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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Jasper County

Honorable Eugene P. Warr, Jr., Circuit Court Judge

ANTONIO SCOTT,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2023-002508

APPENDIX

KATHRINE H. HUDGINS
Senior Appellate Defender

ALAN WILSON
Attorney General

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

DANIELLE E DIXON
Assistant Attorney General
PO Box 11549
Rembert C. Dennis Building
Columbia, SC 29211
(803)734-3970

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA) IN THE FOURTEEN JUDICIAL CIRCUIT
COUNTY OF JASPER) CASE NO.: 2011-GS-27-00216

STATE OF SOUTH CAROLINA,)
v.) TRANSCRIPT OF RECORD
ANTONIO D. SCOTT,)
DEFENDANT.)

DECEMBER 5TH - 7TH, 2011
JASPER COUNTY, SOUTH CAROLINA
BEFORE THE HONORABLE CARMEN T. MULLEN, JUDGE.

APPEARANCES:

MR. ROBERT FERGUSON, ESQUIRE
FOURTEENTH JUDICIAL CIRCUIT SOLICITOR'S OFFICE
POST OFFICE BOX 1880
BLUFFTON, SOUTH CAROLINA 29910
Attorney for the State of South Carolina

MR. ROBERT HUGHES, ESQUIRE
FOURTEENTH CIRCUIT PUBLIC DEFENDER'S OFFICE
POST OFFICE BOX 506
HAMPTON, SOUTH CAROLINA 29924
Attorney for the Defendant

Rebecca H. Hill
Official Court Reporter

Jury Selection
State v. Antonio D. Scott
2011-GS-27-00192
December 5th - 7th, 2011

Juror #	Name	Race	Gender	Jury
76	Vaughn Goodall	W	M	1
175	David Shipes	W	M	2
132	Nakia Mitchell	B	F	3
152	Arinn Poston	B	M	4
75	Abigail Gomez	H	F	5
113	Dometric Lewis	B	M	6
216	Rachael Wilson	W	F	7
138	Chester Newton	B	M	8
159	Kerry Raymond	W	M	9
4	Shirleyne Albergottie	B	F	10
3	Louis Aiken	B	F	11
186	Zachary Smith	W	F	12
153	Robert Priester	B	M	Alt. 1
104	Wendy Kelly	W	F	Alt. 2

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EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
ONE	CD OF 9-1-1 (2 CALLS)	66	67
TWO	DVD OF TASER AXON CAMERA	93	94
THREE	NOT IN EVIDENCE		
FOUR	PHOTO	80	81
FIVE	PHOTO	80	81
SIX	PHOTO	80	81
SEVEN	PHOTO	80	81
EIGHT	PHOTO	80	81
NINE	NOT IN EVIDENCE		
TEN	PHOTO	80	81

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ONE	DVD	10	11
TWO	DVD	PRE-MARKED	
THREE	DVD	PRE-MARKED	

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Direct Examination of Det. Daniel Litchfield by Asst. Sol. Ferguson

1 JACKSON V DENNO HRG

2 THE COURT: Okay. Call your first witness.

3 ASST. SOL. FERGUSON: The State calls Daniel
4 Litchfield.

5 MADAME CLERK: Place your left hand on the Bible and
6 raise your right.

7 WHEREUPON, LT. LITCHFIELD IS DULY SWORN.

8 DIRECT EXAMINATION

9 BY ASST. SOL. FERGUSON:

10 Q Detective Litchfield, who do you work for?

11 A I work for the Ridgeland Police Department.

12 Q And what do you do for them?

13 A I'm the head investigator over Investigations, small
14 crimes for the Ridgeland Police Department.

15 Q Were you working for the Ridgeland Police Department
16 back in March of this year, 2011?

17 A Yes, sir.

18 Q And were you involved in a case with Mr. Antonio Scott
19 and the victim being Cynthia Nelson?

20 A Yes, sir..

21 Q Did you have an opportunity to speak to Mr. Scott about
22 those accusations?

23 A Yes, I did.

24 Q And when did that take place?

25 A I believe the following day after his arrest.

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Direct Examination of Det. Daniel Litchfield by Asst. Sol. Ferguson

1 Q Would that be March the 22nd?

2 A I'm not sure of the exact date, but I believe, so, yes,
3 sir.

4 Q And what is the date of the actual incident?

5 A I'm not sure, sir.

6 Q March the 20th?

7 A The 20th.

8 Q All right. Now, where did you talk to Mr. Scott?

9 A It was at the Jasper County Detention Center.

10 Q And who else was present at that interview?

11 A Investigator MacIntosh.

12 Q Did the defendant appear to be under the influence of
13 any drugs or alcohol during your interview with him?

14 A No, sir.

15 Q Did the defendant appear to have any mental or physical
16 impairment that would have prevented him from understanding
17 y'all's conversation?

18 A No, sir.

19 Q Can you describe the room where the questioning took
20 place?

21 A It's actually the, I guess, Judge's chambers for doing
22 bond hearings at the jail.

23 Q And approximately how long did that interview last?

24 A I believe around -- it wasn't very long at all; about
25 thirty minutes or so.

Jackson v. Denno Hearing
Direct Examination of Det. Daniel Litchfield by Asst. Sol. Ferguson

8

1 Q Okay. Did y'all take any breaks or did you just go
2 straight through?

3 A We went straight through.

4 Q At any point did the defendant ask to take a break?

5 A No.

6 Q At any point did he ask for anything to eat or drink?

7 A No.

8 Q Now, did you make any threats or promises to the
9 defendant in exchange for his statement?

10 A No, sir.

11 Q Was the defendant incarcerated when you talked to him?

12 A Yes, he was.

13 Q And did he agree to come speak to you?

14 A Yes.

15 Q Okay. Now, was the defendant advised of his
16 constitutional rights, pursuant to Miranda, prior to being
17 questioned about this crime?

18 A Yes, sir.

19 Q And how did you accomplish that advisement of rights?
20 Did you do so by form or by reading it from a card?

21 A A form.

22 Q Okay. Now, did the defendant initial that form saying
23 he understood his rights?

24 A Yes.

25 Q Okay. Did he then waive those rights and agree to talk

Jackson v. Denno Hearing
Direct Examination of Det. Daniel Litchfield by Asst. Sol. Ferguson

9

1 to you about these crimes?

2 A Yes, he did.

3 Q Okay. Now, after having had them read to him and him
4 initialing, did you observe any inditia of him being able to
5 understand the conversation y'all were having?

6 A None at all.

7 Q Okay. What was the defendant's emotional state during
8 your interview?

9 A He was calm and he was, you know, concerned about the
10 whole situation.

11 Q Okay. Now, who else was present in that room with you
12 and the defendant?

13 A Investigator Macintosh.

14 Q Okay. And did either one of you promise or threaten
15 the defendant in any way, shape or form?

16 A No, sir.

17 Q Did you promise him any hope of reward in exchange for
18 his statement?

19 A No, sir.

20 Q Okay. Did he ever indicate that he wished to speak to
21 an attorney before he talked to you?

22 A No.

23 Q Did he ever stop you from questioning him for any
24 reason?

25 A No, sir.

Jackson v. Denno Hearing
Direct Examination of Det. Daniel Litchfield by Asst. Sol. Ferguson

10

1 Q Was the statement recorded by audio or video?

2 A Yes, it was, sir.

3 Q Now, Det. Litchfield, I want to show you what's been
4 previously marked for identification as State's Exhibit
5 Number Three and ask if you can identify this.

6 ASST. SOL. FERGUSON: Your Honor, may I approach the
7 witness?

8 THE COURT: You may.

9 A Yes, sir. It has my initials on it. This is the video
10 version of the actual interview.

11 Q And have you and I reviewed a portion of that video to
12 determine what was on that CD?

13 A Yes.

14 Q And is it a fair and accurate depiction of the
15 interview conducted with the defendant on March the 22nd?

16 A Yes, sir.

17 ASST. SOL. FERGUSON: Your Honor, at this point, I
18 would like to publish just the waiver of rights portion of
19 this video for Your Honor's determination.

20 THE COURT: Have you seen the whole thing, Mr. Hughes?

21 MR. HUGHES: I've seen the video, Your Honor. I have no
22 objection to that.

23 THE COURT: Okay.

24 (ASST. SOL. FERGUSON PREPARES CD PLAYER. AUDIO BEGINS
25 PLAYING AT 10:15 A.M.; AUDIO ENDS PLAYING AT 10:17 A.M.)

Jackson v. Denno Hearing
Direct Examination of Det. Daniel Litchfield by Asst. Sol. Ferguson

11

1 ASST. SOL. FERGUSON: Your Honor, that's all the
2 questions I have regarding the voluntariness of this
3 defendant's statement. If Mr. Hughes has any questions,
4 I'll yield to him.

5 THE COURT: Okay.

6 CROSS-EXAMINATION

7 BY MR. HUGHES:

8 Q Detective, what was he charged with when you were
9 questioning him?

10 A Murder.

11 Q Isn't it true though that you did not actually charge
12 him with murder and arrest him until after this interview
13 was over?

14 A I believe the warrant was already served on him.

15 Q I believe the video will show the warrant being served
16 on him at the end of the interview and that's when you told
17 him the victim had died and that's when you arrested him for
18 murder. So you interviewed him knowing you were going to
19 serve a warrant for murder, but you did not serve the
20 warrant until after you interviewed him, correct?

21 A I'm not real sure.

22 Q During the interview, did you talk about anything
23 regarding the history of the defendant with either the
24 victim or either anything with the victim's family?

25 A I believe that came up, but it was voluntary on his

Jackson v. Denno Hearing
Cross-Examination of Det. Daniel Litchfield by Mr. Hughes

1 side.

2 Q Did you tell him what the penalty for murder was on
3 that video?

4 A No.

5 MR. HUGHES: No further questions, Your Honor.

6 THE COURT: Okay. Anything further, Mr. Ferguson?

7 ASST. SOL. FERGUSON: No, Your Honor.

8 THE COURT: Okay. You may step down, sir.

9 ASST. SOL. FERGUSON: The defendant only gave one
10 statement, Your Honor, and that is it. I think there are
11 substantive issues that Mr. Hughes may want to address, and
12 the State as well, just about some of the content about the
13 defendant's statement.

14 THE COURT: What was he incarcerated for when he ---

15 ASST. SOL. FERGUSON: Well, he was originally charged
16 with attempted murder.

17 THE COURT: Okay.

18 ASST. SOL. FERGUSON: And then the victim died. So the
19 warrant was upgraded.

20 THE COURT: Okay.

21 MR. HUGHES: Your Honor, as far as 95 percent of the
22 statement is concerned; I have no problems with it. There
23 is nothing inculpatory on the video. I do have a problem
24 with the fact that he does talk about certain things which
25 would be considered prior bad acts on the video. I also

Jackson v. Denno Hearing
Cross-Examination of Det. Daniel Litchfield by Mr. Hughes

13

1 have a problem with law enforcement, basically, using a
2 threat of life imprisonment on the charge of murder, even
3 though he had not been charged with murder at that time.

4 The video does show the warrant to be served on him at
5 the end of the interview. He's not informed. I do not know
6 if my client would have requested an attorney if he'd have
7 known he was being charged with murder; but like I said, 95
8 percent of the video, I have no problem with. My biggest
9 problem is redacting the parts that the State and I both
10 agree shouldn't come in without causing the jury to question
11 what was missing.

12 THE COURT: Okay. Well, obviously, he was Mirandized.
13 There's no question he received and understood his rights,
14 so I don't see a problem with that. Tell me how you want to
15 go ahead and try to get around the portions that need to be
16 redacted that you both agree on but you don't want to look
17 choppy.

18 MR. HUGHES: Your Honor, I believe the best way to do
19 it is for you to tell the jury that we're not hiding
20 anything, but just as a matter of speeding things along,
21 we're just going to show the relative parts. I would not
22 object to that. That way, it doesn't look like either side
23 is hiding anything. I would have a problem with it going
24 back into the jury room.

25 THE COURT: We could certainly, if they needed it

1 replayed, we can bring them back in here and play for them
2 once they continue to deliberate. If they want to see it,
3 we can certainly do that; that's not a problem. No issue
4 there. Okay?

5 MR. HUGHES: Okay. The second matter, Your Honor, I
6 don't know when Mr. Ferguson is going to do this, but there
7 is a videotape of the crime scene. I object strongly to a
8 videotape of it. It would be impossible to redact a video
9 without the jury questioning what's being hidden. In the
10 past, we have dealt with still photos, which allow us to
11 have full control of what is seen and what is not seen. I
12 would have no new objection to still photos, provided that
13 they match the standard to all photos coming in, but a
14 videotape, we don't have the capability of knowing what a
15 jury is going to see. We can look at the videotape and we
16 can see something, but the jury might pick up something we
17 don't notice. As opposed to a still photo where I can sit
18 there and look over the still photo entirely and know what
19 they are going to be shown.

20 THE COURT: Well, how soon after the incident was this
21 footage take and what does it show?

22 ASST. SOL. FERGUSON: Well, Your Honor, this is a piece
23 of technology that Ridgeland PD now has, and it is a camera
24 attached to basically what looks like an eyeglass set. So
25 it picks up when Officer Kevin Smith gets the call and gets

1 in his car and it shuts off when they've cleared the scene.
2 Everything that Officer Smith sees is recorded on video.
3 And so, that obviously does record things that would be
4 invisible; a person that's making statements that are not
5 going to testify.

6 Mr. Hughes and I have talked about this and I think,
7 Your Honor, for purposes of pre-trial, what the State would
8 seek to show is the beginning portion of that video as to
9 what Kevin saw, Officer Smith saw when he arrived, the
10 condition of the scene, up until there starts to be
11 statements that I think would be inadmissible or hearsay.
12 So we can play that portion for Your Honor and get a pre-
13 trial ruling of its admissibility if that would make Mr.
14 Hughes feel better. It's not something I would seek to play
15 two minutes here, skip forward fifteen minutes, play two
16 minutes there. I've kind of narrowed it down to what I
17 think would be the most relative and probative portion of
18 that video, which would be the beginning.

19 MR. HUGHES: I would need to see what he's referencing
20 to.

21 THE COURT: Okay. Well, y'all will have to look at it
22 to determine what it is he's going to use. And certainly,
23 if you all can't agree, I can look at it and just because
24 it's a moving video, doesn't mean it's not admissible,
25 certainly, so I would let it in. Of course, there may be

1 things in it that are admissible, but I'm going to have to
2 leave that to you all to determine to not put those in or if
3 you need a ruling, I'll be happy to look at it and make a
4 ruling on whether that person comes in or out.

5 Again, I can also tell the jury that the attorneys
6 worked hard at streamlining this case, so to show you only
7 the relevant portions; again, I can say, "No one's hiding
8 anything from you. This is just we don't want to waste
9 anybody's time."

10 ASST. SOL. FERGUSON: And I can tell Mr. Hughes the
11 exact moment that I've ran it up to and that's 12 minutes
12 and 54 seconds, from the beginning to 12 minutes and 54
13 seconds.

14 THE COURT: Okay.

15 MR. HUGHES: I would need to look it over. Mr.
16 Ferguson and I can meet up after pull a jury on this. And
17 I'm just old-fashioned, Your Honor, I prefer the still
18 photos so I know what the jury is seeing and I'll be able to
19 point things out to the jury. That's just a preference.
20 Although, I do question the possible prejudicial value of
21 some of the things on the tape. Excuse me, I would hold the
22 right to do that because there are some things on that tape
23 that I definitely don't want coming in, some video and some
24 audio matters.

25 THE COURT: I can't rule on that until I've seen ---

1 MR. HUGHES: I understand, Your Honor. Mr. Ferguson
2 and I might be in agreement with this and will probably
3 streamline what's going on after we have a chance to talk it
4 over between the two of us.

5 THE COURT: Okay. What other motions do you have?

6 ASST. SOL. FERGUSON: Your Honor, I did a pre-trial
7 Memorandum of Law. This incident actually began the night
8 before and basically, the victim was stabbed on March the
9 20th of 2011. Well, on March the 19th of 2011, the victim
10 rides by her apartment and sees the defendant outside of her
11 apartment. She calls law enforcement. Law enforcement
12 responds, but they do not make contact with the defendant.
13 They do make contact with him on the telephone; a little bit
14 later, there's an exchange.

15 Now, there's two parts: on the day of the actual
16 murder, which is March the 20th, we have a witness who
17 overheard this defendant stating that he went to that
18 apartment to kill Cynthia Nelson and that she called the
19 cops and he had to hide in the dumpster to avoid detection.
20 And then, he went on to say that he was going to kill her
21 when he saw her on the 20th. So basically, the gist of our
22 argument is, Your Honor, that ill-will between the victim
23 and the defendant is admissible. One, to show motive, to
24 show the mental element required for murder. And also,
25 under the theory of res gestae, that this is one continuous

1 chain of events. That he had made up his mind on the 19th
2 and that same mental element carried over until the
3 commission of the crime on the 20th.

4 And so we would seek a pre-trial ruling on number one,
5 Officer Smith's testimony about him responding to that phone
6 call on the 19th, that he knew the 19th, and also as to our
7 witnesses, testimony about statements this defendant made
8 about the 19th and the 20th.

9 THE COURT: Okay. So I assume they were in an ongoing
10 relationship; is that correct? They had a child in common?

11 ASST. SOL. FERGUSON: Well, the victim is actually his
12 son's mother's mother. So this is actually the grandmother
13 of defendant's child, and it was an ongoing dispute between
14 them.

15 THE COURT: Okay. So Cynthia Nelson is the
16 grandmother?

17 ASST. SOL. FERGUSON: Yes, ma'am.

18 THE COURT: Okay. And the incident the night before
19 was between the defendant and Ms. Nelson or her daughter?

20 ASST. SOL. FERGUSON: Ms. Nelson, the deceased.

21 THE COURT: Ms. Nelson, the deceased.

22 ASST. SOL. FERGUSON: Yes, ma'am.

23 THE COURT: Okay. Mr. Hughes?

24 MR. HUGHES: Your Honor, there appears to have been no
25 contact between the defendant and the victim the previous

1 night. As far as this being a continuation, we have
2 different locations. We've had a night to sleep things
3 through. We have the victim coming to the location herself,
4 voluntarily. This is not like the defendant has gone
5 looking for her. This is not a continuation, Your Honor,
6 this is two separate incidents entirely.

7 THE COURT: What's your defense? Is it that he wasn't
8 there at all or is it that there was a fight and mutual
9 combat situation and this is self-defense?

10 MR. HUGHES: It's self-defense, Your Honor.

11 THE COURT: Self-defense. Okay.

12 ASST. SOL. FERGUSON: And more specifically, Your
13 Honor, the defendant states in his statement that Mr.
14 Litchfield testified to that the victim was actually
15 aggressive. That she pulled out a knife and swung at him,
16 at which point, he did a side-step defense maneuver, hitting
17 her elbow, causing her to stab herself. And so, you know, I
18 think that the prior evening would help the jury understand
19 the context of this dispute on the 20th between these two
20 people. This isn't an isolated incident. It actually began
21 the night before and continued over.

22 Now, Mr. Hughes did say that the victim voluntarily
23 came to where the defendant was. Well, that was at the
24 request of the defendant. He requested Akera Nelson, who is
25 the daughter, bring their child and the victim was in the

1 child with them. And so, you know, we would disagree with
2 her just going over there to try and start something, Your
3 Honor, that she was the aggressor.

4 THE COURT: Okay. Well, I would guess that the
5 previous -- or the first incident and the continuing
6 problems just goes to intent notice, not an accident when it
7 occurred. The incident the night before ---

8 ASST. SOL. FERGUSON: Yes, ma'am.

9 THE COURT: --- what exactly do you intend on putting
10 out there? That they had words, that there was a fight,
11 that the police came out?

12 ASST. SOL. FERGUSON: Two separate pieces of evidence.
13 The first thing in Officer's Smith's testimony that he
14 responded to a call about Mr. Scott calling the victim and
15 harassing her.

16 THE COURT: Okay.

17 ASST. SOL. FERGUSON: Then, the defendant's own
18 explanation of the night before. He's overheard on the 20th
19 saying, "Yeah, I went to that apartment to kill her, but she
20 called the police, so I had to hide in the dumpster."

21 THE COURT: Okay.

22 ASST. SOL. FERGUSON: So those two separate pieces of
23 evidence to show what occurred on the 19th.

24 THE COURT: Okay. Mr. Hughes?

25 MR. HUGHES: Your Honor, I believe the State is trying

1 to connect two separate incidents in this matter. Most of
2 what happened the night before would be hearsay, based upon
3 the fact that the victim was one of the people involved. I
4 do not know exactly what happened that night; no one does.
5 I do know that there was no confrontation between the victim
6 and the defendant that night; that no statements were given
7 to law enforcement. As far as written statements, there
8 have been none presented as far as the incident the night
9 before. And that the statement of what my client said was
10 not given to law enforcement until days after the incident.

11 It's basically obvious the Solicitor is trying to
12 bolster their case by trying to connect two separate
13 incidents, Your Honor, and I do not think that they can
14 because ---

15 THE COURT: Well, if they didn't have any contact and
16 it sounds to me like there are just ill-words, but no actual
17 contact, but if it did result in her calling the police and
18 have the police come out, and I'm assuming she gave her
19 story to Det. Smith. How else is he supposed to prove
20 intent? How is he supposed to prove malice in a murder
21 charge? I don't know how else he would. Because you're
22 going to claim that she was the aggressor and this was an
23 accident and apparently she stabbed herself; is that your
24 side?

25 MR. HUGHES: Yes, Your Honor.

1 THE COURT: Just so I know, how did she end up dying?
2 Was it through one stab or ---

3 MR. HUGHES: One stab wound to the carotid artery. She
4 basically bled out, Your Honor. She suffered from heart
5 failure, I think, a day later.

6 THE COURT: Okay. How were the police called when she,
7 in fact, was stabbed?

8 ASST. SOL. FERGUSON: Witnesses to the actual stabbing
9 called. First, the defendant's sister, Shareema Behlin;
10 second, Akera Nelson, the deceased's daughter. They both
11 called 9-1-1.

12 THE COURT: To get someone to come help.

13 ASST. SOL. FERGUSON: Yes, ma'am.

14 THE COURT: Do you have any case law that shows that
15 with it being the evening before, being too far, Mr. Hughes,
16 as far as not contemporaneous enough? Because there does
17 seem to be an existing and ongoing fight.

18 MR. HUGHES: Not at this time, Your Honor. We were
19 handed this just a few minutes ago. I might in the morning.

20 THE COURT: Are we going to go ahead and start the
21 trial today or are we just going to just poll the jury? What
22 are we going to do?

23 ASST. SOL. FERGUSON: Your Honor, I would ask that we
24 start with openings in the morning.

25 THE COURT: All right. Well, I'll give you an

1 opportunity as to this issue to find some case law. I can
2 just tell you that my inclination is certainly for the
3 totality with res gestae of the entire case, you do have to
4 show that it is an ongoing problem. I think it also goes to
5 intent and motive back and forth, particularly if you're
6 going to raise a defense of accident or that she was the
7 aggressor and that she stabbed herself.

8 Additionally, because this ongoing feud is not a result
9 of say a specific conviction or any other unrelated bad act
10 to this incident, I mean, just for a probative value, it
11 just shows and tells the whole story, and I really do think
12 the probative value would outweigh any prejudice. But I
13 feel that whatever you present as far as case law for either
14 one of you in the morning, you're welcome to do it.

15 MR. HUGHES: Thank you, Your Honor.

16 THE COURT: Okay. What other motions do we have?

17 ASST. SOL. FERGUSON: I guess I'm kind of bringing up
18 one of Mr. Hughes' anticipated objections, but we prepped
19 this case for trial at the last term of Court and it's back
20 up today, and one of the issues that Mr. Hughes has brought
21 to my attention is that he has an objection to the entering
22 of the 9-1-1 tapes, and so I just wanted to bring that to
23 Your Honor's attention, because I definitely intend on
24 calling two separate 9-1-1 dispatchers, the two different
25 persons who received the call from the incident location.

1 THE COURT: And that was the 9-1-1 tapes from the
2 defendant's sister who called ---

3 ASST. SOL. FERGUSON: Yes, ma'am. On the 20th of
4 March.

5 THE COURT: --- okay. And the other person who called
6 in was?

7 ASST. SOL. FERGUSON: Akera Nelson, the deceased's
8 daughter.

9 THE COURT: The deceased's daughter.

10 ASST. SOL. FERGUSON: The mother of ---

11 THE COURT: What is the name of the mother?

12 ASST. SOL. FERGUSON: Yes, ma'am.

13 THE COURT: Okay. Now, I've got it.

14 MR. HUGHES: Your Honor, he's handed me a third 9-1-1
15 tape of the night before, which I will definitely object to.
16 Your Honor, with the two 9-1-1 tapes that he's given me
17 before, both Akira and -- sorry, I cannot pronounce the
18 name. I think it's Shareema, my client's sister. Akera and
19 Shareema, they've called both parties as witnesses, Your
20 Honor. All they're doing is trying to bolster any testimony
21 they would be giving. I can see possibly using it to
22 impeach if they change their story, but if you're going to
23 call the person who made the call anyway, why play the 9-1-1
24 tape, except in order to hear the panic and the distress in
25 the voice, causing an emotional response on the part of the

1 jury?

2 There's no reason -- there's no need to bring the 9-1-1
3 tape in, other than to excite the jury. There's no
4 probative value to it.

5 THE COURT: Well, except that it's a contemporaneous
6 recording of what occurred at the time. It's probably the
7 best evidence.

8 MR. HUGHES: Your Honor, if he wishes to use it to
9 impeach any statement the witness gives, he's going to call
10 both people that made the 9-1-1 tape. Why add it to it? I
11 mean, all he's doing is basically, going, "Here, listen to
12 this excited woman call 9-1-1," instead of talking to the
13 person on the stand.

14 ASST. SOL. FERGUSON: Well, Your Honor, they are on my
15 potential witness list. I get to call anybody in this case.
16 You know, it's just a potential list. Your Honor, it is the
17 best evidence to set the scene. It establishes
18 jurisdiction. It shows who was the first one to call in
19 response to her getting stabbed. It shows what law
20 enforcement had in their mind upon arriving at the scene.
21 And so, I've never really had to argue for the admission of
22 9-1-1 tapes, Your Honor. I'll be happy to address any
23 concerns you have.

24 THE COURT: I don't see it as an issue. I think if
25 you're just using it to replay it by a different way, and I

1 have no idea what they are going to testify to.

2 MR. HUGHES: Well, Your Honor, like I said, I have no
3 problem if he's using it impeach. I think the only thing --
4 my objection to it is that all he is doing is bolstering the
5 witness statement and ---

6 THE COURT: Well, I'll tell you what he's going to do,
7 he's going to call them and he's going to play it for them
8 and say, "Is that you calling 9-1-1? Is that what you just
9 witnessed?" "Yeah." I'm assuming that's what he is going
10 to do.

11 ASST. SOL. FERGUSON: Your Honor, quite frankly, you
12 know, this is an exception to hearsay. I do have both the
13 9-1-1 operators who took in the call, one of which whom is a
14 records custodian, and so this is a record that is kept in
15 the regular course of business that is extremely relevant
16 and probative to the case at hand, and so, that is my
17 intent.

18 MR. HUGHES: I would object that the prejudicial value
19 definitely outweighs the probative value, especially if you
20 have a witness who is going to be testifying anyway or could
21 be testifying.

22 THE COURT: Okay. It's the best evidence, so I
23 certainly think it's probative under Rule 403, so I'm going
24 to allow it.

25 MR. HUGHES: Okay.

1 THE COURT: Anything else?

2 ASST. SOL. FERGUSON: Not from the State, Your Honor.

3 MR. HUGHES: Not from defense, Your Honor.

4 THE COURT: How long is it going to take to try, you
5 all?

6 ASST. SOL. FERGUSON: Your Honor, I like to consider
7 myself fairly concise, and I would say I'm calling all of my
8 witnesses to be ready by tomorrow.

9 MR. HUGHES: There is a good chance that this could go
10 to the jury Wednesday afternoon, Your Honor.

11 THE COURT: Wednesday afternoon, okay. Well, I just
12 want to figure out for alternates, just because it is a
13 murder case, I am going to put two alternates on. Ms.
14 Rankin, we'll go ahead and try to pull your second case as
15 well, if we have enough jurors. Obviously, the strikes are
16 five and ten. Any requested voir dire from anybody?

17 MR. HUGHES: None from the defense.

18 THE COURT: Okay. What time tomorrow morning? Can we
19 start at 9:30; is that acceptable to everyone?

20 ASST. SOL. FERGUSON: Yes, ma'am, Your Honor.

21 MR. HUGHES: No problem.

22 THE COURT: All right. Well, let's take a break before
23 we pull the jury.

24

25 THE COURT: Mr. Ferguson, if you would please call your

1 case.

2 ASST. SOL. FERGUSON: The State calls Antonio Scott in
3 Indictment 2011-GS-27-192, for the offense of murder, Your
4 Honor.

5 THE COURT: Okay. Ladies and gentlemen, if you would,
6 again, give me your attention, we are about to begin the
7 case entitled the State of South Carolina v. Mr. Antonio
8 Damazio Scott, charged in a bill of indictment by the grand
9 jury of Jasper County for the offense of murder.

10 Ladies and gentlemen, the State in this case is being
11 represented by Mr. Robbie Ferguson and Ms. Meredith Bannon.
12 (BOTH STAND AND FACES THE JURY PANEL.)

