the way down to the street. And
21 then there's the sidewalk on the other side. So this shows you
22 kind of the view that they had, that grassy area where they
23 were running.

24 Mark Blake, when he was running here, he had a bunch
25 of choices. And he kept choosing to do whatever he felt like.

1 That's what he did. That's what he does. He thinks he can
2 talk his way out of everything. He thinks that he gets to
3 decide everyone's fate. He is subject to the same laws that
4 you and I are. As he's running down this way, he hears
5 somebody yelling, Stop. He even told you that. He turns and
6 looks. Took a little while, but he did acknowledge he saw blue
7 lights. So 10 to 15 feet away, he sees a person. He hears a
8 person. And in that same glance, he sees blue lights. Oh, and
9 by the way, there's this big encounters with blue lights all
10 earlier just prior to this, minutes before this. Who else
11 would it be?

12 So next there's Sean Riner out there having that
13 cigarette. Poor guy, I think, so unlucky. But so he's out
14 there, and he's able from this hotel patio -- and again, you
15 will have all of these exhibits, so you will have a better
16 perspective -- he's able from that spot, he testified, he saw
17 the blue lights on the on-ramp. After he saw the blue lights
18 is when he saw the people running. He saw the people running
19 50 feet away. And he told you it was a police officer. And he
20 told you that officer was telling the defendant to stop. He
21 told you that. So he could tell from 50 feet away. And
22 Mr. Blake, who says he has good vision, cannot tell from 10 to
23 15 feet away.

24 So Mr. Blake decided that he was going -- he was going
25 to choose how everything happened and how everything went down.

1 So instead of stopping back in the Best Buy parking lot,
2 instead of stopping after everything on Dupont, instead of
3 stopping when he was in a car accident, instead of any of that,
4 he kept choosing to go. He kept choosing to flee. He was
5 trying to outrun the situation that he had created. He ran.
6 He sure did. He ran. And when he realized that Cory Goldstein
7 was in great shape and a fast runner, he was like, oh, I have
8 to change my strategy. So he went from a run to a jog. Hands
9 on the waistband. Went from a jog to a walk, to a stop.

10 Ladies and gentlemen, I am not saying these were like
11 long periods of a run and long period of a jog and long period
12 of a walk. Look at the pictures. Sidewalk is not that long.
13 From one end of the hotel to the rest, I don't know how many
14 yards, I am not good with that, but if you were running and you
15 jog for a few moments like this, and then you walk for a few
16 minutes, and then you stop, and then you spin around, I mean,
17 that's pretty quick. I talk pretty quick, but if somebody
18 says, you know, Don't move, police, don't move, I mean, I can
19 move pretty darn quick.

20 So, you know, I just kind of want you to think about
21 that. When we are up here testifying, we are asking for
22 everyone to slow things down. And it's really important to
23 slow things down for you to understand what happened. But then
24 it's also really nice to hear somebody who had no idea of what
25 was going and who saw things in real-time. And Riner saw in

1 real-time zero, a big goose egg, zero bullets, zero muzzle
2 flashes. He didn't hear them or see them until the first guy
3 turned around. That is hugely important.

4 So this is the sidewalk. This is the sidewalk. So
5 along this sidewalk is the run, jog, walk, everything. And you
6 could see on the right side of the building, that's where the
7 patio is. That's where Sean Riner is during all of this.

8 I ask you to think about Mr. Blake's version. Think
9 about it. So he's running. And then he is shot from behind
10 when he first gets on the sidewalk. I think there was
11 testimony about the shell casings. We even had Chad Smith do
12 some math. Remember that? Cory Goldstein, 18 rounds were
13 collected. Lt. Wallace told you, and there are photograph, all
14 18 rounds of Officer Goldstein's were, like, in the roadway,
15 the roadway away from 526. And you will have pictures. You
16 can see where that was. It's actually close to where you are
17 kind of turning right to go to Costco. That's a landmark for
18 me, turning right into Costco. So there are no shell casings.
19 There are no shell casings over there.

20 And more importantly, aside from that, do the math.
21 Listen to Chad Smith, do the math. You know, he talked about,
22 well, there's Goldstein's magazine is 13. He reloaded. So
23 Goldstein had two magazine, 13, 13, 26. Out of the 26, 18 were
24 fired. That leaves you with 8. There were 8 left in the
25 magazine, which means all 18 were collected, which means all

1 18, none of them where Mr. Blake claims that the first shots
2 rang out, none of them.

3 He's crafting a story that helps himself out. And
4 it's not consistent, his favorite word, with what everyone else
5 is saying.

6 So here we have Sean Riner ducking, trying to get into
7 everything. Here I want to talk to you, because what's
8 happening is, he's ducking to get in, because at this point,
9 firing is happening. You heard from Officer Goldstein. The
10 only people out there. You could see the parking lot. No one
11 is out there. You heard testimony from officers who ran
12 through. He was the only one out there anywhere in that hotel
13 parking lot. We got the surveillance videos. He's the only
14 one in that hotel parking lot. No one else claims to have seen
15 the initial exchange between the two.

16 So you've got Officer Goldstein and we've got Mark
17 Blake. We have Officer Goldstein who is on duty, in full
18 uniform, trying to effect a traffic stop, wearing his equipment
19 belt, yelling police commands, trying to get all of this going.
20 And then you have Mark Blake, who from moment go, moment go, he
21 had all of these things that he was not doing correctly, all of
22 these things that he was doing that he could be caught for, all
23 of these things that he should not have been doing.

24 So Sean Riner is ducking. This is after he saw the
25 stop and turned. This is that firearm of the defendant's, that

1 Glock he was not allowed to have. That is in the lock-back
2 position. I don't remember, one of the witnesses was circling
3 and showing you the slide is back. When that slide is back --
4 I think it may have been Flaherty -- he was explaining when the
5 slide goes back, with a semi-automatic, when it goes forward,
6 it pulls another bullet up for you. And it stops going forward
7 if there's no more bullets to pull up for you. So it was ran
8 dry. It was shot until it was empty.

9 This is picture is that cluster, that cluster where
10 Mark Blake decided to make his decision, and then spin around
11 and plant those feet, shooter stance, and get that good, clean
12 first shot off. And then he stood there because, absolutely,
13 he too was shot. I am not debating that. He was hit. Officer
14 Goldstein returned fire. Officer Goldstein shot him back. And
15 then he went to the ground, and then he was still firing. You
16 heard the testimony about what was happening. Mark Blake made
17 choices along way.

18 You see this perspective. This is from -- everything
19 here is where Mark Blake is. It's kind of hard to see. Out in
20 the street, just passed that sign -- this one is tough. Passed
21 that sign, you see more markers out in the street. Those are
22 all Goldstein's markers out there. This is further down Sam
23 Ritt, almost where you are turning to go to Costco. This is
24 not the whole other side. This is not where Mark Blake claims
25 that all the action started, where he had to start blind

1 firing.

2 Let's talk about injuries. Okay? It matters. This
3 is the diagram that Dr. Montgomery went through with you of
4 Mark Blake. She talked about she had everything listed. L
5 with a circle and R with a circle means right or left. I don't
6 remember a whole lot of her other -- I think the straight line
7 with a C underneath, I think that means width, potentially.
8 She testified. You remember her testimony.

9 But it's really telling to look at this. So the front
10 guy has shot in the bottom leg, shot in the right thigh, shot
11 in the left, like, thigh, shot in the left arm. The back has
12 zero.

13 Again, you could like my idea of a poor dryer on its
14 last leg, or whatever as far as the tattered clothes, but I
15 think it's important that you look at this. The doctor treated
16 both of these guys. The doctor is neutral. She's a trauma
17 surgeon. She's there to try to help save lives. Granted, she
18 told you that none of this was life-threatening. She told you
19 that may be limb-threatening, she said. This is hugely
20 important. The defendant's story doesn't line up with this.

21 So then let's talk about Officer Goldstein's injuries.
22 Again, you will have all this back there with you. You will
23 have all the photos, all the exhibit. You can look at
24 everything. This right here is -- his clothes were cut off of
25 him. This is when he was shot. And it went through shoulder,

1 shoulder, shoulder, shoulder, and then the back, which I can't
2 really reach. That's where that is. So he posed for you up
3 there. This is how he holds his gun. He's right-handed. And
4 that's where he was shot.

5 He also was shot right there. His bullet hole was
6 through and through. His doctor told you that and he told you
7 that. Went in here and out here. The officer was also shot
8 there.

9 Ladies and gentlemen, I feel that any of these shots
10 would count. But this is the one. This is the one that really
11 matters. That's his undershirt. So even with his uniform,
12 that polyester uniform shirt, and that Kevlar vest that stopped
13 the bullet from hitting in his cardiac box that the doctor was
14 telling you, I think it's here, in the cardiac box that the
15 doctor was telling you about, even with that, it still caused
16 him to bleed and burn through his shirt.

17 Here, it looks like a tiny little insignificant hole.
18 But that right there, that's the kill shot. That's the kill
19 shot. But for Officer Goldstein wearing that vest, and that is
20 what saved his life that day, period.

21 So here is one of the pictures where it went through,
22 and you are kind of opening all the layers of it. Here's the
23 vest out of that blue, and you see a tiny little mark, boom,
24 right there. That's it. That is it. That is the kill shot.

25 You know, you have been very attentive throughout

1 everything. And I just think it's very important that you look
2 at all the facts and circumstances around this. Think of who
3 had the motive. Who was doing what and for what reasons that
4 night.

5 And I talked to you in the beginning and, you know,
6 just simply said, Mark Blake was caught. That's what happened.
7 He was caught. He tried to outrun his problems. He tried to
8 outrun his problems with that car. When that didn't work, he
9 tried to outrun his problems on foot. And when that didn't
10 work, he tried to shoot his way out of it. That's what
11 happened.

12 Mark Blake chose to drive the rental car that he was
13 not authorized to drive. Mark Blake chose to drive a car with
14 aftermarket tint. He chose to ignore traffic laws, stop
15 signs, proper signals. He chose that. He chose to ignore the
16 blue lights in the Best Buy parking lot. He chose to ignore
17 the sirens in the Best Buy parking lot. He chose to ignore the
18 officer exiting the car in that well-lit Best Buy parking lot.
19 Mark Blake chose to run. He chose to run. He took off. He
20 had no headlights. He was speeding down Dupont Road. He
21 ignored those blue lights and sirens of Officer Goldstein the
22 whole way down, following him all the way down Dupont. Mark
23 Blake then chose to ignore the light at Savannah Highway and
24 Dupont when he went on to Savannah Highway. He chose to ignore
25 the traffic laws there and Officer Goldstein, by weaving in and

1 out, with no headlights, and speeding throughout everything.
2 These are all choices that Mark Blake made leading up to his
3 ultimate choice, which is why we are here today.

4 He chose to get on the on-ramp to try to get out of
5 Charleston and get on 526. He chose -- when he wrecked that
6 car, he chose to illegally arm himself with that Glock 22. And
7 he chose to get out and run. He chose this.

8 When he couldn't outrun it, like I said, with the car,
9 he decided to outrun it on foot, carrying that gun. He
10 started -- and he chose to run towards the Comfort Suites. He
11 ended up -- he chose to ignore the verbal commands of Officer
12 Goldstein. He chose to ignore the person that he saw, that he
13 told you he saw as he glanced over his shoulder again and
14 again. And then he decided, when he couldn't outrun his
15 problems on foot, he was shooting his way out of it. It didn't
16 take him long, but he made that decision.

17 He made that decision when he put his hands in his
18 waistband. He made that decision when he spun around. He made
19 that decision when his arms were outstretched and his feet were
20 shoulder width apart and he was in shooter stance with Officer
21 Goldstein. He made that decision. All Officer Goldstein could
22 do was to respond.

23 Mark Blake spun around, shooter stance, and started
24 firing. He fired until he had no more bullets. Officer
25 Goldstein was trying to get his gun out of his holster, gets

1 hit, and then is moving, walking away, still getting shot in
2 the middle of the roadway. That's what the evidence shows.
3 That is what the testimony shows. Mark Blake chose to try to
4 kill Officer Goldstein. And we cannot ignore that.

5 I respectfully request that you go back there and you
6 think about this. And you give it all the attention it
7 deserves. Think about how Mark Blake, with each one of his
8 choices and each one of his actions, he was not without fault
9 in bringing about the difficulty, but for him not stopping, but
10 for him having that gun, but for him running, but for him
11 stopping and turning around.

12 And this is not a Cory says, Mark Blake says. This is
13 a Mark Blake says, everyone else says. And not only does
14 everyone else say, the crime scene shows it. Look at this
15 stuff.

16 I respectfully request that you come back with a
17 verdict of guilty for attempted murder, because this defendant
18 tried to kill Officer Goldstein that night.

19 THE COURT: Ladies and gentlemen, we are going to take
20 a recess. Your food is here. I will let you eat. And bring
21 you back out and give you the law. Don't discuss the case yet.
22 Follow the bailiff, please.

23 (Whereupon, the jury leaves open court at 7:04 p.m.)

24 THE COURT: All right. The jury's food is here. So
25 if any of you want to eat, I suggest you eat quickly somewhere

1 and get back. As soon as I've got all the essential personnel,
2 we are going to start. All right. Thank you.

3 (Whereupon, a recess transpired.)

4 (Court's Exh. 14, *State v. Burriss*, was marked for
5 identification.)

6 (Court's Exh. 15, *State v. Williams*, was marked for
7 identification.)

8 (Court's Exh. 16, Jury Charge, was marked for
9 identification.)

10 THE COURT: I made some modifications to the charges.
11 I wasn't able to make a strike through or anything thing like
12 that version of it. I will tell you that I added the section
13 about the intent related to ABHAN, being knowingly, basically
14 explaining to the jury that something is done knowingly, it's
15 not done by accident or mistake but it's done consciously.

16 I deleted -- there was some language in there about
17 prior difficulty. I took that out. It wasn't necessary
18 because these two -- there's no evidence that these two
19 individuals even knew each other before the incident.

20 I added the language about the two things that I said
21 I would. And it's not exactly what was handed up to me, but
22 it's in self-defense portion toward the bottom of it.

23 I've also handed you a proposed verdict form. And if
24 you have any issue with the manner in which the verdict form is
25 presented to the jury, I need to know it now.

1 THE DEFENDANT: I know we discussed earlier about the
2 last defense, Judge. I don't have anything else to object
3 about that I haven't objected about already.

4 THE COURT: All right, sir.

5 MR. SOWARDS: And just, Your Honor, on the first page
6 at the bottom, you may consider the lack of evidence by the
7 State, I thought --

8 THE COURT: I changed it twice. Is it still showing
9 as the lack of evidence?

10 MR. SOWARDS: It is on ours, Judge.

11 THE COURT: My computer froze up, obviously. It
12 wouldn't freeze up at two o'clock in the afternoon, but it
13 freezes up. And I guess when I was trying to save, somehow it
14 saved a different version.

15 MR. SOWARDS: We take no issue with the verdict form,
16 Your Honor.

17 THE COURT: It's showing up as the lack of evidence on
18 yours? Apparently, what we printed was the wrong thing. I'm
19 sorry. I was saving them all on top of this same form. I
20 wasn't creating different ones. So I don't know what in the
21 world. All right. We will try it again. We will be at ease
22 for a few minutes.

23 (Whereupon, a recess transpired.)

24 THE COURT: While we are doing this is, my intention
25 is to give the jury a copy of the instructions. I don't know

1 if the judges here typically do that or not. Maybe some do,
2 some don't. So what I always do is make a copy of it and give
3 it to the court reporter to mark as a court's exhibit so there
4 would be a record of what I sent back to the jury. So we made
5 all these copies. And we are going to try to make some more.
6 What I will probably do is just print out so y'all can see them
7 and then charge the jury. And my law clerk can be printing the
8 rest of them while I'm charging. We are at ease.

9 (Whereupon, recess transpired.)

10 THE COURT: I'm going to go ahead and charge the jury.
11 And y'all can object at the end of the charge if there's
12 anything in there that you don't like.

13 (Whereupon, the jury returns to open court at 7:57
14 p.m.)

15 THE COURT: Bear with me. Members of the jury, all
16 the evidence has been presented. You've heard the arguments of
17 counsel. And now it's time for me to instruct you on the law
18 that applies to this cases. Please continue to pay close
19 attention during this next stage of the proceeding.

20 First, you need to understand some basic ground rules.
21 You, the jury members, are the sole judges of the facts. You
22 decide all the issues of fact. You alone determine the truth
23 of the evidence, its effect, its value and its weight. You
24 alone judge the credibility of the witnesses, in other words,
25 whether or not a witness's testimony is believable.

1 In evaluating the testimony of the witnesses, you may
2 believe all of what a witness said or none of it. You may
3 believe part of what a witness said and not believe the
4 balance. You may believe one witness against many or many
5 against one. You may consider any interest, bias or prejudice
6 that you feel that a witness has in this case. You may
7 consider the demeanor and the appearance of the witness and the
8 opportunity for knowledge that the witness had. You may
9 consider any lack of evidence presented by the State.

10 But you are not to exercise these considerations
11 arbitrarily. What I want you to do is to use your common
12 sense. Use your sense of logic and reason and your good
13 judgment.

14 The rules of evidence allow for opinion testimony to
15 be given under certain circumstances. One area where that's
16 allowed is where someone, by virtue of education, training and
17 experience, is qualified or permitted to testify as an expert
18 witness. The mere fact that an expert is allowed to give
19 opinions under our rules does not mean that you must accept the
20 opinions given. You may accept or reject the opinions of an
21 expert witness, just as you may with any other witness, in
22 whole or in part.

23 It's not proper for me to give you a charge on the
24 facts of the case. I cannot discuss the facts with you. I am
25 not permitted to convey to you an impression as to what, if

1 any, personal opinions I might develop about the facts of the
2 case. If during any stage of this trial, you developed an
3 impression that I have a personal opinion about the facts, you
4 must remove that belief totally from your mind. You are the
5 sole judges of the facts. I am the judge of the law that
6 applies to the case. And under your oath, you are vowed to
7 accept and apply the law as I give it to you. You must abandon
8 any conflicting ideas you might have as to what the law is or
9 what it should be. I give you the law. You apply it to the
10 facts as you determine them to be. And in that way, you reach
11 your verdict.