13 THE COURT: Thank you. Additionally, Mr. Scott is
14 being represented by Mr. Bob Hughes. Mr. Scott, if you and
15 Mr. Hughes would both stand and face the jury panel.

16 (MR. HUGHES AND MR. SCOTT BOTH STAND AND FACE THE JURY
17 PANEL.)

18 THE COURT: Thank you. You may be seated you all.
19 Ladies and gentlemen of the jury panel, is there any member
20 of the jury panel related by blood, connected by marriage to
21 the defendant in this case, Mr. Antonio Scott? If so,
22 please stand.

23 (NO RESPONSE.)

24 THE COURT: Additionally, is there any member of the
25 jury panel who is a close personal friend or share a special

1 relationship with the defendant in this case, Mr. Scott?

2 (NO RESPONSE.)

3 THE COURT: Ladies and gentlemen of the jury, you have
4 been introduced to the attorneys who are trying this case,
5 again, Mr. Ferguson, Ms. Bannon, and Mr. Hughes. My
6 question is the same, is there any member of the jury panel
7 related by blood or connected by marriage to any of the
8 attorneys trying this case, or have a close personal
9 friendship or share a special relationship with the
10 attorneys trying this case? If so, please stand.

11 (NO RESPONSE.)

12 THE COURT: Additionally, Ladies and gentlemen, the
13 following is a list of potential witnesses in this case.
14 Again, Ladies and gentlemen, the question will be is any
15 member of the jury panel related by blood or connected by
16 marriage to any of these potential witnesses or are any
17 members of the jury panel a close personal friend or share a
18 special relationship with any of the potential witnesses?
19 They are Christopher Poventud of the Jasper County EMS.
20 Lynn Shuman of the Jasper County 9-1-1, Kim Carpenter of
21 Jasper County 9-1-1, Kevin Smith of the Ridgeland Police
22 Department. Rob Nelson of the Ridgeland Police Department.
23 Christopher MacIntosh of the Ridgeland Police Department.
24 Daniel Litchfield of the Ridgeland Police Department.
25 John Croft of the Jasper County Sheriff's Office. Dr. Erin

1 Presnell of MUSC, Dr. Lee Marie Tormos of MUSC, Akera Nelson
2 of Ridgeland, South Carolina; Shareema Behlin of Ridgeland,
3 South Carolina; Monique Chester of Ridgeland, South
4 Carolina; and Dr. William McRae of Medical Center in
5 Savannah.

6 Again, ladies and gentlemen, the question is, is there
7 any member of the jury panel related by blood or connected
8 by marriage, or have a close personal friendship or share a
9 special relationship with any of these potential witnesses?
10 If so, please stand.

11 JUROR: Your Honor?

12 THE COURT: Your name and juror number?

13 JUROR: My name is Lois Wiechowski. I don't remember
14 my juror number, but Akera Nelson was a tenant of mine.

15 THE COURT: Okay.

16 JUROR: I knew her and her mother both very well.

17 THE COURT: Okay.

18 MADAME CLERK: Number 210.

19 THE COURT: Ma'am, I'm going to go ahead and excuse you
20 from the trial of this case. You do not need to respond to
21 any further questions about this case, but I will ask you
22 for the next case, all right?

23 JUROR: Okay.

24 THE COURT: Anyone else?

25 (NO RESPONSE.)

1 THE COURT: Additionally, ladies and gentlemen --- yes,
2 sir?

3 JUROR: David Daring, 49; John Croft, I went to school
4 with him and I've known him for years.

5 THE COURT: John Croft?

6 JUROR: Yes, ma'am.

7 THE COURT: Sir, are you a personal friend of his? Do
8 you break bread with him, eat with him, talk to him on the
9 phone?

10 JUROR: No, I don't do all of that; but I've known him
11 forever.

12 THE COURT: And you went to school together?

13 JUROR: Yes, high school.

14 THE COURT: The fact that you all went to high school
15 together and he may testify in this case, would you be able
16 to be fair and impartial in the trial of this case?

17 JUROR: I reckon, yeah. I reckon. I reckon.

18 THE COURT: Sir, I need to be sure.

19 JUROR: Yeah, I guess I could.

20 THE COURT: Yes, you could? When is the last time you
21 saw Mr. Croft?

22 JUROR: Just a little while ago downstairs; me and him
23 had a conversation a couple months ago playing ping-pong
24 together.

25 THE COURT: Okay. Sir, I'm going to go ahead and

1 excuse you from the trial of this case. Stick around, I
2 have a second jury to pull. Okay?

3 THE COURT: All right. Ladies and gentlemen, the
4 allegations are in this case that in Jasper County, on or
5 about March 20th of 2011, that Antonio Scott did kill Ms.
6 Cynthia Nelson by means of a stabbing and she died here in
7 Jasper County on March 21st, 2011, as a result of that
8 stabbing. Does any juror have any independent knowledge
9 about this case whatsoever? If so, please stand.

10 (JURORS STAND.)

11 THE COURT: Sir, give me your name and juror number and
12 I'm just going to ask you to come speak to me, okay? But
13 just for the record, your name and juror number?

14 JUROR: Larry Rhines.

15 THE COURT: All right, Mr. Rhines, why don't you come on
16 over here and speak with me?

17 JUROR: (APPROACHES BENCH.) I know him. I mean, I
18 just heard -- we used to play basketball together.

19 THE COURT: Okay. But what have you heard?

20 JUROR: Well, nothing about this case here.

21 THE COURT: Okay. Did you know the victim?

22 JUROR: Kind of.

23 THE COURT: How did you know her?

24 JUROR: By my wife through my home boy.

25 THE COURT: Okay. So you heard about it on the street?

1 JUROR: Yeah.

2 THE COURT: What have you heard?

3 JUROR: I ain't know who kill her, but police say that
4 they have a feeling that he did it.

5 THE COURT: Can you put aside anything you may have
6 heard on the street and decide this case only on what you
7 hear in the courtroom?

8 JUROR: Not really.

9 THE COURT: Not really?

10 JUROR: No, not really.

11 THE COURT: Okay. All right. I'm going to excuse you
12 from the trial of this case. Just go ahead and sit tight
13 with me and then on the next case, you can go ahead and
14 answer questions on that one.

15 Okay. He's going to be excused from the trial of this
16 case. Anyone else?

17 THE COURT: Ladies and gentlemen, has any member of the
18 jury panel seen, read or heard anything about this case or
19 have any other independent knowledge about this case
20 whatsoever? If so, please stand.

21 (NO RESPONSE.)

22 THE COURT: Has any member of the jury panel formed or
23 expressed an opinion of the guilt or the innocence of the
24 defendant in this case, Mr. Antonio Scott? If so, please
25 stand.

1 (NO RESPONSE.)

2 THE COURT: Is there any member of the jury panel who
3 has cause to have any interest or any bias for or against
4 the defendant, Mr. Antonio Scott, in this case? If so,
5 please stand. (NO RESPONSE.)

6 THE COURT: Ladies and gentlemen, is there any member
7 of the jury panel who is a member of or a contributor to any
8 group which has as its primary concern the promotion of law
9 enforcement or victim's rights? If so, please stand. And
10 again, that would include such groups as citizens against
11 violent crime or mothers against drunk driving, or SADD,
12 students against drunk driving, or if you contribute to any
13 of the local associations, say, the Sheriff's association,
14 the Trooper's association, even if it's simply by a phone
15 call and a donation.

16 (JUROR STANDS.)

17 THE COURT: Ma'am, your name and juror number.

18 JUROR: Sonya Cooler, I don't remember my number.

19 MADAME CLERK: Forty-five.

20 JUROR: But I'm a member of the group of mother's
21 against drunk driving.

22 THE COURT: Okay. Thank you, ma'am. You may be seated.
23 Anyone else?

24 (NO RESPONSE.)

25 THE COURT: Ladies and gentlemen, is there any reason

1 whatsoever that you cannot give both the State of South
2 Carolina and the defendant, Mr. Antonio Scott, a fair and an
3 impartial trial in this case? If so, please stand.

4 (NO RESPONSE.)

5 THE COURT: Is there anything further requested of the
6 panel?

7 MR. HUGHES: I would request that any members of the
8 panel who have been a victim, or family members who have
9 been a victim of violent crimes, Your Honor.

10 THE COURT: All right. Anything from you, Mr.
11 Ferguson?

12 ASST. SOL. FERGUSON: No, ma'am, Your Honor.

13 THE COURT: All right. Ladies and gentlemen, is there
14 any member of the jury panel who has either been accused of
15 or has been a victim of a violent crime? If so, please
16 stand.

17 (JURORS STAND.)

18 THE COURT: Ladies and gentlemen, what I'm going to do
19 is this, when I get to you, I want you to give me your name
20 and juror number, and I want you to tell me whether or not
21 you are accused of or the victim of, and tell me what the
22 crime was and how long ago it was.

23 Ma'am, I'm going to start all the way over here with
24 you.

25 JUROR: Debbie Pulfer, 155, victim. My parents were

1 both murdered in 1990.

2 THE COURT: Okay. Ma'am, this case, obviously, is an
3 allegation of murder. Do you feel like you could fairly sit
4 in judgment on this case?

5 JUROR: Yes, I think I can.

6 THE COURT: Okay. Thank you, ma'am. Yes, ma'am?

7 JUROR: Sonya Cooler and my first husband was killed in
8 1994 by a drunk driver.

9 THE COURT: Yes, ma'am. You may be seated.

10 JUROR: Mike Peeples, number 147. My mother's brother
11 was stabbed 27 times to death right here in Ridgeland about
12 16 years ago.

13 THE COURT: All right. Sir, the allegations in this
14 case is the person that was stabbed. Can you sit and be
15 fair and impartial to both sides in this case?

16 JUROR: Ma'am, I've got real mixed feelings about it.

17 THE COURT: All right, sir. I'm going to excuse you
18 from the trial of this case and I'm going to ask you to stay
19 with me, because you would be subject to the second trial,
20 all right?

21 JUROR: Yes, ma'am.

22 THE COURT: Thank you. Yes, ma'am?

23 JUROR: My uncle was the one who was murdered in 2008
24 right by Cooler's Gas Station ---

25 THE COURT: All right, ma'am, give me your name and

1 juror number.

2 JUROR: Deidra Roberts, 163.

3 THE COURT: Ms. Roberts, the fact that your uncle was
4 killed, would that affect your ability to be fair and
5 impartial in the trial of this case?

6 JUROR: No.

7 THE COURT: Thank you. Anyone else?

8 (NO RESPONSE.)

9 THE COURT: All right. Any further questions requested
10 of the panel from the State?

11 ASST. SOL. FERGUSON: No, ma'am, Your Honor.

12 THE COURT: From the defense?

13 MR. HUGHES: No, Your Honor.

14 THE COURT: All right. Ladies and gentlemen, let me
15 tell you what's happening at this time. Those of you who
16 have been qualified for potential jurors for this case, your
17 names are being put into the computer right now. It will
18 draw a random list. What we will do is call your name and
19 you are going to stand right where you are and you are going
20 to be asked to take a seat in the jury box or to sit down
21 again. The attorneys are allowed to utilize a certain
22 number of strikes to be able to choose their jury. So
23 that's what we're doing.

24 What I'd like to do, ladies and gentlemen, if there is
25 anyone that needs to go refresh themselves very quickly, I'm

1 going to go ahead and excuse you to do that. I'm just going
2 to ask that you don't take anymore than about three, four,
3 five minutes, and ladies and gentlemen, if you don't need to
4 refresh yourselves, keep your seats, because you're seated
5 and as soon as everyone is back here we're going to go ahead
6 and pull this jury and I'm going to get you out of here as
7 soon as I can.

8 If you are chosen on this first jury, we're going to
9 give you a few brief instructions and then we're going to
10 send you home until tomorrow morning; same thing with the
11 second jury. All right? So again, if anyone needs to
12 refresh themselves, if you would, just tell the deputy when
13 you're going out the door so he'll know to be looking for
14 you, and if you don't need to, please keep your seat. Thank
15 you. We'll be at ease for about five minutes.

16 (OFF THE RECORD AT 3:25 P.M.; BACK ON THE RECORD AT
17 3:35 P.M.)

18 THE COURT: All right, ladies and gentlemen, when you
19 hear your name called, simply stand up in place. You are
20 not to do or say anything, just stand up. All right?
21 Margaret.

22 MADAME CLERK: Juror number 76 -- one moment.

23 SOTTO VOICE DISCUSSION BETWEEN CLERK AND THE COURT.

24 THE COURT: Sir, I'm going to ask you to come up here
25 quickly just to speak with me and I want the attorneys to

1 come on up as well.

2 THE COURT: My understanding, during the short break,
3 from Margaret is she told me you knew one of the witnesses.
4 Tell me what you told her.

5 JUROR: Well, all it is, is that I knew Sharita (sic).
6 I know her as a person, never hung out, never drank with
7 her. I live on Gillison and sometimes she's lived out
8 there, and she used to go around with me on the motorcycle
9 and deliver toys, but I never partied with her, never drank
10 with her, never socialized with her or nothing like that,
11 but I do know her. She rides around on a moped out here.

12 THE COURT: And she's one of the witnesses?

13 ASST. SOL. FERGUSON: No, I believe he may be talking
14 about Shareema Behlin.

15 JUROR: I don't know her last name. She rides a moped
16 around here.

17 MR. HUGHES: What does she look like?

18 JUROR: Sarita is the only person I know. Is that her
19 name, Sarita?

20 THE COURT: I don't know.

21 JUROR: Okay. Then, I don't know -- I don't know her.

22 THE COURT: Okay.

23 JUROR: I thought it was Sarita.

24 THE COURT: Okay.

25 JUROR: I'm hard of hearing.

1 THE COURT: That's all right.
2 JUROR: Okay.
3 THE COURT: Just go on back and stay standing, okay?
4 JUROR: Okay.
5 THE COURT: I appreciate it.
6 (EVERYONE RETURNS TO THEIR SEATS.)
7 THE COURT: What says the State?
8 ASST. SOL. FERGUSON: Please present Mr. Goodall.
9 THE COURT: Mr. Hughes?
10 MR. HUGHES: Please seat the juror.
11 THE COURT: Come on around, sir.
12 JUROR: Am I the first one in the whole box?
13 THE COURT: You got it. Come on up.
14 MADAME CLERK: Number 175, David Shipes. What says the
15 State?
16 ASST. SOL. FERGUSON: Please present Mr. Shipes.
17 MADAME CLERK: What says the defense?
18 MR. HUGHES: Please seat the juror.
19 THE COURT: Come on up, Mr. Shipes.
20 MADAME CLERK: Number 132, Nakia Mitchell. What says
21 the State?
22 ASST. SOL. FERGUSON: Please present Ms. Mitchell.
23 MADAME CLERK: What says the defense?
24 MR. HUGHES: Please seat the juror.
25 MADAME CLERK: Number 152, Arinn Poston. What says the

1 State?

2 ASST. SOL. FERGUSON: Please present Mr. Poston.

3 MADAME CLERK: What says the defense?

4 MR. HUGHES: Please seat the juror.

5 MADAME CLERK: Number 105, Stacy Kirk. What says the
6 State?

7 ASST. SOL. FERGUSON: Please present Ms. Kirk.

8 MADAME CLERK: What says the defense?

9 MR. HUGHES: Please excuse this juror.

10 THE COURT: Please have a seat.

11 MADAME CLERK: Number 75, Abigail Gomez. What says the
12 State?

13 ASST. SOL. FERGUSON: Please present Ms. Gomez.

14 MADAME CLERK: What says the defense?

15 MR. HUGHES: Please seat the juror.

16 MADAME CLERK: Have a seat in the jury box, ma'am.

17 Number 113, Demetric Lewis; what says the State?

18 ASST. SOL. FERGUSON: Please present this juror.

19 MADAME CLERK: What says the defense?

20 MR. HUGHES: Please seat the juror.

21 MADAME CLERK: Come forward, sir. Number 155, Deborah
22 Pulfer. What says the State?

23 ASST. SOL. FERGUSON: Please present this juror.

24 MADAME CLERK: What says the defense?

25 MR. HUGHES: Please excuse the juror from the trial of

1 this case.

2 MADAME CLERK: Thank you, please have a seat. Number
3 9, William Fowler. What says the State -- I'm sorry, number
4 71.

5 ASST. SOL. FERGUSON: Please present Mr. Fowler.

6 MADAME CLERK: What says the defense?

7 MR. HUGHES: Please excuse the juror from the trial of
8 this case.

9 MADAME CLERK: Thank you, sir. Please have a seat.
10 Number 130, David Minor. What says the State?

11 ASST. SOL. FERGUSON: Please excuse Mr. Minor in the
12 trial of this case.

13 MADAME CLERK: Thank you, sir. Please have a seat.

14 THE COURT: You may be seated, sir. Go ahead and take
15 a seat.

16 MADAME CLERK: Number 61, Victoria Exley. What says
17 the State?

18 ASST. SOL. FERGUSON: Please present Ms. Exley.

19 MADAME CLERK: What says the defense?

20 MR. HUGHES: Please excuse the juror from the trial of
21 this case.

22 MADAME CLERK: Thank you, ma'am. Please have a seat.
23 Number 216, Rachael Wilson. What says the State?

24 ASST. SOL. FERGUSON: Please present Ms. Wilson.

25 MADAME CLERK: What says the defense?

1 MR. HUGHES: Please seat the juror.

2 MADAME CLERK: Please come forward ma'am. Number 30,
3 Patricia Bynum. What says the State?

4 ASST. SOL. FERGUSON: Please present Ms. Bynum.

5 MADAME CLERK: What says the defense?

6 MR. HUGHES: Please excuse the juror from the trial of
7 this case.

8 MADAME CLERK: Thank you, ma'am. Please have a seat.
9 Number 103, Joseph Keiffer. What says the State?

10 ASST. SOL. FERGUSON: Please present Mr. Keiffer.

11 MADAME CLERK: What says the defense?

12 MR. HUGHES: Please excuse the juror from the trial of
13 this case.

14 MADAME CLERK: Thank you, sir. Number 138, Chester
15 Newton. What says the State?

16 ASST. SOL. FERGUSON: Please present Mr. Newton.

17 MADAME CLERK: What says the defense?

18 MR. HUGHES: Please seat the juror.

19 MADAME CLERK: Come forward, sir, and have a seat in
20 the jury box.

21 MADAME CLERK: Number 159, Kerry Raymond. What says
22 the State?

23 ASST. SOL. FERGUSON: Please present Mr. Raymond.

24 MR. HUGHES: Please seat the juror.

25 MADAME CLERK: Come forward, sir. Number 4, Shirlayne

1 Albergotti. What says the State?

2 ASST. SOL. FERGUSON: Please present Ms. Albergotti.

3 MADAME CLERK: What says the defense?

4 MR. HUGHES: Please seat the juror.

5 MADAME CLERK: Come forward, ma'am. Have a seat in the
6 jury box. Number 124, Charles McCaskill. What says the
7 State?

8 ASST. SOL. FERGUSON: Please present Mr. McCaskill.

9 MADAME CLERK: What says the defense?

10 MR. HUGHES: Please excuse the juror from the trial of
11 this case.

12 MADAME CLERK: Thank you, sir. Number 3, Louis Aiken.
13 What says the State?

14 ASST. SOL. FERGUSON: Please present Mr. Aiken.

15 MADAME CLERK: What says the defense?

16 MR. HUGHES: Please seat the juror.

17 MADAME CLERK: Please come forward, sir, and have a
18 seat in the jury box. Number 186, Zachary Smith. What says
19 the State?

20 ASST. SOL. FERGUSON: Please present Mr. Smith.

21 MADAME CLERK: What says the defense?

22 MR. HUGHES: Please seat the juror.

23 MADAME CLERK: Please come forward, sir, and have a
24 seat in the jury box. Alternate One, number 153, Robert
25 Priester. What says the State?

1 ASST. SOL. FERGUSON: Please present Mr. Priester.

2 MADAME CLERK: What says the defense?

3 MR. HUGHES: Please seat the juror.

4 MADAME CLERK: Come forward, sir. Alternate number

5 Two, number 27, Jeannie Burden. What says the State?

6 ASST. SOL. FERGUSON: Please present Ms. Burden.

7 MADAME CLERK: What says the defense?

8 MR. HUGHES: Please excuse the juror from the trial of
9 this case.

10 MADAME CLERK: Thank you, ma'am. Juror number 5, Danny
11 Albert. What says the State?

12 ASST. SOL. FERGUSON: Please present Mr. Albert.

13 MADAME CLERK: What says the defense?

14 MR. HUGHES: Please excuse the juror from the trial of
15 this case.

16 MADAME CLERK: Thank you, sir. Juror number 104, Wendy
17 Kelly. What says the State?

18 ASST. SOL. FERGUSON: Please present Ms. Kelly.

19 MADAME CLERK: Does the defense have cause for strike?

20 MR. HUGHES: No, ma'am.

21 MADAME CLERK: Please come forward, ma'am, and have a
22 seat as Alternate Two.

23 THE COURT: Are there any matters of law that we need
24 to take up regarding jury selection process, from the State?

25 ASST. SOL. FERGUSON: No, ma'am, Your Honor.

1 THE COURT: From the defense?

2 MR. HUGHES: No, Your Honor.

3 THE COURT: All right. Well, ladies and gentlemen,
4 welcome. I'm sure you understand, you are the jury in my
5 first case. Before I go ahead and excuse you for the
6 remainder of the day to report tomorrow morning at 9:30,
7 there are just a couple of guidelines that I need to give
8 you before I excuse you back to your jury room.

9 Jo is going to give you a few more guidelines as to
10 where to come in the morning when you report. But ladies
11 and gentlemen, most importantly to begin with, you are not
12 to discuss this case with anyone, and that includes family,
13 friends, or each other, until you have heard all of the
14 evidence in this case and you have heard the arguments from
15 the lawyers and my charge on the law. Again, it would be
16 inappropriate for you to do that. The only thing you are
17 permitted to do when you go home tonight and see a loved one
18 is say that I've been chosen as a juror in a criminal case.
19 You cannot say the parties involved, you cannot say the
20 attorneys that are involved, or anything about this case.
21 And the reason why is, inevitably, someone is going to try
22 to tell you something about something when they know
23 absolutely nothing about this case, and it would be highly
24 inappropriate for you to be influenced in any way.

25 Additionally, ladies and gentlemen, I am ordering that

1 you are not to read or watch or listen to anything about
2 this case. I don't know if there will be anything in the
3 newspaper or on the radio or the TV, but again, out of an
4 abundance of caution, if you happen to turn on the TV
5 tonight or if you see something about this case in the news,
6 you are to disregard it and just move on, ladies and
7 gentlemen. Again, it wouldn't be factual. It wouldn't be
8 appropriate for you to be influenced in any way. You're
9 going to have everything you need to decide this case right
10 here in this courtroom. The evidence is going to be
11 presented to you here and that is how you are going to
12 determine and reach a verdict in this case.

13 Also, ladies and gentlemen, if you were able to get
14 into the courthouse this morning with a cell phone, I am
15 going to ask that you either leave it back in your car or at
16 home. Because you can get so much information off of a cell
17 phone nowadays, out of an abundance of caution, if you
18 actually are sat, we will take your cell phone from you when
19 you come in the morning. It will be returned to you if we
20 have to do that, but again, we prefer if you just leave them
21 back in the car or at home. That way there won't be a
22 problem.

23 If you are concerned that someone may need to get ahold
24 of you emergently, such as children, family members,
25 whomever, just tell them to call up to the Clerk of Court's

1 office, say that you are a juror in my case, and I assure
2 you that I will get you immediately if there are any
3 concerns. All right?

4 Also, ladies and gentlemen, you are not to do any of
5 your own independent research in this case, and that would
6 include after today or at any time. Again, it's
7 inappropriate for you to do so. Also, you are not to do any
8 blogging, or Facebooking, or say anything that would be put
9 out on the internet in any way that you are sitting as a
10 juror in a case. Again, that would be inappropriate. It
11 would subject you to possible contact from people.

12 So again, out of an abundance of caution, I'm just
13 asking that if you are someone that Facebooks or blogs,
14 again, do not put on there that you are performing jury
15 service and that you've been selected. All right?

16 Also, ladies and gentlemen, the parties and the
17 witnesses in this case have been instructed not to speak to
18 you in coming or going to the courthouse during the next
19 couple of days that we're going to be trying this case, and
20 the reason why is even an innocent conversation out in
21 parking lot, "Isn't it a gorgeous day?" can be misconstrued,
22 and I assure it always gets reported back. So out of an
23 abundance of caution, when you pass these lawyers, possibly,
24 or the witnesses to the parties, and they don't even say
25 hello or smile, please, they're not being rude, they are

1 following my orders. All right?

2 Ladies and gentlemen, lastly, I just respectfully ask
3 that you all be on time. I cannot start until all 14 of you
4 are here. So if you happen to run into car trouble or have a
5 problem tomorrow morning, please call into the Clerk's
6 office and we'll send someone out to come get you. Again, I
7 can't start until all 14 of you are here. And I'm going to
8 do my very best to be on time and when you all are here
9 prepared and ready to go, we will be as well, and we will go
10 ahead and accept you back into this courtroom.

11 I can tell you that both of these attorneys I've tried
12 many cases with. You can expect them to be professional,
13 you can expect them to be on time, and they are going to do
14 their very best to get this case in front of you
15 expeditiously.

16 I can tell you that typically -- and when I say
17 "typically," tomorrow we're going to start at 9:30. Each
18 morning, we may have a discussion about what your schedules
19 are like, but additionally, ladies and gentlemen, if any of
20 you have an engagement that you have to be present for, say,
21 at a certain time, 5:30 on a given night, please just let Jo
22 know and we're going to accommodate you.

23 And additionally, I know I have at least one juror, and
24 possibly two, that needed a ride here in the morning, or
25 back; and again, I want to remind you to talk to Jo before

1 you leave and let her know of an address so that you can get
2 carried to and from the courthouse. All right?

3 Ladies and gentlemen, again, thank you for your
4 willingness to serve. Without you, I can't do the county's
5 business. So again, I want to thank you. I'm going to
6 excuse you back to your jury room and Jo is going to give
7 you a couple of more instructions, and then we look forward
8 to seeing you all tomorrow morning at 9:30 a.m. Thank you.

9 (12-5-11, 4:30 P.M., WHEREUPON, THE JURY EXITS THE
10 COURTROOM AND THE FOLLOWING IS HELD ON THE RECORD.)

11 THE COURT: All right. Anything further in reference
12 to this jury?

13 ASST. SOL. FERGUSON: No, ma'am, Your Honor.

14 THE COURT: All right.

15 MR. HUGHES: No, Your Honor.

16 THE COURT: I will see you all tomorrow morning about
17 9:15. Y'all will be prepared and ready to go; is that
18 correct?

19 ASST. SOL. FERGUSON: Yes, ma'am.

20 MR. HUGHES: Yes, ma'am.

21 THE COURT: All right. Additionally, y'all, just take
22 a seat for a moment if y'all don't mind. Ladies and
23 gentlemen, I had intended on pulling a second jury this
24 afternoon in hopes of not having to keep bringing people
25 back, but there has been an issue that has developed in that

1 case. Whether or not we're going to be able to try it this
2 week is a question. I don't want to waste y'all's time by
3 pulling a jury if I'm not sure and absolutely positive I'm
4 going to need you.

5 So what I'm going to go ahead and do, Ladies and
6 gentlemen, is excuse all of you for the remainder of the
7 day. However, I'm going to ask that you call in on the
8 juror line -- Margaret, where do they have the number?

9 MADAME CLERK: They have the number. We passed it out.

10 THE COURT: Is it on the pamphlet?

11 MADAME CLERK: They have it on a little slip of paper,
12 Your Honor.

13 THE COURT: You have a number on a slip of paper.
14 There is going to be a recorded message after 6:00 tomorrow
15 night and it's going to tell you whether or not you need to
16 report. In all likelihood, it will probably say to call
17 back Wednesday after 6:00. Just follow and do what it says.
18 If it says to not come back, then you aren't required to
19 come back. But of course, if you need to, and I assure you
20 that if we do have to pull a jury, I will need all of you to
21 be able to pull that jury. Please, just make sure you
22 respond to it. Ladies and gentlemen, thank you for your
23 patience this afternoon. Hopefully, I will see you again,
24 but thank you for being here. You are excused.

25 (WHEREUPON THE JURY EXITS THE COURTROOM AND THE

1 FOLLOWING IS HELD ON THE RECORD.)

2 THE COURT: For those of you that are out there and are
3 still remaining, ladies and gentlemen, if you were summoned
4 to be here, please do not leave unless you have spoken with
5 your lawyer or the Solicitor prosecuting your case. We will
6 be at ease until 9:15 tomorrow morning. Thank you.

7 (12-5-11, 5:30 P.M., WHEREUPON THE COURT IS IN RECESS
8 IN THE TRIAL OF THIS CASE FOR THE EVENING.)

9 (COURT RECONVENES ON 12-6-11, 9:30 A.M., AND THE
10 FOLLOWING IS HELD ON THE RECORD.)

11 THE COURT: Ms. Mitchell? Ma'am, it's my understanding
12 that you approached Ms. Bostick yesterday because you
13 believe you know someone in the trial of this case; is that
14 correct?

15 WITNESS: Yes, ma'am.

16 THE COURT: Who do you know, ma'am?

17 WITNESS: The defendant.

18 THE COURT: How do you know him?

19 WITNESS: I know his family. We live in the same
20 community.

21 THE COURT: Okay. All right. And you didn't speak up
22 yesterday when you were asked?

23 WITNESS: No, ma'am.

24 THE COURT: All right, ma'am, I am going to go ahead
25 and remove you from the trial of this case. I want to make

1 sure that you have not spoken with any of the other jurors
2 about your relationship or knowing the defendant.