12 It's also my duty to determine what evidence is
13 admissible. If I rule something inadmissible or instructed you
14 to disregard something, you are not to consider those things in
15 arriving at your verdict. Base your verdict on the competent
16 evidence before you. Consider the testimony from the witnesses
17 and any exhibits admitted. You must also follow the limiting
18 instructions that I gave you during the trial.

19 I need to explain to you that there are two types of
20 evidence generally presented during a trial. There's direct
21 evidence. And there's circumstantial evidence. Direct
22 evidence directly proves the existence of a fact and does not
23 require deduction. Circumstantial evidence is proof of a chain
24 of facts and circumstances indicating the existence of a fact.
25 Crimes may be proven by circumstantial evidence. The law makes

1 no distinction between the weight or value to be given to
2 either direct or circumstantial evidence. However, to the
3 extent that the State relies on circumstantial evidence, all of
4 the circumstances must be consistent with each other, and when
5 taken together, point conclusively to the guilt of the accused
6 beyond a reasonable doubt. If the circumstances merely portray
7 the defendant's behavior as suspicious, then the proof has
8 failed.

9 The State has the burden of proving the defendant
10 guilty beyond a reasonable doubt. The burden rests with the
11 State regardless whether the State relies on direct evidence,
12 circumstantial evidence, or some combination of the two.

13 The defendant in this case, Mr. Blake, is presumed to
14 be innocent. This is no mere legal theory. It is a
15 fundamental and substantial right to which everyone is
16 entitled. It's been described as being like a robe of
17 righteousness placed around an accused that remains with him
18 through every stage of the trial. It continues to exist after
19 you retire to your jury room to deliberate, and continues to
20 exist so that he is presumed to be innocent unless and until
21 you, the jury, determine that the State has proven the guilt of
22 the defendant beyond a reasonable doubt.

23 A defendant is not required to prove his innocence.
24 He's not required to prove anything. The burden is on the
25 State to prove the guilt of the defendant beyond a reasonable

1 doubt. And it's required that every essential elements of an
2 offense charged be proven by the State beyond a reasonable
3 doubt. The State is not required to prove the guilt of the
4 defendant beyond all doubt or beyond every doubt. The
5 appropriate standard is proof beyond a reasonable doubt.

6 Some of you may have served as jurors in civil court.
7 And if you have, you know that the burden of proof in civil
8 court is a lesser standard. It requires establishing that
9 something is more likely than not, which is called the greater
10 weighed or preponderance of the evidence. But in criminal
11 court, the standard is much higher. And the proof must be much
12 stronger than what is required in civil court. The burden of
13 proof in a criminal case, such as the one before you, is proof
14 beyond a reasonable doubt.

15 So what do I mean by that term? Proof beyond a
16 reasonable doubt is proof that leaves you firmly convinced of
17 the defendant's guilt. There are few things in the world that
18 we know with absolute certainty. And in criminal cases, the
19 law does not require proof that overcomes every possible doubt.

20 If, based on your consideration of the evidence, you
21 are firmly convinced that the defendant is guilty of a crime,
22 then you are to find him guilty of that crime. If, on the
23 other hand, you think there is a real possibility that he is
24 not guilty, you must give him the benefit of the doubt and find
25 him not guilty of that crime. There is no obligation on the

1 part of the defendant to raise any doubt or any other
2 possibility. He is presumed innocent. And the State has the
3 entire burden of proof, and must prove to you that the
4 defendant is guilty to the exclusion of any other real
5 possibility.

6 To prove the defendant guilty of a crime, the State
7 must prove to you beyond a reasonable doubt that the defendant
8 acted with criminal intent. Intent is a mental state. The
9 State must establish the necessary criminal intent beyond a
10 reasonable doubt in order for the defendant to be convicted of
11 a crime.

12 The criminal intent required for attempted murder is
13 specific intent. It requires proof beyond a reasonable doubt
14 that the defendant had the specific intent to kill Cory
15 Goldstein as alleged in the indictment. Specific intent means
16 that the defendant consciously intended the completion of the
17 act of killing Cory Goldstein with malice aforethought. You
18 are to look at all of the circumstances surrounding the
19 incident to determine whether the defendant had the necessary
20 criminal intent. Intent, like other elements, may be proven by
21 direct or circumstantial evidence or a combination of both.

22 Now, let's turn to the specific charge that's alleged
23 in this trial. I read this indictment to you at the beginning
24 of the trial. Mr. Blake is accused of committing attempted
25 murder in Charleston County, South Carolina, on or about March

1 20th, 2013, and that it is alleged that he did, with intent to
2 kill, and with malice aforethought, attempt to kill Cory
3 Goldstein.

4 I caution you again that an indictment has no
5 evidentiary value. An indictment is nothing more than a
6 charging paper, formal means by which someone is charged and
7 brought to trial. It's not evidence. And you may not accord
8 an indictment any evidentiary value.

9 So the State has to prove to you that the alleged
10 offense occurred in Charleston County, South Carolina. In
11 order to prove attempted murder, the State must prove to you
12 that the defendant attempted to kill another person named in
13 the indictment with malice aforethought. As I stated, this
14 requires proof of a specific intent to kill that person with
15 malice aforethought.

16 Malice imports wickedness. It springs from depravity,
17 a depraved spirit, a heart devoid of socially duty and fatally
18 bent on mischief. It involves hatred, ill will, or hostility
19 toward another person. It is the intentional doing of a
20 wrongful act without just cause or excuse and with an intent to
21 kill the person. Malice aforethought does not require that
22 malice exists for any particular time before the act is
23 committed, but malice must exist in the mind of the defendant
24 just before and at the time that the act is committed.
25 Therefore, there has to be a combination of a previous evil

1 intent and the act.

2 Intent means intending the result that actually
3 occurs, not something that occurs accidentally or
4 involuntarily. The State has to prove expressed malice, which
5 is the deliberate intention to kill a human being unlawfully.
6 It requires the State to prove that the defendant consciously
7 intended the completion of the act of murder, but failed.

8 Attempted murder involves the performance of an act
9 that tends to kill a human being, but fails, where the act was
10 done with malice, the deliberate intention to kill unlawfully.

11 Now, ladies and gentlemen, the law recognizes that
12 certain crimes include within them lesser crimes. Greater
13 crimes include lesser crimes. And these are called
14 lesser-included offenses. The crime of attempted murder
15 includes within it the lesser-included offense of assault and
16 battery of a high and aggravated nature. If you find that the
17 State has failed to prove beyond a reasonable doubt that the
18 defendant committed attempted murder, you would then consider
19 whether the State has proven the defendant guilty of a
20 lesser-included offense of assault and battery of a high and
21 aggravated nature.

22 A person commits assault and battery of a high and
23 aggravated nature if the person unlawfully injures another
24 person, and great bodily injury results, or the act is
25 accomplished by a means likely to produce death or great bodily

1 injury.

2 Great bodily injury means bodily injury which causes a
3 substantial risk of death or which causes serious permanent
4 disfigurement or protracted loss or impairment of the function
5 of a bodily member or organ. To do an act unlawfully means to
6 do it without legal justification or excuse.

7 The State must prove that the defendant knowingly,
8 intentionally and unlawfully committed an assault and battery.
9 An assault is a threat to harm another. It does not have to be
10 expressed by words, but it may be shown by acts or by conduct.

11 A battery is an unlawful touching of another human
12 being. It does not have to be flesh to flesh, but it may be
13 accomplished by some object put in motion by the perpetrator.

14 Assault and battery of a high and aggravated nature
15 occurs when a person unlawfully injures another person, and
16 great bodily injury results, or the act is accomplished by a
17 means likely to produce death or great bodily injury.

18 To do an act knowingly, as I said previously, means
19 that it's done with knowledge, consciously, not something that
20 occurs by accident or mistake.

21 So to recap, ladies and gentlemen, attempted murder
22 requires malice aforethought and the attempt to kill. Assault
23 and battery of a high and aggravated nature does not require
24 malice or the specific intent to kill, but requires the State
25 to prove that the defendant unlawfully and knowingly injured

1 another person, and that great bodily injury resulted, or the
2 act was accomplished by a means likely to produce death or
3 great bodily injury.

4 Now, one of the issues that you need to consider is
5 whether the defendant was acting in self-defense. Self-defense
6 is a complete defense. If the defendant was acting in
7 self-defense, his conduct was lawful, and you must find him not
8 guilty.

9 A defendant does not have any burden of proof. So a
10 defendant does not have to prove self-defense. Rather, the
11 State has the burden of proving beyond a reasonable doubt that
12 the defendant did not act in self-defense. If you have a
13 reasonable doubt of a defendant's guilt after considering all
14 of the evidence, including the evidence of self-defense, you
15 must find the defendant not guilty.

16 On the other hand, if you have no reasonable doubt of
17 the defendant's guilt after considering all of the evidence,
18 including the evidence of self-defense, then you must find the
19 defendant guilty.

20 The following elements are required to establish
21 self-defense. The first is, the defendant must have been
22 without fault in bringing on the difficulty. If the
23 defendant's conduct was the type that was reasonably calculated
24 to and did provoke a deadly assault, the defendant would be at
25 fault in bringing on the difficulty and would not be entitled

1 to an acquittal based on self-defense.

2 The second necessary element of self-defense is that
3 the defendant was actually in imminent danger of death or
4 serious bodily injury, or that he actually believed that he was
5 in imminent danger of death or serious bodily injury. If the
6 defendant was actually in such imminent danger, it must be
7 shown that the circumstances would have warranted a person of
8 ordinary firmness and courage to strike as the defendant did to
9 prevent death or serious bodily injury to himself.

10 If the defendant believed that he was in imminent
11 danger of death or serious bodily injury, it must be shown that
12 a reasonably prudent person of ordinary firmness and courage
13 would have had the same belief.

14 In deciding whether the defendant actually was or
15 believed that he was in imminent danger of death or serious
16 bodily injury, you should consider all the facts and
17 circumstances surrounding the incident and the relationship
18 between the parties.

19 A defendant has a right to act upon appearances even
20 if his assessments was incorrect. It is not necessary that a
21 defendant was actually in danger. It is enough if the
22 defendant believed he was in imminent danger, and a reasonably
23 prudent person of ordinary firmness and courage in his position
24 and with his knowledge would have had the same belief. It is
25 for you, the jury, to decide whether the defendant had a

1 reasonable fear of immediate danger of death or serious bodily
2 injury, and that it would have been felt by a person of
3 ordinary firmness and courage in the same situation. Words
4 accompanied by hostile acts may, depending on the
5 circumstances, create an appearance that the defendant can act
6 in self-defense.

7 The final element of self-defense is that the
8 defendant had no other probable way to avoid the danger of
9 death or serious bodily injury than to act as he did in this
10 particular instance. However, a defendant does not have to
11 wait until an assailant has the drop on him before acting in
12 self-defense. A defendant has no duty to retreat, if by doing
13 so, the danger of being killed or suffering serious bodily
14 injury would increase.

15 A person who is confronted with a self-defense
16 situation is not required to make an exact calculation of the
17 amount of force needed to avoid death or serious bodily harm,
18 but is permitted to use the degree of force in self-defense
19 that a person of ordinary reason and firmness would have
20 believed to be needed to prevent his own death or serious
21 bodily injury.

22 The force used in self-defense does not have to be
23 limited to the degree or amount of force used by the opposing
24 party. A defendant has the right to use such force as appeared
25 to be necessary for complete self-protection and which a person

1 of ordinary reason and firmness would have believed to be
2 needed to prevent death or serious bodily harm. Therefore, in
3 self-defense, the defendant has the right to use the force
4 needed to avoid death or serious bodily harm. The force used
5 in self-defense does not have to be limited to the degree or
6 amount of force used by the purported victim. A defendant has
7 the right to use so much force as appeared to be necessary for
8 complete self-protection and which a person of ordinary reason
9 and firmness would have believed to be needed to prevent death
10 or serious bodily harm.

11 An individual under appropriate circumstances has the
12 right to utilize the amount of resistance reasonably necessary
13 to defend himself in the event excessive force is utilized
14 instant to a lawful arrest. If a person is justified in acting
15 in self-defense and using deadly force under the standards that
16 I just explained to you, he is not guilty. Even if he used a
17 firearm that it was unlawful for him to possess at that time, a
18 person can be acting in self-defense even if he is in lawful
19 possession of a weapon -- I'm sorry, even if he was in unlawful
20 possession of a weapon, if he was entitled to arm himself in
21 self-defense at the time of the shooting.

22 If the defendant is justified in defending himself by
23 firing a weapon, then the defendant is also justified in
24 continuing to shoot until it is apparent that the danger of
25 death or serious bodily injury has completely ended.

1 And the final thing I need to tell you about the law,
2 ladies and gentlemen, is that a defendant is entitled to every
3 reasonable doubt arising in the case and in any defense. If
4 upon any issue of fact essential to a conviction, you have a
5 reasonable doubt as to how that issue should be resolved, you
6 must resolve that doubt in favor of the defendant.

7 If upon reviewing the entire case, you have a
8 reasonable doubt as to whether the defendant has been proven
9 guilty of an offense, he is entitled to that doubt and a
10 verdict of not guilty as to that charge.

11 On the other hand, if upon reviewing the case, you
12 find that the State has proven every essential element of this
13 case against the defendant beyond a reasonable doubt, it is
14 equally your duty to find the defendant guilty of that charge.
15 If you have a reasonable doubt as to whether the defendant has
16 been proven guilty of a greater crime charged or a
17 lesser-included offense, you must give him the benefit of the
18 doubt and find him guilty only of the lesser-included offense.
19 But you cannot find him guilty of any offense, greater or
20 lesser, unless you are satisfied that the State has proven
21 every essential element of that offense beyond a reasonable
22 doubt.

23 That's the law. When you go back to the jury room,
24 you are going to have the exhibits and you are going to have
25 with you this verdict form. On this verdict form, you are

1 going to tell us your decision. Now, ladies and gentlemen, I'm
2 supposed to tell you that you are not to infer from the order
3 in which I state these options that I'm suggesting one over the
4 other. I have to list one thing first, one thing second, one
5 thing third. You have three possible options.

6 So the verdict reads: We, the jury, unanimously find
7 the defendant, the first option listed is that you may find him
8 not guilty. The second option listed is that you may find him
9 guilty of a lesser-included offense of assault and battery of a
10 high and aggravated nature. Third option is, you may find him
11 guilty of attempted murder.

12 Madam Forelady, part of your job is to record the
13 verdict. I think you will find the form self-explanatory.
14 Select the option chosen by the jury and sign your name on the
15 signature line.

16 Ladies and gentlemen, how you go about your votes, how
17 you go about your deliberations is entirely in your discretion
18 subject to this requirement. The verdict must be unanimous.
19 All of you must agree before the forelady can record your
20 verdict. When you have reached your verdict, knock on the
21 door, the bailiff will respond to your knock.

22 Okay. I've told you dozen times or more not to
23 discuss the case until I tell you to. It's not time yet. The
24 law says I have to let the attorney and the defendant discuss
25 with me anything that they may disagree with about what I just

1 told you. Now, the truth is, we've been over this multiple
2 times already. And I don't expect us to take very long. This
3 is the signal you need to look for. When you have with you in
4 the jury room the verdict form and the exhibits and the
5 alternate is brought out, it's just the twelve of you in there
6 and you have these things, you don't have to wait one more
7 second, you can start talking about the case. But don't talk
8 about the case until then.

9 Couple of housekeeping things. I told you that we
10 have restrictions imposed on every trial that involves
11 firearms. So the two exhibits that deal with the firearms, if
12 you want them in the jury room with you, send word to me and we
13 will send in what you want. I can't send the ammunition and
14 the firearm in at the same time, even though they are
15 deactivated. That's just a rule that applies in every case.

16 The second thing, and I did not ask this before you
17 came out, I should have, there's a lot of electronic media. I
18 think there's some electronic media that's used, I think some
19 videos and things. Do they have a means of playing that back
20 there?

21 THE CLERK: Yes.

22 THE COURT: They do. Nevermind. You are ahead of us
23 in the Midlands. All right. Very good. Okay. So don't talk
24 about the case until you have these things in there. Folks, my
25 plan is then to give you a copy of those instructions. I'm

1 still going to try to do that. Unfortunately, when things
2 start going downhill, they tend to steamroll, pick up steam.
3 So I had the unfortunate situation that my computer froze. I'm
4 going to try to get this printed out so each of you have a copy
5 of the charge. As quickly as I get that done, I will send it
6 back there to you. It's not going to be exactly word for word
7 like I read it, because I don't read like I write, but the
8 essence of it will be the same.

9 Okay. Thank you very much. You may retire to your
10 jury room.

11 (Whereupon, the jury leaves open court at 8:24 p.m.)

12 THE COURT: For the record, exception, additional
13 objections to the charge from the State.

14 MR. SOWARDS: Nothing from the State.

15 THE COURT: Defense?

16 THE DEFENDANT: I just want to renew every objection I
17 made for the record.

18 THE COURT: All right. Let me see if I can get this
19 printed out so we can get the show on the road. Is there any
20 objection to me letting them go ahead and start deliberating
21 before they get this copy of the charge?

22 MR. SOWARDS: Not from the State.

23 THE COURT: I don't have to send it to them.

24 THE DEFENDANT: Judge, did you make a -- I objected.
25 I didn't hear any response.

1 THE COURT: What did I say when he objected? He said
2 he renewed his previous objection is what he said. Nevermind,
3 I'll speed it up. The objections to the requested charge that
4 are not included in the charge given to the jury are denied.
5 We are at ease.

6 THE COURT: All right. Bring the alternate out. You
7 are Charles Elliott?

8 A JUROR: Yes, sir.

9 THE COURT: Mr. Elliott, we are going to discharge you
10 from the case now. We made it through without needing your
11 services on the actual jury deliberation. So I want to thank
12 you very much. You are welcome to stay around, if you wish to
13 stay. I don't know anything about your work, so I don't know
14 if you need a work excuse or not. Do you need one?

15 A JUROR: No, it's okay.

16 THE COURT: If you do find out you need one, just let
17 the clerk of court know. They will mail you a check for your
18 jury service. Won't be much. You don't have to call and come
19 back tomorrow. And you have an exemption from jury service for
20 2019, '18, '19 and '20. Won't help you in federal court,
21 magistrate or municipal court.

22 THE WITNESS: Thank you very much.

23 (Whereupon, the alternate is excused.)

24 (Whereupon, the jury deliberates at 8:43 p.m.)

25 THE COURT: We are at ease pending a verdict.

1 (Whereupon, recess transpired.)

2 THE COURT: I've been informed the jury has a verdict.
3 Obviously, I have no way of knowing what the jury has decided.
4 I say this in every case. Please stay still and stay quiet.
5 Don't show any sign of approval or disapproval of the verdict.
6 Don't shake your head in agreement or disagreement. Just stay
7 still. Stay quiet. We will get through this just fine.

8 Bring the jury.

9 (Whereupon, the jury returns to open court at 9:20
10 p.m.)

11 THE COURT: Madam Forelady, has also jury reached a
12 verdict?

13 THE FOREPERSON: We have.

14 THE COURT: Would you pass it to the bailiff.

15 State of South Carolina, County of Charleston, in the
16 Court of General Sessions, The State v. Mark Lorenzo Blake Jr.,
17 Case No. 2013-GS-10-04926, we the jury unanimously find the
18 defendant guilty of attempted murder, signed by the foreman.
19 Madam Foreman, ladies and gentlemen, if I've accurately stated
20 your verdict that is guilty of attempted murder, please signify
21 by raising your right hands. Okay. All 12 hands are raised.
22 Thank you.

23 Ladies and gentlemen, let me ask the attorneys and the
24 defendant, is there any matter to take up prior to the jury
25 being discharged from the State?

1 MS. LINDER: None from the State.

2 THE COURT: Defense?

3 THE DEFENDANT: Please poll the jury.

4 THE COURT: All right. Ladies and gentlemen of the
5 jury, the clerk is going to call the roll. As he calls your
6 name, please raise your hand so he knows where to look. He's
7 going to ask you basically these questions, sometimes they ask
8 two questions, sometimes they ask a question together.
9 Basically, the question is: Was this your verdict; and is it
10 still your verdict? Just answer him truthfully.

11 THE CLERK: Juror No. 66, Charles Elliott -- oh, excuse
12 me.

13 Juror No. 212, Rod Pace, is this your verdict?

14 JUROR 212: Yes.

15 THE CLERK: Is this still your verdict?

16 JUROR 212: Yes.

17 THE CLERK: Juror No. 98, Heather Green, is this your
18 verdict?

19 JUROR 98: Yes.

20 THE CLERK: Is this still your verdict?

21 JUROR 98: Yes.

22 THE CLERK: Juror 28, Dawn Blair, is this your
23 verdict?

24 JUROR 28: Yes.

25 THE CLERK: Is it still your verdict?

1 JUROR 28: It is.

2 THE CLERK: Juror No. 289, Ashley Wietor?

3 JUROR 289: Wietor.

4 THE CLERK: Is this your verdict?

5 JUROR 289: Yes.

6 THE CLERK: Is this still your verdict?

7 JUROR 289: Yes.

8 THE CLERK: Juror No. 35, Lionel Brown, is this your
9 verdict?

10 JUROR 35: Yes.

11 THE CLERK: Is this still your verdict?

12 JUROR 35: Yes.

13 THE CLERK: Juror No. 11, Jessica Baker, is this your
14 verdict?

15 JUROR 11: Yes.

16 THE CLERK: Is this still your verdict?

17 JUROR 11: Yes.

18 THE CLERK: Juror No. 217, Michael Protopapa.

19 JUROR 217: Yes.

20 THE CLERK: Is this your verdict?

21 JUROR 217: Yes.

22 THE CLERK: Is this still your verdict?

23 JUROR 217: Yes.

24 THE CLERK: Juror No. 182, Medea Massie, is this your
25 verdict?

1 JUROR 182: Yes.

2 THE CLERK: Is this still your verdict?

3 JUROR 182: Yes.

4 THE CLERK: Juror No. 209, Kayla O'Connor, is this
5 your verdict?

6 JUROR 209: Yes.

7 THE CLERK: Is this still your verdict?

8 JUROR 209: Yes.

9 THE CLERK: Juror No. 38, Stacey Brown, is this your
10 verdict?

11 JUROR 38: Yes.

12 THE CLERK: Is this still your verdict?

13 JUROR 38: Yes.

14 THE CLERK: Juror No. 19, is this your verdict?

15 JUROR 19: Yes.

16 THE CLERK: Is this still your verdict?

17 JUROR 19: Yes.

18 THE CLERK: Is there anyone's name I didn't call?

19 What's your juror number?

20 JUROR 205: Juror 205.

21 THE CLERK: Is this your verdicts?

22 JUROR 205: Yes.

23 THE CLERK: Is this still your verdict?

24 JUROR 205: Yes.

25 THE CLERK: Your Honor, the jury has been polled.

1 THE COURT: All right. Anything further from the
2 defense prior to the jury being discharged?

3 THE DEFENDANT: I mean, I got a motion I want to
4 raise.

5 THE COURT: Most of the motions come after I discharge
6 the jury. Do you want to ask him anything?

7 THE DEFENDANT: No, nothing more for the jury.

8 THE COURT: All right. Thank you. Bear with me one
9 moment. Madam Forelady, I need you to do one more thing for
10 me. The original indictment I don't ever send it back, but
11 after the verdict is rendered, we write the verdict on the
12 original. So you will need to sign that for me. The clerk
13 will run it back there to you. Will you wait in the jury room
14 until you sign this, please?

15 THE FOREPERSON: Okay.

16 THE COURT: Also, ladies and gentlemen, let me tell
17 you that you have an exemption from jury service for 2018, 2019
18 and 2020 in state court at this level. It will not help you
19 with federal jury duty or magistrate or municipal court jury
20 duty. But you do not have to serve until at the earliest 2021.
21 Since you actually sat on a trial jury you are disqualified for
22 a year. So try to remember when you served. It's around
23 Thanksgiving. You should be purged from the computer system
24 for three years, but sometimes it doesn't quite work that way.

25 All right. I thank you very much for your service and

1 I hope you have a pleasant evening. You are free to go. If
2 you need a slip for work, wait back there and they will come
3 get that for you. They will mail you a little check and some
4 money. All right. Thank you.

5 (Whereupon, the jury leaves the 9:26 p.m.)

6 THE COURT: All right. I'm going to ask the media if
7 you filmed that section where we polled the jury and called the
8 name out, don't disseminate the names of the jurors, please.
9 All right. Thank you.

10 Do you all need a few minutes before we go into the
11 motions, or are you ready? All right. We will be at ease for
12 a few minutes and I will hear the motions, and then we will
13 deal with that.

14 (Whereupon, recess transpired.)

15 THE COURT: What are the motions?

16 THE DEFENDANT: Judge, I want to raise pretrial
17 motions. I think that the jury was highly prejudicially misled
18 by allowance of firearm evidence that you let in. You said you
19 think this was a mistake.

20 THE COURT: I didn't say I thought I made a mistake.
21 I said in hindsight, I might be proved differently. But I
22 didn't say I made a mistake. I said it was a close question.

23 THE DEFENDANT: I request a new trial because I feel
24 the grounds that the jury has been prejudicially misled based
25 on the evidence that they allowed -- that you allowed to get

1 in. I will give you a chance to right your wrong.

2 THE COURT: Motions are denied. Anything else?

3 THE DEFENDANT: That's it as far as motions goes. But
4 sure you don't want to reconsider?

5 THE COURT: I have considered it. It went to the
6 issue of motive that was argued initially. And there were
7 curative instructions given to the jury.

8 Is there anything related to sentencing?

9 MS. LINDER: Your Honor, as you know, we served life
10 without parole notice. Mr. Blake previously on the record in
11 front of Judge Dennis said that it was properly served, and he
12 was eligible for it for this charge. Your Honor, there's
13 nothing further. You sat here for the past two days listening
14 to everything. And I have nothing further to say and neither
15 does the victim, Cory Goldstein.

16 THE COURT: Anything from the defense about
17 sentencing?

18 THE DEFENDANT: As far as what?

19 THE COURT: Anything you want to say about sentencing?

20 THE DEFENDANT: Yeah. Of course, God will overturn
21 the life sentence. So at that point in time, I look at life
22 sentence as nothing. It's just words. It's going to get
23 overturned regardless. So you sentence me to life. I am not
24 going to do no life. I'm not laying down to do no life
25 sentence. I'm giving it back to you all.

1 THE COURT: What do you mean, you're going to give it
2 back?

3 THE DEFENDANT: I'm giving it all back. I am not
4 laying down. I'm not doing a life sentence. So all you are
5 telling me is words right now. You try to keep me down, but I
6 am not going to stay down. I keep fighting until the death.
7 Federal license, I have a lot to be worried about. This is a
8 state license. Doesn't mean too much, laws here. Get serious.

9 THE COURT: The record reflects that Mr. Blake was
10 convicted of possession with intent to distribute heroin,
11 second offense.

12 THE DEFENDANT: It's in Supreme Court right now. It's
13 about to be overturned. So I'm giving it back to you all one
14 way or another. It's probably going to get overturned sometime
15 next year. So I will be back in front of one of y'all faces,
16 smiling.

17 THE COURT: I have every confidence that the appellate
18 court will do their jobs appropriately.

19 THE DEFENDANT: Yeah, they are going to do their jobs
20 appropriately.

21 THE COURT: He also was convicted of trafficking
22 cocaine, third offense.

23 THE DEFENDANT: I put my PCR on that, straight on
24 that. As soon as I get back to the yard, I will be back in
25 y'all's face smiling.

1 THE COURT: The notice of the intention to seek life
2 without parole was properly served, according to the records.
3 Section 17-25-45 provides that a person must be sentenced to
4 life in prison without parole if that person has one or more
5 prior convictions for a most serious offense, or two or more
6 prior convictions for a serious offense and is convicted of the
7 charge of attempted murder.

8 Therefore, the sentence of the Court is that you be
9 committed to the South Carolina Department of Corrections for a
10 period of life imprisonment without the possibility of parole
11 under Section 17-25-45, plus the costs and assessments is
12 applicable. Restitution is deferred. Sentence runs
13 concurrently. Any appeal from this has to be filed promptly.
14 It has to be in writing. You should consult with your stand-by
15 counsel to make sure that you have a properly filed appeal.
16 Thank you.

17 (Whereupon, the proceedings are adjourned.)
18
19
20
21
22
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25

CERTIFICATE OF REPORTER

I, Karen V. Andersen, Registered Merit Reporter,
Certified Realtime Reporter for the State of South Carolina at
Large, do hereby certify that the foregoing transcript is a
true, accurate and complete Transcript of Record of the
proceedings.

I further certify that I am neither related to nor
counsel for any party to the cause pending or interested in the
events thereof.


Karen V. Andersen
Registered Merit Reporter
Certified Realtime Reporter

STATE OF SOUTH CAROLINA)

2022-CP-10-760
IN THE COURT OF COMMON PLEASCounty of CHARLESTON)MARIE BLAKE #68687)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

APPLICATION FOR
POST-CONVICTION RELIEFFILED
2022 FEB 16 AM 10:58
CLERK OF COURT**INSTRUCTIONS - READ CAREFULLY**

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention MCCORMICK CORRECTIONS
2. Name and location of Court which imposed sentence 9TH JUDICIAL
CIRCUIT COURT, CHARLESTON COUNTY
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) 2013A1010900404 2013-65-1004926
 - (b) _____

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

(a) NOVEMBER 17, 2018

(b) LINOP

(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. _____

ii. _____

iii. _____

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

i. AFFIRMED

ii. _____

iii. _____

(c) the date of each such result:

i. 6-9-21

ii. _____

iii. _____

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

i. 2021-UP-201

ii. _____

iii. _____

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

(a) _____

(b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) INEFFECTIVE ASSISTANCE OF COUNSEL
- (b) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) OMITTED RAISING APPELLATE ISSUE
- (b) _____
- (c) _____
12. Prior to this application have you filed with respect to this conviction: N/A
- (a) any petition in a State Court under South Carolina Law? _____
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? _____
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____
- (d) any other petitions, motions or applications in this or any other Court? _____
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. _____
- 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) NON-APPELLATE REVIEW CLAIMS
 (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? NO
 (c) your sentencing? NO
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? YES
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
NO

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

(a) the name and address of each attorney who represented you:
 i. EDUARDO CURRY - ATTORNEY
6518-D ORCHESTER RD, N. CHARLESTON, SC 29408
 ii. TAYLOR GILLIAM - APPELLATE OFFENDER
1330 LADY ST, SUITE 401 COLUMBIA, SC 29201
 iii. _____
 (b) the proceedings at which each such attorney represented you:
 i. ARRAIGNMENT
 ii. DIRECT APPEAL
 iii. _____

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

REVERSE BOTH CONVICTION AND SENTENCE,
AND REMAND FOR A NEW TRIAL

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

NO

STATE OF SOUTH CAROLINA)
)
 County of CHARLESTON)

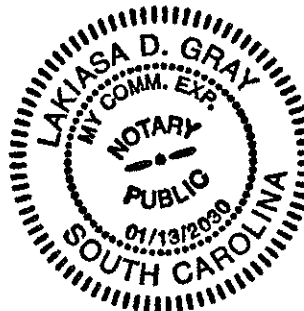
VERIFICATION

I, MARK L. BLAKE, JR, 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.

J. B. Bl

SWORN to and subscribed before me this 8th
 day of February, 2022.
Lakiasa D. Gray (L.S.)
 Notary Public

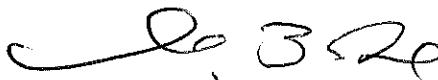
My Commission Expires: 01/13/30



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

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

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



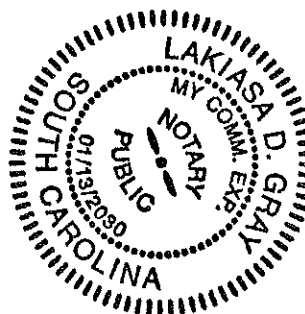
Applicant

SWORN or affirmed to and subscribed before me this

8th day of February, 2022

Lakiasa D. Gray
Notary Public

My Commission Expires: 01/13/30



STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Mark Blake, #368687,

Applicant,

v.

State of South Carolina,

Respondent.

) IN THE COURT OF COMMON PLEAS
) FOR THE NINTH JUDICIAL CIRCUIT
)

) CASE NO. 2022-CP-10-00760
)

) **RETURN AND**
) **MOTION FOR MORE**
) **DEFINITE STATEMENT**
) (Counsel Appointed)

2023 SEP -1 AM 11:54
FILED
JULIE J. ARMSTRONG
CLERK OF COURT
DC

In response to the application for post-conviction relief (PCR) filed by Mark Blake (Applicant) on February 16, 2022, Respondent makes the following return and motion for more definite statement:¹

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections serving a life sentence. In August 2013, the Charleston County Grand Jury indicated Applicant for attempted murder (2013-GS-10-4926). This charge arose from an incident involving Cory Goldstein (Victim) on March 30, 2013. On November 13, 2018, Applicant proceeded to a jury trial before the Honorable William P. Keesley. Applicant appeared pro se with Jason King, Esquire, as standby counsel. Assistant Solicitors Stephanie Linder and J. Whit Sowards prosecuted the case. The jury convicted Applicant as indicted, and Judge Keesley sentenced him to life.

Applicant filed a direct appeal. Appellate Defender Taylor D. Gilliam represented Applicant and submitted a brief arguing the trial court erred in excluding any mention of

¹ Respondent's return was due to be filed within ninety days of service. See Rule 12(a), SCRCP ("[T]he State of South Carolina shall answer or otherwise respond to an application for post-conviction relief within . . . 90 days if it arises out of a trial."). Now, having completed the return in this matter, and in light of no demonstrable prejudice to Applicant as a consequence to any delay, Respondent 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); Guinyard v. State, 260 S.C. 220, 195 S.E.2D 392 (1973) (holding the trial court may extend the time for filing a return and the time limit prescribed by statute is not mandatory, but discretionary, with the trial court).

Applicant's right to carry a firearm following prior convictions when the fact he could not legally carry a firearm was irrelevant and highly prejudicial. The South Carolina Court of Appeals affirmed, finding the issue unpreserved. Up. Op. No. 2021-UP-201 (Filed June 9, 2021). The remittitur was sent June 28, 2021.

CURRENT APPLICATION

Applicant timely commenced this PCR action on February 16, 2022. In his application, Applicant asserts he is being held in custody unlawfully for the following reason:

Ineffective assistance of counsel: "Omitted raising appellate issue."

As relief, Applicant requests this Court "reverse both conviction and sentence, and remand for a new trial." Attached to this return and incorporated herein are the Charleston County Clerk of Court records of the subject conviction, Applicant's records from the Department of Corrections, the records from Applicant's direct appeal, and the trial transcript. The State reserves the right to amend this return upon receipt of any additional relevant materials.

MOTION FOR MORE DEFINITE STATEMENT

Respondent moves for a more definite statement on Applicant's allegations that counsel was ineffective for not raising appellate issues. The Uniform PCR Act requires applicants to "specifically set forth the grounds upon which the application is based." S.C. Code Ann. § 17-27-50 (1985). When a PCR applicant fails to adequately set forth the grounds upon which he seeks relief, the Court may at any time prior to the entry of judgment "issue orders for amendment of the application or any pleading or motion." S.C. Code Ann. § 17-27-70(a); see also Rule 12(c), SCRCPP (permitting the Court to order a more definite statement if a pleading "is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading"). The Court may, in its discretion, fix the time for which a more definite statement shall be made. Rule 12(c), SCRCPP.