3 WITNESS: No, ma'am.

4 THE COURT: You have not?

5 WITNESS: No, ma'am.

6 THE COURT: All right. Well, I will go ahead and
7 excuse you. I am going to ask that you call back on the
8 juror line tonight after 6:00 to determine whether or not
9 you will have to come back for the next trial. Okay?

10 WITNESS: Okay. Thank you.

11 THE COURT: Thank you. All right. What else do we
12 need to take up this morning?

13 MR. HUGHES: Your Honor, yesterday I forgot to move to
14 sequester the witnesses. I would do so at this time.

15 THE COURT: Okay. Any problem with that, Mr. Ferguson?

16 ASST. SOL. FERGUSON: No, ma'am, Your Honor.

17 THE COURT: Okay. Let's go ahead and sequester the
18 witnesses.

19 ASST. SOL. FERGUSON: And Your Honor, I would ask that
20 my Investigator Litchfield be exempt from that Order, as my
21 lead Investigator.

22 MR. HUGHES: I have no problem with that, Your Honor.

23 THE COURT: Okay.

24 MR. HUGHES: Your Honor, also you gave me time to
25 review what Mr. Ferguson gave me yesterday and I have done

1 so and I find no appropriate case law to override his
2 paperwork.

3 THE COURT: Okay. You withdraw your motion?

4 MR. HUGHES: Yes, Your Honor.

5 ASST. SOL. FERGUSON: And Your Honor, just briefly for
6 the record, I had represented to the Court yesterday my
7 intentions to cut the Axon video off at 12 minutes and 54
8 seconds. Upon my further review last night, I've actually
9 reduced that amount to 7 minutes and 20 seconds. I don't
10 think that that would created any additional objection. I
11 think he actually waived those, but just so that I didn't
12 misrepresent to the Court what I intend to produce.

13 MR. HUGHES: I've reviewed up to the 13 minute mark and
14 I have no problems with that, Your Honor.

15 THE COURT: Okay.

16 MR. HUGHES: So if he wants to cut it shorter, I would
17 have no objection.

18 THE COURT: Okay.

19 ASST. SOL. FERGUSON: And Your Honor, finally, Mr.
20 Hughes pointed out this morning that on the indictment it
21 does read that Cynthia Nelson died in Jasper County as a
22 proximate result of the stabbing. Well, in fact, she was
23 declared dead and was transferred to Savannah. So I would
24 ask Your Honor to just basically scratch out "in Jasper
25 County" as a Scribner's error on the indictment.

1 THE COURT: Okay. Any objection?

2 MR. HUGHES: No, Your Honor.

3 THE COURT: Y'all, do I have that indictment? Oh,
4 okay, I've got it right here. Okay. I will go ahead and
5 strike that out and make the change on the indictment.

6 ASST. SOL. FERGUSON: And I think what the excused --
7 with removing juror number 132, that puts the juror 153, Mr.
8 Priester, as our twelfth juror.

9 THE COURT: It does.

10 ASST. SOL. FERGUSON: Okay. Thank you, Your Honor.

11 MR. HUGHES: Nothing else, Your Honor.

12 THE COURT: Okay. Y'all ready for opening statements?

13 ASST. SOL. FERGUSON: Yes, ma'am, Your Honor.

14 MR. HUGHES: Yes, Your Honor.

15 THE COURT: All right. Bring us the jury, please.

16 (10:00 A.M., 12-6-11, WHEREUPON THE JURY ENTERS THE
17 COURTROOM AND THE FOLLOWING IS HELD ON THE RECORD.)

18 THE COURT: Good morning, ladies and gentlemen, and
19 welcome back. Mr. Priester, I'm sure you know now that I
20 had to relieve a juror, so you are now a member of this
21 jury, sir. I appreciate your willingness.

22 Ladies and gentlemen, at this time, what we have to do
23 is hear the opening statements from the attorneys. I, also,
24 am going to give you an important introduction to the trial
25 of the case, but before we do all of that, Ms. Bostick, your

1 Clerk of Court, is going to swear you in as the jury of this
2 case. If you all would please stand and raise your right
3 hand.

4 (JURORS STAND AND RAISE THEIR RIGHT HAND.)

5 (WHEREUPON, THE JURY IS DULY SWORN.)

6 THE COURT: You may be seated, ladies and gentlemen.
7 What I am now going to say to you is intended to serve as an
8 introduction in the trial of this case. These remarks are
9 not a charge on the law. I'm going to charge you on the law
10 that is applicable to this case at the end of the case.
11 This is just merely an explanation of the procedure we're
12 going to follow so you can better understand what's
13 happening during the trial.

14 Ladies and gentlemen, the defendant in this case is
15 charged by what is called an indictment filed in this court
16 for the offense of murder. And the elements, again, I'll
17 explain to you at the end of this case.

18 The indictment is simply the charge by which the case
19 is brought into this courtroom, but it is not in any sense
20 evidence of any of the allegations that it contains.

21 Ladies and gentlemen, the defendant, Mr. Scott, has
22 pled not guilty to this indictment. The State, therefore,
23 has the burden of proving each of the elements of the
24 indictment beyond a reasonable doubt and it's your duty as
25 jurors to decide whether or not the State has met that

1 burden in this case.

2 Now, your purpose as jurors is to find and determine
3 the facts. You are the sole judge of all facts in this
4 case. If, at any time, I make any comment regarding the
5 facts of this case, you must disregard it, and you are to
6 only determine the facts of this case from the testimony
7 that you're going to hear from the witness stand, as well as
8 any other evidence that is introduced into the case. Please
9 understand it's up to you to determine the inferences that
10 you feel can be properly drawn from the evidence. And
11 please understand that it's especially important that you
12 perform your duty of determining the facts of this case
13 diligently and conscientiously, because ordinarily there is
14 no way to correct an erroneous determination of the facts by
15 a jury.

16 On the other hand and with equal emphasis, the same law
17 that makes you the judge of the facts makes me the judge of
18 the law. The law that is given by the Court is the only law
19 that you may consider. You must accept and follow it, even
20 if you disagree with it. I cannot tell you what the facts
21 of the case are and you cannot disagree with me about what
22 the law is or what you think the law should be. Your job,
23 ladies and gentlemen, is to take the law as I give it to you
24 and apply it to the facts as you find them and from there,
25 render a true and just verdict under the oath that you just

1 took.

2 Now, ladies and gentlemen, until I advise you to begin
3 your deliberations, you must not discuss this case with
4 anyone, and that includes your fellow jurors, family members
5 or anyone that is involved in this case. And after the case
6 is submitted to you, you may only discuss it in the jury
7 room with your fellow jurors.

8 Now, as I told you yesterday, the parties, the
9 witnesses in this case, have been instructed that they are
10 not to speak to you. So again, if you happen to pass them
11 in the courthouse or the parking lot and they don't even say
12 hello, they're not being unfriendly; they are simply
13 following my orders.

14 Also, ladies and gentlemen, during the trial of this
15 case, you are not to read, listen to, or watch anything
16 about this case. And again, that includes anything that
17 could be on the internet, the newspapers, television, radio,
18 or the like, ladies and gentlemen, and you are not to
19 consider anything that you may have read or heard about this
20 case outside this courtroom, whether it's before or during
21 the trial of this case.

22 Please understand that it is vitally important that you
23 keep an open mind and not decide any issue in the case until
24 all of the evidence has been presented, the parties have
25 made their closing arguments, and I have instructed you on

1 the law that is applicable to this case.

2 Please understand that it is your solemn responsibility
3 to determine the guilt or innocence of the defendant and
4 your verdict must be based solely on the evidence that is
5 presented to you here in this trial and on the law that I
6 instruct you during and at the close of the trial.

7 Now, ladies and gentlemen, in just a minute, the
8 Solicitor is going to make what is called an opening
9 statement in which he is going to explain to you what the
10 issues are in this case, or what he believes the issues are
11 in this case. The attorney for the defendant will also be
12 making an opening statement, although he is not required to
13 do so.

14 What the attorneys tell you in their opening statement
15 is not evidence in this case. Again, it is only their
16 contention as to what the issues are. I remind you, Ladies
17 and gentlemen, that the evidence in this case comes from the
18 witness stand, as well as any other physical evidence that
19 is entered into or any other stipulation that the attorneys
20 enter into in this case.

21 Now, I want you to know that from time to time during
22 the trial of this case, you may hear one of the attorneys
23 say something like, "Your Honor, I believe we have a
24 question of law, or a matter of law that we need to discuss
25 with you," or "Your Honor, may we approach the bench?" or

1 sometimes, I, myself, may have to send you back to your jury
2 room to discuss something with the attorneys. I want you to
3 know something, we are not hiding anything from you. The
4 reason why they do it is often when I have to decide whether
5 or not certain evidence is admitted, I may make a comment on
6 the facts of this case, and again, I would never want
7 anything I say influence you on the facts of this case. So
8 out of an abundance of caution, we do it outside of your
9 presence.

10 Ladies and gentlemen, in determining what the true
11 facts are in a case, you must decide whether or not the
12 testimony of the witnesses is believable. My responsibility
13 to rule as a matter of law whether certain testimony is
14 admitted, but once the testimony is admitted, whether or not
15 you believe it is solely for you to determine. In deciding
16 whether to believe a witness, you have the right to consider
17 the interest of any witness, the bias of any witness, the
18 prejudice of any witness, and you can look at the
19 opportunity that the witness had to have seen the matters
20 and things about which they are testifying and you can look
21 at the way the witness acts on the witness stand.

22 You have the right to consider anything that is in the
23 record that will help you evaluate the testimony of the
24 witness. That means, ladies and gentlemen, it is your
25 solemn responsibility to pay close attention to these

1 witnesses, to observe them, to listen to them, and to pay
2 close attention to the attorneys during their argument into
3 the Court, so at the very end of this case you can
4 accurately remember what has been testified to.

5 Ladies and gentlemen, because I don't think this case
6 is going to take too terribly long, I am not going to permit
7 you to take notes. If for some reason I do think it will
8 aid you in some way, we would give you pads and pens. I am
9 simply asking that you sit back and give your attention to
10 the attorneys in this case.

11 Any objections from the State or the defense or any
12 additions?

13 ASST. SOL. FERGUSON: No, ma'am, Your Honor.

14 MR. HUGHES: No, Your Honor.

15 THE COURT: Thank you. Ladies and gentlemen, we're
16 going to begin the trial of this case. Mr. Ferguson.

17 ASST. SOL. FERGUSON: Thank you, Your Honor. May it
18 please the Court?

19 THE COURT: Yes, sir.

20 OPENING STATEMENT

21 BY ASST. SOL. FERGUSON:

22 So this is how it's going to be. You're gonna let your
23 momma get in between us. So this is how it's gonna be.
24 You're gonna let your momma get in between us. That's what
25 the defendant, Antonio Scott, said to Akera Nelson while

1 threatening her with a knife. The same knife that he would
2 use moments later to kill Cynthia Nelson, her mother.

3 The same knife that was no where to be found when the
4 defendant fled the scene. This is a case about a mother
5 standing up for her child. Cynthia Nelson standing up for
6 Akera Nelson.

7 This tragedy started March the 19th, 2011. Cynthia
8 Nelson was driving home when she saw the defendant, Antonio
9 Scott, standing out in front of her apartment. She called
10 the police. Officer Kevin Smith responded. He didn't find
11 Antonio Scott. He didn't find Antonio Scott, because
12 Antonio Scott was hiding in a nearby dumpster.

13 Now, we know this because the next day on March the
14 20th, the defendant is overheard saying that he went to
15 Cynthia Nelson's house that night to kill her, and that he
16 had to hide in that dumpster when the police came.

17 So this is how it's gonna be. You're gonna let your
18 momma get in between us. This is a case about a mother
19 standing up for her child; about Cynthia Nelson standing up
20 for Akera Nelson. Antonio Scott stabbed Cynthia Nelson
21 through the left side of her face severing her carotid
22 artery, causing her to lose almost all of the blood in her
23 body. She was first taken to Coastal Carolina here in
24 Hardeeville, then transferred to Savannah, where on March
25 the 21st, she was pronounced dead two days after the

1 defendant hid in a dumpster outside of her apartment. One
2 day after he stabs her for getting in between he and Akera
3 Nelson.

4 Ladies and gentlemen, this is a case about a mother
5 standing up for her child. About Cynthia Nelson standing up
6 for Akera Nelson. At the end of this trial, I'm going to
7 come up and ask you to find the defendant guilty for
8 murdering Cynthia Nelson. Thank you.

9 THE COURT: Mr. Hughes.

10 MR. HUGHES: May it please the Court?

11 THE COURT: Yes, sir.

12 OPENING STATEMENT

13 BY MR. HUGHES:

14 I know everyone of you has watched a television show
15 that had a trial in it, because we all watch them. They're
16 fun. They're entertaining, they're exciting. This isn't
17 television. This is real life. Some of this is going to
18 seem boring to you. Some of this is going to make you
19 wonder what in the world are those people doing? But it is
20 what we do to ensure justice.

21 My client is not guilty. My client comes to you to
22 have y'all find out the truth. That's what a verdict means,
23 "truth". You are the finders of the fact. You are the ones
24 who determine truth. There is probably 500 years of life
25 experience sitting in those twelve chairs. You do not leave

1 your common sense when you sit in those chairs. You do not
2 leave your life experience.

3 Listen and watch everyone. Your job is to find out the
4 truth. This isn't television. I'm not Perry Mason. No one
5 is going to stand up in the back at the end of the half hour
6 and go, "No, I did it." This is real life. Pay close
7 attention, listen, watch. Use that 500-plus of life
8 experience, common sense, knowledge, and 24 eyes, 24 ears,
9 and get the truth. When this is over, I'm going to come
10 back and talk to you and the first thing I'm going to tell
11 you is I told you it wasn't anything like television, and
12 y'all will agree with me. Thank you.

13 THE COURT: Mr. Ferguson, you may call your first
14 witness.

15 ASST. SOL. FERGUSON: The State calls Lynn Shuman.

16 MADAME CLERK: Please come forward to be sworn.

17 (WHEREUPON, MS. LYNN SHUMAN IS DULY SWORN.)

18 THE COURT: Ms. Shuman, when you've sat down and
19 adjusted the microphone, will you please give us your name
20 for the record and spell your last name for my court
21 reporter.

22 MS. SHUMAN: Okay. Lynn Shuman, S-H-U-M-A-N.

23 DIRECT EXAMINATION

24 BY ASST. SOL. FERGUSON:

25 Q Good morning, Ms. Shuman.

1 A Good morning.

2 Q Who do you work for?

3 A Jasper County Dispatch.

4 Q And how long have you worked for them?

5 A For four years.

6 Q And what training did you have to undergo in order to
7 work for Jasper County 911?

8 A We had to go to SLED training and we also had to go to
9 E-911.

10 Q And were you working back on March the 20th of 2011?

11 A Yes.

12 Q And did you receive a call about an incident occurring
13 at Baytree Apartments that night?

14 A Yes.

15 Q Now, Ms. Shuman, I want to show you what's been
16 previously marked as State's Exhibit Number One for
17 identification purposes and see if you can recognize this
18 item.

19 ASST. SOL. FERGUSON: Your Honor, may I approach the
20 witness?

21 THE COURT: You may.

22 ASST. SOL. FERGUSON: Thank you.

23 Q So do you recognize that item, Ms. Shuman?

24 A Yes.

25 Q And what is it?

1 A It's the copy of the tape, the 911 call.

2 Q And prior to today's date, had you and I gone over that
3 audio portion?

4 A Yes.

5 Q And is that a fair and accurate depiction of the call
6 that came in that night?

7 A Yes.

8 Q Now, as part of your duties at Jasper County 911, do
9 you have access to the stored information on y'all's system?

10 A Yes.

11 Q And did you actually prepare that disc for this trial?

12 A I did.

13 Q And if I were to come to you and ask for a specific
14 call to 911 on a specific date, would you be able to
15 retrieve that information for me?

16 A Yes.

17 Q So would you consider yourself a records custodian?

18 A Yes.

19 Q Okay. Thank you.

20 ASST. SOL. FERGUSON: Your Honor, at this point, the
21 State would submit State's Exhibit Number One into evidence.

22 THE COURT: Any objection?

23 MR. HUGHES: None that haven't already been heard, Your
24 Honor.

25 THE COURT: Okay. Thank you. It's in evidence.

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1 ASST. SOL. FERGUSON: Thank you, Your Honor.

2 (WHEREUPON, STATE EXHIBIT NUMBER ONE, CD OF 9-1-1 CALL,
3 IS ACCEPTED INTO EVIDENCE.)

4 Q Ms. Shuman, was there a second call that came in that
5 night?

6 A Yes.

7 Q And were you the one that answered that call?

8 A No.

9 Q And why was that?

10 A I believe I was dispatching law enforcement out at that
11 time.

12 Q But is that second call also on that audio?

13 A Yes.

14 Q Thank you.

15 ASST. SOL. FERGUSON: Your Honor, if I may approach the
16 witness?

17 THE COURT: You may.

18 ASST. SOL. FERGUSON: Your Honor, if I may publish the
19 two 9-1-1 calls to the jury?

20 THE COURT: You may.

21 (SOLICITOR PREPARES EQUIPMENT FOR PLAYING OF CALL.

22 (9-1-1 CALL BEGINS 10:15 A.M. -- CALL ENDS 10:18 A.M.)

23 Q Now, Ms. Shuman, are there two people on that audiotape
24 that you were talking to at the incident location?

25 A No, there was one.

1 Q Did the caller ever identify themselves?

2 A No.

3 Q Okay. And are you positive that the phone was never
4 passed to anybody else?

5 A I'm not positive, but ---

6 Q Would you disagree if I told you that there was two
7 people on that audio portion?

8 A No.

9 Q Okay.

10 (SECOND 9-1-1 CALL IS PLAYED AT 10:19 A.M.; ENDS 10:21
11 A.M.)

12 Q Now, Ms. Shuman, who was the 9-1-1 dispatcher that we
13 hear on that second call?

14 A Kimberly Carpenter.

15 Q Okay.

16 ASST. SOL. FERGUSON: Your Honor, I have no further
17 questions of this witness.

18 CROSS-EXAMINATION

19 BY MR. HUGHES:

20 Q Ms. Shuman, how many 9-1-1 calls do you generally get a
21 night, or a day, or a shift?

22 A It just depends; a lot.

23 Q And how long have you been working there?

24 A Four years.

25 Q And not an actual number, but a rough estimate, about

Cross-Examination of Lynn Shuman by Mr. Hughes

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1 how many calls have you taken?

2 A (PAUSE.)

3 Q Thousands?

4 A Thousands, I'm sure.

5 Q And you're trained to listen to people and hear them,
6 correct?

7 A Yes.

8 Q So if you thought you were talking to one person, you
9 would probably realize when someone else came on the line?

10 A I'm sure, yes.

11 Q Okay. And because you need to know what's going on?

12 A Yes.

13 Q And you've always tried to establish a repore with the
14 person on the phone so that you can get more information out
15 of them?

16 A Yes.

17 Q So you're trained how to talk on the phone to people
18 who are hysterical?

19 A Yes.

20 Q Okay.

21 MR. HUGHES: No further questions.

22 THE COURT: Mr. Ferguson?

23 ASST. SOL. FERGUSON: Just briefly, Your Honor.

24 REDIRECT EXAMINATION

25 BY ASST. SOL. FERGUSON:

1 Q Ms. Shuman, you know, we just listened to these two
2 calls. And the first call, do you remember the caller
3 asking another person a question?

4 A Yes.

5 Q Okay. Now, do you remember another person making
6 direct comments about her mother?

7 A No, not really.

8 Q Well, she's being asked questions about the victim in
9 this case, and so it sounds like in that first call that one
10 person is asking another for the response to that question
11 that you're asking.

12 A Right. Yes.

13 Q And then would you disagree with me that that one
14 person who is being asked the questions then gets on the
15 telephone?

16 A Possibly, yes.

17 Q And if we need to, we can play it again. It's kind of
18 hard to hear and I apologize for that. So now, the second
19 portion, that's one person, correct?

20 A Yes.

21 Q Okay. And that person is referring to the victim as
22 her mother?

23 A Yes.

24 ASST. SOL. FERGUSON: Your Honor, I don't have any
25 further questions.

1 THE COURT: Anything further?

2 MR. HUGHES: Nothing else, Your Honor.

3 THE COURT: You may step down, Ms. Shuman. Ladies and
4 gentlemen of the jury, we're going to take a very brief
5 break. While you are on your break, I need for you to do
6 some things for me. I need one of y'all to serve as a
7 foreperson in the trial of this case. The foreperson
8 doesn't have anymore say than anyone else. They are just
9 simply the person that I communicate with regarding
10 scheduling, and also they are the person that when the case
11 is sent to you for your deliberation, they will get the ball
12 rolling and get everyone speaking. So if you would, ladies
13 and gentlemen, among the twelve of you that are sitting are
14 jurors, if you would go back and elect a foreperson and when
15 that person comes out, I would ask that they take this front
16 seat right here where Mr. Priester is and also give to Jean
17 the name of the foreperson for me. All right?

18 Okay, ladies and gentlemen, I need to tell you, and I
19 will tell you this every time I send you back to the jury
20 room, do not discuss this case. You have not heard all the
21 evidence. YOU have not heard the arguments of the lawyers,
22 nor my charge on the law, and it would be inappropriate for
23 you to discuss this case at this time. All right? You're
24 excused back to your jury room for just a quick moment.

25 (10:25 A.M., WHEREUPON, THE JURY EXITS THE COURTROOM

1 AND THE FOLLOWING IS HELD ON THE RECORD.)

2 THE COURT: All right, we're going to be at ease for
3 about ten minutes in this case.

4 THE COURT: All right. Are we ready to go?

5 ASST. SOL. FERGUSON: Yes, ma'am, Your Honor.

6 MR. HUGHES: Yes, Your Honor.

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

8 (10:36 A.M.; WHEREUPON, THE JURY ENTERS THE COURTROOM

9 AND THE FOLLOWING IS HELD ON THE RECORD.)

10 THE COURT: Welcome back, ladies and gentlemen. Call
11 your next witness, Mr. Ferguson.

12 ASST. SOL. FERGUSON: Thank you, Your Honor. The State
13 calls Christopher Poventud.

14 MADAME CLERK: Please come forward and be sworn.

15 (WHEREUPON, MR. CHRISTOPHER POVENTUD IS DULY SWORN.)

16 THE COURT: Sir, if you would give us your name for the
17 record and spell your last name for my court reporter.

18 MR. POVENTUD: My name is Christopher Poventud. Last
19 name is spelled "P", as in Peter, O-V-E-N-T-U-D.

20 THE COURT: Thank you, sir.

21 DIRECT EXAMINATION

22 BY ASST. SOL. FERGUSON:

23 Q Good morning, Mr. Poventud.

24 A Good morning.

25 Q Who do you work for?

Direct Examination of Christopher Poventud by Asst. Sol. Ferguson

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1 A Jasper County Fire Rescue.

2 Q And how long have you worked for them?

3 A For about going on three years now.

4 Q And what is your job there?

5 A Firefighter/paramedic.

6 Q And what kind of training did you have to undergo and
7 education in order to become a firefighter/paramedic?

8 A I had to take emergency medical training as a basic and
9 then I went on to take advanced life support training as a
10 paramedic for about a year; a total of about two years of
11 schooling.

12 Q And how many emergency calls would you say that you've
13 responded to in your career with Jasper County EMS?

14 A A lot. Probably over 500, maybe, a thousand.

15 Q And Poventud, were you working on March the 20th of
16 2011?

17 A Yes, sir.

18 Q And did you respond to a Baytree Apartments that
19 evening?

20 A Yes, sir.

21 Q And what did you respond to? What were you called out
22 for?

23 A It was dispatched as a possible stabbing, assault
24 victim.

25 Q And do you remember what time you were called out?

1 A It's on my paperwork, if you want me to look over it.

2 Q Please, sir.

3 A The initial call was received at 19:24, and we were
4 dispatched at 19:26.

5 Q And for us laymen, what time is 19:24?

6 A 19:24 would be 7:24 in the evening.

7 Q Okay.

8 A And we left dispatch at 7:26. So the call was received
9 at 7:24.

10 Q Okay. And what time did you arrive at Baytree
11 Apartments?

12 A On scene at 7:31.

13 Q What time did you wrap up the call and depart from
14 Baytree Apartments?

15 A We departed the scene at 7:40.

16 Q And what did you see when you got there?

17 A Per my report, when we walked in, a 48-year-old female
18 was found sitting on the couch in her home, slumped over to
19 her right side and patient had a significant amount of blood
20 on her clothing, emanating from her neck.

21 Q And what did you do?

22 A We started taking care of her. The first thing that we
23 want to do is remove her from the scene, so we put her on a
24 backboard, moved her to our ambulance, and at that point,
25 she went into traumatic cardiac arrest.

Direct Examination of Christopher Poventud by Asst. Sol. Ferguson

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1 Q What would you say the medical condition of the victim
2 was upon your initial response?

3 A Very poor.

4 Q Okay. And did you check her vital statistics?

5 A Absolutely. Initially, when I checked her vital signs,
6 it says in my report that she had a very weak carotid pulse
7 and she was breathing agonally, and what that means is
8 basically it was just her last efforts of breathing and it
9 was probably about four breaths a minute. And normal should
10 be twelve to twenty breaths a minute.

11 Q Now, in your physical examination of this victim, did
12 you notice any trauma to her neck area, neck and face area?

13 A Yes, sir. Like I said, there was a lot of blood on her
14 shirt and it was emanating from a wound on her left lateral
15 side of her neck. It seemed like it was a penetrating
16 wound.

17 Q And what does that mean?

18 A That an object or some type of weapon was used to be
19 put into her neck.

20 Q Okay. Now, specifically, what was your first action
21 upon seeing the victim in her condition?

22 A The first action that I want to do is I want to control
23 the bleeding and control the hemorrhaging. So we took
24 trauma dressing that we have and we control the bleeding
25 with direct pressure.

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

2 A We moved her onto a long spine board, because of a
3 trauma victim, we like to immobilize them. So we moved her
4 onto the spine board and immediately moved her out of the
5 house. We also provided her with oxygen since she wasn't
6 able to breathe on her own, breathing only about four times
7 a minute, through a bag-valve mask.

8 Q And what is that?

9 A It's a mask that has -- it's a squeeze mask. So what
10 we're actually doing is providing ventilation, assisting her
11 with ventilations by positive pressure ventilation and
12 that's what that mask does. It's a mask that goes over the
13 face and you provide the positive pressure ventilation as
14 you squeeze them.

15 Q Okay. Now, once you moved her inside the ambulance,
16 did you re-evaluate her condition?

17 A Absolutely.

18 Q And what was her condition at that point?

19 A At that point, when we re-evaluated her, she no longer
20 had a pulse, and we just immediately started chest
21 compressions, and we started cardiac arrest protocol.

22 Q And what is that cardiac arrest protocol?

23 A You start CPR, get all of your IV's going, you want to
24 intubate a patient so that you can secure an airway for
25 them.

Direct Examination of Christopher Poventud by Asst. Sol. Ferguson

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1 Q And what does that mean?

2 A Intubation is when we actually take a tube and put it
3 into her trachea so that all the ventilation and oxygen that
4 we're providing, it immediately goes to her lungs. Then, we
5 went ahead and did so and then we start pushing our cardiac
6 medications for -- she was in PEA, pulseless electrical
7 activity, which means her heart is beating. It does have
8 some electrical current in it, but it's not enough to
9 actually profuse the body, or actually send and flow blood
10 through the body to profuse her organs.

11 Q So basically, did you attempt to put an IV in the
12 victim's body?

13 A Absolutely.

14 Q And were you successful in doing so?

15 A Yes.

16 Q Were there ever any negative attempts or any
17 unsuccessful attempts?

18 A Yes, sir. My Captain is also a firefighter/paramedic,
19 came to assist me on the scene. Initially, I tried to
20 intubate the patient. I was unsuccessful, and initially, he
21 tried to start an IV, simultaneously, and he was
22 unsuccessful. So we swapped positions and I initiated an
23 IV; it was successful, and he initiated intubation and he
24 was successful.

25 Q Given the nature of the victim's injury, why would it

1 be difficult to establish an IV?

2 A Poor peripheral access. Also, the patient was a larger
3 patient, but since she's not flowing any blood or anything
4 like that, sometimes it can be difficult to obtain an IV.

5 An IV is -- once we start an IV, it flashes blood back, but
6 if there is no blood moving, it can't really get any flash
7 back into the chamber of my IV. So poor peripheral access,
8 and then like I said, the size of the patient.

9 Q How much blood loss would it take in order for you to
10 experience those difficulties in inserting an IV?

11 A Normal patient is from about four to six liters in
12 their body, so two to four liters you start experiencing
13 that type of difficulty.

14 Q So about half of somebody's blood.

15 A Yes, absolutely.

16 Q Now, you said that you administered some medication.
17 What were those medications?

18 A For a pulseless electrical activity, it would be
19 epinephrine, in a concentration of one in ten thousand, and
20 atropine, and you administer that every three to five
21 minutes; and that's part of the protocol. So initially, due
22 to not having the IV, you can also administer that
23 medication via the endotrachial tube that was placed into
24 her lungs, so we initially started administering that
25 medication through the endotrachial tube. Once the IV was

1 established, everything else goes intravenously.