Appointed counsel “shall insure that all grounds for relief are included in the application and shall amend the application if necessary.” Rule 71.1(d), SCRCF. Furthermore, civil proceedings must include “a short and plain statement of the facts showing that the pleader is entitled to relief.” Rule 8(a), SCRCF.

Here, Applicant has failed to state with specificity the facts giving rise to his allegation that counsel was ineffective for failing to raise appellate issues. Specifically, the allegation does not set forth what issue Applicant believes appellate counsel should have raised. Therefore, Respondent moves pursuant to Rules 12(c) and 71.1(d), SCRCF, to have Applicant, through counsel, file an amended application prior to any hearing scheduled in this matter that provides facts to support his allegation related to ineffective assistance of appellate counsel. If Applicant failed to timely file a responsive amended application, Respondent reserves the right to move for summary dismissal of this claim.

INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL

Respondent requests an evidentiary hearing on Applicant’s claim of ineffective assistance of appellate counsel.² A criminal defendant is constitutionally entitled to the effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387, 398 (1985). The proper standard for evaluating a claim that appellate counsel was ineffective is the standard enunciated in Strickland v. Smith v. Robbins, 528 U.S. 259, 263 (2000). The burden of proof is on the applicant to first show appellate counsel’s performance was deficient under prevailing professional norms. Second, the applicant must prove they were prejudiced by counsel’s deficiency and show with a “reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have

² Applicant—who proceeded pro se—has not raised any claim related to ineffective assistance of trial and/or standby counsel. Respondent reserves the right to amend this return and move to dismiss such claims should Applicant raise them at a later date.

been different.” Southerland v. State, 337 S.C. 610, 616, 524 S.E.2d 833, 836 (1999).

When an applicant contends appellate counsel rendered ineffective assistance for failing to argue a specific issue on appeal, he must show that failure to raise that issue was objectively unreasonable and that, but for this failure, applicant’s conviction or sentence would have been reversed or remanded. Id. An applicant must show that a particular nonfrivolous issue was clearly stronger than issues presented by appellate counsel. Additionally, an applicant must show a reasonable probability that, but for counsel’s failure to raise that particular claim, the applicant would have prevailed on appeal. Smith, 528 U.S. at 288.

Here, the record likely does not refute or disprove Applicant’s allegation of ineffective assistance of appellate counsel; therefore, the State requests an evidentiary hearing on this issue. See Sharper, 279 S.C. at 265, 305 S.E.2d at 248 (providing an evidentiary hearing shall be held when a PCR application “alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record”).

ANY FUTURE AMENDMENTS AND INVOCATION OF DISCOVERY

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney (and not Applicant) is the only individual authorized to file amendments to this applicant. See Rule 11, SCRCP. Pro se filings will not be considered at the PCR hearing. The State reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State or, alternatively, the State will request a continuance. See Love v. State, 428 S.C. 231, 245, 834 S.E.2d 196, 203 (2018) (Kittredge, J., dissent) (“If, however, the proposed amendment . . . would truly prejudice the State, the better course of action would be to continue the matter and thus remove any possibility of prejudice

resulting from the belated amendments.”).

Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon showing of good cause. S.C. Code Ann. § 17-27-150. Further, the State requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to the State well in advance of the evidentiary hearing. As noted above, the State reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to the State. See Love, 428 S.C. 231, 834 S.E.2d 196.

ALL OTHER CLAIMS

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

CONCLUSION

WHEREFORE, the State respectfully requests an evidentiary hearing on Applicant’s claims of ineffective assistance of appellate counsel.

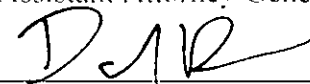
Respectfully Submitted,

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
Post Office Box 11549
Columbia, SC 29211

August 30, 2023

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
) IN THE COURT OF COMMON PLEAS
) FOR THE NINTH JUDICIAL CIRCUIT

Mark Blake, #368687)

Applicant,)

v.)

State of South Carolina)

Respondent,)

Case No.: 202-CP-10-00760

Certificate of Service by Mark Blake

FILED
2023 SEP - 1 AM 11:54
JULIE A. ARMSTRONG
CLERK OF COURT
DCL

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 for More Definite Statement in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Denise Grainger Swope, Esquire
The Swope Law Firm, P.A.
1525 Sam Rittenberg Boulevard, Suite 208
Charleston, SC 29407

DATED this 30th day of August, 2023.

Vickie Hall

Vickie Hall, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Mark Blake, #368687,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

Case No.: 2022-CP-10-00760

**AMENDED RETURN AND
MOTION TO SIMPLIFY ISSUE**

(Counsel Appointed)

2022 MAR -7 AM 11:46
FILED
CLERK OF COURT

The State of South Carolina ("Respondent" or "the State") hereby amends its Return to the post-conviction relief ("PCR") action filed by Mark Blake ("Applicant") on February 16, 2022. Respondent would respectfully show this Court:

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections serving a life sentence. In August 2013, the Charleston County Grand Jury indicated Applicant for attempted murder (2013-GS-10-4926). This charge arose from a shooting incident involving Cory Goldstein (Victim) on March 30, 2013. On November 13, 2018, Applicant proceeded to a jury trial before the Honorable William P. Keesley. Applicant proceeded *pro se* with Jason King, Esquire, as standby counsel. Assistant Solicitors Stephanie Linder and J. Whit Sowards prosecuted the case. The jury convicted Applicant as indicted, and Judge Keesley sentenced him to life.

Applicant filed a direct appeal. Appellate Defender Taylor D. Gilliam represented Applicant and submitted a brief arguing the trial court erred in excluding any mention of Applicant's right to carry a firearm following prior convictions when the fact he could not legally carry a firearm was irrelevant and highly prejudicial. The South Carolina Court of Appeals

affirmed, finding the issue unpreserved. *State v. Blake*, Up. Op. No. 2021-UP-201 (Filed June 9, 2021). The remittitur was sent June 28, 2021.

II. CURRENT APPLICATION

In his current PCR application, Applicant alleges he is being held unlawfully based on the following:¹

A. Ineffective Assistance of Appellate Counsel: “Omitted raising appellate issue.”

B. Applicant requests relief as follows: “reverse both conviction and sentence, and remand for a new trial”.²

Attached to this Return and incorporated herein are the records of the Charleston County Clerk of Court records regarding the subject convictions, the appellate records, Applicant’s records from SCDC, and the PCR application. The State reserves the right to amend this Return upon receipt of any relevant materials.

III. MOTION TO SIMPLIFY THE ISSUES

The State moves to simplify and clarify the issues of the evidentiary hearing to specific allegations of ineffective assistance of appellate counsel. In any action, upon motion of a party, the court may direct the attorneys for the parties to appear before it for a hearing to consider the simplification of the issues. Rule 16(a)(1), SCRCP; *Brown v. United Ins. Co.* 268 S.C. 254, 233 S.E.2d 298 (1977) (holding the trial court had authority at a pre-trial conference to have opposing counsel simply the factual issues); *Hodge v. Myers*, 255 S.C. 542, 180 S.E.2d 203 (1971) (“purposes of pre-trial conferences are...to narrow or simplify the issues”). The attorneys in the

¹ Unless quoted, Applicant’s allegations have been summarized for brevity and clarity.

² If this Court finds a defect in the original proceedings, the appropriate remedy would be to grant a new trial on the original indictments. *Gilstrap v. State*, 252 S.C. 625, 628, 168 S.E.2d 88, 89 (1969) (stating the relief to be granted is remand for a new trial); *Smith v. State*, 413 S.C. 194, 195, 775 S.E.2d 696, 696 (2015) (“We now clarify the proper remedy is a new trial”).

pre-trial hearing will be prepared to state the facts which can be proven whether or not alleged in the pleadings and state questions of law involved. Rule 16(a)(8)(1)-(2), SCRCP.

Applicant is precluded from raising allegations of ineffective assistance of trial counsel because Applicant waived his Sixth Amendment right to counsel and proceeded to represent himself at trial. The Sixth and Fourteenth Amendments to the United States Constitution guarantee criminal defendants the right to assistance of counsel. U.S. Const. amend VI. The Sixth Amendment also guarantees every criminal defendant “the right to proceed without counsel when he voluntarily and intelligently elects to do so.” *State v. Barnes*, 407 S.C. 27, 35, 36, 753 S.E.2d 545, 550 (2014) (quoting *Faretta v. California*, 422 U.S. 806, 807 (1975)). So long as the defendant makes his request prior to trial, the only proper inquiry mandated by *Faretta* is that the defendant is informed of the dangers and disadvantages of self-representation and makes a knowing and intelligent waiver of his right to counsel. *Id.* at 35-36, 753 S.E.2d at 550.

A defendant does not have a right to hybrid representation: partially *pro se* and partially by counsel. *See State v. Reed*, 332 S.C. 35, 43, 503 S.E.2d 747, 751 (1998) (“[a] trial judge is not required to permit hybrid representation” (citing *McKaskle v. Wiggins*, 465 U.S. 168 (1984))). While a *pro se* defendant may have standby counsel, the *pro se* defendant must be allowed to control the organization and content of his own defense, make motions, argue points of law, participate in *voir dire*, question witnesses, and address the court and jury at appropriate points in trial. *McKaskle*, 465 U.S. at 174. Further, a *pro se* defendant cannot claim ineffective assistance of counsel against himself. *See Faretta*, 422 U.S. at 834 (stating the *pro se* defendant will bear the consequences of a conviction, and although he may conduct his own defense to his own detriment, his choice must be honored).

Applicant cannot raise allegations of ineffective assistance of trial counsel because Applicant proceeded *pro se*, was in control of his own defense, and thus, bears the consequences of his own representation. Applicant intelligently and voluntarily waived his right to counsel in two separate *Faretta* hearings. (R. 20:6-13). Standby counsel's involvement in Applicant's trial was limited as Applicant was given control of the organization and content of his entire defense. Standby counsel did not infringe upon Applicant's right to present his own defense at trial. *McKaskle*, 465 U.S. at 178 (stating the *Faretta* right is eroded where standby counsel's participation substantially interferes with defendant's significant tactical decisions, questioning of witnesses, or speaking over defendant on any matter of importance). As a matter of law, it would be a contravention to allow Applicant to raise allegations of ineffective assistance of trial counsel where Applicant waived his right to counsel and represented himself at trial to his own detriment. Thus, this Court should simplify and clarify that Applicant may not raise any issues of ineffective assistance of trial counsel at the evidentiary hearing.

IV. ANY FUTURE AMENDMENTS

The State reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State, or alternatively, the State will request a continuance in the matter.³

V. GENERAL DENIAL AND REASSERTION OF PREVIOUS ARGUMENTS AND MOTIONS

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this return is hereby denied. Further, the State reasserts all arguments and motions previously made in its initial return.

³ See *Love v. State*, 428 S.C. 231, 245, 834 S.E.2d 196, 203 (2019) (Kittredge, J., dissenting) ("If, however, the proposed amendment... would truly prejudice the State, the better course of action would be to continue the matter and thus remove any possibility of prejudice resulting from the belated amendments").

VI. CONCLUSION

WHEREFORE, the State respectfully requests this Court grant its motion to simplify the issues Applicant may proceed on at the evidentiary hearing.

Respectfully submitted,

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

BRYAN T. HALL
Assistant Attorney General

By:



ATTORNEYS FOR THE STATE
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29212

March 5, 2024

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

2022-CP-10-00760

Mark Blake, #368687,

Applicant,

vs

State of South Carolina,

Respondent,

CERTIFICATE OF SERVICE BY MAIL

BY

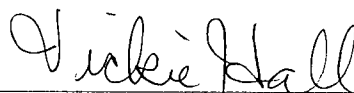
JULIE J. ARMSTRONG
CLERK OF COURT

2024 MAR -7 AM 11:46

FILED

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 at this is a proper circumstance of service by mail.
3. I have this day served a copy of the Amended Return and Motion to Simplify Issues in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Denise Grainger Swope, Esquire
The Swope Law Firm, P.A.
1525 Sam Rittenberg Boulevard, Suite 208
Charleston, SC 29407

DATED this 5th day of March, 2024.


Vickie Hall, Legal Assistant
 For Respondent

AH
GS
SOL
AG

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

MARK BLAKE,
#368687

Applicant,

v.

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO. 2022-CP-10-760

ORDER OF CONTINUANCE

FILED
2024 MAR 14 PM 1:42
JULIE J. ARMSTRONG
CLERK OF COURT

IT APPEARING THAT a Post Conviction Relief Hearing in this matter was scheduled for March 13, 2024, at 9:30 a.m.; and

IT APPEARING THAT a continuance was requested and counsel for Respondent did not object;

NOW THEREFORE, the Court finds that the Post Conviction Relief hearing in this matter is continued until the next term of Court.

AND IT IS SO ORDERED this 13 day of MARCH at Charleston, South Carolina.



The Honorable Walton McLeod
Presiding Judge
Court of Common Pleas
Ninth Judicial Circuit

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Mark Blake, SCDC # 368687,

Applicant,

v.

State of South Carolina,

Respondent.

) IN THE COURT OF COMMON PLEAS
) FOR THE NINTH JUDICIAL CIRCUIT
)

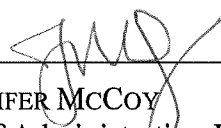
) Case No.: 2022-CP-10-00760
)

) **ORDER OF CONTINUANCE**
)
)
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)

2024 SEP -5 AM 10:53
CLERK OF COURT

This matter comes before the Court pursuant to an application for post-conviction relief (“PCR”) filed by Mark Blake (“Applicant”) on February 16, 2022. An evidentiary hearing was scheduled for Thursday, September 12, 2024. However, the State has requested a continuance in this matter due to the unavailability of a key witness. Applicant, though his counsel, consents to the State’s request for a continuance. Therefore, this Court finds good cause to continue this matter until the next available PCR term of court in the Ninth Judicial Circuit.

AND IT IS SO ORDERED on this 5 day of September, 2024.


JENNIFER MCCOY
Chief Administrative Judge
Common Pleas
Ninth Judicial Circuit

Charleston, South Carolina

State of South Carolina	)	Court of Common Pleas
County of Charleston	)	Ninth Judicial Circuit
	)	
MARK L. BLAKE, JR.,	)	Case Number:
	)	2022-CP-10-00760
Applicant,	)	
	)	
vs.	)	
	)	
STATE OF SOUTH CAROLINA,	)	MOTION FOR
	)	POSTCONVICTION RELIEF
Respondent.	)	
_____	)	TRANSCRIPT OF RECORD

December 19, 2024
Charleston, South Carolina

B E F O R E:

The Honorable Jocelyn Newman

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

MS. DENISE G. SWOPE,
Attorney at Law,
for the Applicant;

MR. BRYAN T. HALL
and MS. DANIELLE DIXON,
Assistant Attorneys General,
for the Respondent.

Jamie Bickett
Official Court Reporter

INDEX

WITNESSES

<u>NAME</u>	<u>PAGE</u>
Mark Blake	
Direct Examination by Ms. Swope.....	19
Cross-Examination by Mr. Hall.....	30
Taylor Gilliam	
Direct Examination by Mr. Hall.....	38
Cross-Examination by Ms. Swope.....	45
Redirect Examination by Mr. Hall.....	46
Recross-Examination by Ms. Swope.....	47

EXHIBITS

<u>NUMBER</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
Applicant's 1	Motion and court order		26

RULING OF THE COURT.....	50
CERTIFICATE OF COURT REPORTER.....	53

1 (The following proceedings were had in open court.)

2 THE COURT: Okay. Yes, sir.

3 MR. HALL: May it please the Court?

4 THE COURT: Yes, sir.

5 MR. HALL: Assistant Attorney General Bryan Hall for the
6 State.

7 Your Honor, this is the case of Mark Blake versus State
8 of South Carolina, Docket Number 2022-CP-10-00760.

9 In its August 2013 term, the Charleston County Grand
10 Jury indicted Mr. Blake for attempted murder. That
11 indictment number is 2013-GS-10-4926. This charge arose from
12 an incident that occurred on March 30 of 2013 in which a
13 traffic stop led to a high-speed chase, at the conclusion of
14 which Mr. Blake shot and injured Officer Cory Goldstein. On
15 November 13 to November 15 of 2018, Mr. Blake proceeded to a
16 jury trial before the Honorable William Keesley. Assistant
17 solicitors Stephanie Linder and J. Whit Sowards prosecuted
18 the case, and Mr. Blake represented himself, choosing to
19 proceed pro se with Jason King as standby counsel. The jury
20 convicted Mr. Blake, and Judge Keesley sentenced him to life
21 imprisonment.

22 On November 26, 2018, a notice of appeal was filed. On
23 appeal, Mr. Blake was represented by Appellate Defender
24 Taylor Gilliam, who raised the following issue: whether the
25 trial court erred in failing to exclude any mention of

1 appellant having lost his right to carry a firearm following
2 prior probations where in a trial for attempted murder, the
3 fact that he could not legally carry a weapon was irrelevant
4 and overly prejudicial. The South Carolina Court of Appeals
5 affirmed the conviction, finding that Mr. Blake failed to
6 make an objection to all references concerning his illegal
7 possession of a firearm, and Mr. Blake adduced testimony
8 about this fact several times throughout the trial.

9 The remittitur was sent on June 28 of 2021, and this PCR
10 was timely filed on February 16 of 2022. In his application,
11 Mr. Blake raised the following allegations: ineffective
12 assistance of appellate counsel for failing to raise
13 appellate issues.

14 Your Honor, our office has submitted the clerk of court
15 records, SCDC records, appellate records, and records from
16 the current PCR action. Mr. Blake is present and represented
17 by Denise Swope. And I believe that Ms. Swope would like to
18 make a motion.

19 THE COURT: Ms. Swope.

20 MS. SWOPE: Yes, your Honor, if I may.

21 I would like to renew my continuance motion at this
22 time. I feel even stronger regarding that motion after
23 speaking with Mr. Blake and his family. His father is here
24 today as well as other family members.

25 My concerns are twofold.

1 Mr. Blake has been representing himself pro se in an
2 action in the federal court system, and he's been focused on
3 that. While this is an old case, I would point out to the
4 Court that I am substitute counsel so I did not get in here
5 from the beginning. It was continued one time because of
6 scheduling for a State's witness. It was continued the next
7 time because we had just received an amended return.

8 Mr. Blake asked me himself for a continuance for several
9 reasons. He has been focused on his other case. And as the
10 Court knows, you only get one bite at this apple. And this
11 man is facing, you know, the rest of his life in prison. And
12 he has raised issues with me today, stating that he is on
13 three medications: Remeron, Prozac, and prazosin. And he
14 said that his anxiety was through the roof, that he's taking
15 medications for nightmares, that he is having difficulty
16 sleeping, that he is having difficulty focusing.

17 Mr. Blake has represented himself in previous actions.
18 He feels very confident in his ability to do that in the
19 past. Based on these issues and the issues raised by his
20 family to me after speaking with him, I would like to have an
21 opportunity to look at his medical records. I would like an
22 opportunity to see if I can get the transcript for the
23 *Faretta* hearing where he was allowed to represent himself.

24 Most importantly for purposes of today, the same person
25 who has been representing himself, who feels very confident

1 in his ability to do that, is looking at me and saying,
2 "Ms. Swope, I don't feel confident. I don't feel focused
3 enough. I don't feel like I'm able to proceed today." And
4 he has never said that to me. And because he only gets one
5 shot at this, I want to make sure that he can present his
6 case in the best possible fashion.

7 And as I've said, he's on three medications including
8 Prozac today. And he said he does not feel calm; he does not
9 feel focused. And both of his parents -- after speaking with
10 him, I spoke with his father as well as his mother regarding
11 medication issues, and they have concerns as well. And the
12 father -- Mr. Blake, the father, said that's he's happy to
13 address the Court.

14 But my concern is he only gets one try at this, Judge.
15 And I want him to know that he put his best foot forward,
16 that he did the best that he could.

17 There is a docket for this circuit in January. So we're
18 not talking about a long delay. I just want him to make sure
19 his deadline with his federal case is past. I feel like he
20 could better focus now and we could be better prepared and
21 better focused for him to be able to do his best, because
22 he's never going to get another shot at this.

23 And unlike a lot of people that's in front of the Court,
24 they have a max-out date. They get to go home regardless of
25 how this goes. That's not true for Mr. Blake. If this

1 doesn't go his way and nothing is overturned, he's going to
2 spend the rest of his life in prison. And I want him to know
3 that he has his best try.

4 THE COURT: Well, this doesn't appear to be a
5 complicated case. The incident in question happened nearly
6 -- I mean, we're three months shy of 12 years ago. And
7 frankly, the passage of time does not typically help these
8 matters at all. The trial occurred more than six years ago.

9 And it's not an overly complicated case. I mean, he's
10 alleging ineffective assistance of counsel -- ineffective
11 assistance of appellate counsel when it appears that
12 appellate counsel made certainly arguments and the basis of
13 the appellate court's decision was Mr. Blake's own failure as
14 a self-represented litigant to do certain things, which makes
15 this case actually fairly simple, as far as I can see.

16 I also thought that Remeron and Prozac helped with those
17 issues, the anxiety and all. So if he sits here today on
18 Prozac, he should be feeling great.

19 MS. SWOPE: And that was what I was hoping he would say
20 to me. And for the first time in all my interactions with
21 him, he is saying to me that he doesn't feel like he can
22 focus, he doesn't feel prepared, he doesn't feel confident in
23 himself. He said that he feels -- I believe the words were
24 almost like an identity crisis, like he didn't feel like
25 himself. And those kind of words concern me.

1 And I just want to make sure -- because Mr. Blake is an
2 intelligent person. He is a very focused person. He's
3 always been very directed with me and very calm. And this is
4 different.

5 I had concerns yesterday and the day before, based on
6 what his family was telling me. Then I was able to speak
7 with Mr. Blake over the phone several times. And then I was
8 able to look him in the eye today. And it's just very
9 different. It's very different. And I looked back at the
10 transcript after speaking with Mr. Blake, and at one point
11 during the trial he said to the judge, "I need someone to
12 make objections for me."

13 So based on those kind of comments, based on the fact
14 that he's on medications, I just -- I want to make sure that
15 we have -- that I have addressed every possible thing that I
16 can address in advocating for Mr. Blake because he doesn't
17 get another chance. We're so far down the process, this is
18 it. And I want to make sure that he has every chance that he
19 can have to get as fair a hearing as he possibly can.

20 I agree with you that on the surface it's a fairly
21 simple case because my review and my ability to collaterally
22 deal with it is limited because Mr. Blake was pro se.

23 I spoke with appellate counsel, Mr. Gilliam, and asked
24 if he had addressed the idea of should he have been pro se,
25 because I didn't know Mr. Blake in 2018. And he said that

1 no, he did not, and he'd be willing to testify regarding
2 that. He said that perhaps we should call as well the
3 prosecutor and standby counsel, if need be, if we have
4 concerns about whether or not *Faretta* was done correctly.

5 THE COURT: Would that not be a direct appeal issue,
6 though?

7 MS. SWOPE: It would. But that's exactly the point is
8 the appeal issues are what we are dealing with.

9 THE COURT: Gotcha. Yes. Thank you.

10 MS. SWOPE: That's the only issues we're dealing with.

11 THE COURT: Okay. I understand.

12 What's the State's position?

13 MR. HALL: Your Honor, the State objects to a
14 continuance.

15 And just so that we have a clear record, this is an old
16 case. This case has been around since February of 2022, so
17 it's going on nearly three years. This case has been
18 continued twice already, the first time was by the applicant
19 back in March of 2024. Then the State requested a
20 continuance in September of this year due to the
21 unavailability of a witness. But it's already been continued
22 twice.

23 Your Honor, the State submits that this motion is for
24 the purpose of delay. And the reason for that is because we
25 received three different reasons for this motion from

1 opposing counsel.

2 The first that I was told was Mr. Blake wanted a
3 continuance so that he could research the issues himself. We
4 submit that that's unnecessary because Mr. Blake is
5 represented by counsel.

6 The second reason given was because he had a federal
7 habeas deadline for a filing that was due today. As of the
8 time of this hearing, it's come to our attention that
9 Mr. Blake has, in fact, filed in that federal habeas case in
10 which he's representing himself.

11 And then the reason that Ms. Swope just mentioned
12 regarding mental health issues and whether or not he
13 knowingly and voluntarily waived his right to proceed pro se.
14 Your Honor, we just found out about that allegation
15 yesterday. This application has been around since February
16 of 2022, and this was not an allegation that was pled in his
17 original application. So that's a new allegation that has
18 come to our attention.

19 But if I could just address the substance of the reason
20 for the motion.

21 The State submits that if there were any concerns about
22 his ability to represent himself, that's a direct appeal
23 issue. And we have appellate counsel present virtually to --
24 who will be able to testify to that issue.

25 But the transcript also speaks to the -- although we

1 don't have the transcripts from the *Faretta* hearing, and the
2 reason why we don't have the transcripts from the *Faretta*
3 hearing is because of the length of time. It's over five
4 years, and court reporters only keep the transcripts for five
5 years. And so due to the age of this case, those transcripts
6 are unavailable.

7 Turning the Court's attention to page 20 of the trial
8 transcript, at Mr. Blake's trial in which he represented
9 himself, the judge asked Mr. Blake if he was representing
10 himself. And the Court stated that, quote, "It's my
11 understanding that there's already been a full *Faretta*
12 hearing," to which I believe the solicitor responded, "Yes,
13 Judge. Judge Dennis had two separate *Faretta* hearings after
14 he requested to represent himself for trial, and both of
15 those times he found that Mr. Blake was going to be pro se."

16 Your Honor, if you read the trial transcript, Mr. Blake
17 represented himself and I thought he did a fairly decent job
18 of doing that.

19 And so, your Honor, the State submits that this motion
20 is simply for delay. And it's also a fishing expedition.
21 Those transcripts are unavailable. There were no concerns
22 about Mr. Blake's competency before today. And so we ask
23 that you deny his motion and proceed with an evidentiary
24 hearing on what seems to be a simple straightforward issue of
25 whether or not appellate counsel was ineffective.

1 THE COURT: Ms. Swope.

2 MS. SWOPE: Yes, your Honor.

3 As I said, my experience with Mr. Blake has been very
4 focused, very confident. And I'm dealing with a different
5 individual today. And I just want to make certain that he is
6 able to focus. He didn't want more time to research himself.
7 What he said was he wanted more time to review everything so
8 that he could have it fresh in his mind for the hearing
9 itself. And that was my concern earlier in the week.

10 Today I'm being told that he's having difficulty
11 focusing, he's having difficulty sleeping. And I said,
12 "You're on those medications and you're still feeling that
13 way today." And I said, "I know it's hard to ask for
14 assistance. I know it's hard to admit that you're having a
15 hard time because that's not in your nature." But I said, "I
16 need you to be honest with me," and he was. He said that he
17 just does not feel focused, he does not feel like he is his
18 best self today, and he just wants to make sure that he can
19 put his best foot forward and express himself well.

20 I just fail to see -- given that one continuance was due
21 to a scheduling issue and one was due to we had just received
22 an amended return on a very old case and I had family tragedy
23 going on at the time, this has not been continued over and
24 over at Mr. Blake's request. He's never made this request
25 before. He's never told me anything like this before.

1 And I honestly don't see how anyone is prejudiced,
2 except for the fact that we'll have this on the docket for
3 one more month. I don't see how -- when you're talking about
4 weighing a life sentence against a continuance that's a
5 matter of weeks to give Mr. Blake a chance to get into a
6 better place mentally, I just don't see how the State is
7 prejudiced by that.

8 MR. HALL: Your Honor --

9 MS. SWOPE: Mr. Blake has never made this request from
10 me before.

11 MR. HALL: Your Honor, if I could speak to prejudice.

12 Because this case has been put on the docket several
13 times following the continuances, this case is preventing the
14 State from being able to docket and schedule other cases that
15 need hearings. Your Honor, the State has an interest in
16 moving cases. Regarding scheduling, Assistant Attorney
17 General Danielle Dixon runs the Ninth Circuit, which contains
18 Charleston, and so I will let her speak regarding whether
19 there's availability to set this case for a hearing at one of
20 the times next year.

21 MS. DIXON: And your Honor, just to speak to that,
22 because our next term in Charleston begins January 20, which
23 is just shy of four weeks away, our office does try to get
24 the roster out at least a month in advance to give all the
25 parties notice and everything. We actually mailed all that

1 out today. With the holidays and everything -- I think
2 Monday is four weeks from the start. And with the holidays
3 and everything, I was wanting to get it out.

4 So that roster is pretty much done. I think to add a
5 case at this point we would have to get the permission of the
6 judge, which is generally our office policy that we don't
7 just go random -- we don't just go adding cases to a roster
8 once it's been published. We don't know right now who the
9 judge will be. I think we might get some clarity on that in
10 the next couple of weeks.

11 But it's currently pretty full. That Monday's a
12 holiday. We don't have anything scheduled that Friday, but I
13 was trying to get some depositions that had been ordered in
14 another case done that Friday.

15 So that's where we are. The rosters got mailed out
16 today. So it's not quite as easy as just putting it back
17 on -- you know, adding it then.

18 MS. SWOPE: And your Honor, if I may, I was informed
19 that the next docket after that is May. And I explained to
20 my client that it could be May, that I hoped it would be
21 January if it was continued but that it could be May. And he
22 is aware of that in making this request.

23 THE COURT: All right. The motion for a continuance is
24 denied.

25 Again, these cases don't get better with age. You know,

1 one thing that has happened over the time that this has been
2 pending is the likely destruction of any records of the
3 *Faretta* hearing. I mean, that's a huge detriment. It's not
4 going to get any better. In fact, this case was filed in
5 2022. The trial was in 2018. That is still within the
6 five-year timeframe for the court reporter to still have the
7 audio recordings and any transcription that they did
8 contemporaneous. Obviously, the *Faretta* hearings would have
9 occurred before that. But probably still within that
10 five-year window, or close to it.

11 Just, it's not an overly complicated case. You know,
12 and I sympathize and empathize with Mr. Blake not feeling his
13 best today. Frankly, I don't feel my best today. I have
14 driven back and forth from Columbia to Moncks Corner and/or
15 Charleston every day this week, and I don't feel my best.
16 It's not like I'm on a beach on vacation feeling my best.
17 I'm fine. I'm competent to work.

18 And Mr. Blake, I've heard nothing that suggests that
19 he's not competent to answer questions of his counsel, who
20 should be prepared.

21 The amended return, I think that's frankly not an issue.
22 That's a bit of a red herring. The returns are, in large
23 part, similar. The amended return just moves to simplify the
24 issues, which is basically what the first return says. It
25 asks for a more definite statement, but they just want to

1 know specifically what the issues are.

2 And whether that was in writing in a return or not, that
3 is a requirement. The Court has to know what the issues are
4 with specificity. So, you know --

5 MS. SWOPE: As I said, your Honor, it was that as well
6 as we had had a family --

7 THE COURT: Y'all love to interrupt in Charleston
8 County.

9 MS. SWOPE: I am so sorry. I thought you were --

10 THE COURT: Every time.

11 MS. SWOPE: -- done with your sentence.

12 THE COURT: Across the board.

13 MS. SWOPE: I apologize.

14 THE COURT: Yeah, that's why people usually say, "May it
15 please the Court," so that --

16 MS. SWOPE: I'm so sorry.

17 THE COURT: -- you can be --

18 MS. SWOPE: I do apologize.

19 THE COURT: -- recognized by the Court.

20 But I really think that's a nonissue. And I'm sure I'm
21 leaving out some other amendments in the return. But in any
22 event, even if it were a completely different return, it was
23 filed March 7, more than nine months ago.

24 So the case is what it is. The transcripts are what
25 they are. There are no other transcripts that are going to

1 be available except maybe related to the PCR action and
2 transcripts of the motions for continuance, if they were even
3 put on the record. There is nothing else to gain by the
4 delay. And both the Court and the State have an interest in
5 moving cases forward.

6 And that's the basis of my ruling.

7 So let's proceed. Although we mentioned Mr. Gilliam --
8 virtually?

9 MR. HALL: Yes, ma'am. I've reached out to Mr. Gilliam,
10 and he will be appearing virtually.

11 THE COURT: Okay. Let's start the Webex again.

12 Okay. So we're going to proceed today with the
13 evidentiary hearing so that we can dispose of this case.

14 Give me some background, Mr. Hall. Or did you already
15 do that?

16 No, because I --

17 MR. HALL: I did, Judge, but I can go through it again.

18 THE COURT: Hold on. Let me just -- nope. You went
19 through all of that: attempted murder, Judge Keesley,
20 pro se. Yes. I have my notes. I have things highlighted.

21 So it will be on Ms. Swope to call her first witness.

22 MS. SWOPE: Yes. I would call Mr. Mark Blake to the
23 stand, please.

24 THE COURT: Mr. Blake, come around here.

25 Also, Mr. Hall or Ms. Dixon, you may want to call or

1 text Mr. Gilliam. There's no one logged in right now.

2 MS. DIXON: Your Honor?

3 THE COURT: There's zero attendees.

4 MS. SWOPE: Oh. I've got his text -- er, I've got his
5 number.

6 THE COURT: And I don't know if you want him to hear
7 Mr. Blake's testimony, or if he can -- that could be --

8 MR. HALL: Yes, Judge.

9 THE COURT: You do?

10 MR. HALL: Yes, ma'am.

11 THE COURT: We can go ahead and swear him and seat him,
12 though.

13 (Witness sworn.)

14 CLERK OF THE COURT: Please have a seat for me.

15 THE COURT: Have a seat right there.

16 CLERK OF THE COURT: Please state your name for the
17 record and spell your last name, please.

18 THE WITNESS: Mark Blake, B-L-A-K-E.

19 THE COURT: Your witness.

20 MS. SWOPE: Yes, your Honor.

21

22

23

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25

1 MARK BLAKE,
2 called as a witness on his own behalf, being first duly
3 sworn, was examined and testified as follows:

4 DIRECT EXAMINATION

5 BY MS. SWOPE:

6 Q. Mr. Blake, can you state your name for the record,
7 please.

8 A. Yes. It's Mark Blake.

9 Q. And the first issue that we discussed --

10 MS. SWOPE: Your Honor, do I need to cover his reasons
11 for a continuance for the record? Do I need him to say them,
12 or do you feel like I've done that?

13 THE COURT: I feel like you've done that. And I've
14 ruled on that.

15 MS. SWOPE: Okay. I just wanted to --

16 THE COURT: Move on.

17 MS. SWOPE: Okay.

18 Q. [By Ms. Swope] Mr. Blake, the first thing that we
19 discussed regarding issues that you believe appellate counsel
20 should have raised in his direct appeal that he did not, the
21 first issue that we discussed was the Langford issue.

22 A. Correct.

23 Q. And can you explain that to the Court.

24 A. Yes. It was a -- the Langford issue consisted of -- it
25 was a pretrial motion that I actually did in front of I think

1 it was Judge Dennis, and he denied it. And it was part of
2 the record. It was like a few days before trial. And it
3 consisted of my overextensive time of delay. I think it was
4 like maybe over -- the case was like 2018, so I think it was
5 like maybe five years delayed. I raised the issue on a
6 pretrial motion, and it was preserved for appellate review.

7 And Mr. Gilliam, he did not present it for appellate
8 review for whatever reason. We had a discussion via phone
9 conversation regarding the issue that he was raising, and I
10 asked him about it. He said he, you know, didn't feel
11 confident in raising it.