2 Q And what do those medicines do?

3 A The epinephrine is natural occurring in your body, and
4 when we give it to you, it helps to stimulate the heart,
5 stimulate the electrical activity so we can start profusion.
6 Being in cardiac arrest, her body is no longer able to
7 continue the blood flow through her body.

8 Q Is it like adrenaline?

9 A Yes, absolutely.

10 Q Okay. Now, all of these things that we've talked
11 about, where did they occur? Where were you doing these
12 emergency medicine procedures?

13 A In the back of the ambulance, en-route to the hospital.

14 Q Okay. And what hospital did you take her to?

15 A Coastal Carolina Medical Center.

16 Q Okay. And I keep saying "her" and "the victim"; were
17 you ever able to establish the identity of the person you
18 were treating?

19 A Later on after, yeah.

20 Q Okay. Do you know if she was ever transferred from
21 Coastal Carolina Hospital?

22 A I believe so that she was transferred to a different
23 hospital once they stabilized her.

24 Q Okay:

25 ASST. SOL. FERGUSON: Your Honor, may we approach the

1 bench just briefly.

2 THE COURT: Yes, sir.

3 (WHEREUPON, A BENCH CONFERENCE IS HELD OFF THE RECORD
4 AND OUT OF THE HEARING OF THE JURY.)

5 Q I apologize, Mr. Poventud. I want to show you what's
6 been previously marked as State's Exhibits Four, Five, Six,
7 Seven, Eight and Ten, that have previously been marked for
8 identification purposes and ask you if you can identify
9 what's being shown in these photographs.

10 A Yes, sir.

11 ASST. SOL. FERGUSON: Your Honor, may I approach the
12 witness?

13 THE COURT: You may.

14 Q And Mr. Poventud, it specifically states that --
15 Exhibits for identification Four, Five, Six and Seven, what
16 do they show?

17 A They show the couch that the victim was found on when
18 we arrived on scene. They show that the blood was emanating
19 from her neck onto her clothing; it seems like it also is on
20 the couch as well. It has the wrapping for the trauma
21 dressing that I spoke of earlier that we used to control the
22 hemorrhaging from the patient's neck.

23 Q And are those fair and accurate depictions of what you
24 saw on March the 20th of 2011?

25 A Yes, sir.

1 Q And now, Eight and Ten, State's Exhibits for
2 identification, what do those two items show?

3 A Eight and ten show the patient -- actually, this is at
4 the hospital. It shows the penetrating wound that I spoke
5 of on the left lateral side of her neck. It shows her
6 intubated, what you see across her face is actually a holder
7 for the endotracheal tube that we placed into her neck.

8 Q And are those fair and accurate depictions of the wound
9 that you saw on March the 20th, 2011?

10 A Yes, sir.

11 ASST. SOL. FERGUSON: Your Honor, at this point, I
12 would move to have State's Exhibits Four, Five, Six, Seven,
13 Eight and Ten admitted into evidence.

14 THE COURT: Without objection, correct?

15 MR. HUGHES: No objection, Your Honor.

16 (WHEREUPON, STATE'S EXHIBIT NUMBER FOUR, PHOTO, IS
17 RECEIVED INTO EVIDENCE.)

18 (WHEREUPON, STATE'S EXHIBIT NUMBER FIVE, PHOTO, IS
19 RECEIVED INTO EVIDENCE.)

20 (WHEREUPON, STATE'S EXHIBIT NUMBER SIX, PHOTO, IS
21 RECEIVED INTO EVIDENCE.)

22 (WHEREUPON, STATE'S EXHIBIT NUMBER SEVEN, PHOTO, IS
23 RECEIVED INTO EVIDENCE.)

24 (WHEREUPON, STATE'S EXHIBIT NUMBER EIGHT, PHOTO, IS
25 RECEIVED INTO EVIDENCE.)

1 (WHEREUPON, STATE'S EXHIBIT NUMBER TEN, PHOTO, IS
2 RECEIVED INTO EVIDENCE.)

3 ASST. SOL. FERGUSON: And Your Honor, I would wish to
4 publish these to the jury.

5 THE COURT: They're in evidence.

6 ASST. SOL. FERGUSON: And if my witness may step down,
7 we're going to use the Elmo machine.

8 THE COURT: Mr. Poventud, you may step down, sir.

9 MR. POVENTUD: Thank you, ma'am.

10 (TECHNICAL DIFFICULTIES WITH THE ELMO MACHINE.)

11 ASST. SOL. FERGUSON: Your Honor, I promise we did
12 check this out beforehand and it was working fine.

13 Q Mr. Poventud, we'll do this the old-fashioned way. If
14 you will help me, and what we will do is make sure that
15 everybody on the jury can see these. If you can tell them
16 what they are looking at in these photographs. I'm going to
17 give you what's been entered into evidence as State's
18 Exhibit Number Four, and if you can show that to the entire
19 panel and explain to them what they are looking at.

20 A This is the couch that the victim was found on when we
21 first arrived on scene. As you can see right here, there is
22 blood, and I was talking about it was emanating from the
23 patient's neck through her clothes onto the couch. And the
24 trauma dressing that I spoke of, that's the wrapper for it.

25 Q And now State's Exhibit Number Five, if you could do

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1 the same thing.

2 A Just a closer view of everything that I just explained.

3 THE COURT: Mr. Poventud, if you'll walk a little bit
4 down here to these jurors, that would be good.

5 MR. POVENTUD: Yes, ma'am.

6 THE COURT: I'd appreciate it. Thank you.

7 Q This is State's Exhibit Number Six.

8 A Just another angle of the blood that was emanating from
9 her and the couch that we found the victim on.

10 Q State's Exhibit Seven -- and I want to ask you a
11 question. If you can show them that picture. What does
12 that picture show?

13 A Shows blood on the floor.

14 Q Now, do you know if that blood was there before y'all
15 attempted to move the victim or not?

16 A No, I don't, sir.

17 Q Could it have gotten there when you moved her?

18 A Possibly.

19 Q Okay. If you could show that to the remainder of the
20 panel.

21 (WITNESS COMPLIES.)

22 Q This is State's Exhibit Number Eight.

23 A This is actually at the hospital. We took pictures and
24 this shows the wound on the left lateral side of the
25 patient, that penetrating wound, and as I was talking about

1 the device that we use to hold the endotrachial tube in
2 place; that's what that strap is.

3 Q And finally, Mr. Poventud, State's Exhibit Number Ten.

4 A Same picture, just a closer view of the penetrating
5 wound and the device holding the endotrachial tube.

6 Q All right, Mr. Poventud, if you would take your seat
7 back up on the stand.

8 ASST. SOL. FERGUSON: Your Honor, I wish to pass these
9 to the jury, just in case they didn't quite a good look at
10 it.

11 MR. HUGHES: No objection.

12 THE COURT: Okay.

13 Q Mr. Poventud, what time did y'all arrive at the
14 hospital?

15 A Arrival time at the hospital was 7:54 in the evening,
16 p.m.

17 Q Now, understanding that things take time, was there
18 anything that could have been done differently if you would
19 have arrived earlier or if she would have arrived at the
20 hospital earlier?

21 A All the same actions, whether what time we arrived,
22 would have been -- I mean, if we would have arrived 15
23 minutes earlier, 15 minutes later, the same actions would
24 have occurred.

25 Q Thank you, Mr. Poventud. I have no further questions

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1 of you.

2 THE COURT: Mr. Hughes.

3 CROSS-EXAMINATION

4 BY MR. HUGHES:

5 Q And how much blood did you say she had lost?

6 A Probably about a liter to two liters of blood.

7 Q Okay. I thought earlier you said about four liters.

8 A No, I said it would take about two to four liters to
9 start knowing some peripheral access changes when I was
10 starting my IV. Q So basically, I think we're all used to
11 a liter is the large drink, so a two liter bottle, right?

12 A Yes.

13 Q Did you have a chance to look around the apartment any?

14 A No. Immediately, the patient needed my attention. I
15 did not look around the apartment or anything. All of my
16 attention was focused immediately to the patient.

17 Q Did you see anywhere where someone might have also been
18 trying to stop the blood flow?

19 A No.

20 MR. HUGHES: No further questions, Your Honor.

21 ASST. SOL. FERGUSON: No, ma'am, Your Honor. I wish
22 that this witness be excused.

23 MR. HUGHES: No objection.

24 THE COURT: You are excused, sir. Thank you.

25 MR. POVENTUD: Thank you, ma'am.

1 THE COURT: If the State will call the next witness.

2 ASST. SOL. FERGUSON: The State calls Officer Rob
3 Nelson.

4 THE COURT: Please come forward, sir, to be sworn.

5 WHEREUPON, MR. ROB NELSON, IS DULY SWORN.

6 DIRECT EXAMINATION

7 BY ASST. SOL. FERGUSON:

8 Q Good morning, Officer Nelson.

9 A Good morning.

10 Q Who do you work for?

11 A I work for the Town of Ridgeland Police Department.

12 Q And how long have you worked for them?

13 A It's been a total of probably about 12 years.

14 Q And what do you do for them?

15 A I'm a reserve police officer.

16 Q Okay. What does that mean?

17 A Basically, I carry out the duties of a police officer,
18 but don't get paid.

19 Q Now, were you working in that capacity back on March
20 the 20th, 2011?

21 A Yes.

22 Q And did you respond to a call to Baytree Apartments
23 that day?

24 A Yes.

25 Q Now, Baytree Apartments, where is that located?

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1 A It's off of First Avenue.

2 Q And is that in the City Limits of Ridgeland?

3 A Yes.

4 Q And is that in Jasper County?

5 A Yes.

6 Q Thank you. Now, what did you see when you arrived
7 there?

8 A I arrived right behind Officer Smith and just a
9 commotion and somebody stated that ---

10 Q Well, I don't want to talk about what people stated,
11 but what did you see and what did you do?

12 A Well, just people was screaming loud and some people
13 was hollering. I couldn't understand what some of them was
14 saying, and I was walking up to the apartment.

15 Q And did you go look for the defendant?

16 A Yes.

17 Q And where did you go to look for the defendant?

18 A I went to the right of the apartment, behind the
19 apartment.

20 Q Okay. So what's behind the apartment?

21 A There's a couple of houses.

22 Q And what did you see back there?

23 A There was a crowd back there and I saw them and asked
24 them if anybody had seen the suspect run back there and they
25 was telling me to leave.

- 1 Q So how many people would you estimate were back there?
- 2 A I'd estimate at least twenty.
- 3 Q And were they cooperative with you?
- 4 A No. No.
- 5 Q Now, did you have information that the defendant had
- 6 run back that way?
- 7 A Yes.
- 8 Q Okay. And you asked those twenty or so persons if they
- 9 had seen the defendant?
- 10 A Yes.
- 11 Q And what did they tell you?
- 12 A They told me to leave.
- 13 Q Okay. Do you know who lives back there?
- 14 A No.
- 15 Q Okay. Now, what else did you do?
- 16 A I came back and I reported back to Smith and tell him
- 17 that the people asked me to leave and he just wanted me to
- 18 stand in front of the door where nobody could come in.
- 19 Q And did you do so?
- 20 A Yes.
- 21 Q Okay. Did y'all allow anybody in or out of that
- 22 apartment? In other words, did you just secure that scene?
- 23 A Yes.
- 24 Q Okay. Now, did you also have to perform what I would
- 25 call "crowd control"?

1 A Yes.

2 Q And why is that?

3 A There was people gathered in front of the apartment, on
4 the side of the apartment, starting a large crowd, and I
5 don't know where they came from; but Smith asked me to try
6 and keep everybody back.

7 Q Do you know if it's the same group of twenty or so
8 people that you saw behind the apartments that were then
9 gathering at the apartments?

10 A I don't know.

11 Q Okay. And what did you tell them?

12 A Told them to stand back, stand back, and then some
13 people refused, so I got on my P.A. and tell them to stand
14 back.

15 Q Now, did you assist Officer Smith in clearing the
16 Apartment 2-F at Baytree?

17 A No.

18 Q Okay. Did you assist him in a search for any type of
19 weapon?

20 A No.

21 Q Okay. Officer Nelson, I appreciate it. I have no
22 further questions for you.

23 THE COURT: Mr. Hughes.

24 CROSS-EXAMINATION

25 BY MR. HUGHES:

1 Q Just a couple of quick questions, Officer Nelson. Are
2 you related to Cynthia Nelson?

3 A Yes.

4 Q Are you related to Akera Nelson?

5 A Yeah.

6 Q Did you talk to Akera that day?

7 A No.

8 Q How are you related to her?

9 A Cynthia Nelson is my mother's niece.

10 MR. HUGHES: No further questions, Your Honor.

11 ASST. SOL. FERGUSON: Just briefly, Your Honor.

12 REDIRECT EXAMINATION

13 BY ASST. SOL. FERGUSON:

14 Q Did that relationship in any way affect what you did
15 that day?

16 A No.

17 ASST. SOL. FERGUSON: Thank you.

18 THE COURT: Anything further, Mr. Hughes?

19 MR. HUGHES: No, Your Honor

20 THE COURT: Any objection to Officer Nelson being
21 excused?

22 MR. HUGHES: No, Your Honor.

23 THE COURT: You are excused, sir, thank you. If the
24 State will call the next witness.

25 ASST. SOL. FERGUSON: Yes, ma'am, Your Honor. The

Cross-Examination of Rob Nelson by Mr. Hughes
Redirect Examination of Rob Nelson by Mr. Hughes

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1 State calls Officer Kevin Smith.

2 WHEREUPON, OFFICER KEVIN SMITH IS DULY SWORN.

3 DIRECT EXAMINATION

4 BY ASST. SOL. FERGUSON:

5 Q Officer Smith, who do you work for?

6 A The Ridgeland Police Department.

7 Q What do you do for them?

8 A I'm a patrol officer.

9 Q And how long have you been a patrol officer?

10 A A total of about five, five and a half years.

11 Q And what education and training did you have to undergo
12 in order to become a patrol officer?

13 A I have a Bachelor in Science from the University of
14 South Carolina and I have a high school diploma, and then I
15 was a reserve officer for a couple of years prior to going
16 full time.

17 Q And did you have to go to the police academy?

18 A Yes, sir, I did.

19 Q And were you working back on March the 20th of 2011?

20 A Yes, sir.

21 Q And did you receive a call out to Baytree Apartments
22 that day?

23 A Yes, sir.

24 Q And what was that call for?

25 A It was for a stabbing.

1 Q And did you in fact respond to that location?

2 A Yes, sir, I did.

3 Q And what did you see when you got there?

4 A When I got there, there were several people that were
5 standing outside of an apartment, obviously upset. I went
6 inside the apartment and I found the victim. She was laying
7 on a couch, bleeding from her neck. There was a small child
8 that was standing on the couch. I motioned for one of the
9 adults in there to get the child and take him out. Then, I
10 checked the building to make sure everything was secure for
11 EMS to respond.

12 Q Now, you said you checked the building, what were you
13 checking the apartment for?

14 A To make sure the suspect was still not on the scene and
15 it was safe for EMS to respond.

16 Q And by "suspect," who do you mean?

17 A Antonio Scott.

18 Q Now, do you see Mr. Antonio Scott, the one that you're
19 speaking of, in the courtroom today?

20 A Yes, sir, I do.

21 Q And could you point him out for the jury, please?

22 A He's sitting right there in the red shirt.

23 Q Thank you. So you did not find the defendant, Mr.
24 Scott, inside that apartment?

25 A No, sir, I did not.

Direct Examination of Kevin Smith by Asst. Sol. Ferguson

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1 Q And what did you do next?

2 A Once the scene was secured for EMS, I stood by at the
3 door for a few moments until EMS got there. Once they were
4 on scene, I made sure they were okay and then I proceeded
5 around the apartment complex to check on Officer Nelson to
6 see if he had made contact with the suspect at that point.

7 Q And what was going on behind the apartment?

8 A Behind the apartment, there are some houses back there,
9 and there was a party that was going on in that area, but
10 directly behind the apartment complex, the victim's daughter
11 was staying there, and she was obviously upset. She was
12 yelling about the incident and referencing Mr. Scott.
13 Officer Nelson was walking back towards me and he said that
14 nobody had seen anything, but he had heard that Mr. Scott
15 had run that way.

16 Q Now, did you speak to any of the persons you saw behind
17 that apartment?

18 A Outside of Officer Nelson, I do not believe so.

19 Q Okay. How many people would you say were back there?

20 A At the party?

21 Q Yes.

22 A I'm not sure.

23 Q And do you know who lives back there?

24 A I believe it's a Ms. Howard ---

25 Q Okay.

1 A --- but I'm not 100 percent sure on that.

2 Q Okay. And do you know of any relationship between Mr.
3 Scott and the Howards?

4 A No, sir.

5 Q Okay. Now, did you make contact with Ms. Akera Nelson?

6 A Yes, sir, I did.

7 Q And did you make contact with Ms. Shareema Behlin?

8 A Yes, sir, I did.

9 Q Okay. And who is Shareema Behlin?

10 A She is the sister of the defendant.

11 Q Okay. And did you ask her for a written statement?

12 A Yes, sir, I did.

13 Q Would she give you one?

14 A I do not believe she did.

15 Q Okay. Did you get a statement from Ms. Akera Nelson?

16 A I believe I did.

17 Q Now, what else did you do?

18 A I notified my supervisor's of what was going on and
19 then I checked around to make sure to see if I could locate
20 the weapon that was used.

21 Q And did you locate a weapon?

22 A No, sir, I did not.

23 Q Okay. Now, as a Ridgeland Police Officer, you have
24 specialized equipment that can record things as you see
25 them; is that right?

Direct Examination of Kevin Smith by Asst. Sol. Ferguson

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1 A Yes, sir, that's correct.

2 Q And what is that?

3 A We wear a taser Axon Camera, which I was wearing that
4 day, which is a -- do you want me to describe the entire
5 thing?

6 Q Please, sir.

7 A Okay. I'm actually wearing one right now if you want
8 me to demonstrate.

9 Q Great.

10 OFFICER SMITH: May I stand up?

11 THE COURT: You may, sir.

12 A Do I need to adjust the mic?

13 Q Please.

14 A Okay. The way it works, the day of the incident, I was
15 actually wearing the headband, which wraps around behind
16 your ears, and this camera is attached to it, so it gives
17 you a first person view. Then this is the control box right
18 here that activates the camera, sets it to different modes,
19 and then all the information is stored in this box on the
20 belt. And so, at the time of the incident, I was utilizing
21 the camera. I had it recording.

22 Q Okay. So you were wearing one of the Axon cameras that
23 day?

24 A Yes, I was.

25 Q And were you able to download the content from that

1 device to a server?

2 A Yes, sir, I was.

3 Q Okay. And at this point, I want to show you what has
4 been previously marked for identification as State's Exhibit
5 Number Two and ask you if you recognize this item?

6 ASST. SOL. FERGUSON: May I approach the witness, Your
7 Honor?

8 THE COURT: You may.

9 ASST. SOL. FERGUSON: Thank you.

10 A Yes, sir. I recognize it.

11 Q And what is that?

12 A This is a video, a CD recording of the video that was
13 recorded that day.

14 Q And prior to today, had you and I gone over there to
15 ensure that it is in fact from that date?

16 A Yes, sir.

17 Q And did you indicate that on that disc at all?

18 A Yes, sir.

19 Q Okay. Is that a fair and accurate depiction of what
20 you saw on March the 20th, 2011, at Baytree Apartments?

21 A Yes, sir, it is.

22 ASST. SOL. FERGUSON: Your Honor, at this point, I
23 would move to enter State's Exhibit Two into evidence.

24 THE COURT: Any objection?

25 MR. HUGHES: No, Your Honor.

Direct Examination of Kevin Smith by Asst. Sol. Ferguson

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1 THE COURT: It's in evidence without objection.

2 (WHEREUPON, STATE'S EXHIBIT NUMBER TWO, DVD, IS
3 RECEIVED INTO EVIDENCE.)

4 ASST. SOL. FERGUSON: And Your Honor, I wish to publish
5 a portion of this at this time.

6 THE COURT: Okay.

7 ASST. SOL. FERGUSON: Hopefully it will post audio and
8 video.

9 THE COURT: Okay. Ladies and gentlemen, these
10 attorneys have worked very hard to recall the relevant
11 information, not to make the case go on and on. So what
12 you're going to see is a portion of the video that is
13 relevant. Again, there are other portions of it, but we
14 don't want to bore you. So again, I want you to understand
15 that we're not hiding anything from you. It's just that some
16 of it is redundant.

17 ASST. SOL. FERGUSON: And Your Honor, it does take just
18 a moment for the audio to kick in. So hopefully, that does
19 not mean we're having technical difficulty.

20 THE COURT: Okay.

21 (BRIEF PAUSE IN COURTROOM.)

22 ASST. SOL. FERGUSON: Your Honor, if we may take just a
23 brief moment to get this figured out. It will resolve it
24 once and for all.

25 THE COURT: Okay. Ladies and gentlemen of the jury,

1 I'm going to send you back to your jury room very briefly.
2 Again, do not discuss this case. It would be inappropriate
3 to do so. Get a cup of coffee. We'll bring you right back
4 out. Okay? Thank you.

5 (11:15 A.M., WHEREUPON, THE JURY EXITS THE COURTROOM
6 FOR A BRIEF RECESS.)

7 (11:20 A.M., WHEREUPON, THE JURY ENTERS THE COURTROOM
8 AND THE FOLLOWING IS HELD ON THE RECORD.)

9 THE COURT: Welcome back, ladies and gentlemen. I
10 think we have got our technical difficulties worked out. So
11 let's go ahead and play the DVD.

12 ASST. SOL. FERGUSON: Thank you, Your Honor.

13 (DVD BEGINS PLAYING AT 11:21 A.M.; DVD ENDS PLAYING AT
14 11:28 A.M.)

15 Q Now, Officer Smith, did you respond to an additional
16 call the night before this occurred?

17 A Yes, sir, I did.

18 Q And what was that call for?

19 A It was for -- I don't remember the exact way it was
20 dispatched to me. It was either for a disturbance or a
21 harassment call.

22 Q Well, who had called?

23 A Ms. Nelson.

24 Q And is that the same Ms. Nelson that we just saw put in
25 that ambulance right there?

Direct Examination of Kevin Smith by Asst. Sol. Ferguson

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1 A Yes, sir, it is.

2 Q And did you respond to where she had called from?

3 A I believe she called from her cell phone at her
4 apartment and said -- do you want me to tell you?

5 Q No, sir. I just want to know what you did as a result
6 of talking to her. Did you go by Ms. Nelson's apartment?

7 A Yes, sir, I did.

8 Q Okay. And what did you do when you got there?

9 A Myself and Officer Nelson, once again, checked her
10 apartment. She stated that Antonio Scott had been there and
11 that he had tried to get into her apartment and then had
12 left and she just wanted us to make sure everything was okay
13 for her to go inside.

14 Q And did you find the defendant, Antonio Scott, that
15 night there?

16 A No, sir, we did not.

17 Q Okay. Did you ever talk to him on the telephone?

18 A Yes, sir, I did.

19 Q Did he admit to calling Ms. Nelson?

20 A He did.

21 Q Thank you, Officer Smith. I have no further questions
22 for you at this time. Please answer any questions that Mr.
23 Hughes may have.

24 A Yes, sir.

25

CROSS-EXAMINATION

1 BY MR. HUGHES:

2 Q Good morning, Officer Smith.

3 A Good morning.

4 Q The night before this happened, you say you talked with
5 Cynthia Nelson?

6 A Yes, sir, I did.

7 Q And that she asked you to do what again?

8 A She wanted us to check her apartment to make sure that
9 Mr. Scott was not inside the apartment for her safety.

10 Q And he wasn't there?

11 A That is correct.

12 Q And it's your magic camera -- looks like it's on your
13 eyeglasses or something, from the view that we've had?

14 A Right. It normally has a headband that you can wear
15 around the back of your ears that would put it right where
16 eyeglasses would be at.

17 Q Okay. And the jury and we all got to see exactly what
18 you saw?

19 A Yes, sir. That is correct.

20 Q And it looked like you were the first person to go in
21 that apartment?

22 A Yes, sir.

23 Q And do you know how long people had been out of that
24 apartment?

25 A I'm not sure.

Cross-Examination of Kevin Smith by Mr. Hughes

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- 1 Q How old was that baby?
- 2 A I'm not sure.
- 3 Q And the baby was left in the apartment?
- 4 A That's correct.
- 5 Q And we can see that you did not move Ms. Nelson.
- 6 A No, sir.
- 7 Q Did you check out the apartment anymore? I mean, did
- 8 you look for a weapon or look for anything else?
- 9 A Yes, sir.
- 10 Q Did you find the weapon?
- 11 A I did not.
- 12 Q Did you find any cloth with blood on it?
- 13 A I do not recall.
- 14 Q Did you talk to anybody that night?
- 15 A I talked to several people that night.
- 16 Q Did any of them give statements?
- 17 A Now, are you talking about in reference to the case?
- 18 Q Yes.
- 19 A Okay. I believe that Ms. Nelson, Akera, gave a
- 20 statement.
- 21 Q Did she give it to you?
- 22 A I do not recall.
- 23 MR. HUGHES: No further questions, Your Honor.
- 24 THE COURT: Anything further?
- 25 ASST. SOL. FERGUSON: No, ma'am, Your Honor.

1 THE COURT: All right. Officer Smith, you may step
2 down, sir. Thank you.

3 OFFICER SMITH: Thank you.

4 THE COURT: Mr. Ferguson, you want to call your next
5 witness?

6 ASST. SOL. FERGUSON: Yes, ma'am, Your Honor. The
7 State calls Monique Chester.

8 (BRIEF PAUSE IN THE COURTROOM.)

9 BAILIFF: What's the witness's name again?

10 THE COURT: Monique Chester.

11 BAILIFF: She's not here.

12 ASST. SOL. FERGUSON: Your Honor, I believe she may be
13 across the courtyard in our other office with Ms. Cradle,
14 but I can get her momentarily.

15 THE COURT: Okay. Do you have someone who we can call
16 in the meantime?

17 ASST. SOL. FERGUSON: Your Honor, no, ma'am, the next
18 two are actually -- Ms. Cradle has them in our office just
19 across the courtyard.

20 THE COURT: Okay.

21 ASST. SOL. FERGUSON: And we sent Officer Lowery to go
22 get them.

23 THE COURT: Okay. Do y'all need a break? Are you
24 okay? Anyone need to refresh themselves? Yeah. Okay. I'm
25 going to send you back to your jury room. I can't keep some

1 of you out here and send some of you back, so I'm going to
2 send you all back. As soon as they are in here, we are
3 going to bring you all back out. Again, do not discuss this
4 case y'all.

5 (11:30 A.M., WHEREUPON, THE JURY EXITS THE COURTROOM.)

6 (11:45 A.M., WHEREUPON, THE JURY ENTERS THE COURTROOM
7 AND THE FOLLOWING IS HELD ON THE RECORD.)

8 THE COURT: All right. I understand our witnesses are
9 ready?

10 ASST. SOL. FERGUSON: Yes, ma'am.

11 THE COURT: All right. Bring them on in.

12 ASST. SOL. FERGUSON: Thank you, Your Honor. The State
13 calls Ms. Monique Chester.

14 THE COURT: Ms. Chester, please come forward to be
15 sworn.

16 (WHEREUPON, MS. MONIQUE CHESTER IS DULY SWORN.)

17 THE COURT: Please come around and have a seat on the
18 witness stand. Ms. Chester, adjust that microphone. Please
19 give your name to my court reporter, please.

20 MS. CHESTER: Monique Chester.

21 DIRECT EXAMINATION

22 BY ASST. SOL. FERGUSON:

23 Q Good morning, Ms. Chester.

24 A Good morning.

25 Q Do you live at Baytree Apartments?

- 1 A Yes.
- 2 Q And did you live there back on March the 20th, 2011?
- 3 A Yes.
- 4 Q Do you remember that day?
- 5 A Yes.
- 6 Q Do you know the defendant in this case, Mr. Antonio
- 7 Scott?
- 8 A Yes.
- 9 Q And could you point him out for the record, please?
- 10 A (WITNESS POINTS TO DEFENDANT, MR. SCOTT.)
- 11 Q Thank you. And do you know Ms. Akera Nelson?
- 12 A Yes.
- 13 Q Do you know Cynthia Nelson?
- 14 A Yes.
- 15 Q Okay. Now, what was going on on the 20th before all of
- 16 this occurred at Baytree and behind it?
- 17 A It was like a wake, but after like the funeral and
- 18 stuff like that.
- 19 Q Okay.
- 20 A Because his cousin had just passed away.
- 21 Q And you say "his cousin", who's cousin?
- 22 A Tone.
- 23 Q And "Tone", is that Mr. Scott, the defendant?
- 24 A Yes.
- 25 Q Okay. And so there was a party behind Baytree

Direct Examination of Monique Chester by Asst. Sol. Ferguson

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1 Apartments?

2 A It was like a get together, yes.

3 Q Okay. And you were at that get together?

4 A Yes.

5 Q Okay. And did you see the defendant that day?

6 A Yes.

7 Q Did you hear him talking?

8 A Yes.

9 Q And what did he say?

10 A He had an altercation. There was something that
11 happened like Saturday night or whatever.

12 Q Was that the previous night?

13 A Yeah.

14 Q Okay. Thank you.

15 A And he said that him and the lady went through
16 something or whatever and she called the police or whatever,
17 but he end up hiding from the police or whatever, hid in the
18 dumpster and threw the knife or whatever.