12 And you know, I was -- I remember that day -- I was very
13 upset about it because I studied that case so long and tried
14 to prep it so well to preserve all issues. And it was just
15 -- I thought it was just very inconsiderate as all the work
16 that I put into this case and for him to basically not, you
17 know, raise it for me regarding my appeal.

18 Q. And the Langford issue that you were concerned about was
19 the delay in the prosecution of the case?

20 A. Yes. Like I said, the prosecution was basing the delay
21 on me, as far as the attorneys that I had, from my
22 understanding. I never one time requested a continuance up
23 until maybe 2018 amongst the whole situation, so I definitely
24 was not the cause of the delay at all. And I didn't
25 prejudice the State at all based on -- you know, I never

1 asked for a continuance but one time out of the whole
2 situation of the ongoing case over like five years.

3 Q. And you asked the Court to dismiss your case and that
4 was denied?

5 A. It was denied by Judge Dennis.

6 Q. Okay. And you renewed that at trial I believe on
7 page 12 of the transcripts for the record -- for the trial
8 record?

9 A. Yeah. Based on his denial -- initial denial, I think he
10 was saying it was under some type of structural review or
11 something of that nature. And I discovered that it wasn't
12 any structural review, you know, so I think it was basically
13 -- it was like a misapprehension of what the law stated. So
14 I mean, I figured I'd try to reraise it in trial based on I
15 think it was basically not a good ruling on his behalf. It
16 wasn't under structured review, from my understanding.

17 Q. Okay. And so you asked the trial judge to revisit the
18 issue, and you raised the issue with appellate counsel
19 Mr. Gilliam as well?

20 A. Yeah. I questioned him about the issue about why he
21 didn't raise the issue. And you know, unfortunately, he was
22 my appellate counsel and it was basically his discretion that
23 he didn't raise the issue.

24 Q. And you raised -- the next issue that I've got on our
25 list is that you raised the issue to quash the indictment,

1 and you asked for documentation that was not provided to you.
2 Can you explain that issue to the Court.

3 A. I don't have that in front of me. Yeah, I did raise a
4 motion to quash indictment. I'm not too legally swift on
5 that particular motion at this time, but yeah, that also got
6 denied. And that's another issue that he didn't raise.

7 Q. Just to refresh your memory on what you've spoken with
8 me about, I believe the issue was that you felt you were
9 entitled to documents from the grand jury; is that correct?
10 Is my memory correct on that?

11 A. Okay. Yeah. Dealing with all the documents that I
12 requested of the grand jury proceedings that I wanted to
13 review based on *Evans versus State*, I believe it was. And I
14 think it was like 14 -- 14-7 -- yes, it was Section
15 14-7-1700, 14-7-1720, and it was like 14-7-1770. Basically I
16 wanted to obtain all the documentation dealing with the grand
17 jury to see if we need to make any -- you know, to review
18 myself to make -- you know, so I could make grand -- to see
19 if I could make grand jury challenges dealing with the grand
20 jury.

21 Q. And that motion was denied?

22 A. That was also -- I believe it was also denied.

23 MS. SWOPE: And I believe that's on page 73 of the
24 transcript, the beginning of that argument, Judge.

25 Q. [By Ms. Swope] And you discussed this with Mr. Gilliam

1 as well, thinking that that should have been included in the
2 appeal?

3 A. Yes, absolutely. I -- you know, like I said, the
4 conversation didn't go well. That was our first
5 conversation. And he was just telling me he raised the one
6 issue out of all the issues that I raised in trial. And I
7 just didn't think it was a good issue based on -- you know,
8 of course, fast forward to now, based on results that it got.
9 And I just thought that there was other issues that could
10 have been -- that he overlooked and didn't raise.

11 Q. Now, the other issues that you and I discussed -- and
12 please let me know -- when I finish, I'm going to ask you if
13 I've forgotten anything.

14 A. Okay.

15 Q. Because I know this was a long trial and this was a long
16 time ago.

17 A. Right.

18 Q. And I know you said you were having trouble focusing
19 today.

20 A. Right.

21 Q. The other issue that you and I discussed, based on our
22 recent conversations, was the *Faretta* issue in terms of
23 whether or not you should have been allowed to represent
24 yourself and the stress that you were under and you said you
25 were anxious, understandably.

1 MS. SWOPE: And I would refer you to the transcript,
2 your Honor, in -- let me see if I can find it.

3 It's transcript page 547.

4 Q. [By Ms. Swope] You at one point asked the Court why the
5 Court wasn't assisting, and the Court explained that you had
6 to make objections and you hadn't made an objection. And you
7 stated that, "I need somebody to object for me." And that's
8 on page 547.

9 Do you remember making that request?

10 A. Yeah. I do believe because I was going to testify, you
11 know -- which I did testify in that trial. So me and
12 Mr. King -- of course he's not here right now, but we
13 discussed anything that I miss out on, you know, if he could
14 basically -- you know what I mean? -- compensate and help me
15 regarding that. Because, you know, the trial was going on a
16 thousand miles an hour. I can't catch everything. So yeah,
17 I did definitely recall asking him.

18 Q. And to your knowledge, was the issue of whether or not
19 you should have been representing yourself raised in the
20 appeal?

21 A. Can you rephrase that?

22 Q. Sure. The issue of whether or not you should have been
23 representing yourself, whether or not you needed additional
24 assistance at trial, was that issue raised in the appeal?

25 A. By Mr. Gilliam, no, it wasn't.

1 Q. Okay. And Mr. Blake, I believe that there was a witness
2 that you wanted to call at trial, is that correct, that was
3 not called at trial?

4 A. Yes. It was the witness Terri Ann Ferguson.

5 Q. Did you make a motion regarding that?

6 A. I did. I got it right here actually. I mean, do y'all
7 -- do I need to present it?

8 Q. Yes.

9 A. Okay.

10 Q. If you could hand that to the attorney general so that
11 he can look at it.

12 MR. HALL: May I approach?

13 THE COURT: Yes, sir.

14 MR. HALL: Beg the Court's indulgence.

15 THE COURT: Yes, sir.

16 (Pause in proceedings.)

17 MS. SWOPE: Your Honor, I would like to put the motion
18 as well as the Court's order regarding that witness into the
19 court record, Judge.

20 MR. HALL: Judge, if --

21 THE COURT: Any objection?

22 MR. HALL: If we could have Mr. Blake identify the
23 document.

24 MS. SWOPE: Yes. I'm sorry. We did skip over that
25 part.

1 Q. [By Ms. Swope] Mr. Blake, you have a copy of a motion
2 that you made, as well as the Court's ruling on the order,
3 correct?

4 A. Yes, ma'am. It's a motion to secure attendance of a
5 witness.

6 Q. And you have the judge's order wherein that was denied,
7 correct?

8 A. Yes. It was filed July 24 of 2018, and it was denied
9 August 28, 2018, by Judge Dennis, I believe it is -- was.

10 MS. SWOPE: Your Honor, if we could enter those into the
11 Court's record, please.

12 THE COURT: Would you mind just grabbing that from him.
13 She's going to grab this from you.

14 And we can collectively make that Applicant's 1.

15 (Applicant's Exhibit Number 1 admitted into evidence.)

16 THE COURT: Can I continue, Ms. Swope?

17 MS. SWOPE: Yes, your Honor.

18 COURT REPORTER: One moment, please. One moment, Judge.

19 THE COURT: Oh, I'm sorry. I jumped the gun.

20 MS. SWOPE: Okay. Maybe it's something in the water,
21 Judge.

22 THE COURT: Maybe.

23 COURT REPORTER: Do you want him to have this back,
24 Ms. Swope?

25 MS. SWOPE: Yes. If he could have it back --

1 COURT REPORTER: Okay.

2 MS. SWOPE: -- that would be -- so if he needs to refer
3 to it.

4 THE COURT: Okay. Now, Ms. Swope.

5 BY MS. SWOPE:

6 Q. Mr. Blake, you had indicated to me that you had some
7 anxiety and depression and other issues at the time of trial.
8 Can you describe that.

9 A. Yeah. At the time I think I was -- I think I was -- I
10 think I went to trial on lockup, if I can recall. So it was
11 a lot of emotional distress because I thought I was a little
12 unprepared because, you know, the condition that I was, you
13 know, undergoing being in lockup and going to trial from
14 lockup. So yeah, it was difficult.

15 Q. Were you on any medications at that time?

16 A. Yeah, I always was on the medications.

17 Q. And do you recall what the medications were or what they
18 were for?

19 A. They were same thing. It was Remeron, prazosin, and --
20 Remeron, prazosin, and Prozac.

21 Q. Okay. And Mr. Blake, I just want to make certain and I
22 want you and I to compare notes.

23 Have I left anything out that you and I had discussed
24 that you wanted to bring before the Court's attention today?

25 A. I think -- I think based on everything that we discussed

1 previously, I think, yeah, that's everything.

2 Q. Is there anything else you want to share with the Court
3 today that we didn't discuss? Because this is your
4 opportunity to speak and present your case.

5 A. There was one witness in my trial. She was a SLED
6 agent. I think it was Kukila Wallace.

7 Q. Mm-hmm.

8 A. And I just didn't have the time -- you know, that's
9 something I also wanted to look into but I just didn't have
10 the time as of now to basically backtrack and backpedal based
11 on her testimony was inconsistent with her investigation
12 dealing with the actual gunshot wounds that I sustained and
13 the officer sustained --

14 Q. Mm-hmm.

15 A. -- due to the incident versus when we was in trial she
16 said it was "suspected" gunshot wounds or "potential" gunshot
17 wounds and not "actual." So it was inconsistent with the
18 investigation. I just really would have liked to basically
19 get some type of investigator in regards to the SLED
20 procedure because the person had been doing it for eight
21 years and testified to -- you know, you go from marking
22 something actual of bullet wounds and then testifying, you
23 know, maybe -- what? -- five years later that it's potential.

24 So I just think it was really -- I just think that
25 really needed to be looked -- you know, looked at somewhat

1 because it just seemed kind of odd to me that me and the
2 officer sustained real bullet -- you know, we got shot. And
3 I just think that her testimony was just inconsistent with,
4 you know, her investigation. So I just thought that was kind
5 of odd.

6 Q. And the witness that you made a motion for and the
7 witness was denied, can you tell the Court what that -- what
8 you believe that witness could have testified to.

9 A. Well, Terri Ann --

10 MR. HALL: Objection. Speculation.

11 THE COURT: I think --

12 MS. SWOPE: Just trying to create a record, Judge.

13 THE COURT: I'm going to -- sustained.

14 MS. SWOPE: Okay.

15 The Court's indulgence, your Honor.

16 THE COURT: Yes, ma'am.

17 (Pause in proceedings.)

18 MS. SWOPE: Your Honor, I don't believe I have anything
19 further of this witness.

20 THE COURT: Cross-examination?

21 MR. HALL: Beg the Court's indulgence.

22 THE COURT: Yes, sir.

23 (Pause in proceedings.)

24

25

1 CROSS-EXAMINATION

2 BY MR. HALL:

3 Q. How you doing, Mr. Blake?

4 A. All right.

5 Q. Mr. Blake, how old are you?

6 A. Thirty-eight.

7 Q. How far did you go in school?

8 A. Eleventh grade.

9 Q. Eleventh grade? Okay. But no legal education, right?

10 A. No.

11 MS. SWOPE: I'm sorry, your Honor. What was the last
12 question.

13 THE COURT: No legal education.

14 MR. HALL: Whether he had any legal education.

15 MS. SWOPE: Okay. Thank you. I didn't understand.

16 MR. HALL: Apologies. I'll speak louder.

17 Q. [By Mr. Hall] And Mr. Blake, isn't it true, as
18 reflected in the transcript at page 20, that Judge Dennis had
19 two separate *Faretta* hearings in your case; isn't that right?

20 A. I don't recall it being full *Faretta* hearings. I just
21 remember and recall him asking if I still wanted to proceed
22 pro se. As far as a *Faretta* hearing goes, I think the last
23 real *Faretta* hearing I probably had was probably Judge
24 Stillwell and that was probably back in 2013.

25 Q. Well, that's not my question, Mr. Blake.

1 My question is, as reflected on the transcript on
2 page 20, as stated in the record, that Judge Dennis had two
3 separate *Faretta* hearings --

4 MS. SWOPE: Your Honor, objection. I don't believe that
5 my client has the paperwork in front of him to refer to. If
6 Mr. Hall would like to --

7 MR. HALL: I'll lay the foundation, your Honor.

8 THE COURT: You can ask the question. I mean, he's
9 testified about other portions of the transcript. He may
10 know; he may not.

11 Go ahead, Mr. Hall.

12 BY MR. HALL:

13 Q. Mr. Blake --

14 A. Yeah.

15 Q. -- are you familiar with your trial transcript? Have
16 you read it?

17 A. Yeah. I read it quite a few times. I haven't read it
18 thoroughly recently, you know, but I can remember certain
19 parts.

20 Q. All right. Well, let me ask you this.

21 A. Okay.

22 Q. If the trial transcript reflects, based on the
23 statements by the Court and the prosecutor, that Judge Dennis
24 had two separate *Faretta* hearings, would you dispute that?

25 MS. SWOPE: Your Honor, I believe he's answered that

1 question. He said he believed the last *Faretta* hearing was
2 2015.

3 THE WITNESS: No. 2013, if I recall.

4 MS. SWOPE: 2013. Excuse me.

5 THE COURT: Overruled.

6 Repeat your question. And let's get a clear answer.

7 BY MR. HALL:

8 Q. If I told you that as reflected on page 20 of your trial
9 transcript that the record reflects, based on the statements
10 by the judge and the solicitor, that Judge Dennis had two
11 separate *Faretta* hearings at which it was determined that you
12 were going to be proceeding pro se, would you dispute that
13 being a part of the transcript and in the record?

14 A. I would say, like I said, I can't recall both *Faretta*
15 hearings. He just asked if I wanted to -- you know, still
16 wanted to proceed pro se.

17 Q. Okay.

18 MR. HALL: Just for the record, let the record reflect
19 that's page 20 of the trial transcript, beginning at line 7
20 to line 13.

21 THE COURT: Yes, sir.

22 BY MR. HALL:

23 Q. And Mr. Blake, so you represented yourself at trial,
24 right?

25 A. Correct.

1 Q. Okay. And because you represented yourself at trial,
2 wasn't it your responsibility to make objections at trial?
3 Right?

4 A. Yeah, it was.

5 Q. Okay. And so because it was your responsibility to make
6 objections, isn't it true that it was your responsibility to
7 preserve issues for appeal? Right?

8 A. Yeah.

9 Q. Okay. And I think even several times during the trial
10 you even told the judge that you were making objections to
11 preserve certain issues for appeal; isn't that right?

12 A. Yeah. Correct.

13 Q. Okay. Mr. Blake, I want to ask you about page 547 of
14 the transcript.

15 On direct, your attorney asked you about you stating
16 that you needed someone to make an objection for you. That
17 statement wasn't made in regards to your competency, was it?

18 MS. SWOPE: Your Honor, I object. I believe that calls
19 for a legal conclusion, and Mr. Blake has testified that he
20 does not have a legal education.

21 THE COURT: Overruled.

22 THE WITNESS: Regarding my competency? Can you rephrase
23 that?

24 BY MR. HALL:

25 Q. I'll rephrase it.

1 So at page 547 of the transcript, you were testifying at
2 that time, right? You were on the stand?

3 A. Correct.

4 Q. Okay.

5 A. Yeah, I remember.

6 Q. Okay. And the judge stated that he hadn't heard an
7 objection, to which you stated that you didn't know that you
8 were allowed to object while testifying and you needed
9 someone to object for you. That's at page 547, lines 7
10 through 10.

11 Is that right?

12 A. Okay. I do remember. Yeah, I do, because it's coming
13 back to me now. Right.

14 Q. Okay. And so your reason for stating that you needed
15 someone to object for you was because you were testifying; it
16 wasn't because of your competency. Isn't that right?

17 A. Yeah, right. Because I was testifying -- right? -- and
18 it just -- it was going, you know, full throttle and, I mean,
19 I was testifying. I mean, so yeah.

20 Q. Okay. And Mr. Blake, if I could --

21 MR. HALL: Do you have Applicant's Exhibit 1?

22 MS. SWOPE: He has it.

23 THE COURT: He has it.

24 MR. HALL: May I approach?

25 THE COURT: Yes, sir.

1 BY MR. HALL:

2 Q. Mr. Blake, I'm handing you what's been marked as -- er,
3 entered into evidence as Applicant's Exhibit 1. I'm going to
4 refer to the order that was signed by Judge Dennis regarding
5 a witness that you wanted to appear.

6 Mr. Blake, isn't it true that the witness that you were
7 trying to subpoena for your trial was an out-of-state
8 witness? Isn't that right?

9 A. At the time it was, yeah.

10 Q. Okay. And isn't it true that Judge Dennis's order not
11 only states that that witness is out of state, but states
12 that a hearing was required to issue an order to get to that
13 witness. Is that right? Er, to subpoena that witness,
14 excuse me.

15 A. Yeah, from my understanding of his order, it appears
16 that he denied it based on, you know, a hearing was supposed
17 to be held. And I requested basically I think it was a
18 stenograph -- not stenographic. It was basically like a
19 conference call hearing. But he denied it based on that.

20 Q. Okay. And I want to ask you one last question,
21 Mr. Blake.

22 You mentioned I believe a Michaela Wallace; is that
23 correct? What's the name of that witness?

24 A. I think it's Kukila Wallace.

25 Q. Can you speak louder?

1 A. I think it's Kukila Wallace.

2 Q. Akila Wallace?

3 A. I think it's Kukila.

4 Q. Kukila?

5 A. Yeah.

6 Q. Wallace?

7 A. Right.

8 Q. Okay. Could you spell that for our court reporter.

9 A. Man, I don't know if I can spell it. Sorry.

10 THE COURT: In the trial transcript it's spelled
11 K-U-K-I-L-A.

12 MR. HALL: Kila Wallace. Okay.

13 THE COURT: K-U-K-I -- Kukila.

14 MR. HALL: Kukila.

15 THE COURT: K-U-K-I-L-A.

16 BY MR. HALL:

17 Q. Mr. Blake, I believe you testified on direct that
18 Ms. Kukila Wallace made inconsistent statements; isn't that
19 right?