19 Q Did he say why he had gone there that night?

20 A He was going after Akera's momma.

21 Q And is that Cynthia Nelson?

22 A Yes.

23 Q Okay. And so he was saying -- who was he talking to
24 when he said this?

25 A He was talking to people around there, family members.

1 Q And so most of those people that were there, are they
2 related to the defendant?

3 A To him? Yes.

4 Q Okay. And now, he said that -- tell us again what he
5 said about going to Ms. Cynthia's apartment.

6 A It was an altercation and he went to her house or
7 whatever, and when he went to her house, she called the
8 police or whatever. So he hid in the dumpster.

9 Q And did you say something about a knife?

10 A He threw the knife away and hid in the dumpster because
11 the police came.

12 Q Okay. Did he say what he went to do there that night?

13 A To kill her.

14 Q Did he say anything -- what else did he say?

15 A So, like, later on that day, he was like, just like,
16 saying that she had called the police on him and stuff like
17 that and he was going to do like this here.

18 Q And what does that mean? What was he demonstrating?

19 A He was gonna stab her.

20 Q Now, how far away from him were you when you heard
21 this?

22 A I was like right here. He was like where that person
23 at right there.

24 Q Now, later on, what happened after you heard him say
25 that? Did you ever see a commotion coming from the

1 apartments over there?

2 A I ain't never went back over from where my apartment
3 was or whatever, and all of a sudden, I saw my little nephew
4 and I heard a commotion going on over there.

5 Q And over there, who's apartment was it?

6 A It was Reema.

7 Q And who ---

8 A Shareema, his sister.

9 Q And that's the defendant's sister?

10 A Yeah.

11 Q Okay. So that all occurred at her apartment?

12 A Uh-huh (affirmative).

13 Q Did you ever see the defendant leave that apartment?

14 A No.

15 Q Okay. Once you saw the commotion, I guess, how did you
16 first see the commotion?

17 A The only thing I know is Reema was standing outside and
18 she was like saying you need to call, like, call the police.

19 Q Did you see the defendant at all after you heard him
20 talking about the previous night, and about that day, in
21 particular?

22 A Unh-unh (negative).

23 Q Okay.

24 ASST. SOL. FERGUSON: I beg the Court's indulgence for
25 just one moment, Your Honor.

1 Q Thank you, Ms. Chester. I have no further questions
2 for you.

3 CROSS-EXAMINATION

4 BY MR. HUGHES:

5 Q Ms. Chester, how many people were at that wake?

6 A Oh, I don't know. There was a lot.

7 Q Well, ten, fifteen, twenty, thirty?

8 A I'd say about twenty.

9 Q Okay. And was there music playing?

10 A Yeah.

11 Q Was it soft music or loud music?

12 A It was like soft music. It wasn't no loud music.

13 Q Okay. And you say you saw Antonio there?

14 A Uh-huh (affirmative).

15 Q And did you talk to him?

16 A No.

17 Q Who were you talking to?

18 A I was talking to a couple more people. Well, a couple
19 more people was talking and I was sitting right there in the
20 car.

21 Q Okay. You were in the car?

22 A Uh-huh

23 Q Where was the car parked?

24 A Like right here and then he was standing over there.

25 Q Okay. Was he in a car?

Cross-Examination of Monique Chester by Mr. Hughes

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- 1 A No. He was standing up talking.
- 2 Q And who was he talking to?
- 3 A His cousin.
- 4 Q Who was that?
- 5 A His kin people.
- 6 Q And you say you heard him threaten to stab Cynthia
- 7 Nelson?
- 8 A He was bragging about the incident that happened
- 9 Saturday night and he was saying what he was going to do
- 10 when he see her.
- 11 Q Do you own a cell phone?
- 12 A Yeah.
- 13 Q Did you have it with you?
- 14 A No.
- 15 Q Was there anybody with you in the car?
- 16 A Yeah.
- 17 Q Who was with you in the car?
- 18 A There was a couple people in the car.
- 19 Q Okay. Who were they?
- 20 A My nephew and his cousin.
- 21 Q Okay. Do you know if they had cell phones?
- 22 A I ain't know. I didn't even ask them did they have any
- 23 cell phones.
- 24 Q Okay. So you hear a man threaten to kill someone and
- 25 you don't bother to call 911?

1 A I'm going through hell right now because of this trial.

2 Q But you did not call 911 that day when you heard that
3 he was threatening to kill her, did you?

4 A No, because I ain't never think he was gonna go through
5 with it.

6 Q Okay. So you really didn't think he was serious. You
7 thought he was joking?

8 A Yeah.

9 Q Okay. You gave a statement to law enforcement?

10 A Yeah.

11 Q How long after Ms. Nelson died did you give that
12 statement?

13 A I don't know. I think it was like the day after or two
14 days' after. I don't know.

15 Q Wasn't it actually about three or four days after?

16 A It could have been.

17 Q And you just suddenly remembered, Oh, I heard Antonio
18 threaten Cynthia," and you went and talked to law
19 enforcement, right?

20 A No, people like that should mind their own business and
21 stuff like that, so ---

22 Q So you didn't even think about what Antonio said until
23 people started talking to you?

24 A Yeah, I knew what he said, but I was minding my
25 business; but I felt bad about what happened to the lady.

Cross-Examination of Monique Chester by Mr. Hughes

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1 Q Did you fill out an incident report? A police report?

2 A I don't know. I can't even remember.

3 Q Did you write down on a sheet of paper what you say
4 happened?

5 A Yeah.

6 Q Did you sign it?

7 MR. HUGHES: May I approach, Your Honor?

8 THE COURT: You may.

9 Q Is this what you wrote?

10 A Yes.

11 Q Did you sign it?

12 A No, I didn't sign it.

13 MR. HUGHES: May I take that back, please?

14 THE COURT: You may.

15 Q So you give a statement to law enforcement two or three
16 days after it happened, and you don't even bother to sign
17 it?

18 A That been confidential.

19 Q I beg your pardon?

20 A That was supposed to have been confidential.

21 Q You mean that you thought you could accuse him of
22 something ---

23 A I wasn't accusing -- I ain't accusing anybody of
24 nothing. I'm just telling you what I overheard him saying.
25 I'm not accusing that man of doing nothing. I just know

1 what I overheard him say.

2 Q At a party, you're sitting in a car, music is playing,
3 and he's away from you talking, and you're the only person
4 that heard it?

5 A Everybody heard it.

6 Q Then why are you the only person to say anything?

7 A Didn't I just say that everybody say I should mind my
8 business? They minding their business.

9 Q So say that again, please?

10 A People told me I should mind my business.

11 Q Who did you contact in law enforcement?

12 A It was, like, Langdale.

13 Q Where did you talk with him at?

14 A Police station.

15 Q Okay. Who did you talk to before you went to see him?

16 A Langdale?

17 Q Did you ever talk to anybody from Cynthia Nelson's
18 family before you went to see the police officer?

19 A No.

20 Q Did you see anything on the television to make you go
21 see the police officer?

22 A No.

23 Q So just you suddenly remember you heard Antonio say
24 something, you went and talked to the detective?

25 A Because it's the right thing to do.

Cross-Examination of Monique Chester by Mr. Hughes

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1 MR. HUGHES: No further questions, Your Honor.

2 REDIRECT EXAMINATION

3 ASST. SOL. FERGUSON:

4 Q Ms. Chester, do you want to be here today?

5 A No.

6 Q Now, Mr. Hughes asked you if you were the only one who
7 heard what the defendant said, and you said that everybody
8 heard. Who was "everybody"?

9 A His family.

10 ASST. SOL. FERGUSON: I have no further questions, Your
11 Honor.

12 MR. HUGHES: Just one quick question, Your Honor.

13 THE COURT: Okay.

14 RECROSS-EXAMINATION

15 MR. HUGHES:

16 Q You were the only non-family member there?

17 A Yes.

18 Q And why were you there?

19 A Because me and my nephew getting ready to go to the
20 store, so he came and parked over there at the wake. So we
21 was just sitting in the car.

22 MR. HUGHES: No further questions, Your Honor.

23 THE COURT: You may step down. Any objections to her
24 being excused?

25 MR. HUGHES: None.

Redirect Examination of Monique Chester by Asst. Sol. Ferguson
Recross-Examination of Monique Chester by Mr. Hughes

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1 ASST. SOL. FERGUSON: No, Your Honor.

2 THE COURT: You are excused, ma'am. Call your next
3 witness. ASST. SOL. FERGUSON: The State calls Akera
4 Nelson.

5 (WHEREUPON, AKERA NELSON IS DULY SWORN.)

6 DIRECT EXAMINATION

7 BY ASST. SOL. FERGUSON:

8 Q Good morning, Ms. Nelson.

9 A Morning.

10 Q Do you remember back on March 20th, 2011?

11 A Uh-huh (affirmative).

12 Q Were you living at Baytree Apartments at that time?

13 A Yes.

14 Q And who were you living with?

15 A Myself.

16 Q And were you involved with the defendant in this case
17 at that time?

18 A Yes.

19 Q And how were you involved with him?

20 A How were we involved?

21 Q Yes, ma'am.

22 A We was together.

23 Q And do y'all have any children?

24 A Yes.

25 Q How many?

Direct Examination of Akera Nelson by Asst. Sol. Ferguson

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- 1 A One.
- 2 Q Okay. And do you see Mr. Scott in the courtroom today?
- 3 A Uh-huh (affirmative).
- 4 Q Can you point him out for us?
- 5 A (WITNESS POINTS OUT DEFENDANT.)
- 6 Q Thank you. Now, I want to talk about what happened in
7 that apartment that day. Why was it that you were going to
8 that apartment?
- 9 A Because he asked me to drop his son off.
- 10 Q And whose apartment is that?
- 11 A Shareema Behlin.
- 12 Q And who is that?
- 13 A His sister.
- 14 Q What were you driving that day?
- 15 A My van.
- 16 Q And what kind of van is that?
- 17 A It was a Grand Volvo, or something like that.
- 18 Q What color was it?
- 19 A Gold.
- 20 Q Okay. And who was with you when you went over to that
21 apartment?
- 22 A My mother.
- 23 Q Where was she?
- 24 A In the passenger side.
- 25 Q And so, did you take your son into that apartment?

1 A Yes.

2 Q What happened when you did that?

3 A When I walked in the apartment, he was sitting down.
4 He was just sitting down. They were watching TV. And he
5 got up, and he got up with a knife, and he was like, "Is
6 this how you wanna do things?" and I was like, "What are you
7 talking about?" And he said, "You gonna let your mom come
8 between us?"

9 Q And so did he threaten you with the knife?

10 A He was like -- he was just basically saying, "Is this
11 how you wanna do things?" He was just holding the knife,
12 and I was like, "It's not that serious. Chill out."

13 Q What happened next?

14 A We was talking or whatever, trying to calm him down;
15 put my son down on the chair. Then, like a minute later, my
16 mom walked in and she was like, "Mother fucker, I'm tired of
17 you beating on my daughter." Then, they started arguing or
18 whatever; at that point, I don't know what he did with the
19 knife, because when he hit her, I didn't see the knife.

20 Q But you saw the defendant hit your mom?

21 A Uh-huh (affirmative).

22 Q And did you see what side he hit her on?

23 A Uh-huh (affirmative).

24 Q What side was that?

25 A He hit her on this side (indicating the right side.)

Direct Examination of Akera Nelson by Asst. Sol. Ferguson

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1 Q Okay. Where were you standing when that happened?

2 A I was standing, like, by the chair.

3 Q And where was Ms. Behlin?

4 A She was, like, by the window.

5 Q Okay. And so, when your mom came in, did she have
6 anything in her hand?

7 A She had a cigarette.

8 Q Did she ever have a knife herself?

9 A No.

10 Q Did you ever see her swing at the defendant?

11 A No.

12 Q Did they just exchange words?

13 A Uh-huh (affirmative).

14 THE COURT: Is that a "yes", for the record?

15 A Yes.

16 ASST. SOL. FERGUSON: Yes, ma'am, thank you. If you'll
17 just say "yes" or "no".

18 Q Now, when you first walked in, you said that the
19 defendant had a knife?

20 A Uh-huh (affirmative).

21 Q Okay. And when you saw the defendant hit your mother,
22 you said you didn't know if he had anything in his hand?

23 A No.

24 Q Was it dark in that apartment?

25 A No.

1 Q Was it well-lit?

2 A Uh-huh (affirmative).

3 THE COURT: Is that a "yes", for the record, again?

4 A Yes.

5 THE COURT: Thank you, ma'am.

6 Q Okay. So what happened after you saw the defendant hit
7 your mother?

8 A I went to the kitchen. I got a mop and I started
9 chopping with it.

10 Q Did you know how serious your mom's condition was at
11 that point?

12 A No. I wasn't -- didn't really think about her
13 condition, because when I saw him hit her, I just -- I
14 blacked out.

15 Q What happened after y'all were in the kitchen?

16 A Reema called the ambulance.

17 Q And that's Shareema Behlin?

18 A Uh-huh (affirmative).

19 Q She called 9-1-1?

20 A Uh-huh (affirmative).

21 Q Okay. Did you ever get on the phone with 9-1-1?

22 A Yes, sir.

23 Q Okay. Did she call and then you got on her phone?

24 A She called and then the phone must have hung up or
25 something, and I called back and was asking them what was

Direct Examination of Akera Nelson by Asst. Sol. Ferguson

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1 taking them so long.

2 Q Okay. What did the defendant do after all this
3 happened?

4 A Well, he was basically had, like, his shirt, trying to
5 put pressure or whatever to her neck or whatever.

6 Q And then what did he do?

7 A He basically -- when the police got there, he ran.

8 Q Where did he run?

9 A Behind the building.

10 Q Did you see him at all after that?

11 A No.

12 Q Have you talked to him since that day?

13 A Yes, sir.

14 Q Has he ever asked you to change your statement from
15 that day?

16 A Yes, sir.

17 Q Has he?

18 A Yes, sir.

19 Q And what did he ask you to say?

20 A He asked me to say that we was arguing and he was
21 trying to stab me, but my mom jumped into the way.

22 Q Is what you told us the first time what happened that
23 day?

24 A Yes.

25 Q Have you changed your statement at all from day one?

1 A No.

2 Q Did you let the defendant influence your memory of what
3 occurred?

4 A No.

5 ASST. SOL. FERGUSON: Your Honor, I beg the Court's
6 indulgence for just one moment.

7 Q Ms. Nelson, did you ever see the knife again at all
8 that day?

9 A No, sir.

10 Q Thank you, Ms. Nelson. I have no further questions for
11 you.

12 THE COURT: Mr. Hughes?

13 CROSS-EXAMINATION

14 BY MR. HUGHES:

15 Q Ms. Nelson, why were you in that apartment?

16 A Because he asked me to bring his son.

17 Q Did he ask you to bring your mother?

18 A No.

19 Q Okay. Did he know your mother was going to come with
20 you?

21 A No.

22 Q Did he know your mother was out in the van?

23 A Yes.

24 Q That she was outside?

25 A Uh-huh (affirmative).

Cross-Examination of Akera Nelson by Mr. Hughes

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- 1 Q Say "yes" or "no", please.
- 2 A Yes.
- 3 Q And after your mother was injured, what did he do?
- 4 A He tried to put pressure on her.
- 5 Q How did she get over to the sofa?
- 6 A She fell onto the sofa.
- 7 Q So she was very much in the apartment when she was
- 8 stabbed?
- 9 A Yes.
- 10 Q And was she saying anything to Antonio?
- 11 A After she got stabbed or before?
- 12 Q No, before.
- 13 A She was cussing him out.
- 14 Q Okay. Did she say anything after she got stabbed?
- 15 A No.
- 16 Q What did you do after your mother was stabbed?
- 17 A I went into the kitchen and I grabbed a mop stick and I
- 18 started chopping with it.
- 19 Q You grabbed a what, please?
- 20 A I grabbed a mop stick.
- 21 Q A mop stick?
- 22 A Uh-huh (affirmative).
- 23 Q Why?
- 24 A Because he hit my mother.
- 25 Q Did you attempt to help your mother at all?

1 A No, I just blacked out. I just thought he had hit her
2 and ...

3 Q When did you leave the apartment?

4 A When did I leave the apartment?

5 Q Right.

6 A After he left.

7 Q But you said that he didn't leave until the police
8 showed up.

9 A Yeah, and I went running behind him.

10 Q Okay. How old was your son then?

11 A One.

12 Q And where was he?

13 A On the chair.

14 Q And what do you mean when you say "you blacked out"?

15 Did you faint? Did you fall to the ground? Do you just not
16 remember?

17 A No, I just basically felt like I had to do something to
18 protect my mom.

19 Q So let me make sure I understand. Antonio Scott did
20 not know your mother was going to be there.

21 A No.

22 Q Antonio Scott tried to stop the bleeding of your
23 mother.

24 A Right.

25 Q And Antonio Scott did not leave until law enforcement

Cross-Examination of Akera Nelson by Mr. Hughes

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1 and EMT's arrived; is that what you testified?

2 A He didn't leave until the police came.

3 Q Until the police showed up?

4 A Uh-huh (affirmative).

5 MR. HUGHES: No further questions, Your Honor.

6 ASST. SOL. FERGUSON: No redirect, Your Honor.

7 THE COURT: Any objection to this witness being
8 excused?

9 ASST. SOL. FERGUSON: No, ma'am, Your Honor.

10 MR. HUGHES: None, Your Honor.

11 THE COURT: You're excused, Ms. Nelson.

12 THE COURT: If the State will call the next witness.

13 ASST. SOL. FERGUSON: Thank you, Your Honor. The State
14 calls Investigator Daniel Litchfield.

15 THE COURT: Come on forward, Inv. Litchfield.

16 WHEREUPON, INVESTIGATOR DANIEL LITCHFIELD IS DULY
17 SWORN.

18 DIRECT EXAMINATION

19 BY ASST. SOL. FERGUSON:

20 Q Good morning, Inv. Litchfield.

21 A Good morning, sir.

22 Q Could you spell your last name for the court reporter?

23 A Yes. It's Litchfield, L-I-T-C-H-F-I-E-L-D.

24 Q Thank you. Who do you work for?

25 A I work for the Ridgeland City Police Department.

1 Q And what do you do for them?

2 A I'm head investigator for Ridgeland Police Department.

3 Q How long have you worked for them?

4 A Since July of '05, about six years.

5 Q And what kind of training and education did you have to
6 undergo in order to be an investigator at Ridgeland Police
7 Department?

8 A I've been a police officer for 14 years total, to
9 include the police academy and various extra classes
10 afterwards, to include interview and interrogation, crime
11 scene preservation, a whole list of stuff.

12 Q Thank you. Now, were you working in that capacity back
13 on March 20th, 2011?

14 A Yes, sir.

15 Q And did you respond out to Baytree Apartments that day?

16 A Yes, sir.

17 Q And why did you go out there?

18 A I got a call from Patrol Officer Kevin Smith in
19 reference to a stabbing at the Baytree Apartments.

20 Q And what did you do when you got there?

21 A I, basically, got all the information I could at the
22 time, who the suspect was, if we had any, which they did.
23 Any information on the victim, how she was doing; which
24 wasn't good. And any information about where he may have
25 ran to, which we got all that.

Direct Examination of Det. Daniel Litchfield by Asst. Sol. Ferguson

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1 Q Okay. Did you ever conduct a physical search of that
2 apartment?

3 A Yes, the first thing I did was look for a weapon.

4 Q Okay. And did you recover anything?

5 A We did recover a steak knife out of the sink and also a
6 handle out of the trash can.

7 Q And through your investigation, were you able to
8 determine whether or not those were the knife involved in
9 this case?

10 A We sent it off to SLED and SLED it was of no
11 evidentiary value at all in those weapons.

12 Q Okay. Thank you. Now, when you collected that broke
13 knife handle and that knife, did you see any blood on it?

14 A No.

15 Q Why did you collect them then?

16 A Because they were knives and we were told that a knife
17 was used in the actual assault.

18 Q Now, did you search the area -- I'd say the perimeter
19 around Baytree Apartments for a murder weapon?

20 A Yes, I did.

21 Q And how extensive was that, sir?

22 A Fairly extensive. We knew a route that they had last
23 seen him traveling. We fanned out on each side of that
24 route to include that route, looked in the woods, on the
25 ground; talked to some people who were having a get

1 together; I believe it was a wake and went from there.

2 Q And nothing was ever recovered as a result of that
3 search?

4 A No.

5 Q Okay. Did you ever have an opportunity to speak to the
6 defendant in this case, Mr. Scott?

7 A Yes, sir. After he was arrested, we interviewed him.

8 Q And when was that?

9 A I believe it was on the 22nd. It was the day after he
10 was arrested.

11 Q Okay. And where did that questioning take place?

12 A It took place at the Jasper County Detention Center,
13 but it was in the judge's chamber area where they have bond
14 hearings.

15 Q Okay. And who was present during that interview?

16 A Myself, the defendant, Mr. Scott, and Christopher
17 MacIntosh, another investigator.

18 Q Okay. And was the defendant Mirandized prior to you
19 questioning him at all?

20 A Yes, sir.

21 Q And by "Mirandize", what does that mean?

22 A Miranda is a set of information that you have to give a
23 person that is being interviewed in reference to a case that
24 he is charged with. I can read it for you if you would like
25 me to.

1 Q Please, sir.

2 A We have a standard form that we read. It's "You have
3 the right to remain silent. Anything you say can or will be
4 used against you in a Court of law. You have the right to
5 an attorney. If you cannot afford one, one will be
6 appointed for you before any questions. At any time during
7 this interview and questioning, you have the right to stop
8 answering any questions."

9 Q And did the defendant appear to understand those
10 rights?

11 A Yes, sir.

12 Q Okay. And did he voluntarily agree to talk to you
13 after he was advised of those rights?

14 A Yes, sir.

15 Q And did you promise him or threaten him any way in
16 exchange for his statement?

17 A No, sir.

18 Q Okay. And basically, what did he say happened in the
19 apartment that night?

20 A After Miranda, I told him we were here to find out the
21 truth and what was going on, you know, his side of the
22 story, obviously. He told us that he was there. He had an
23 altercation, a verbal argument, with Cynthia Nelson. During
24 this argument, he stated that Cynthia Nelson pulled
25 something shiny and silver out of her pocket, went towards

1 him, and he stepped to the side and did a -- for lack of a
2 better term, a martial arts move, pushing her elbow up,
3 causing her to stab herself in the throat.

4 Q Now, did he physically show you how this occurred?

5 A Yes, sir.

6 Q And could you show us how he demonstrated that this
7 occurred?

8 A Yes, sir.

9 OFFICER LITCHFIELD: Be okay, Judge?

10 THE COURT: Sure.

11 A Now, mind you, he was handcuffed, but he said he was
12 standing there. She reached into her pocket, and when she
13 went towards him, he said he did this and this. In other
14 words, her arm went by him and he pushed the arm and she
15 stabbed herself in the neck. That was his statement.

16 Q Okay. So he admitted he was in the apartment that
17 evening?

18 A Yes, sir.

19 Q Admitting that he and Cynthia Nelson exchanged words?

20 A Yes, sir. (DEFENDANT GETS BACK UP ON THE WITNESS
21 STAND.)

22 Q Okay. Did you ask him if he had ever threatened to
23 kill Cynthia Nelson?

24 A I did not.

25 Q Okay. Did you confront him with statements that

1 someone had given saying that he had threatened to kill her?

2 A I did.

3 Q And did he -- what did he say?

4 A He denied it. He said, "We had arguments and we never
5 liked each other," and that kind of stuff; but it was
6 nothing as far as "I was going to kill her."

7 Q Okay. Now approximately how long did that interview
8 with the defendant last?

9 A Approximately 30 minutes.

10 Q Okay. Did you interview anybody else as part of your
11 investigation?

12 A No one under arrest. We talked to different people in
13 reference to what do you know about this case?

14 Q Okay. Were you able to find any information to
15 corroborate the defendant's version of the story that
16 actually Ms. Cynthia Nelson was the aggressor and had the
17 knife?

18 A No, sir. Not at all.

19 Q Okay.

20 ASST. SOL. FERGUSON: I beg the Court's indulgence just
21 one moment, Your Honor.

22 THE COURT: Okay.

23 ASST. SOL. FERGUSON: Thank you.

24 Q Thank you, Investigator Litchfield, I have no further
25 questions for you.

1 A Yes, sir.

2 CROSS-EXAMINATION

3 BY MR. HUGHES:

4 Q Det. Litchfield, when you say you had a conversation
5 with my client at the detention center, do you know how he
6 got to the detention center?

7 A He was arrested and transported there.

8 Q Didn't he turn himself in?

9 A Yes. He called, I believe, a detective at the time,
10 who worked for the Sheriff's Office.

11 Q And was I there that day?

12 A I don't remember.

13 Q Was I in that room?

14 A Oh, no, sir.

15 Q So he talked to you freely and voluntarily?

16 A Uh-huh (affirmative).

17 THE COURT: Say "yes" for the record.

18 A Oh, I'm sorry. Yes, sir.

19 Q He had no qualms about talking to you?

20 A No, sir.

21 Q Open and above board with you?

22 A Yes, sir.

23 Q Do you know if my client does know martial arts?

24 A Not personal knowledge, but I know his father and his
25 father is a black belt and that he taught his son some

1 stuff.

2 Q Okay. Did you bother to take off the handcuffs and
3 have him demonstrate exactly what happened?

4 A No, sir.

5 Q Why not?

6 A He was under arrest for murder and I didn't think that
7 would be appropriate.

8 Q But you were investigating a crime, weren't you?

9 A Correct.

10 Q And part of the investigation is to check all the
11 aspects of it?

12 A Correct.

13 Q So you didn't check that aspect of it?

14 A For officer safety, I did not.

15 Q I'm sorry. I'm not saying you handed him a knife, but
16 couldn't you have at least attempted to see if he knew what
17 he was talking about?

18 A I can do that with him having the handcuffs on, sir.

19 Q Most martial arts don't take place in handcuffs, do
20 they officer?

21 A I've been trained with some that can.

22 Q Okay. But when he was talking to you, was he nervous
23 and scared or was he calm and relaxed?

24 A He was calm, but there was obviously a sense of
25 nervousness; I mean, it is a serious situation.

1 Q And at the time you talked to him, was he under arrest
2 for murder?

3 A He was actually under arrest for attempted murder.

4 Q It was not until the interview was over that you
5 actually informed him that it was actually a murder
6 investigation?

7 A About halfway through the interview I informed him that
8 she had passed away.

9 Q Okay. Did he change his story at that time?

10 A No.

11 Q Did he ask to see me?

12 A No, sir.

13 Q Did he stop talking?

14 A No, sir,

15 Q He cooperated fully with you?

16 A Yes, sir.

17 Q Did you interview Monique Chester?

18 A I talked to her briefly while she was giving a
19 statement to Officer Langdale.

20 MR. HUGHES: No further questions, Your Honor.

21 THE COURT: Mr. Ferguson?

22 ASST. SOL. FERGUSON: No redirect, Your Honor.

23 THE COURT: All right. You may step down, sir. Mr.
24 Ferguson, your next witness?

25 ASST. SOL. FERGUSON: Yes, ma'am, but we may reach a

1 point where our out of town witnesses will be arriving after
2 the lunch break.

3 THE COURT: Okay. Ladies and gentlemen of the jury,
4 it's my understanding that the State has a couple of
5 witnesses who are coming from out of town. It's scheduled
6 for 2:00, and I think we're moving a little bit faster than
7 we anticipated. That just means, ladies and gentlemen, that
8 we're going to have a nice, long lunch. I'm going to go
9 ahead and send you all to lunch.

10 Again, I need to remind you that while you do go to
11 lunch, you are not to do any of your own independent
12 research. You are not to discuss this case with anyone you
13 may come in contact with or with each other. Again, you
14 have not heard all of the evidence in this case and it would
15 be inappropriate to do so. Ladies and gentlemen, I am
16 asking that you be back in the jury room at 2:00 and we're
17 going to go ahead and continue the trial of this case.
18 Have a nice lunch, y'all.

19 (WHEREUPON THE JURY EXITS THE COURTROOM AND COURT IS IN
20 RECEESS FOR LUNCH.)

21 THE COURT: All right. Is everyone ready to go?

22 ASST. SOL. FERGUSON: Yes, ma'am, Your Honor.

23 MR. HUGHES: Yes, Your Honor.

24 THE COURT: Are your two witnesses here?

25 ASST. SOL. FERGUSON: We have, actually, three.

1 THE COURT: Three? Okay.

2 ASST. SOL. FERGUSON: And the next one is here and
3 ready. The second one is being escorted in by Ms. Cradle,
4 from Savannah. I've been told he's moments away. And our
5 third is here. So if we need to call them out of order, we
6 most certainly can.

7 THE COURT: All right. Thank you. Bring the jury in,
8 please.

9 (2:15 P.M., WHEREUPON, THE JURY ENTERS THE COURTROOM
10 AND THE FOLLOWING IS HELD ON THE RECORD.)

11 THE COURT: Welcome back, Ladies and gentlemen. I
12 trust that y'all have had a nice lunch. At this time, we
13 are going to go ahead and continue with the trial of this
14 case. Mr. Ferguson, if you will call your next witness.

15 ASST. SOL. FERGUSON: Thank you, Your Honor. The State
16 calls Shareema Behlin.

17 WHEREUPON, SHAREEMA BEHLIN, IS DULY SWORN.

18 THE COURT: I want you to adjust the microphone, Ms.
19 Behlin, and also, if you would, for my court reporter, spell
20 your first and last name for her, all right?

21 MS. BEHLIN: Yes.

22 THE COURT: Thank you, ma'am. I appreciate it.

23 MS. BEHLIN: My name is Shareema Behlin, S-H-A-R-E-E-M-A
24 B-E-H-L-I-N.

25 THE COURT: Thank you, ma'am.

DIRECT EXAMINATION

1
2 ASST. SOL. FERGUSON:

3 Q Good afternoon, Ms. Behlin.

4 A Good afternoon.

5 Q Do you live at Baytree Apartments?

6 A No.

7 Q Did you live at Baytree Apartments back in 2011?

8 A (WITNESS SHAKES HEAD.)

9 Q You need to say "yes" or "no".

10 A Yes, I did.

11 Q Thank you, ma'am. You did. And what apartment was
12 that?

13 A 2-F.

14 Q Okay. And are you related to the defendant, Mr.
15 Antonio Scott?

16 A Yes, he's my brother.

17 Q Okay. And specifically, on March the 20th, 2011, do
18 you remember that day?

19 A Yes, sir.

20 Q Did you see Mr. Antonio Nelson strike Ms. Cynthia
21 Nelson on that day?

22 A Antonio Scott? Yes, I did see him strike her.

23 Q Okay. Did you call 9-1-1 that day?

24 A Yes, I did.

25 Q I have no further questions for you. Thank you, Ms.

1 Behlin.

2 CROSS-EXAMINATION

3 BY MR. HUGHES:

4 Q Did you see anything in Antonio's hand?

5 A No, I didn't.

6 Q Did you see an injury on Ms. Cynthia Nelson?

7 A No, I didn't. I just saw the blood pouring from her.

8 Q What did Antonio do once Ms. Nelson was injured?

9 A He came from the kitchen and he was like -- because
10 Akera stated, "Oh, it's sticking out of her neck." And when
11 he came, he was like, "Nothing is sticking out of her neck."
12 And then he pulled her jacket down and he jumped back and he
13 jumped up on the chair and grabbed his shirt and he was
14 holding her neck.

15 Q So he was ---

16 A Yeah, he was -- he had his shirt in his hand and he was
17 applying pressure to her neck.

18 Q Okay. What did you do -- did you attempt to assist Ms.
19 Nelson?

20 A No, I just kept trying to get Akera to the phone
21 because they were asking me questions I didn't know.

22 Q Were you inside or outside?

23 A I was inside the apartment. Then, I ran outside
24 because she ran outside and I was still trying to get her to
25 get on the phone.

1 Q But where was Antonio?

2 A He was inside the apartment applying pressure to her
3 neck, but yes, he did run outside, or whatever, once the
4 police was coming, or whatever, and she was behind him.

5 Q But Antonio did not leave until help got there?

6 A Uh-huh (affirmative).

7 Q Say "yes" or "no", please.

8 A Yes.

9 Q Okay. And you did not see Antonio with a weapon?

10 A No, never.

11 Q He did not have a knife before Akera got there?

12 A No. We were sitting there and he had just come from
13 around the corner from my Aunt Elizabeth's house, because
14 her son had just passed, and she had come to my apartment
15 and got him from there between 11:30 and 12:00, and I asked
16 him, he was around here for at least probably four or five
17 hours, and when he came back, he asked me for something to
18 eat and we were sitting there. He asked me what was I
19 watching, and I had never let him watch that before, and I
20 said, "Yeah, I know, because you would never be back." And
21 we were sitting there. He didn't have a knife in his hand.
22 We were eating. The plate was still there even when I came
23 back from Augusta, Georgia, dried out turkey burgers in the
24 oven and the movie we were watching was still in my DVD
25 player.

1 Q And why did Akera come over there that day?

2 A She barged through my door. She claims she came to
3 bring A.J., Antonio, Jr.

4 Q And what did Antonio do when A.J. was there?

5 A A.J. was on the chair in the living room, the long
6 couch in the living room, and they were just in the kitchen
7 arguing back and forth, and then, next thing I know, Cynthia
8 is through my door; everybody's arguing. She falls. I
9 asked her if she was okay. I thought she was having a
10 stroke or something, because she never moved. And when she
11 shook her head "no" to me, that's when I saw all the blood
12 pouring down her shirt and I just grabbed my phone to call
13 911.

14 Q Who picked her up? Or did she fall on the couch?

15 A She fell on the couch, like, when he hit her with the
16 inside of his hand. She fell on the couch and the way she
17 landed, or whatever, the blood wasn't pouring from where the
18 wound was, it was pouring from the opposite side because of
19 the way she landed on the couch, and when she shook her
20 head, I saw she had on a white t-shirt, so I saw all the
21 blood running down her shirt.

22 Q And Antonio was doing what, again?

23 A He was in the kitchen arguing -- he and Akera was in
24 the kitchen arguing after that, or whatever, and then, like,
25 when she finally came out she was like, "Oh, it's sticking

1 out of her neck."

2 Q Did you see anything sticking out of her neck?

3 A I didn't see anything sticking out of her neck. I just
4 kept calling her name or whatever, because I know she was a
5 sickly person, or whatever, so I just kept calling her name
6 and I was on the phone with 911.

7 Q Okay. Let me make sure I've got it right. Antonio went
8 to your place and was eating supper?

9 A Uh-huh (affirmative). Yes, he was.

10 Q Akera comes in with A.J.?

11 A Yes.

12 Q Akera and Antonio had an argument?

13 A Yes.

14 Q Cynthia comes in to your apartment?

15 A Yes.

16 Q Cynthia has a wound somehow?

17 A Yes.

18 Q Antonio takes his shirt and applies pressure to the
19 wound and stays there until help gets there?

20 A Uh-huh (affirmative).

21 Q Yes or no, please?

22 A Yes, sorry.

23 MR. HUGHES: No further questions, Your Honor.

24 THE COURT: Any redirect?

25 REDIRECT EXAMINATION

1 ASST. SOL. FERGUSON:

2 Q Ms. Behlin, did you give a written statement that day?

3 A No, I didn't.

4 Q Were you asked to?

5 A I was asked to, but I didn't.

6 Q Okay. Thank you. No further questions.

7 MR. HUGHES: No re-cross.

8 THE COURT: Any objection to her being excused?

9 ASST. SOL. FERGUSON: No, Your Honor.

10 MR. HUGHES: None from the defense.

11 THE COURT: You are excused. Thank you. Call your
12 next witness.

13 ASST. SOL. FERGUSON: The State calls Dr. Lee Marie
14 Tormos.

15 (BRIEF PAUSE IN COURTROOM.)

16 THE COURT: We're looking for Dr. Tormos.

17 ASST. SOL. FERGUSON: Well, actually, Your Honor, I see
18 my other doctor, if I could just call Dr. William McRae.

19 THE COURT: That's fine. Go ahead and bring Dr. McRae
20 in.

21 ASST. SOL. FERGUSON: Perfect.

22 WHEREUPON, DR. WILLIAM McRAE, IS DULY SWORN.

23 DIRECT EXAMINATION

24 BY ASST. SOL. FERGUSON:

25 Q Good afternoon, Dr. McRae.

1 A Good afternoon.

2 Q Who do you work for?

3 A Memorial Hospital.

4 Q And what do you do for them?

5 A I'm a Radiology Resident.

6 Q And what kind of education and training did you have to
7 undergo in order to work for that hospital?

8 A After graduating college, I went to medical school for
9 four years. I did a Surgical residency for two years, and
10 then switched to Radiology.

11 Q And I want to ask you specifically about a patient that
12 came into your hospital back on March the 20th of 2011. Do
13 you remember about that date?

14 A Yes.

15 Q And specifically, Ms. Cynthia Nelson, did you see her
16 in your hospital on that day?

17 A I did.

18 Q Okay. And what was her condition when you saw her?

19 A She was transferred to us from an outside facility.
20 When she was transferred to us, she was intubated, that
21 means she was on a mechanical ventilator. We were told that
22 she was found down, and I'm not sure where, for an extended
23 period of time, and when the paramedics arrived to her at
24 the scene, from our report, we were told that she was in
25 something called "PDA", which is pulseless electrical

1 activity, which is a cardiac rhythm, which is unsustainable
2 with life, so they began CPRR. They intubated her at the
3 scene, meaning they put a breathing tube down. They
4 transferred her from an outside hospital to our hospital, or
5 maybe they brought her directly; I'm not aware of that. I
6 cannot recall. When she came to our facility, I saw her in
7 the trauma bay, and at that time she was intubated. She was
8 undergoing CPRR as they brought her in. She was on a
9 medication that is known as a vaze (sic) suppressor that
10 sustains your cardiac output. Her blood pressure was
11 extremely low and from that point, you know, we continued to
12 resuscitate the patient and ordered some additional tests.
13 Q And at any point, did you determine that Ms. Nelson was
14 brain dead?

15 A Well, when she first arrived, on initial examination,
16 initial clinical examination, her pupils, bilateral pupils
17 were fixed and dilated, which is certainly and ominous sign.
18 We sent her to the CT Scanner to obtain a CT scan of the
19 brain, which showed significant swelling of the brain. We
20 transferred her to the intensive care unit. At that time,
21 we consulted Dr. Kevin Amar, who is a neurosurgeon, to get
22 his professional opinion, because from our opinion, she was
23 likely brain dead. From the scan that we had received, as
24 well as from our physical examination, she had no gag
25 reflex, no central reflexes of the nervous system. She had

1 a Glasgow coma score, which is basically an indicator of a
2 level of consciousness of a 3T, that's the lowest possible
3 score you can receive on a scale of 15; 3 is the lowest,
4 which is also a poor indicator of prognosis. So we
5 consulted a neurosurgeon and obtained additional studies,
6 including a nuclear medicine perfusion study, which shows
7 perfusion to the brain, basically blood flow to the brain,
8 which showed no flow. Which at that point, we were fairly -
9 - we made the diagnosis of brain death.

10 Q And did you actually pronounce her dead at some point?

11 A Yes.

12 Q And what time was that and what date was that?

13 A I cannot recall. I have my doctor's notes here if I
14 can look at ---

15 Q Yes, sir.

16 A --- and I can tell you exactly when. This is actually
17 the death summary that I dictated. March 21st, 2011, at
18 22:05 the patient was declared brain dead.

19 Q And by brain dead, now what is the difference between a
20 physical death and a brain death? Is there a difference?

21 A With brain death, the central nervous system sustains
22 breathing, you know, your cardiac output, your heart rate.
23 With brain death, you're unable to sustain the main
24 functions of life. She required mechanical ventilation. She
25 was requiring three medications to be exact to keep her

1 blood pressure up to a point to profuse her organs to allow
2 them to receive oxygen. With brain death, you know, you do
3 not have the capabilities of breathing on your own,
4 supporting blood flow to your outside organs, and
5 incompatible with life, unless you are being supported by,
6 say, mechanical ventilation, or medicines to keep you alive.

7 Q Is that what's commonly called as life support?

8 A Exactly. She was on life support.

9 Q And was there ultimately a decision to remove Ms.
10 Nelson from life support?

11 A Yes, and that was after discussing with her family that
12 she was brain dead and they agreed to removing the life
13 support after we told -- discussed with the family that she
14 was brain dead. And I believe the neurosurgeon -- I don't
15 want to speak for him, but I believe he had also held that
16 conversation with the family.

17 Q Is brain death an irreversible medical condition?

18 A Yes.

19 Q Okay. Thank you, Dr. McRae. Please answer any
20 questions that Mr. Hughes may have.

21 A Okay.

22 MR. HUGHES: No questions, Your Honor.

23 THE COURT: All right. Any objection to Dr. McRae
24 being excused?

25 MR. HUGHES: None from the defense.

Direct Examination of Dr. William McRae by Asst. Sol. Ferguson

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1 ASST. SOL. FERGUSON: No, ma'am, Your Honor.

2 THE COURT: You are excused, sir. Thank you.

3 DR. MCRAE: Okay.

4 THE COURT: Call your next witness.

5 ASST. SOL. FERGUSON: The State calls Dr. Lee Marie
6 Tormos.

7 WHEREUPON, DR. LEE MARIE TORMOS, IS DULY SWORN.

8 THE COURT: Dr. Tormos, come around and adjust the
9 microphone. If you would give your name to my court
10 reporter and spell your last name for her as well.

11 DR. TORMOS: My name is Lee Marie Tormos, T-O-R-"M"- as
12 in Mary-O-S.

13 DIRECT EXAMINATION

14 BY ASST. SOL. FERGUSON:

15 Q Good afternoon, Dr. Tormos.

16 A Good afternoon.

17 Q Who do you work for?

18 A I work for the Medical University of South Carolina.

19 Q And what do you do for them?

20 A I am a Forensic Pathologist on staff.

21 Q And what is a Forensic Pathologist?

22 A A Forensic Pathologist is a specialist. A medical
23 doctor that specializes in determining how injury affects
24 the body and helps determine the cause and manner of death.

25 Q And what type of education and training did you have to

1 undergo in order to become a Pathologist.

2 A Okay. In order to become a Pathologist, first, you
3 have to become a doctor. So, after four years of a
4 Bachelors Degree, usually in Sciences, you go to medical
5 school for an additional four years to obtain your M.D.
6 degree. Then, after that, you have to do specialty training
7 for an additional four years. Then, sub-specialty training
8 as a Forensic Pathologist for an additional year; for a
9 total of 13 years after high school.

10 Q And how long have you been a Pathologist?

11 A I've been a Pathologist for four years.

12 Q Okay. Now, as part of your duties, do you perform
13 autopsies?

14 A I do.

15 Q And what is an autopsy?

16 A An autopsy is considered a gold standard diagnostic
17 procedure for determining how injury or disease works upon
18 the body on contact.

19 Q And how many autopsies would you say you've performed
20 in your career as a Pathologist?

21 A I've performed over 700 autopsies.

22 Q And Dr. Tormos, have you ever testified in a Court of
23 law as an expert?

24 A Yes, I have.

25 Q About how many times?

Direct Examination of Dr. Lee Marie Tormos by Asst. Sol. Ferguson

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1 A Once

2 Q All right.

3 ASST. SOL. FERGUSON: Your Honor, at this point, I
4 would move to have Dr. Tormos deemed an expert in Forensic
5 Pathology.

6 THE COURT: Any objection?

7 MR. HUGHES: No objection, Your Honor.

8 THE COURT: Ladies and gentlemen, typically, a witness
9 cannot testify to opinion. We allow an exception for that
10 for people that we deem experts. In this case, Dr. Tormos
11 is going to be qualified in the area of Forensic Pathology.
12 She can give you her opinion in that area, as well as her
13 reasons for the opinion. And of course, her testimony is to
14 be used as you see fit and appropriate, and certainly as
15 compared to other testimony you've heard in the case. All
16 right?

17 ASST. SOL. FERGUSON: Thank you.

18 Q Dr. Tormos, what is the procedure of an autopsy; if you
19 could explain that for the jury.

20 A An autopsy starts with an external examination where we
21 look at the body. First, as it arrives, we document all the
22 finding on the body, including the clothing; personal
23 effects. We then examine the body closely for signs of
24 injury or disease. Then proceed with an internal
25 examination of every organ looking for any evidence of

1 injury or disease on the inside of the body.

2 Q And did you perform an autopsy on a Cynthia Nelson in
3 this case on or about March the 24th of 2011?

4 A Yes, I did.

5 Q And where was that autopsy performed?

6 A It was performed at the Medical University of South
7 Carolina Forensic Department.

8 Q And did you do, first, an external examination?

9 A Yes, I did.

10 Q And what were your findings from that external
11 examination?

12 A We received a body that was nude and was an obese lady
13 who had a stab wound to the left jawline to be precise.

14 Q And Dr. Tormos, I want to show you what has already
15 been admitted into evidence as State's Exhibit Number Eight
16 and Number Ten.

17 ASST. SOL. FERGUSON: Your Honor, may I approach the
18 witness?

19 THE COURT: You may.

20 Q Dr. Tormos, do you recognize what is being shown in
21 those photos?

22 A Yes, I do.

23 Q And are they a fair and accurate depiction of the
24 findings of your external examination of Ms. Cynthia Nelson?

25 A Yes, they are.

Direct Examination of Dr. Lee Marie Tormos by Asst. Sol. Ferguson

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1 ASST. SOL. FERGUSON: And Your Honor, if Dr. Tormos
2 could step down and explain what we're seeing in these
3 photographs.

4 THE COURT: Dr. Tormos, you may step down.

5 Q And Dr. Tormos, we'll start with State's Exhibit Number
6 Eight. If you could show that where most of the jury could
7 see it and if you could explain what's being shown in it.

8 A State's Exhibit Number Eight is the decedent, Cynthia
9 Nelson.

10 THE COURT: Dr. Tormos, could you speak up for me,
11 please? Thank you.

12 A And this is a picture of the left side of her head,
13 including the neck area. And as you can see, there is a
14 velcro strap, because she was intubated at the hospital, so
15 she didn't have a breathing tube inserted. You can see her
16 ear and you can see underneath the ear there is a lesion
17 that when we examined it in the autopsy room was that of a
18 stab wound.

19 Q And Dr. Tormos, this is State's Exhibit Number Ten.

20 A State's Exhibit Number Ten is a close-up picture of the
21 stab wound itself. Before being cleaned, as you can see,
22 there is hemorrhage or bleeding from the stab wound to the
23 outside of the body and this is located on the left jaw
24 line, just inferior to the left ear.

25 Q All right. Thank you, Dr. Tormos, if you would take

1 your seat at the witness stand again.

2 (DR. TORMOS RETURNS TO THE WITNESS STAND.)

3 Q Now, as part of your external examination, you observed
4 the stab wound. Can you tell us about it?

5 A Yes. The stab wound measured .35 of an inch, or about
6 1/3 of an inch in length, and 1/20th of an inch in width.
7 And it was obliquely oriented, meaning diagonally oriented
8 with the blunt edge superiorly, or towards the back of the
9 head, and the sharp edge inferiorly, or towards the front of
10 the head.

11 Q And what does that tell you about the knife that was
12 used to cause that injury?

13 A This is probably a single-edge knife.

14 Q Thank you. I apologize, Dr. Tormos.

15 A There is an associated contusion just inferior to the
16 stab wound and this abrasion is actually rectangular and
17 maybe from either the perpetrator's hand as it touched the
18 face or it can be from the hilt, or the knife handle as it
19 hit the skin on the outside.

20 Q Now, Dr. Tormos, the internal examination, could you
21 describe what you did during the autopsy of Ms. Nelson, to
22 do the internal examination?

23 A Okay. During the course of the autopsy, as we removed
24 the organ, we also examined the area of the neck very
25 carefully, doing a plane by plane dissection, or

1 essentially, we examined every single muscle layer in the
2 neck. In the examination of the neck, we found that there
3 was a lot of bleeding into the soft tissues of the neck and
4 the artery that takes blood from the heart to the brain had
5 been cut, and that led to the bleeding both to the outside
6 of the body and into the soft tissues of the neck.

7 Q Dr. Tormos, were you able to determine the pathway that
8 a knife traveled into Cynthia Nelson?

9 A We were able to determine that the pathway was
10 downwards, medial, meaning to the center, or towards the
11 spine, and to the back.

12 Q And in your medical opinion to a reasonable degree of
13 certainty, was this a mortal wound that Cynthia Nelson
14 suffered?

15 A Yes, it was.

16 Q And once again, Dr. Tormos, I'm going to ask you if you
17 would step down. We have a demonstrative piece of evidence,
18 and I'm going to ask that you would show us on this exactly
19 what we're talking about.

20 (BRIEF PAUSE WHILE MR. FERGUSON GETS THE DEMONSTRATIVE
21 EVIDENCE.)

22 Q Now, Dr. Tormos, I'm going to give you, this is just a
23 piece of wire and it will show us the trajectory, the
24 pathway, that this knife took.

25 A So the stab wound was located inferior to the left ear,

1 right near the jawline, and it was angled downward,
2 medially, and posterially, like this. (DEMONSTRATING ON THE
3 MODEL.)

4 Q Okay. Thank you. Now, what I would like for you to do
5 is hold this as if it were the knife, and I want to position
6 our demonstrative evidence, and I'm hoping to do this in a
7 way that everybody can see. But is this wound consistent
8 with someone having a knife in their right hand, striking
9 someone who they're facing?

10 A Yes.

11 Q Okay. Now, did you determine that this was -- in your
12 medical opinion, have you ever seen a wound like this that
13 was self-inflicted?

14 A No, I haven't.

15 Q Okay. Given that it is consistent with a person having
16 a knife in their right hand, striking the person that
17 they're facing, is it possible that this is a self-inflicted
18 wound?

19 A It is not possible that this could be a self-inflicted
20 wound.

21 Q Now, more importantly, is it probable?

22 A It is not probable.

23 Q Could you demonstrate for me, using this dummy, how a
24 person would have to move in order to inflict this wound
25 upon themselves?

1 A Okay. So with the person holding a knife in their
2 right hand -- and I am going to put this paper so that the
3 sharp edge is medial. So the dummy will have to hold the
4 knife like this (DEMONSTRATES) turn the wrist so that it is
5 medial.

6 Q Well, I don't think that knife will bend, so let's see
7 if we can't ---

8 A Well, we don't know how long the knife is. Well,
9 right there, possibly. The bending of the wrist.

10 Q Thank you. Dr. Tormos, if you would take your seat
11 back on the witness stand.

12 (DR. TORMOS RESUMES THE STAND.)

13 Q Now, Dr. Tormos, what do we mean by "cause of death"?

14 A The cause of death is the actual derangement, the
15 actual finding or event that precipitated a person's death.

16 Q And is that also called a medical reason for death?

17 A Yes.

18 Q And what was your determination for the cause of death
19 in this particular case?

20 A We determined that the cause of death is hypobulimic
21 shock, which means acute blood loss; and myocardial infarc,
22 or heart attack, due to the stab wound to the face and neck.

23 Q Dr. Tormos, what is it when we talk about "manner of
24 death"? A Okay. There are five manners of death. There is
25 natural, in which illness simply precipitated a person's

1 death.. There is homicide, and that simply means in medical
2 and legal terms that a person inflicted something that
3 eventually took this person's life. There is accident, and
4 you all know what accident is. There is suicide. And then
5 there is undetermined.

6 Q Dr. Tormos, did you determine through your
7 investigation that this wound was the result of an accident?

8 A No, I did not.

9 Q All right. Did you determine through your
10 investigation that this injury and death was a suicide?

11 A No, it was not.

12 Q Were your findings undetermined?

13 A No, they weren't.

14 Q So what was the manner of death in this case?

15 A The manner of death in this case was homicide.

16 Q Okay. And how did you come to that determination?

17 A We came to that determination based on the
18 investigation findings provided to us by the coroner.

19 Q Now, Dr. Tormos, does the nature of the injury -- did
20 the nature of the injury also lead to your determination
21 that this case was a homicide?

22 A Yes.

23 Q And is that because you've never seen this as a self-
24 inflicted injury before?

25 A Even though stab wounds may be self-inflicted, there

1 are usually other findings associated with a stab wound, and
2 in this case, it is a single stab wound to the neck and that
3 is inconsistent with a suicide.

4 Q And is it also inconsistent with an accident?

5 A It is inconsistent with an accident.

6 Q Thank you, Dr. Tormos, I have no further questions for
7 you. THE COURT: Mr. Hughes?

8 CROSS-EXAMINATION

9 BY MR. HUGHES:

10 Q Dr. Tormos, how deep was the wound?

11 A The wound was somewhere between 2.2 inches and 2.8
12 inches in depth.

13 Q Was it stopped by bone?

14 A Yes, it was.

15 Q The wound, I believe, severed the carotid artery?

16 A We were unable to determine precisely which artery was
17 severed. There are several branches high up in the neck.
18 We did find a severed artery we believe it was the external
19 carotid artery, but we cannot exclude that there was also
20 injury to the vertebral artery.

21 Q Were there any other wounds?

22 A Not on the body -- well, wounds, in terms of stab
23 wounds? No.

24 Q Okay. Are you familiar with what is called a defensive
25 wound?

1 A Yes, I am.

2 Q Would you please explain that to the jury?

3 A Defensive wounds are wounds sustained when an attacker
4 is coming forward usually and a person holds up their hands,
5 forearms, or in a case where they are lying down, they hold
6 up their legs in self-defense. And they are usually on the
7 hands, on the forearms, or in the case of somebody who is
8 lying down and the attacker is on top of them, they also may
9 be sustained on the legs.

10 Q And the reason for that is because people who are being
11 attacked with a knife try to defend themselves, correct?

12 A That is correct.

13 Q Did you find any defensive wounds?

14 A We did not.

15 Q Have you done very many autopsies on people who were
16 stabbed?

17 A Define "very many".

18 Q More than twenty?

19 A Somewhere between ten and twenty.

20 Q Have you ever done an autopsy on somebody who sustained
21 a single stab wound?

22 A Yes.

23 Q Okay. Where was that wound to?

24 A The chest.

25 Q Were there any defensive wounds for that?

1 A No.

2 MR. HUGHES: Could I have the witness step down,

3 please?

4 THE COURT: You may.

5 MR. HUGHES: Come here, please, Doctor.

6 Q Remember to speak up so that everyone can hear you. I

7 don't have anything fancy like that. I just have a piece of

8 tube that I cut the length of my household knives. Could

9 you please hold that in your hand?

10 A Uh-huh (affirmative).

11 Q And let's call the yellow part the "blade".

12 A Uh-huh (affirmative).

13 Q Now, stab me like that person was stabbed.

14 A (WITNESS DEMONSTRATES.)

15 Q Okay. Do that again, please.

16 A (WITNESS DEMONSTRATES AGAIN.)

17 Q Okay. So it hit right in here, right below the ear,

18 and the blade was pointed down like that?

19 A Correct.

20 Q Okay. Are you familiar with any self-defense? Do you

21 know any self-defense?

22 A No.

23 Q Okay. What I'd like for you to do is attack me again

24 the same way coming that way. And I'm going to defend

25 myself.

1 A (WITNESS COMPLIES.)

2 Q Now, which way is the hand going?

3 A Towards my left.

4 Q Would -- let's turn this way, please. Would this cause
5 any injury to you other than to your neck? Would there be
6 markings on either your wrist or your inner arm?

7 A No.

8 Q Okay. So then a person who is attacking could actually
9 stab themselves in the neck?

10 A Yes.

11 Q Okay. Thank you. You may be seated. And again, I
12 ask, would that move that I just did cause any markings on
13 your person?

14 A No.

15 Q Okay. So that would not show up on an autopsy?

16 A No.

17 Q And the wound that would have been generated to
18 yourself, that would have been consistent to the wounds that
19 the woman had?

20 A It is very possible, yes.

21 Q So this could have been an accident?

22 A Yes.

23 MR. HUGHES: No further questions, Your Honor.

24 THE COURT: Any redirect?

25 ASST. SOL. FERGUSON: Just briefly, Your Honor.

1 REDIRECT EXAMINATION

2 BY ASST. SOL. FERGUSON:

3 Q A lot of things can happen; is that right, Dr. Tormos?

4 A That is true.

5 Q Now, was it your findings that it was an accident?

6 A No.

7 Q And again, why is that?

8 A Because the information provided by the scene
9 investigation, and the history provided by the coroner,
10 leads us to believe that this was a homicide, a witnessed
11 homicide.

12 Q And is it also the nature of that wound that led you to
13 that determination?

14 A Yes.

15 Q Okay.

16 ASST. SOL. FERGUSON: I beg the Court's indulgence for
17 just one moment, please.

18 (BRIEF PAUSE.)

19 Q Dr. Tormos, I couldn't help but notice the interaction
20 between Mr. Hughes and yourself. It looked uncomfortable.
21 Was that a natural reaction to what was being done to you?
22 Did that feel natural to you?

23 A It was a bit uncomfortable.

24 Q And was there a point where your wrist angle was
25 actually manipulated to show the actual trajectory that you

1 and I talked about on the dummy?

2 A I cannot answer that.

3 Q Was the actual angle of the wrist, was that a variable
4 in that equation?

5 A The angle of the wrist is necessary in order to
6 reproduce the trajectory of the stab wound.

7 Q And in that demonstration, when you first did it,
8 wasn't it not the same trajectory, and then it moved up to
9 where it would be a demonstration of that same trajectory?
10 In other words, when you first went through the
11 demonstration with Mr. Hughes, wasn't the knife in the exact
12 same place that we just talked about with that dummy?

13 A We may have accommodated it.

14 Q Thank you, Dr. Tormos.

15 THE COURT: Anything further? Mr. Hughes?

16 RECROSS-EXAMINATION

17 BY MR. HUGHES:

18 Q Doctor, did I move your wrist any?

19 A No, sir.

20 Q And the movement that I did to you could have inflicted
21 the wound done to the victim?

22 A Yes, you did lift my forearm, but if you lift my
23 forearm, yes, I could ---

24 Q Are you the same size as the victim?

25 A No, sir.

Redirect Examination of Dr. Lee Marie Tormos by Asst. Sol. Ferguson
Recross-Examination of Dr. Lee Marie Tormos by Mr. Hughes

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1 Q Am I the same size as the defendant?

2 A I do not know. I've never seen the defendant.

3 Q Without the information provided to you from outside
4 source, but only based upon the autopsy, would this have
5 been called an accident or a homicide?

6 A We do not do autopsies in a vacuum. We have to take
7 into consideration all of the investigative findings, and as
8 such, it is the determination that it is a homicide, based
9 upon the investigation.

10 Q So you're not there to determine if it's a homicide.
11 You're just there to determine if the facts match that of a
12 homicide?

13 A No. That is not what I am saying.

14 Q I apologize. Please tell me.

15 A We are there to document the injuries and findings and
16 put all of the findings, including toxicology reports,
17 investigation reports, and police findings, and any other
18 matter which may be pertinent to this case, in order to
19 arrive at a determination.