20 A. Correct, according to her investigation.

21 Q. Okay. And because you represented yourself at trial,
22 wasn't it your responsibility to cross-examine her about any
23 inconsistent statements that she made?

24 A. I mean, I did cross-examine her about that. I did.

25 Q. You did cross-examine her?

1 A. Right.

2 Q. Okay.

3 MR. HALL: No further questions, your Honor.

4 THE COURT: Anything further, Ms. Swope?

5 MS. SWOPE: Beg the Court's indulgence --

6 THE COURT: Mm-hmm.

7 MS. SWOPE: -- for one moment, Judge.

8 (Pause in proceedings.)

9 MS. SWOPE: Nothing, your Honor.

10 THE COURT: Okay. Thank you.

11 Let's see. We need that exhibit, so you can just leave
12 that -- the one that's been marked. You can take the rest of
13 your papers with you but -- okay. Is that all you had?

14 THE WITNESS: (Indicated.)

15 THE COURT: Yeah, well, take that and you can go back
16 and sit next to your lawyer. Okay?

17 (Witness excused.)

18 THE COURT: Any additional witnesses, Ms. Swope?

19 MS. SWOPE: No, your Honor.

20 THE COURT: All right. Mr. Hall.

21 MR. HALL: Your Honor, the State calls Taylor Gilliam,
22 who will be appearing virtually.

23 THE COURT: Let's swear Mr. Gilliam in.

24 (Witness sworn.)

25 CLERK OF THE COURT: Can you please state your name for

1 the record, spelling your last name please.

2 THE WITNESS: Taylor David Gilliam, G-I-L-L-I-A-M.

3 THE COURT: Mr. Hall, your witness.

4 TAYLOR GILLIAM,

5 called as a witness on behalf of the State, being first duly

6 sworn, was examined and testified via videoconference as

7 follows:

8 DIRECT EXAMINATION

9 BY MR. HALL:

10 Q. How you doing, Mr. Gilliam?

11 A. I'm doing fine. How are you?

12 Q. Great. Can you hear me?

13 A. I am getting an echo, but I'll work through it.

14 Q. Okay. Let me know if I need to slow down or clarify
15 anything.

16 Mr. Gilliam, how long have you been practicing law?

17 A. Ten years this year.

18 Q. Okay. And how much of that time has been spent in
19 appellate practice?

20 A. I was at the South Carolina Commission on Indigent
21 Defense for about seven or eight years.

22 Q. Okay. And did you represent Mr. Blake on --

23 A. I did.

24 Q. Okay. Let me ask you, Mr. Gilliam, in your experience
25 as -- in your experience in the appellate practice, can you

1 tell the Court -- when you receive a case, can you explain to
2 the Court your process for reviewing the case for appeal.

3 A. Certainly.

4 And to deal with the echo, I may mute you while I'm
5 speaking so I don't hear my own voice.

6 Typically when representing clients at the South
7 Carolina Commission on Indigent Defense, I would receive the
8 trial transcript after a notice of appeal was filed and
9 review the transcript, whether it was a direct appeal or a
10 postconviction relief appeal, for motions and objections that
11 I believed had merit and should be raised in a brief for a
12 petition for writ of certiorari before the appellate court.

13 Q. Okay. And so you testified that when you receive a
14 case, you review the transcript; is that right?

15 A. That is correct.

16 Q. Okay. And you look for objections in the record; is
17 that right?

18 A. That's correct.

19 Q. Okay. And whether or not an objection has been made,
20 does that affect your ability to raise issues on appeal?

21 A. It does. Under South Carolina's error preservation
22 rules, an objection must have been raised for the rules to
23 apply.

24 Q. So if an issue was not raised and ruled upon, does that
25 issue mean that you cannot raise it on appeal in South

1 Carolina?

2 A. I could raise it if I wanted to, but it's significantly
3 (audio distortion) that the client would receive from (audio
4 distortion) on direct appeal.

5 Q. Could you repeat that, Mr. Gilliam? I don't think my
6 court reporter got it.

7 A. Certainly. I could raise it if I wanted to. However,
8 it is not best practice because the Court of Appeals is
9 unlikely to grant relief on an unpreserved issue.

10 Q. Okay. I want to ask you, in Mr. Blake's case, did you
11 review the trial transcript in this case?

12 A. I did.

13 Q. Okay. And did you review issues that were preserved for
14 appeal?

15 A. I do not recall with specificity how many issues may
16 have been preserved, but I reviewed the transcript in its
17 entirety.

18 Q. Okay. Do you recall there being a Langford issue that
19 was preserved?

20 A. I do not have an independent recollection of it, but I
21 located that portion in the transcript.

22 Q. Okay. Can you tell the Court or can you give the Court
23 your opinion about if you had raised that issue on appeal
24 whether or not you believe that issue would have been one
25 that had merit.

1 A. I do not believe that actual issue had merit,
2 particularly given on page 15 of the transcript it was stated
3 that multiple continuances were attributable to Mr. Blake.

4 Q. And your belief about whether an issue has merit, what
5 is that based on?

6 A. Based on way too much time on Westlaw performing legal
7 research and general knowledge of the law.

8 Q. I want to ask you about another issue in this case,
9 Mr. Gilliam.

10 Do you recall a motion to quash the indictment in this
11 case that was raised by Mr. Blake at trial?

12 A. I do not have an independent recollection of that issue,
13 but my phone log with Mr. Blake reflects a conversation about
14 that issue.

15 Q. Okay. Can you tell the Court about that conversation.

16 A. Certainly. In July of 2019, Mr. Blake called me,
17 unhappy that I had not raised the issue dealing with the
18 sufficiency of his indictment. I informed him that I had
19 raised that issue. He said he was going to submit his own
20 brief. I told him the Court of Appeals would not accept it.
21 And then we spoke about another issue regarding evidence for
22 the failure to stop for blue light.

23 Q. Okay. And so you told him that you didn't believe that
24 issue had merit on appeal; is that right?

25 A. That's exactly right. Yes.

1 Q. Okay. I want to ask you about the *Faretta* warnings in
2 this case.

3 On page 20 of the trial transcript, the transcript
4 reflects that there were two *Faretta* hearings in this case.
5 In reviewing this case for appeal, did you have any concerns
6 about the *Faretta* warnings in this case or the fact that
7 there were *Faretta* warnings in this case?

8 A. Yes. The fact that those hearings had occurred
9 definitely impacted my decision not to raise that issue on
10 appeal.

11 Q. Okay. And so you chose not to raise that issue because
12 there were, in fact, two *Faretta* hearings in this case?

13 A. That's correct.

14 Q. Okay. And I want to ask you -- you read Mr. Blake's
15 transcript and reviewed it on appeal. In reading the
16 transcript, did you have any concerns about his ability to
17 represent himself at trial?

18 A. None of those concerns jumped out at me from reading the
19 transcript.

20 Q. Okay.

21 MR. HALL: May I approach, your Honor?

22 THE COURT: Yes, sir.

23 BY MR. HALL:

24 Q. Mr. Gilliam, I'm showing you what's been entered into
25 evidence as Applicant's Exhibit 1. I don't know if you can

1 see that.

2 A. Not very well.

3 Q. Okay. It's an order from Judge Dennis denying
4 Mr. Blake's request to issue an out-of-state subpoena on
5 Terri Ann Ferguson.

6 Do you recall that document?

7 A. I do not recall it --

8 Q. Okay.

9 A. -- with specificity, no.

10 Q. Have you ever seen this order?

11 A. I do not recall, but I don't want to speculate.

12 Q. Okay. Well, let me ask you this. Was that order --
13 because you have never seen that order, was that order a part
14 of the record -- the appellate record that you received?

15 A. Do you want me to answer that based on my memory or
16 reviewing the record on appeal that was filed with the Court
17 of Appeals?

18 Q. Yes. Based on -- well, both. Based on your memory and
19 based on the record on appeal that you received.

20 A. It is not listed as an item in the record on appeal, and
21 it is not something that I recall reviewing as part of the
22 case.

23 Q. And so because you don't recall that being a part of the
24 record on appeal, that's not something that you could have
25 raised; is that right?

1 A. If it was not part of the record on appeal, then I could
2 not have cited to it as part of the initial brief.

3 Q. Okay. I want to ask you about the brief that you filed
4 in Mr. Blake's case and the issue that you raised.

5 Can you tell the Court -- can you give the Court your
6 reason for raising the issue that you did in this case.

7 A. Certainly. I raised an issue regarding mention of
8 Mr. Blake having lost his right to carry a firearm simply
9 because that knowledge carries with it a stigma that an
10 individual likely had a felony conviction and, therefore,
11 could not have possessed a firearm.

12 Q. And do you believe that that was the issue that had the
13 best chance of being successful on appeal?

14 A. I did, yes.

15 Q. Okay. And ultimately, the Court of Appeals affirmed the
16 conviction?

17 A. That is correct. Their published opinion was issued on
18 June 9, 2021.

19 Q. And lastly, Mr. Gilliam, were there any issues that you
20 can think of that you could have raised that would have been
21 successful on appeal based on your review and legal research
22 in Mr. Blake's case?

23 A. Based on my review of the file in 2024 and my
24 recollections from when I wrote the brief, no.

25 MR. HALL: No further questions, your Honor.

1 Please answer anything that Ms. Swope has.

2 MS. SWOPE: Your Honor, I was trying to figure out
3 whether I needed to move to there or if he can see me here.

4 THE COURT: Mr. Gilliam, can you see Ms. Swope where she
5 is at counsel table?

6 THE WITNESS: She is far away from my vision, but I can
7 hear her just fine.

8 THE COURT: Okay. Let's do that.

9 MS. SWOPE: Okay. Just wanted to make sure.

10 CROSS-EXAMINATION

11 BY MS. SWOPE:

12 Q. Mr. Gilliam, did you ask for the transcript of the
13 *Faretta* hearings to review them?

14 A. I did not.

15 Q. Okay. Were you aware that -- as Mr. Blake testified,
16 that he was on medication and suffering from conditions at
17 the time of trial?

18 A. I was not, to my recollection.

19 Q. Okay. And did you note in the transcript -- and it's
20 been discussed at length -- that Mr. Blake mentioned that he
21 needed someone to rule on objections and had asked counsel to
22 -- standby counsel to assist in that?

23 A. I heard that discussion here today, but I don't recall
24 that with any specificity.

25 Q. Okay. So you didn't review the *Faretta* hearing

1 transcripts and that issue was not raised on appeal, correct?

2 A. Correct. May I expound on that a little bit?

3 Q. Of course. Of course.

4 A. As part of receiving a new case, one of our
5 administrative assistants would email trial counsel in a
6 standard case. In this instance, I have a note in my file
7 that our assistant emailed Attorney King, who I think was
8 standby counsel. That email was sent on November 30, 2018.
9 He reported to us that there were no pretrial hearings such
10 that we should request additional transcripts.

11 Further, per my first phone call with Mr. Blake, he
12 asked me to request pretrial hearing transcripts from
13 February 5, 2018. I checked with the court reporter as well
14 as the court calendar. The court reporter indicated that
15 there were no transcripts regarding Mr. Blake or in front of
16 Judge Dennis on that day.

17 MS. SWOPE: The Court's indulgence, your Honor?

18 THE COURT: Yes, ma'am.

19 (Pause in proceedings.)

20 MS. SWOPE: Your Honor, I don't believe I have anything
21 further.

22 THE COURT: Anything further, Mr. Hall?

23 REDIRECT EXAMINATION

24 BY MR. HALL:

25 Q. Again, Mr. Gilliam, you testified on direct that you had

1 no concerns about the *Faretta* warnings that were given in
2 this case; is that right?

3 A. That is correct.

4 Q. Okay. And because you were appellate counsel, you
5 wouldn't have known about any medications that Mr. Blake was
6 taking at the time of his trial unless it was in the record;
7 is that right?

8 A. That is right.

9 Q. Okay.

10 MR. HALL: No further questions, your Honor.

11 THE COURT: Anything further, Ms. Swope?

12 MS. SWOPE: Yes, your Honor. Just a quick followup.

13 RECROSS-EXAMINATION

14 BY MS. SWOPE:

15 Q. Mr. Gilliam, because my client represented himself at
16 trial, you said you discussed with his standby counsel,
17 Mr. King, whether there were any concerns regarding
18 competency. Did you discuss that with Mr. Blake at any point
19 or did you ask him if he took any medications?

20 A. I'm not sure I spoke with standby counsel about his
21 competency or medication. But my phone log, similarly, does
22 not reflect any conversations about that with Mr. Blake.

23 MS. SWOPE: Thank you.

24 Nothing further, your Honor.

25 THE COURT: All right. Thank you, Mr. Gilliam. You may

1 log out.

2 THE WITNESS: Thank you, your Honor. Appreciate you
3 letting me testify virtually.

4 THE COURT: Yes, sir. Take care.

5 (Witness excused.)

6 THE COURT: Any additional witnesses, Mr. Hall?

7 MR. HALL: None from the State, your Honor.

8 THE COURT: Let me hear your argument, Ms. Swope.

9 MS. SWOPE: Yes, your Honor.

10 Mr. Blake was facing life without possibility of parole,
11 and he is of the opinion that the issues that he raised
12 regarding the Langford issue, the sufficiency of the
13 indictment, should have been raised by appellate counsel. He
14 asked for them to be raised by appellate counsel.

15 And I believe that a review of the transcript also
16 raises the issue of whether Mr. Blake should have been
17 allowed to represent himself, at least to the point where
18 appellate counsel should have investigated that further in
19 terms of asking for those transcripts or discussing the issue
20 with Mr. Blake. I feel like had he been represented by
21 counsel, that he would have had a much easier time and
22 perhaps would have preserved more issues that would have been
23 of assistance in his appeal.

24 I believe prejudice resulted from that, and he would be
25 asking for a new trial.

1 THE COURT: Mr. Hall.

2 MR. HALL: Briefly, your Honor.

3 As you heard testimony from appellate counsel, we've
4 indicated that he reviewed the transcript which reflects
5 there were two *Faretta* hearings, in each of which the judge
6 determined that Mr. Blake could proceed pro se. And
7 appellate counsel had no concerns about those *Faretta*
8 warnings.

9 Your Honor, just to give the Court the standard for
10 ineffective assistance of appellate counsel, when an
11 applicant contends that appellate counsel rendered
12 ineffective assistance for failing to argue a specific issue
13 on appeal, the applicant must show the failure to raise the
14 issue was objectively unreasonable and, but for this failure,
15 the applicant's conviction or sentence would have been
16 reversed or remanded. That comes from *Southerland v. State*,
17 337 S.C. 610, 524 S.E. 2d 833. That's a 1999 Supreme Court
18 case.

19 And another case, just to cite for the record, your
20 Honor: An applicant must show that a particular nonfrivolous
21 issue was clearly stronger than the issues presented by
22 appellate counsel and must show a reasonable probability that
23 for counsel's failure to raise those issues, that the
24 applicant would have prevailed on appeal. That comes from
25 *Smith v. Robbins*, 528 U.S. 5 -- excuse me, 528 U.S. 259.

1 That's a 2000 U.S. Supreme Court case.

2 Your Honor, applying that standard here, none of the
3 issues that Mr. Blake alleges appellate counsel should have
4 raised would have resulted in a reversal of his conviction.
5 So he failed to prove prejudice, and we would ask that you
6 deny his application.

7 THE COURT: Any response, Ms. Swope?

8 MS. SWOPE: Your Honor, just that I believe that it's
9 fairly clear on the record -- or it is clear on the record
10 and in general that a person is always better off being
11 represented by counsel. And I believe that appellate
12 counsel, in addition to raising concerns that the defendant
13 had asked him to raise, should have made certain, since
14 appellate issues were the only things that could be addressed
15 and Faretta issues are a direct appeal issue -- it's the only
16 place that it can be addressed -- that those transcripts
17 should have been requested and he should have asked more
18 questions of Mr. Blake to give him the best opportunity and
19 best representation to not face life in prison.

20 THE COURT: Okay. The motion -- or the application for
21 postconviction relief is denied.

22 Mr. Blake has not met the threshold standard. He's not
23 shown that -- let me find the language -- that Mr. Gilliam
24 failed in his duty. In fact, he has a professional duty to
25 choose among potential issues according to their merit. And

1 he's not shown that he was prejudiced by any deficiency that,
2 but for Mr. Gilliam's professional judgment being exercised,
3 that there would have been a different outcome. I don't find
4 that these are significant, obvious issues, particularly in
5 light of the fact that the Court in this case held not one,
6 but two *Faretta* hearings.

7 And Mr. Gilliam, when speaking to standby counsel, had
8 no reason to know that there were issues with -- potential
9 issues with competency or anything like that. In fact,
10 standby counsel said there were no pretrial hearings that he
11 needed to be worried about. And the date given by Mr. Blake
12 for requesting a transcript was a -- the date of a
13 nonexistent hearing. He just would have no reason to know.
14 But even if he did know that there were issues, I don't find
15 that -- or there was a potential issue, I do not find that
16 Mr. Gilliam was deficient in failing to raise those issues or
17 that Mr. Blake has met his burden of proven prejudice
18 resulting from any alleged deficiencies.

19 So I'll ask Mr. Hall to prepare an order for my
20 signature.

21 MR. HALL: Yes, your Honor.

22 THE COURT: How long do you --

23 MR. HALL: When you would you like that order?

24 THE COURT: Yeah, I was going to ask how long you need.

25 MR. HALL: Thirty days? Is that fine, your Honor?

1 THE COURT: Thirty days it is.

2 MS. SWOPE: Thank you, your Honor.

3 MR. HALL: Thank you, your Honor.

4 THE COURT: Thank you.

5 (End of proceedings.)

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CERTIFICATE OF REPORTER

State of South Carolina

County of Charleston

I, Jamie L. Bickett, an Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and evidence introduced in the hearing of the captioned case in the Ninth Judicial Circuit, the Court of Common Pleas for Charleston County, South Carolina.