20 Q Okay. I hate to ask you to do this, but could you do
21 that again in English? A little simpler, please, because I
22 ---

23 A Okay. Part of the Forensic Pathologist's job is to
24 take all of the findings of the case, and that includes the
25 scene investigations from the coroner, or the police

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1 department, or any other investigative agency that may be
2 involved in a case. We also look at toxicology. We look at
3 the autopsy findings. We look at medical records. And we
4 put everything together in order to come to a determination.
5 We rarely do autopsies or come to a determination in a
6 vacuum, because there are circumstances. And just like a
7 gunshot wound to the head may be self-inflicted and may be a
8 suicide, it may be an accident in a hunting event, or it may
9 be a homicide, so can a lot of other things. So our manner
10 of death is usually a combination of all the facts in a case
11 put together to come to a determination.

12 Q Thank you, Doctor. So this could have been, based upon
13 what you said earlier, this could have been an accident?

14 A This could have been an accident if we were only
15 talking about the wound.

16 Q Okay. Thank you, Doctor.

17 MR. HUGHES: No further questions, Your Honor.

18 THE COURT: Okay. Anything further, Mr. Ferguson?

19 ASST. SOL. FERGUSON: Nothing further, Your Honor.

20 THE COURT: Any objection to Dr. Tormos being excused,
21 from anyone?

22 MR. HUGHES: Not at all.

23 ASST. SOL. FERGUSON: No, ma'am, Your Honor.

24 THE COURT: Dr. Tormos, you may step down and you are
25 excused from the courtroom.

Redirect Examination of Dr. Lee Marie Tormos by Asst. Sol. Ferguson
Recross-Examination of Dr. Lee Marie Tormos by Mr. Hughes

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1 (DR. TORMOS EXITS THE COURTROOM.)

2 ASST. SOL. FERGUSON: And Your Honor, if we may take a
3 brief break to make sure we have everything in line, that
4 would be appreciated.

5 THE COURT: Okay. Ladies and gentlemen of the jury, we
6 are going to take a brief break. We will be back with you
7 shortly. Again, do not discuss this case. It wouldn't be
8 appropriate to do so. Thank you.

9 (2:50 P.M., WHEREUPON THE JURY EXITS THE COURTROOM AND
10 THE FOLLOWING IS HELD ON THE RECORD.)

11 THE COURT: All right. Let's make sure you have all of
12 your evidence together.

13 ASST. SOL. FERGUSON: Thank you, Your Honor.

14 (BRIEF PAUSE IN COURTROOM.)

15 THE COURT: Why don't we go ahead and make the motions
16 that are applicable at this point. Let's talk about your
17 client's rights and if he wants to testify before we bring
18 the jury out.

19 Mr. Ferguson, Mr. Hughes has already expressed his
20 desire that he would like to argue and charge tomorrow
21 morning. I remind you all that I cannot be here until
22 10:45, so if we did that it would mean that we would not
23 start and I would not have him back here until 11:00 in the
24 morning, because I don't want him waiting on us. So you
25 have the pleasure, or any position, or are you here for the

1 duration?

2 ASST. SOL. FERGUSON: Yes, ma'am, Your Honor, I'm here
3 for the duration or whatever Your Honor decides will be
4 fine.

5 THE COURT: Okay. Do you have a preference?

6 ASST. SOL. FERGUSON: No, ma'am, Your Honor.

7 THE COURT: Okay.

8 ASST. SOL. FERGUSON: I mean I would like to have a
9 charge conference and those type things. I do think we've
10 gone pretty quick and I don't want to give the impression
11 that this is not an important case. I think we do have the
12 luxury of time and so I do not object to arguing and
13 charging tomorrow if Your Honor is so inclined

14 THE COURT: Okay. I agree with you. All right. So
15 we'll do that. Sometimes it frustrates the jury to break at
16 3:00. So let's do this, let's go ahead, Mr. Hughes, and you
17 make your motion and then I'll go through your client's
18 rights with him and we'll figure out if he wants to testify
19 and then we'll have you both rest in front of the jury and
20 then we'll send them home for the night. Then, we'll have a
21 charge conference, okay?

22 MR. HUGHES: Your Honor, at this time, I would move for
23 directed verdict. The State has not met all of its burden
24 for murder. They have not shown any premeditation in this.
25 It has been testified that the defendant did not know that

1 Ms. Cynthia Nelson was going to be there. The State made
2 statements in their opening that have not been shown. I do
3 not see this with malice. I do not see -- I don't even see
4 heat of the moment, here, Your Honor. This may be
5 involuntary, but that would be the maximum I would say. I
6 would move to dismiss for failure to meet all of the
7 elements of murder. I would also, at this time, like to
8 renew all of my previous motions.

9 THE COURT: All right. Mr. Ferguson?

10 ASST. SOL. FERGUSON: Thank you, Your Honor. Very
11 rarely in a murder case do we get the luxury of express
12 malice, and I think that's exactly what we have here. WE
13 have a statement from the defendant on the day that the
14 victim was killed saying "I'm going to kill that lady." Not
15 only that, we have the statement that he went to her
16 apartment the previous night to kill her. So the intent was
17 formed on the previous night and it was reaffirmed on the
18 20th and it continued up until this incident occurred. And
19 so I respectfully disagree with Mr. Hughes's analysis of
20 what evidence is in the record and I think there is clear
21 malice aforethought and I think the elements of murder are
22 met. I think we could argue about charges, jury charges, at
23 a later time, Your Honor.

24 THE COURT: All right. Well, respectfully, I do think
25 the allegation that he threatened her life not once, but

1 twice, within a 24-hour period of this incident does cross
2 the level of express malice and the jury can consider it if
3 believed it. So I'm going to deny your motion for a
4 directed verdict as to meeting all the elements of malice.
5 I do clearly think a voluntary manslaughter charge is
6 appropriate, and of course at the charge conference, we will
7 discuss whether or not a charge of involuntary manslaughter
8 is appropriate as well. So with that said, I'm denying your
9 motion at this time. Is now an appropriate time for me to
10 go through with your client whether or not he wishes to
11 testify?

12 MR. HUGHES: Yes, Your Honor. I have been talking with
13 him for the last six months about his testimony or his lack
14 thereof and he agrees that he understands all of his rights.

15 THE COURT: And have y'all discussed -- I have no idea
16 whether or not he has any prior convictions, what would be
17 used against him if he did take the stand?

18 MR. HUGHES: Mr. Ferguson, I believe, has a small list
19 of things.

20 THE COURT: Okay.

21 MR. HUGHES: So, yes, Your Honor, I have talked with
22 him about his prior record.

23 THE COURT: All right. Well, Mr. Scott, if you will go
24 ahead and stand up, sir. Ms. Bostick is going to swear you
25 in. Come on around, please, sir.

1 WHEREUPON, MR. ANTONIO SCOTT, IS DULY SWORN.

2 THE COURT: Mr. Scott, the State has rested its case
3 and we will bring the jury back in and formally do it in
4 front of them, but this is the time where you are entitled
5 to present your defense if you wish to. I'm going to
6 explain to you some rights and regards to that. Again, sir,
7 I want to make sure you understand and appreciate what I'm
8 saying. If at any time you don't understand or you can't
9 hear me, just ask me to repeat it or rephrase it and I'll be
10 happy to do so, sir.

11 What you need to understand is you have the right, it's
12 a right to claim the protections that are given to you by
13 the Fifth Amendment of the Constitution of the United
14 States, which states in part that no person shall be
15 compelled in any criminal case to be a witness against
16 themselves. That means that no one can make you testify.

17 However, sir, I want you also to know that you do have
18 the right to testify if you so choose, but sir, what you
19 need to understand and appreciate is that if you decide to
20 testify, you are going to be subject to the same rules that
21 all the other witnesses are subject to and you can be
22 examined and cross-examined on any and all relevant issues
23 that are in your case.

24 Additionally, sir, if you have any prior convictions
25 for dishonesty or a false statement or for any crimes

1 punishable by imprisonment for more than one year, and if I
2 were to determine that the probative value of those crimes
3 outweigh any prejudicial value or effect to you, the
4 Solicitor will be able to introduce that or go into those,
5 sir. If you decide to testify, you need to understand that
6 this is a decision that only you can make. While I expect
7 you to talk to your lawyer and counsel with your lawyer,
8 again, this is a personal and independent decision and only
9 you can't invoke it.

10 I want you to know though that if you decide not to
11 testify in the case, I'm going to tell the jury in my jury
12 charge that that the fact that you didn't testify is not
13 even to be discussed back there in a jury room. Again, a
14 person has the right not to choose to speak and to invoke
15 your right and I just want to make sure you understand that
16 and appreciate that and your decision not to testify is
17 yours and it's freely made.

18 Sir, do you know if you want to testify?

19 MR. SCOTT: No, I don't, Your Honor.

20 THE COURT: You do not want to testify?

21 MR. SCOTT: No, ma'am.

22 THE COURT: Have you had an opportunity to speak with
23 your lawyer about that, is that correct?

24 MR. SCOTT: Yes, Your Honor.

25 THE COURT: All right, sir. I appreciate that and I do

1 find that you understand your rights and that you've chosen
2 not to testify. You can go ahead and take a seat..

3 And what we are going to do y'all is I'm going to bring
4 the jury back out and we're going to have Mr. Ferguson rest
5 for the record and Mr. Hughes, you're going to go ahead and
6 rest for the record, and then you can renew your motion
7 again and then we will have a charge conference, and I'm
8 going to bring them back at 11:00 tomorrow morning to go
9 ahead and argue and charge.

10 Any problem with that, Mr. Ferguson?

11 ASST. SOL. FERGUSON: No, ma'am, Your Honor.

12 THE COURT: Mr. Hughes?

13 MR. HUGHES: No, Your Honor.

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

15 (12-7-11, WHEREUPON THE JURY ENTERS THE COURTROOM AND
16 THE FOLLOWING IS HELD ON THE RECORD.)

17 THE COURT: Well, Ladies and gentlemen, welcome back.
18 Mr. Ferguson?

19 ASST. SOL. FERGUSON: Your Honor, at this point, the
20 State rests.

21 THE COURT: All right. Thank you, sir.

22 MR. HUGHES: Your Honor, at this point, the defense
23 rests.

24 THE COURT: Ladies and gentlemen, at this time both the
25 State and the defendant have rested their case. Based on

1 the hour, there is some other work I need to do with these
2 attorneys before we go ahead and argue, charge, and send
3 this case to you, and just based on the hour so that we
4 don't end up staying here late, I'm going to go ahead and
5 send you all home for the night and let us do our business,
6 and we're going to start up in the morning when you all are
7 going to hear the arguments from the attorneys, as well as
8 my charge on the law.

9 Ladies and gentlemen, I have another unavoidable
10 conflict in the morning, so we cannot begin until 11:00
11 tomorrow morning. So I am asking that you all return at
12 11:00 a.m. tomorrow morning again, where you all are going
13 to hear the closing arguments from the attorneys on this
14 case and you're going to hear my charge on the law and we're
15 going to send this case to you.

16 Again, ladies and gentlemen, I look forward to seeing
17 you all at 11:00. We will be prompt if you're here as well.
18 Again, I have to tell you that while you have heard all of
19 the evidence, you haven't heard the arguments from all the
20 lawyers, nor my charge on the case, and it would be
21 inappropriate for you to discuss the case with anyone, to do
22 any independent research. The only thing I ask, Ladies and
23 gentlemen, is go home and get a good night's sleep and come
24 back in the morning prepared to listen and deliberate. All
25 right? Have a wonderful evening, y'all. See you in the

1 morning.

2 (WHEREUPON THE JURY EXITS THE COURTROOM AND THE
3 FOLLOWING IS HELD ON THE RECORD.)

4 THE COURT: All right. I've already indicated and told
5 y'all that I am not going to charge involuntary
6 manslaughter.

7 This is where I have a problem with the involuntary
8 manslaughter portion of the charge. "To prove involuntary
9 manslaughter, the State must prove beyond a reasonable doubt
10 that the defendant unintentionally killed the victim without
11 malice, but while engaged in an unlawful activity not
12 naturally tending to cause death or great bodily harm, or
13 that the defendant unintentionally killed the victim without
14 malice while engaged in a lawful activity." Well, number
15 one, the activity was not lawful, clearly. Having a knife
16 in someone's hand, if you believe the State's version of the
17 facts, is not lawful.

18 Additionally, if it's an unlawful activity, then it
19 would have to be one that's not naturally tending to cause
20 death or great bodily injury. Well, if you have a knife and
21 it's unlawful, it's likely that it can cause great bodily
22 injury or death. That's why I'm having a hard time finding
23 involuntary manslaughter appropriate to this case, which is
24 why I'm inviting any of you that if you want to pull up any
25 case law that would show --- Mr. Hughes?

1 MR. HUGHES: Your Honor, I really prefer not to even
2 have voluntary manslaughter. The testimony was from the
3 State's own witness that it was potentially an accident. I
4 would like the charge for accident. I would also like a
5 charge of self-defense, because the State produced ---

6 THE COURT: Okay. Just so I'm clear, though -- see,
7 you jumped right over. You don't want a voluntary or a
8 involuntary charge; is that what you're asking?

9 MR. HUGHES: I would not object to both voluntary and
10 involuntary. I would object to simply voluntary. If I
11 had my druthers, I'd rather have all four. I would
12 appreciate ---

13 THE COURT: All four of what? Where did we get the
14 last one?

15 MR. HUGHES: I'm sorry. Murder, voluntary manslaughter
16 ---

17 THE COURT: And involuntary.

18 MR. HUGHES: Or not guilty.

19 THE COURT: Okay. Well, again, I can tell you, what I'm
20 going to invite you to do, before you jump over to accident
21 and self-defense, let's first talk about -- I invite you
22 again to find any case law you can that you think parallels
23 the facts of this case for a involuntary charge. I think
24 what's appropriate, and the appropriate law in this case, is
25 according to the testimony and of course it's what I'm

1 charged to charge is, I believe, murder and voluntary
2 manslaughter, as it stands.

3 So now I think we need to go on to accident and self-
4 defense. Of course, I looked at that as well. I understand
5 why you're asking for it. I had it online. Let me just
6 look at the accident charge, again, very quickly.

7 (BRIEF PAUSE IN COURTROOM.)

8 THE COURT: Well, if we charge accident, "an act may be
9 excused on the ground of accident if it is shown that the
10 act was unintentional, which I think under the facts you
11 could state that. That the defendant was acting lawfully,"
12 which I don't think you can argue that, "and that reasonable
13 care was used by the defendant in the handling of the
14 weapon." Well, again, the defendant wasn't acting lawfully
15 if, in fact, he had a knife.

16 MR. HUGHES: Your Honor, the only person that puts him
17 with a knife is, I believe, Akera, and she does not identify
18 a knife in his possession at the time of the incident.

19 THE COURT: Then that's not an accident by him. That's
20 an accident by the victim.

21 MR. HUGHES: Yes, ma'am. But I don't know if the jury
22 would be confused since the pathologist did state that this
23 could have been an accident. I would withdraw the motion
24 for an accident if the self-defense aspect was a charge of
25 self-defense.

1 THE COURT: Okay. Say that again one more time.

2 MR. HUGHES: I would withdraw the request for the
3 accident charge and if I can have the self-defense charge.

4 THE COURT: That would be putting the knife back in
5 your guy's hands.

6 MR. HUGHES: No, ma'am. That would be putting the
7 knife in the victim's hand.

8 THE COURT: Then it wouldn't be his fault at all.

9 MR. HUGHES: Through his actions when she told law
10 enforcement and law enforcement testified to and I
11 demonstrated possibility that she would have been attacking
12 him while he performed an act.

13 THE COURT: Again, though, that would still place her
14 being the aggressor. Her having the knife. There would be
15 no defense even for him. It would be that she hurt herself.
16 I mean, I understand your allegation is that somehow they
17 tussled and she ended up getting stabbed with a knife that
18 she brought into the fight, correct?

19 MR. HUGHES: Law enforcement testified that he
20 demonstrated a move. I demonstrated to the Forensic
21 Pathologist that move was possible and that that move would
22 result -- would potentially result in that wound. I would
23 like the jury to understand that because of his self-defense
24 action and defending himself from an attack with the knife
25 that it is -- that he was acting in self-defense that

1 evening, Your Honor. Not that he was attacking in -- he
2 stabbed her, but he was acting in self-defense that caused
3 her to be stabbed.

4 THE COURT: Okay. Obviously, to establish self-
5 defense, he has to be without fault in bringing on the
6 difficulty.

7 MR. HUGHES: If he is at his sisters eating and the
8 victim comes in and attacks him, I would say that he is
9 without fault.

10 THE COURT: No one has asked for a mutual combat
11 charge, right?

12 MR. HUGHES: I did not even consider a mutual combat
13 charge, Your Honor; so I've not asked for it.

14 THE COURT: Does the State have a position on self-
15 defense?

16 ASST. SOL. FERGUSON: Well, Your Honor, I mean, self-
17 defense is yes, I killed this person, but I was justified in
18 doing so. And so, what we have is a hybrid. It is, yes, I
19 killed her, but I used her own hand to do it. And so, it is
20 not an accident in my opinion. It is an intentional self-
21 defense act that this defendant is alleging that he did it
22 that resulted in her death. I think that it is ludicrous,
23 quite frankly.

24 THE COURT: Well, I understand that, but it is
25 appropriate under his facts of the case, which I guess it

1 is. I mean, I can tell you right now, I can charge self-
2 defense, but not accident.

3 ASST. SOL. FERGUSON: Yes, ma'am. I do think the
4 defendant is not without fault in bringing this incident on.
5 Akera Nelson testified that it was

6 THE COURT: Depends on whose version you believe, and
7 that's the problem.

8 ASST. SOL. FERGUSON: That's right. Yes, ma'am.

9 THE COURT: So I want to be clear, Mr. Hughes, for the
10 record. You want self-defense, but you do not want
11 accident; is that correct?

12 MR. HUGHES: The legal definition of accident, I do not
13 see it as a case in this matter, Your Honor. Although the
14 Forensic Pathologist did use the word accident in her
15 identifying that this could have been an accident, but I
16 don't think she was using the legal definition.

17 THE COURT: Okay. Under his version of him doing some
18 kind of technique, or move, I could see self-defense. So
19 again, you are not requesting accident. Do you want to go
20 with self-defense? For it to have been an accident, he
21 would have had to have had the knife.

22 MR. HUGHES: Right.

23 THE COURT: And that just simply is not the theory of
24 the case and never has been.

25 MR. HUGHES: None whatsoever.

1 THE COURT: Gotcha. Okay. Anything else besides self-
2 defense and I think we're all going to look at involuntary
3 and see if we can find -- I'm having a hard time, Mr.
4 Hughes, with involuntary. I'm just asking you and
5 suggesting to you that maybe you can find some case law or
6 something that's factually close or similar.

7 MR. HUGHES: I will be more than happy to spend the
8 evening looking, Your Honor.

9 THE COURT: All right. Other than the standard
10 reasonable doubt, presumption of innocence, you both have
11 heard my charge many times. Mr. Hughes, I know you've heard
12 it ad nauseum.

13 MR. HUGHES: I would not say ad nauseum, Your Honor,
14 but I have definitely heard it enough times to know that I
15 trust it.

16 THE COURT: That's okay. Anything else?

17 ASST. SOL. FERGUSON: Nothing, Your Honor.

18 THE COURT: Let me just reread one more time the
19 involuntary charge so that I'm comfortable.

20 (BRIEF PAUSE IN COURTROOM.)

21 THE COURT: I have a hard time, again, getting past,
22 Mr. Hughes, the engaging in wrongful activity, which I can
23 agree on, but one that does not naturally tending to cause
24 death or great bodily injury. I think if you've got a
25 knife, it does; or that the defendant unintentionally killed

1 the victim without malice and while engaged in a lawful
2 activity. That's not it. It's either self-defense or the
3 other. It just can't be both. I just don't think
4 involuntary is appropriate.

5 MR. HUGHES: If I could have some time to review this
6 Your Honor, and like I said, my biggest problem with giving
7 them the choice of murder, voluntary or not guilty is that
8 nine times out of ten they will simply go with the lesser
9 included. I would ask that they be given a chance to give
10 them something to think about, not just go, "Well, we don't
11 think it's murder, but we're not really sure that he didn't
12 do something. So, let's just find him guilty of this."

13 THE COURT: Well, they can believe your story, which is
14 the self-defense that he was doing some kind of martial arts
15 move and she ended up stabbing herself.

16 MR. HUGHES: Again, I request until tomorrow morning.
17 Let me check and see what I can find for you.

18 THE COURT: Absolutely. And if you do find it and you
19 want to e-mail it to me overnight, of course, copy Mr.
20 Ferguson and Ms. Bannon, but I'd like to read it ahead of
21 time if I can.

22 MR. HUGHES: I will try my best to, Your Honor.

23 THE COURT: All right, y'all. Anything else we need to
24 put on the record for this case? And of course, Mr. Hughes,
25 you need to renew your motions again, and I apologize, but

1 we'll go ahead and put it on the record right now.

2 MR. HUGHES: Your Honor, at this time, I'd like to
3 renew my motion for directed verdict and my previous motions
4 at this time.

5 THE COURT: Well, respectfully, I'm denying those both
6 on the same grounds as earlier. Anything else we need to
7 put on the record for tomorrow?

8 ASST. SOL. FERGUSON: No, Your Honor, not from the
9 State.

10 MR. HUGHES: Not from the defense.

11 THE COURT: Both of you did a very short opening. I'm
12 assuming your closing is going to be probably not as short,
13 but neither one of you are long-winded; so am I anticipating
14 correctly?

15 ASST. SOL. FERGUSON: That's correct, Your Honor.

16 MR. HUGHES: Yes, Your Honor, and can I get that in
17 writing, please?

18 THE COURT: Well, I guess I should have said it depends
19 on what you are doing, whether or not you're fast. All
20 right, y'all, we're going to turn back to non-jury matters.
21 Ms. Gentry, anything you want to do this afternoon?

22 (3:40 P.M., 12-6-11, WHEREUPON, THE COURT IS IN RECESS
23 IN THE TRIAL OF THIS CASE.)

24 (9:30 A.M., 12-7-11, WHEREUPON, COURT RESUMES IN THE
25 TRIAL OF THIS CASE AND THE FOLLOWING IS HELD ON THE RECORD.)

1 THE COURT: I wanted to go back on the record and
2 discuss again about whether or not to charge involuntary
3 manslaughter. Mr. Hughes, I see that you gave my law clerk
4 the case of Casey v. State of South Carolina, 409 SE 2d,
5 391, where, basically, the whole thing was evidence of a
6 struggle between the defendant and victim over a weapon is
7 sufficient for submission of an involuntary manslaughter
8 instruction to the jury.

9 I'm still having a hard time in this case about that.
10 I honestly think that it has to be either murder or
11 voluntary manslaughter or self-defense. You know, based on
12 your entire -- your defense of this case, you state that
13 your client did some type of martial arts move to avoid
14 apparently being hit or himself hurt in some way?

15 MR. HUGHES: Yes, Your Honor.

16 THE COURT: I don't see how he could be guilty, then,
17 of involuntary manslaughter. I mean, that's the problem.
18 That's the problem I have. I understand why you want it
19 charged, but again, I don't see -- if either what he did was
20 self-defense or -- and you have to believe one way or the
21 other, either he came with a knife or she came with a knife.
22 I mean, that's the problem I have with that. I don't see
23 how criminal negligence, what he did -- I mean, I don't see
24 how under any of the circumstances he could be criminally
25 negligent.

1 MR. HUGHES: Well, Your Honor, as Detective Litchfield
2 testified, my client has martial arts training. I do not
3 know for sure if there were other moves he could have done
4 to disarm Ms. Nelson. The move that he did do, and that was
5 testified to, as described to under Detective Litchfield,
6 and I demonstrated with the forensic pathologist was
7 possible, directly caused Ms. Nelson's death. I would say
8 that any negligence would be ---

9 THE COURT: That would be purely self-defense, then.

10 MR. HUGHES: Okay.

11 THE COURT: I mean, he should be acquitted on that. If
12 that's truly what it was, if it's under what he was saying,
13 then he should be acquitted then. If the jury believed
14 that, he shouldn't even be convicted of involuntary
15 manslaughter.

16 MR. HUGHES: Well, my biggest problem with voluntary
17 manslaughter is while I do see that if the State was correct
18 that that would be a possible to charge to the jury, my
19 biggest worry is the jury would no longer look at the facts,
20 but simply split the baby and go with that. I would request
21 then that he simply be charged with murder or not guilty,
22 and not a charge of self-defense.

23 THE COURT: I'm sorry. Give me one second.

24 MR. HUGHES: Yes, ma'am.

25 (Off the record, briefly.)

1 THE COURT: I've pulled up -- my law clerk pulled up a
2 very recent case, State v. Smith, where the Supreme Court
3 upheld a trial court after the Court of Appeals, of course,
4 reversed them. That it was not error to charge only murder
5 and not for voluntary or involuntary, based on the facts of
6 the case.

7 (BRIEF PAUSE IN THE COURT.)

8 THE COURT: All right. I'm sorry. Mr. Ferguson, go
9 ahead.

10 MR. FERGUSON: Yes, ma'am. What would you like for me
11 to address first, the involuntary manslaughter?

12 THE COURT: The involuntary.

13 MR. FERGUSON: Okay. Yeah, what we have is there is no
14 evidence of a struggle over a weapon. It is, if you believe
15 the defendant's story, it is an intentional act to find the
16 victim, first. And then, second, a defensive act, an
17 intentional defensive act by the defendant.

18 THE COURT: Which will be self-defense, which would be
19 a complete offense.

20 MR. FERGUSON: That's correct. I don't see how you act
21 in self-defense in a criminally negligent way, because it is
22 an intentional act.

23 THE COURT: Right.

24 MR. FERGUSON: I just don't think there's a precedent
25 to negligently defend yourself. So I agree with the Court's

1 initial assertion that it is not applicable in this case.

2 Now, voluntary manslaughter, you know, the crux of that
3 charge is heat of passion and the appearance of an assault.

4 In other words, if you take the defendant's version of
5 the facts, that the victim somehow either was trying to stab
6 him or hit him, that is obviously the appearance of an
7 assault; words are not sufficient. The testimony about what
8 Ms. Nelson said upon entering that room, that that is not
9 sufficient legal provocation, but the appearance of an
10 assault is.

11 And so there again, if you believe his version of the
12 story or even part of his version of the story, that would
13 suffice for sufficient legal provocation in order to create
14 the heat of passion. If she had the knife or she didn't
15 have the knife. If he felt like it was about to be a
16 struggle, or about to be an assault, that has been held to
17 warrant that charge. And, you know, it's up to the jury
18 what version they believe or whether they believe a hybrid
19 of the two.

20 And so, you know, unfortunately, it is not up to Mr.
21 Hughes to decide, based on his concerns of real life results
22 as to what to charge the jury. It is if there are any facts
23 in evidence that support the charge. And so, splitting the
24 baby, you know, it may be an astute observation, given his
25 own professional experience, but it doesn't control what we

1 charge a jury. We have to look at what's in evidence. And
2 I think that it is an appropriate charge, and I think that
3 it should be part of Your Honor's charge.

4 THE COURT: Yes, sir?

5 MR. HUGHES: Your Honor, I find myself in a very
6 strange position against arguing against the lesser included
7 of the matter. I would object to a charge of voluntary
8 manslaughter in this case. If the State felt there was a
9 voluntary manslaughter charge in this case, they should have
10 indicted him on a voluntary manslaughter charge. Asking for
11 the lesser included ---

12 THE COURT: It was charge with murder because of the
13 previous threat of "I'm going to kill you from the night
14 before," which is in evidence as express malice. That's why
15 he was charged with murder, I'm going to go ahead and
16 presume, not that I want to put words in the State's mouth;
17 but I believe you've already said that.

18 I do think, though, that there is evidence in this case
19 in which this jury could find that this was voluntary
20 manslaughter. If they didn't believe those words or if they
21 didn't believe that he lied in wait and was going to do this
22 and when to kill her. I mean, quite frankly, the evidence
23 that, you know, after it occurred, you know, he tried to use
24 his shirt to stop, you know, the bleeding shows something.
25 I don't know what exactly, but it shows something; at least

1 it does to me as the judge.

2 So I understand; the problem is that I am required, as
3 you understand -- and I know your dilemma. I understand why
4 you're asking only to have murder charged, but I am duty-
5 bound to charge what is appropriate for the facts of this
6 case. I have to charge both murder and voluntary
7 manslaughter and, of course, self-defense, based on the
8 facts. And we have gone through them, and I can tell you
9 that I've looked at this every way I can. And we all know,
10 it's a reversible error for me to incorrectly charge what's
11 applicable to the facts and we certainly all don't want to
12 do this again. I can tell you that I feel very comfortable
13 in coming to this decision, so ---

14 MR. HUGHES: Like I said, Your Honor, I find myself in
15 a position of arguing against something I would normally be
16 arguing for. But just for the record, I would object to a
17 charge of voluntary manslaughter.

18 THE COURT: All right. I'm going to respectfully
19 decline that. I think it's appropriate. Okay? Anything
20 else we need to bring up? Obviously, I don't have all my
21 jurors here, so we're at ease for the moment.

22 MR. HUGHES: Could the State and I meet with you in
23 chambers, please?

24 THE COURT: Sure.

25 (Off the record, briefly.)