Official Court Reporter

Dated this 9th day
of May, 2025.

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

Mark Blake, SCDC #368687,)

Case No. 2022-CP-10-00760

Applicant,)

ORDER OF DISMISSAL

v.)

State of South Carolina,)

Respondent.)

FILED
2025 FEB -5 AM 8:31
CLERK OF COURT

This matter is before the Court pursuant to an application for post-conviction relief (“PCR”) filed by Mark Blake (“Applicant”) on February 16, 2022. On December 19, 2024, an evidentiary hearing convened. Applicant was present and represented by Denise Swope, Esquire. Assistant Attorney General Bryan T. Hall represented Respondent. At the hearing, Applicant testified on his own behalf. Respondent called as a witness Taylor Gilliam, Esquire. Following a thorough review of the trial transcript and the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant did not meet his burden of proof. Thus, this Court denies relief and dismisses this application with prejudice.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections (“SCDC”) serving a life sentence. In August 2013, the Charleston County Grand Jury indicted Applicant for attempted murder (2013-GS-10-4926). This charge arose from an incident in which an officer attempted a traffic stop on Applicant. Applicant stopped initially then fled and a chase ensued. At the conclusion of the chase, Applicant fled on foot and shot several times at the officer who was attempting to arrest him. The officer was shot and injured.

From November 13 to November 15, 2018, Applicant represented himself in a jury trial before the Honorable William P. Keesley. Assistant Solicitors Stephanie Linder and J. Whit

Sowards prosecuted the case. The jury convicted Applicant, and Judge Keesley sentenced Applicant to life imprisonment.

Applicant filed a timely notice of appeal. On appeal, Applicant was represented by Appellate Defender Taylor Gilliam (“Appellate Counsel”), who filed a brief raising the following issue:

Whether the trial court erred in failing to exclude any mention of Appellant having lost his right to carry a firearm following prior convictions, where in a trial for attempted murder, the fact that he could not legally carry a firearm was irrelevant and highly prejudicial?

The South Carolina Court of Appeals affirmed Applicant’s conviction, determining that Applicant failed to make a contemporaneous objection to references concerning his illegal possession of a firearm and that Applicant himself induced testimony about his not being permitted to legally possess a firearm several times throughout trial. *State v. Blake*, Op. No. 2021-UP-201 (S.C. Ct. App. filed June 9, 2021). The Remittitur was sent on June 28, 2021.

CURRENT APPLICATION

Applicant timely commenced this PCR action on February 16, 2022, alleging he is being held in custody unlawfully for the following reasons:

Ineffective Assistance of Appellate Counsel

- a. Failure to raise appellate issues: *Langford*¹ issue for delay in prosecution.

On September 1, 2023, Respondent filed a Return and requested a more definite statement on Applicant’s claims. On March 7, 2024, Respondent filed an Amended Return. At the evidentiary hearing, Applicant raised the following additional allegation:

¹ *State v. Langford*, 400 S.C. 421, 735 S.E.2d 471 (2012).

Ineffective Assistance of Appellate Counsel

- b. Failure to raise on appeal whether Applicant freely and voluntarily waived his right to counsel and was competent to represent himself at trial.²

Before this Court are the Charleston County Clerk of Court records of the subject conviction; Applicant's records from SCDC; the appellate records; the trial transcript; and the records of the current PCR action.

TESTIMONY PRESENTED AT THE EVIDENTIARY HEARING

Applicant's Testimony

At the evidentiary hearing, Applicant averred that Appellate Counsel failed to raise on appeal a *Langford* issue and a *Faretta*³ issue. Regarding the *Langford* issue, Applicant testified that the trial of his case was delayed by five years. Applicant testified that at trial, he moved to quash the indictments on grounds that the documents were not presented swiftly, but the trial judge denied his motion. According to Applicant, he presented the issue to Appellate Counsel who did not raise it. Applicant testified that Appellate Counsel told him that he did not feel confident about raising the issue on appeal.

Regarding the *Faretta* issue, Applicant testified that although he does not recall having two *Faretta* hearings, he did remember the judge asking him if he wanted to proceed *pro se*. He stated that he asked for standby counsel to help assist him with trial and that, at the time, he was on medications for anxiety. Applicant testified that while testifying at trial, he was under stress and anxious and needed someone to raise objections for him. On cross-examination, Applicant admitted that the reason he needed someone to make an objection for him was due to logistical

² Although not plead in his PCR applicant, Applicant raised this issue at the evidentiary hearing.

³ *Faretta v. California*, 422 U.S. 806 (1975).

complications (i.e., him having to simultaneously testify and raise objections) and not his competency. He also acknowledged that since he represented himself at trial, it was his responsibility to make objections and preserve issues for appeal.

Finally, although not plead in his PCR Application, Applicant complained that trial witness Kukila Wallace made inconsistent statements at trial. However, Applicant testified that he was able to cross-examine her about her statements.

Appellate Counsel's Testimony

Taylor Gilliam ("Appellate Counsel") testified that he has been practicing law for ten years, including seven or eight years as an Appellate Defender for the Commission of Indigent Defense. Appellate Counsel testified that when representing clients on appeal, he obtains and reviews the trial transcripts and finds issues with merit. Appellate Counsel testified that his opinion on whether an issue has merit depends on legal research and his general knowledge of the law. Appellate Counsel testified that he looks for objections in the record and whether an objection has been made affects whether an issue can be raised on appeal. Appellate Counsel testified that if an issue is not raised and ruled upon, the issue is unpreserved, and the appellate court is unlikely to grant review on the issue. He also testified that while he does not have an independent recollection of the *Langford* issue, he does not believe that the issue has merit since the multiple continuances of Applicant's trial were attributed to Applicant.

Regarding the *Faretta* issue, Appellate Counsel testified that since *Faretta* hearings had occurred, he did not raise this issue on appeal. Appellate Counsel testified that in reviewing the trial transcript, he had no concerns about Applicant's ability to represent himself. Appellate Counsel testified that since he was appellate counsel, he would not have known about any medications Applicant was taking at the time. Appellate Counsel testified that he raised the issue

of Applicant's right to carry a firearm because he believed the issue had the best chance of success on appeal.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the trial transcript in its entirety and has heard the testimony at the PCR hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility, and weigh their testimony. After a careful review based on the *Strickland* standard set forth below, this Court finds Applicant has failed to carry his burden of proof. Below are this Court's findings of facts and conclusions of law as required by S.C. CODE ANN. § 17-27-80 (2017).

Ineffective Assistance of Counsel

In a PCR action, an applicant bears the burden of proving the allegations. Rule 71.1(e), SCRCP; *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). An applicant alleging ineffective assistance of counsel must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." *Strickland v. Washington*, 466 U.S. 668 (1984); *Butler*, 286 S.C. at 441, 334 S.E.2d at 813. "The test for effective assistance of counsel is whether the representation was within the range of competence demanded of attorneys in criminal cases." *Watson v. State*, 287 S.C. 356, 357, 338 S.E.2d 636, 637 (1985). Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. *Butler*, 286 S.C. at 441, 334 S.E.2d at 813. An applicant must overcome this presumption to receive relief. *Cherry v. State*, 300 S.C. 115, 386 S.E.2d 624 (1989).

To establish ineffective assistance of counsel, a PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness and (2) the applicant sustained

prejudice as a result of counsel's deficient performance. *Strickland*, 466 U.S. at 687–88; *Cherry*, 300 S.C. at 117–18, 386 S.E.2d at 625. Applicant must prove prejudice by showing “there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.” *Id.*

Ineffective Assistance of Appellate Counsel

In analyzing ineffective assistance of appellate counsel, the court applies the *Strickland* test just as it would when analyzing a claim of ineffective assistance of trial counsel. *Bennett v. State*, 383 S.C. 303, 309, 680 S.E.2d 273, 276 (2009) (providing an applicant must prove appellate counsel's performance was deficient and must prove prejudice by showing a reasonable probability the result of the proceeding would have been different but for counsel's errors). When an applicant contends appellate counsel rendered ineffective assistance for failing to argue a specific issue on appeal, he must show that failure to raise that issue was objectively unreasonable and that, but for this failure, applicant's conviction or sentence would have been reversed or remanded. *Southerland v. State*, 337 S.C. 610, 616, 524 S.E.2d 833, 836 (1999). An applicant must show that a particular nonfrivolous issue was clearly stronger than issues presented by appellate counsel and must show a reasonable probability that, but for counsel's failure to raise that particular claim, the applicant would have prevailed on appeal. *Smith v. Robbins*, 528 U.S. 259, 288 (2000).

Failure to Raise on Appeal a Langford Issue

This Court finds Applicant failed to prove Appellate Counsel was ineffective for failing to raise on appeal an alleged *Langford* violation. Whether a defendant's Sixth Amendment right to a speedy trial is violated is necessarily relative; it is consistent with delays and depends upon the circumstances. *State v. Langford*, 400 S.C. 421, 440-41, 735 S.E.2d 471, 481-82 (2012). Speedy

trial does not mean an immediate one, the State is entitled to reasonable time to prepare its case; speedy trial means a trial without unreasonable and unnecessary delay. *Id.* Factors the court weighs include the length of the delay, the reason for it, the defendant's assertion of his right to a speedy trial, and any prejudice he suffered. *Id.*

This Court finds credible Appellate Counsel's testimony that he did not believe the issue had merit since the continuances in Applicant's trial were attributed to Applicant. This Court finds that Appellate Counsel, based on his experience and legal research, articulated a reasonable strategic decision in not raising an issue that he believed was unlikely to be successful. Further, this Court finds Applicant failed to prove he was prejudiced by failing to prove there's a reasonable probability that the result of his appeal would have been different but for Appellate Counsel's failure to raise the issue. Thus, Applicant failed to meet his burden.

Failure to Raise on Appeal Whether Applicant Knowingly and Voluntarily Waived his Right to Counsel and was Competent to Proceed Pro Se

This Court finds that Applicant failed to prove that Appellate Counsel was ineffective for failing to raise as an issue on appeal whether Applicant knowingly and voluntarily waived his right to counsel and was competent to proceed *pro se*. Although it may be to a defendant's detriment to be allowed to proceed *pro se*, his knowing, intelligent, and voluntary decision must be honored. *Faretta v. California*, 422 U.S. 806, 834 (1975). Under *Faretta*, the trial judge has the responsibility to make sure the defendant is informed of the dangers and disadvantages of self-representation, and that he makes a knowing and intelligent waiver of his right to counsel. *State v. Reed*, 332 S.C. 35, 41, 503 S.E.2d 747, 750 (1998) (holding the trial court did not err in accepting the appellant's waiver of his right to counsel where the trial court held several hearings to determine whether appellant understood, and the judge informed the appellant of the dangers and disadvantages of self-representation).

This Court finds the record supports a finding that Applicant knowingly, intelligently, freely, and voluntarily waived his right to counsel and proceed *pro se*. The record reflects the trial court held two separate *Faretta* hearings, both in which Applicant indicated his desire to represent himself at trial.

The Court: I asked Mr. Blake if he was representing himself. My understanding is there's already been a full *Faretta* hearing.

[Solicitor]: Yes, judge. Judge Dennis had two separate *Faretta* hearings after he requested to represent himself for this trial. And both of those times, he found Mr. Blake was going to be *pro se*.

(Tr. 20:7-13).

This Court finds credible Appellate Counsel's testimony that upon reviewing the trial transcript, he did not have any concerns about Applicant's ability to represent himself at trial. This Court also finds it credible that Appellate Counsel would not have known about any medications Applicant was taking around the time of trial. This Court finds credible Appellate Counsel's testimony that he raised the issue that he believed had the best chance of being successful. This Court finds Applicant failed to prove he was prejudiced by failing to show a reasonable probability that the result of his appeal would have been different but for Appellate Counsel's failure to raise a *Faretta* issue.

Additionally, this Court finds Applicant failed to meet his burden of proving he was incompetent at the time of the *Faretta* hearings or trial where the record shows Applicant demonstrated a reasonable degree of rational understanding before and during his trial. As supported by the trial transcript, Applicant answered the trial court's questions clearly and appropriately and made several arguments and objections. *See McLaughlin v. State*, 352 S.C. 476, 575 S.C. 841 (2003) (holding that the evidence did not suggest the applicant was incompetent due to medications before or during his trial where testimony established that the applicant had the

ability to consult with his lawyer with a reasonable degree of rational understanding and answered his lawyer's questions clearly and appropriately). Further, in the PCR hearing, Applicant admitted that his need for assistance to make an objection during trial was due to the fact that he was testifying on the stand at the time and not because of his competency. This also is reflected in the trial transcript as Applicant stated, "I didn't know I was allowed to object while testifying. I need somebody to object for me." (Tr. 547:9-10). Thus, Applicant failed to meet his burden.

Failure to Raise on Appeal Inconsistent Statements Made by Kukila Wallace

Although not pleaded, Applicant testified that Appellate Counsel should have raised on appeal an issue regarding prior inconsistent statements made by witness Kukila Wallace. This Court finds Applicant failed to prove Appellate Counsel was ineffective in this regard. This Court finds Applicant failed to prove he was prejudiced by failing to show a reasonable probability the result of his appeal would have been different but for Appellate Counsel's failure to raise this issue. Thus, Applicant failed to meet his burden.

[Space left blank intentionally. Conclusion follows on next page.]

CONCLUSION

Based on the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant relief. Thus, this application is denied and dismissed with prejudice. Should Applicant wish to secure appellate review, he must file and serve a notice of appeal within thirty (30) 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 an 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 must be remanded to and remain in the custody of the State.

AND IT IS SO ORDERED THIS 28th day of January 2025.

Columbia, South Carolina


JOCELYN NEWMAN
Presiding Judge
Ninth Judicial Circuit

WITNESSES

State Law Enforcement Division

AGENCY CASE NUMBER

3113-0033

ARREST WARRANT NUMBER

2013A1010900404

DATE OF ARREST

April 3, 2013

ACTION OF GRAND JURY

TRUE BILLForeperson of Grand Jury
Date:

AUG 6 6 2013

VERDICT

Foreperson of Petit Jury

Date:

INDICT

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

August Term 2013

THE STATE

VS.

MARK LORENZO BLAKE JR

DOB: [REDACTED]

B/M

Indictment for

Attempted Murder

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

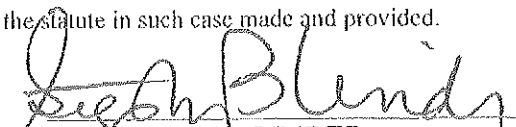
INDICTMENT

At a Court of General Sessions, convened on August 5, 2013 the Grand Jurors of Charleston County present upon their oath:

Attempted Murder

That in Charleston County, South Carolina, on or about March 30, 2013, the Defendant, MARK LORENZO BLAKE JR. did, with intent to kill and malice aforethought, attempt to kill Cory Goldstein. This is in violation of Section 16-3-29 of the South Carolina Code of Laws (1976) as amended.

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


STEPHANIE B. LINDER
ASSISTANT SOLICITOR

COUNTY OF CHARLESTON

STATE VS.

MARK LORENZO BLAKE, JR.

AKA: Mark Blake, ROMAN, MARK LORENZO JR.

Race: Black/African American

Sex: M

DOB: [REDACTED]

SS#: [REDACTED]

Address: [REDACTED]

City, State, Zip: Charleston, SC [REDACTED]

DL# [REDACTED]

SID# SC01602790

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

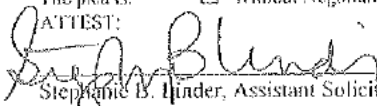
In disposition of the said indictment comes now the Defendant who was

TO: Attempted Murder

In violation of § 16-03-0029 of the S.C. Code of Laws, bearing CDR Code # 3410

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45
(CSC w/minor 1st or CSC w/minor 3rd)The charge is: ☒ As indicted, ☐ Lesser Included Offense,☐ Defendant Waives Presentation to Grand Jury, (def.'s initials)The plea is: ☐ Without Negotiations or Recommendation,☐ Negotiated Sentence,☐ Recommendation by the State.

ATTEST:


 Stephanie B. Under, Assistant Solicitor 72636 SC Bar #

Defendant

Attorney for Defendant

68630 SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 17-25 days/months/years or 1 under the Youthful Offender Act not to exceed 1 years and/or to pay a fine of \$ 100.00, provided that upon the service of 1 days/months/years and/or payment of \$ 100.00, plus costs and assessments as applicable; the balance is suspended with probation for 1 months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on 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 PTUPTotal: \$ 100.00 plus 20% fee: \$ 20.00

days/hours Public Service Employment

Payment Terms:

Obtain GED ☐☐ Set by SCDPPPS

Attend Voc. Rehab. Or Job Corp.

May serve W/E beginning

Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ 100.00 Beginning\$ 100.00 Paid to Public Defender Fund

Other:

Recipient:

*Fine: \$ 100.00§14-1-206 (Assessments 107.5%) \$ 100.00§14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100.00§14-1-211 (A)(2)(DUI Surcharge) \$100 \$ 100.00§56-5-2995 (DUI Assessment) \$12 \$ 12.00§56-1-286 (DUI Breath Test) \$25 \$ 25.00Proviso (Public Def/Probation) \$500 \$ 500.00§14-1-212 (Law Enforce. Funding) \$25 \$ 25.00§14-1-213 (Drug Court Surcharge) \$150 \$ 150.00§50-21-114 (BUI Breath Test Fee) \$50 \$ 50.00§56-5-2942(J) (Vehicle Assessment) \$40/ea \$ 40.003% to County (if paid in installments) \$ 3.75TOTAL \$ 128.75☐ Appointed PD or appointed other counsel,

Proviso requires \$500 be paid to Clerk

during probation and shall be collected before any other fees.

Clerk of Court/Deputy Clerk:

Court Reporter:

Karen Anderson

Presiding Judge:

Judge Code:

Sentence Date:

William P. Handberg

2050

Nov. 15, 2018