1 THE COURT: Okay. My understanding is that we have all
2 my jurors here. Ladies and gentleman, for those of you that
3 are back in the courtroom, we're going to go ahead and start
4 the closing statements in this case. I'm going to ask that
5 you please don't leave during those. In between that and my
6 jury charge, if you do wish to leave the courtroom, you need
7 to leave, because after that, no one moves and the doors
8 will be locked. All right? Let's go ahead and bring them
9 in.

10 (12:00 P.M., 12-7-11, WHEREUPON, THE JURY ENTERS THE
11 COURTROOM AND THE FOLLOWING IS HELD ON THE RECORD.)

12 THE COURT: Ladies and gentlemen, good to see you-all
13 back. At this time, ladies and gentlemen, what you are
14 going to hear are the closing arguments from the attorneys.
15 Then, I am going to charge you on the law that's applicable
16 to this case and we will send the case to you. All right?
17 So if you would give your attention to the State, please.

18 ASST. SOL FERGUSON: May it please the Court?

19 THE COURT: Yes, sir.

20 CLOSING ARGUMENT

21 BY ASST. SOL FERGUSON:

22 So that's how it's going to be. You're going to let
23 your momma get in-between us. This is a case about a mother
24 standing up for her child, about Cynthia Nelson standing up
25 for Akera Nelson. What Antonio Scott did was murder Cynthia

1 Nelson. Murder is the killing of another with malice
2 aforethought. That's two separate parts. The killing of
3 another is a physical act. With malice aforethought, it's
4 the mental act.

5 First, the killing of another. Cynthia Nelson is dead.
6 When EMS got there, she had lost almost half the blood in
7 her body. She had very shallow pulse, almost zero
8 electrical activity. She was taken to Hardeeville,
9 transferred to Savannah where they found that she was brain
10 dead, an irreversible medical condition. She was only alive
11 by mechanical means, and she was in that condition because
12 the defendant, Antonio Scott, stabbed her in the face.

13 Akera Nelson, she testified that the moment she walked
14 into that apartment, the defendant stood up with a knife in
15 his hand, the same knife that he had the night before when
16 he went to kill her. The same knife that he used to kill
17 her, and the same knife that was absolutely nowhere to be
18 found when he fled the scene that day.

19 Now, she said she didn't see what he hit her with, but
20 that he hit her. Not that, you know, that Cynthia Nelson
21 took a swing at the defendant. Not that Cynthia Nelson had
22 any type of weapon on her, but that she saw the defendant
23 strike her mother, and that she grabbed the broomstick,
24 started whaling on him in defense of her mother. Nothing
25 about a tangling of arms, a sophisticated, complicated,

1 intentional defensive maneuver, like Mr. Hughes wanted to
2 demonstrate for us. She saw Antonio Scott hit Cynthia
3 Nelson.

4 Now, she said she didn't see what he hit her with. Was
5 that because he no longer had the knife that he had the
6 night before? Was it because he no longer had the knife that
7 he threatened her with just moments before that? Was it
8 because Cynthia had the knife? Or was it because he had the
9 knife concealed, so that no one could stop him this time
10 when he went to kill Cynthia Nelson, like Officer Kevin
11 Smith's testimony the night before, and he had to ditch the
12 knife and hide in the dumpsters.

13 So did she not see the knife because he had it
14 concealed, until he found that moment he was waiting on, the
15 moment that he could kill Cynthia Nelson and nobody get in
16 the way. He could take that knife and jab it.

17 Before Cynthia Nelson had a time to react, a time to
18 put her hands up, which would explain the lack of defensive
19 wounds that Mr. Hughes wanted to talk about so much with Dr.
20 Tormos. If you don't see a knife coming, you don't try to
21 block it.

22 It was not a complicated hand-to-hand combat maneuver
23 on the part of the defendant. He did not perform this feat
24 with people two feet on either side of him that did not see
25 it. That's not what happened.

1 If it were a self-defense situation, wouldn't the knife
2 still be sitting there beside Cynthia Nelson as she lay
3 dying, with only her fingerprints on it? Would it be gone?
4 Would it be gone till this day? Wouldn't have Akera told 9-
5 1-1, "My mom and my boyfriend got in a fight. And they were
6 all tangled up in each other. She ended up getting
7 stabbed." That's not what she told 9-1-1. She told 9-1-1
8 that Antonio Scott hit her mother and that she was bleeding
9 out everywhere.

10 Now, there's testimony from Akera that the defendant
11 took his shirt off after she stopped whaling on him with a
12 broomstick, and they looked down and saw Cynthia bleeding on
13 the couch, and did something -- did something to her. You
14 know, whether it's applying pressure to the wound, we don't
15 know. But what we do know is at that moment, he realized he
16 had messed up, that he had stabbed her in the neck and she
17 was dying. That's what he knew, and he knew he had to get
18 out of there, and get out of there quick before Officer
19 Kevin Smith showed up again.

20 He realized he had to get rid of that knife, like he
21 got rid of it the night before, before jumping in the
22 dumpster. He couldn't leave that knife sitting there. Or
23 could he? If it was self-defense, why was the knife gone?
24 The knife's gone because it wasn't self-defense. It wasn't
25 anything on the part of Cynthia Nelson. He had to take that

1 knife so that law enforcement wouldn't find it.

2 And where did he go? He ran behind Baytree Apartments,
3 where there were 20 or so friends and family who saw no
4 evil, heard no evil. Told officer Rob Nelson to leave. So
5 is it too hard to imagine that he was able to hide the knife
6 after running back through that crowd? That he was able to
7 dispose of it amongst the friends and family who saw nothing
8 and heard nothing?

9 If it were as the defendant wants you to believe, if it
10 were to occur that way, why would he then ask Akera Nelson
11 to change her statement? Not change it to tell her, you
12 know, I was just acting on, you know, defending myself. No.
13 Tell them that I was trying to stab you and that your mom
14 jumped in-between us. Yeah, that's it. That's what I want
15 you to say. That's not what he told her because that's not
16 what happened. What happened is, he stabbed her and he did
17 it in a way that she didn't see the knife, she didn't see it
18 coming. She got blind-sided.

19 Now, Shareema Behlin, the defendant's own sister, she
20 told you that she saw Antonio Scott hit Cynthia Nelson. Not
21 that Cynthia Nelson came in with a knife. Not that Cynthia
22 Nelson even took a swing at the defendant, and especially
23 not that Cynthia Nelson and Antonio Scott were wrapped up in
24 some kind of awkward, uncomfortable jumble of hands like Mr.
25 Hughes demonstrated with Dr. Tormos, who said that was

1 uncomfortable; that was unnatural. You know, you saw that
2 demonstration. Nobody else saw that.

3 What Mr. Hughes did is not evidence. But what Akera
4 and what Shareema told 9-1-1 is evidence. You heard those
5 tapes. Shareema said "I saw my brother hit her with a --
6 you know, with a closed fist." Well, that's consistent with
7 him concealing that knife.

8 Of all the people that you heard from, would you not
9 expect the defendant's own sister to tell the same story
10 that he did? To, at least, if it were a defensive
11 situation, when she calls 911 to say, "Look, this lady tried
12 to stab my brother and he was able to defend himself, and
13 she died as a result. She got stabbed as a result." No.
14 That's not what she said moments after it occurred. It was
15 "Antonio Scott hit Cynthia Nelson and now she's bleeding out
16 of her neck and you need to hurry up because it's bad."

17 Dr. Tormos, in her expert opinion, told you this was a
18 homicide and she gave you two reasons for that. The first
19 being information from law enforcement. The second being
20 the nature of the wound itself. In her experience, she's
21 never seen a wound like that be self-inflicted.

22 Now, Dr. Tormos was also under oath. She had to tell
23 the truth, just like all the other witnesses were supposed
24 to, and that's what she did. She told you that anything's
25 possible, anything's possible, no matter how probable, no

1 matter how ludicrous, anything's possible. To say anything
2 otherwise would be lying, and I don't think Dr. Tormos is
3 going to lie. She doesn't have a dog in this fight. She is
4 a scientist; she is an expert. Her findings were that the
5 injuries that Cynthia Nelson suffered is consistent with a
6 homicide.

7 Information given by law enforcement, the nature of the
8 wound, the two together, not accident, not suicide, not
9 self- defense. If it were self-defense, do you not think
10 that Dr. Tormos would have observed in her external
11 examination some type of bruising if it had occurred how Mr.
12 Hughes did it? Not a slow and planned out, but quick. Do
13 you not think that there would be some indication on Cynthia
14 Nelson's dead body that would corroborate that story? Well,
15 there wasn't. The only thing she had was a stab wound. No
16 defensive wounds, because she didn't see it coming, because
17 the defendant concealed the knife, like he concealed himself
18 in the dumpster the night before, like he concealed that
19 knife when he threw it before he jumped in that dumpster,
20 like he concealed himself on the 20th when the cops were
21 coming. Not when help arrived; when the cops came is when
22 he ran. And where is the knife? It is now concealed again.

23 Autopsies are not done in a vacuum. She told you that.
24 And that is because in order for her to form her opinion,
25 she has to take all the factors into consideration, just

1 like you. You can't decide this case in a vacuum. You
2 can't decide this case just on a cut on her neck or the lack
3 of defensive wounds. You have to think about all the
4 instances that led up to that event. What did the defendant
5 say? What did he do? And you have to come up with what
6 happened with what the facts are in this case. That is your
7 job. So just like autopsies are not performed in a vacuum,
8 neither are jury trials.

9 Now, the killing of another, that is the physical part
10 of it. The mental part is malice aforethought; that is
11 hatred, ill-will. A depraved heart intent on doing wrong,
12 on killing, doing evil things. Now, that can either be
13 shown expressly, "I'm going to kill that lady. I went to
14 kill that lady last night." Or it can be implied. I hid in
15 the dumpster when the cops came and waited on them to leave.
16 I waited for my first opportunity to attack again; that
17 could be implied.

18 So express, Monique Chester overheard the defendant
19 bragging about what he intended to do, about the mental
20 element of this crime. "I went to go kill her last night
21 and the cops came. And I had to throw that knife down and
22 jump in the dumpster." That is express malice. We don't
23 have to use our context clues or our inference abilities, to
24 know what he did.

25 And what else did she tell you? She said, "I'm not the

1 only one that heard it. Everybody heard it." Who's
2 everybody? Is it the 20 people that were behind Baytree?
3 Friends and family of the defendant? Is it the 20 people
4 now in this courtroom today behind the defendant that heard
5 no evil? That saw no evil? Monique Chester did was she
6 thought was the right thing to do, so that you, ladies and
7 gentlemen, could have all the circumstances to decide this
8 case, not just in a vacuum, so that you knew what he was
9 going around saying about the previous night and about that
10 particular day, the day that he stabbed Cynthia Nelson.

11 You don't have to imply malice; it is expressed. "I
12 want to kill that lady. I'm going to kill her when I see
13 her." Even made, you know, a gesture with a knife. Monique
14 Chester showed you that gesture that she observed. Now,
15 Monique Chester also told you she had been told to mind her
16 business. You know, "Mind your business." Not "stop lying
17 about what he said. He didn't say that." That's not what
18 she was being told. She was being told, "Mind your
19 business." She felt like it was the right thing to do, so
20 that you would have all the information before you when you
21 make this very important decision, so that you don't have to
22 rely on inferences, on guesswork. You know what was said
23 because she felt like it was the right thing to do, to come
24 in here and tell you what she overheard, because nobody else
25 would.

1 Ladies and gentlemen, those two things put together
2 equal the offense of murder. The killing of another with
3 malice aforethought. If you have those two things, you have
4 murder. One without the other won't cut it. You got to
5 have a physical act, coupled with the mental act. The
6 physical act, the act of Antonio Scott stabbing Cynthia
7 Nelson. The mental part, "I'm going to kill that lady. I
8 went to kill her last night. I'm going to kill her when I
9 see her."

10 All of the circumstances surrounding that; afterwards,
11 not finding the knife, nobody saying anything about this
12 complicated tangle of arms that resulted in her death.
13 Nothing. Two people that saw it. Three, but one's dead.
14 The two people that are here, Antonio Scott hit Cynthia
15 Nelson on the side. We didn't see what he hit her with
16 because she didn't see it coming, so she didn't put her
17 hands up. He told you what he went to do, he told you what
18 he was going to do, and then he did it.

19 Ladies and gentlemen, I told you at the beginning that
20 I was going to stand up here after this trial and ask you to
21 find the defendant guilty of murder, and that's what I'm
22 doing now. This is a case about a mother standing up for
23 her child; about Cynthia Nelson standing up for Akera Nelson
24 and getting stabbed because of it. So ladies and gentlemen,
25 take this important responsibility, think very hard, talk

1 amongst yourselves, and find the defendant guilty for the
2 murder of Cynthia Nelson. Thank you.

3 THE COURT: Thank you.

4 MR. HUGHES: Please the Court?

5 THE COURT: Yes, sir.

6 CLOSING ARGUMENT

7 BY MR. HUGHES:

8 I made a promise to you, I'd come back before you to
9 tell you it was nothing like you ever saw on television, and
10 it wasn't. The State has made a wonderful argument and made
11 a mountain out of a molehill. Their whole case as far as
12 murder is concerned rests on one person, Monique Chester.
13 Monique Chester, who lives at Baytree -- remember that; this
14 happened at Baytree. Monique lives at Baytree. She knows
15 all the people at Baytree. She is the one person that says
16 she overheard Antonio Scott. "I went there last night to
17 murder her. I hid in the dumpster. I'm going to murder her
18 when I see her." I asked her a question, "Well, why didn't
19 you just call the cops?" That young woman said she didn't
20 have a cell phone.

21 Like I said, y'all have got 500-plus years of life
22 experience and common sense. Who today does not have a cell
23 phone? All she had to do was pick up the phone, call 9-1-1.
24 The cops could have been there, and if she was telling the
25 truth, we wouldn't be here today. But she is lying. She

1 lives at Baytree. She saw the crowds. You saw the video.
2 You saw all those people. You know she walked over to find
3 out what was going on. And when she heard that Antonio
4 Scott had killed Cynthia Nelson, did she go, "Officer,
5 officer, I heard him this afternoon say he was going to kill
6 her"? No. She didn't do that. What did she do? She
7 waited four days to get in touch with law enforcement and
8 say just exactly what would need to be safe to get y'all
9 here today, "I heard Antonio Scott say that he was going to
10 kill Cynthia Nelson. That he was going to stab her, and he
11 was going to do this."

12 Well, law enforcement was there that evening. Why
13 didn't she tell them then? Why didn't the other people tell
14 them? Mr. Ferguson would have you believe that everybody at
15 the party was a relative of Antonio Scott, but he's not had
16 anybody say that. He's not called anybody else that was at
17 that party to say either yes or no. All he's done is put
18 one woman who four days later in a statement she doesn't
19 even care enough to sign about, who comes in and for a
20 moment in the sun says, "Oh, I heard everything. Antonio
21 Scott even told about the crime he did last night."

22 Now, about that crime last night. Yes, law enforcement
23 was there. But we didn't hear the 911 tape from Cynthia
24 Nelson, did we? We didn't hear that Antonio Scott was there
25 to murder. The only person that said Antonio Scott was

1 there to murder her that night was Monique Chester. Monique
2 Chester, I want y'all to think about -- y'all saw her
3 attitude. You saw how she was sitting. You saw how she
4 responded. She didn't want to be there. She said she
5 didn't.

6 So if we don't take Monique into account, let's talk
7 about what happened at the apartment that evening, okay.
8 Antonio Scott is at the party; everybody agrees on that. He
9 goes over to his sister's house to get something to eat. I
10 believe his sister said turkey burgers.

11 Now, Akera comes over with A.J., Antonio, Junior. Now,
12 they get into an argument, but Antonio Scott does not know
13 that Cynthia Nelson is anywhere in the area. Akera said she
14 didn't know she was going to be there. Serena -- I have
15 problems with that name; excuse me. His sister, Shareema,
16 did not know she was going to be there. That takes
17 premeditation out of the picture. You can't plan to kill
18 somebody you don't know is going to be there.

19 Okay. Akera says Cynthia comes in smoking a cigarette.
20 That cigarette bothers me. Where was it? Now, I've smoked
21 cigarettes and if you drop a cigarette on a white carpet,
22 you're going to have major carpet damage. And nobody said
23 anything about any cigarette on the floor after this was
24 supposed to happen.

25 Now, the only person that says she was smoking was

1 Akera. Akera is in an argument with Antonio when her mother
2 comes in, and she comes toward Antonio. Everybody agrees to
3 that. Akera said that Cynthia went toward Antonio. But
4 Shareema said Cynthia went toward Antonio. Even Antonio --
5 Detective Litchfield said that Cynthia got up in his face.

6 Now, the night from the night before, the only person
7 that says anything about a knife the night before is
8 Monique. So what other knives are you going to while eating
9 your turkey burgers? There were kitchen knives found in
10 the kitchen. A knife was found in the trash can, but SLED
11 came back with not enough evidence or something. It was
12 sent out to SLED, but we don't know if those were the murder
13 weapons or not.

14 Okay. I asked Detective Litchfield what Antonio said
15 he did. Detective Litchfield demonstrated, while Antonio
16 was in handcuffs, did a move where he did like this and then
17 like this.

18 Now, Mr. Ferguson says that's a complicated move. If
19 you look at me, you can tell I don't do much exercise in
20 marshal arts. And just by watching what Mr. Litchfield
21 said, I was able to figure out what happened. It's not that
22 hard.

23 Mr. Ferguson said there would be bruises on Cynthia
24 Nelson if that happened. I asked the forensic pathologist
25 if that was done, would there be a bruise here. Did you

1 find a bruise on Cynthia Nelson? No. Would there be a
2 bruise? No. Would there be a bruise on the wrist? No. I
3 asked because I wanted to find out the truth. There was no
4 bruise because there it wouldn't have bruised her.

5 Now, we have a cigarette that disappears. We have a
6 knife that disappears, maybe in the kitchen, maybe; who
7 knows? Now, Mr. Ferguson wants you to think that Antonio
8 Scott was a cold-blooded killer, was planning to kill
9 Cynthia Nelson and he wants you to look at his actions.
10 Let's look at his actions after Cynthia Nelson got wounded.

11 He helped -- she goes back on the sofa. He is the only
12 one that seems to understand this woman has been hurt. Now,
13 if he murders someone, he's going to run, because there are
14 two witnesses to what he did. Does he run? Akera Nelson
15 says he took his shirt and put over the wound. Sherema says
16 he took his shirt and put over the wound.

17 Akera goes crazy. She goes for a mop. She doesn't go
18 to her mother. She then -- I'm not exactly sure what
19 happened, but there was no testimony that she attacked
20 Antonio. All it was, was she was going to get a mop to keep
21 Antonio away from her mother, but she sees him holding his
22 shirt on the wound. And if you see in the video and in the
23 still pictures, that's exactly what EMT's were going to do
24 when they got there. That package in the picture is a
25 press, to press over the wound, to keep the person from

1 bleeding out. It's not as good as a shirt, but it's the
2 only thing he had.

3 What does Akera Nelson do? She runs out of the house.
4 She is doing everything; she's not calling 9-1-1; then, It's
5 Shareema who calls 9-1-1. She is so panicked. She says she
6 blacks out. I'm not exactly sure what she meant with that.
7 I have a feeling it's just stopped thinking, because we have
8 her mother with a wound that causes a lot of blood. We have
9 her boyfriend who is applying pressure, trying to save her
10 mother. We have his sister who is calling 911. And Akera
11 Nelson runs outside, leaving her one-year-old baby in the
12 house. That alone indicates that she is not worried about
13 Antonio. No mother leaves a child behind like that. Okay?

14 Akera said Antonio stayed there until the cops and help
15 arrived. Shareema says Antonio stayed there until cops and
16 help arrived. And then both agreed that he ran away. Why
17 would a young black male who has got a woman who has got a
18 stab wound to her neck run away, even if it is self-defense
19 that she is doing that? Because he panicked. He ran. I
20 don't expect you to forgive him, but I expect you to
21 understand his emotional response to the situation. He
22 waited as long as he could, was trying to make sure Cynthia
23 Nelson did not die. That is not what a murderer does.

24 Now, did the cops catch him? No. He turns himself in
25 to law enforcement. Does he immediately clam up and take

1 the Fifth Amendment? No. He talks to Detective Litchfield
2 for 30 minutes. He explains everything. He talks to him.
3 He answers their questions. He does exactly what a person
4 who hasn't done anything does. He's not scared. He did
5 what he was supposed to.

6 A woman comes at him. Everybody agrees; Cynthia Nelson
7 came at him. A woman is injured. Either she's attacking
8 him and he attacks back or she is attacking with a knife and
9 he defends himself. Any way you look at it, he has done
10 nothing wrong in that department. He is not going at her;
11 he is not attacking her. She is attacking him. He defends
12 himself. He uses his marshal arts. Detective Litchfield
13 told you his father is a black belt. He trains his son.
14 Detective Litchfield said that. He knows what to do.

15 And if this is a murder and he is so mad at Cynthia
16 Nelson that he is going to conceal a knife in his hand and
17 stab her to kill her, why would he hit her only once? This
18 is not that big of a target. Cynthia Nelson was a very
19 large woman. No. He doesn't. There are no multiple stab
20 wounds. This is not "I am mad at you," or "I'm mad at you,"
21 or "I'm mad at you." This is self-defense. She's coming at
22 him. He defends himself using his marshal arts. The knife
23 goes back on Cynthia Nelson.

24 Now, the forensic pathologist told you, "We said it was
25 a homicide because of the wounds and because of what the

1 police say. No autopsy is done in a vacuum."

2 Now, what do you think the forensic pathologist would
3 have said about the cause of death if they had been told
4 that the defendant has demonstrated a marshal arts move that
5 causes this to happen, would they have investigated? I
6 asked Detective Litchfield if he asked Antonio to
7 demonstrate. Did he take off the handcuffs? No. He didn't
8 because of officer safety. It makes sense if you're going -
9 - if you're going to hand a knife to a murder suspect, not
10 to take the handcuffs off. This is not a knife. This would
11 have been a great demonstration for Detective Litchfield to
12 use, but he didn't. Why? Because he felt he had the
13 suspect already. He was getting ready to arrest him for
14 murder. There's no need to look for another reason. I made
15 sure to ask.

16 These are the facts that came out from both Akera and
17 Shareema. Did Antonio Scott know Cynthia Nelson was going
18 to be there? Both said "no." Did Cynthia Nelson come at
19 Antonio Scott? Both said "yes." A person has a right to
20 defend themselves from an attack. Cynthia Nelson went at
21 Antonio Scott. What did Antonio Scott do after Cynthia
22 Nelson was injured? He is the one that tried to save her
23 life. He is the one that kept his head and applied pressure
24 to the wound, which is exactly what the EMT did when he got
25 there. Both agreed that Antonio Scott stayed with Cynthia

1 Nelson until help arrived. Then, he left.

2 Now, murder is the willful killing of another with
3 malice aforethought. The State has shown absolutely no
4 malice, other than what Monique Chester said she heard him
5 say, which nobody else heard, even though there was a party
6 of 20 people there. And she was in the car and just
7 happened to be parked close enough to Antonio Scott, not
8 only to hear everything, but to see him acting out what he
9 was supposed to have done or was going to do, that she
10 didn't bother to tell anybody for four days.

11 Ladies and gentlemen, this is not murder. This is
12 self-defense. A person has the right to defend themselves
13 from attackers. That is what this was. Cynthia Nelson came
14 at Antonio Scott. He defended himself. Unfortunately, and
15 this is the biggest tragedy of all, Cynthia Nelson died.
16 Not because of what Antonio Scott did, but because of what
17 happened that night when she attacked Antonio Scott.

18 Ladies and gentlemen, you have to find my client not
19 guilty because the State has not proved murder; they have
20 not shown malice. They have simply shown that Monique
21 Chester wants some attention and Antonio Scott did the best
22 he could to save Cynthia Nelson's life after she attacked
23 him. Thank you.

24 JURY CHARGE

25 THE COURT: Madame Foreperson, members of the jury, you

1 have followed very patiently and listened very attentively
2 to the presentation of the evidence in this case, and I want
3 to thank you for that. And also the able arguments made by
4 Solicitor Robert Ferguson on behalf of the State, and Mr.
5 Robert Hughes on behalf of the defendant.

6 Now, it is my duty as the trial judge under the
7 Constitution of this state to charge and instruct you on the
8 law that is applicable to this case. And it's your duty as
9 jurors to accept and apply the law as I will now state it to
10 you.

11 As jurors, it is your sole, exclusive duty to decide
12 all the issues of fact in this case. You must determine the
13 effect, the value, the weight, and the truth of the
14 evidence. Both the State and the defense have the right to
15 expect that you will carefully consider the evidence and
16 apply the law to that evidence. Now, ladies and gentlemen,
17 by doing so, the State of South Carolina and the defense
18 will receive a fair and impartial trial on this case.

19 Now, the State of South Carolina, by the bill of
20 indictment in this case charges the defendant, Antonio
21 Demazio Scott, with the offense of murder. And that
22 indictment reads as follows: That in Jasper County, on or
23 about March 20th, 2011, with malice aforethought, Antonio
24 Demazio Scott, did kill and murder Cynthia Nelson by means
25 of stabbing, and that Cynthia Nelson did die as a proximate

1 result thereof on March 21st of 2011.

2 Now, ladies and gentlemen, I remind you that the fact
3 the defendant was arrested and charged and indicted in this
4 case is not evidence in this case and cannot be considered
5 by you as evidence of guilt in this case, nor did it create
6 a presumption or inference of guilt. An indictment is
7 simply the formal written instrument which contains the
8 charges which are made against the defendant. It's the
9 formal document by which the case is brought into this
10 courtroom.

11 Now, ladies and gentlemen, the defendant, Mr. Scott in
12 this case, has pled not guilty to this indictment. And that
13 plea puts the burden on the State to prove the defendant
14 guilty beyond a reasonable doubt. A person charged with
15 committing a criminal offense in South Carolina is never
16 required to prove himself innocent. I charge you that it is
17 an important rule of law that the defendant, in a criminal
18 trial, no matter what the seriousness of the charge may be
19 will always be presumed to be innocent for the crime of
20 which an indictment was issued, unless guilt has been proven
21 by evidence satisfying you, the jury, of that guilt beyond a
22 reasonable doubt.

23 Ladies and gentlemen, this presumption of innocence
24 does not end when you begin your deliberations, but it
25 accompanies the defendant throughout the trial until you,

1 again, the jury, reach a verdict based on evidence
2 satisfying you of the defendant's guilt beyond a reasonable
3 doubt.

4 Ladies and gentlemen, this presumption of innocence is
5 like a robe of righteousness that's placed about the
6 defendant and it remains with him until it's been stripped
7 from him by evidence satisfying you of his guilt beyond a
8 reasonable doubt. Ladies and gentlemen, the presumption of
9 innocence is not a mere legal theory. It's not just a legal
10 phrase we use. It's a substantial right to which every
11 defendant is entitled, unless you, the jury, are satisfied
12 from the evidence of the defendant's guilt beyond a
13 reasonable doubt.

14 Now, ladies and gentlemen, again, I told you that the
15 State has the burden of proving the defendant guilty beyond
16 a reasonable doubt. The term "reasonable doubt" must be
17 given its plain and ordinary meaning. However, to the
18 extent that I may define it for you, a reasonable doubt is
19 the kind of doubt that would cause a reasonable person to
20 hesitate to act in the most important of their personal
21 decisions.

22 Ladies and gentlemen, the defendant is entitled to
23 every reasonable doubt arising in the case. If, upon any
24 issue of fact essential to conviction, you have a reasonable
25 doubt how that issue should be decided, you must resolve

1 that reasonable doubt in favor of the defendant.

2 Now, ladies and gentlemen, some of you may have served
3 as jurors in civil cases where you were told it was only
4 necessary to prove that a fact is more than likely true than
5 not true. Such as by what we call the greater weight or the
6 preponderance of the evidence. In criminal cases, the
7 State's proof must be more powerful than that. It must be
8 beyond a reasonable doubt.

9 Ladies and gentlemen, proof beyond a reasonable doubt
10 is proof that leaves you firmly convinced of the defendant's
11 guilt. Now, there are very few things in this world that we
12 know with absolute certainty. And in criminal cases, the
13 law does not require proof that overcomes every possible
14 doubt. If, based on your consideration of the evidence, you
15 are firmly convinced that the defendant is guilty of the
16 crime charged, you must find the defendant guilty. If, on
17 the other hand, you think there is a real possibility that
18 the defendant is not guilty, you must give the defendant the
19 benefit of the doubt and find him not guilty.

20 Now, I remind you, ladies and gentlemen, that you and I
21 have certain duties to perform in this case. As the trial
22 judge, it is my responsibility to preside over the trial of
23 the case, and I also have the duty to rule on the
24 admissibility of the evidence that's offered during the
25 trial. You are to consider only the competent evidence

1 before you. You are to consider only the testimony which
2 has been presented from the witness stand back here and any
3 other exhibits which have been made a part of the record.

4 I, ladies and gentlemen, have the additional duty to
5 charge you the law that's applicable to this case. As the
6 presiding judge, I'm the sole judge of the law. And it's
7 your duty, as jurors, to accept and apply the law as I now
8 state it to you. If you have any idea as to what the law is
9 or what the law ought to be, and it does not agree with you,
10 that I now tell you the law is, you must abandon this idea
11 because you are sworn to accept and apply the law exactly as
12 I state it to you.

13 Now, ladies and gentlemen, in every case tried in this
14 Court before a jury, the jury becomes the sole and exclusive
15 judge of all the facts. A trial judge cannot intimate,
16 state, comment on, or make any statement to a trial jury
17 about the facts in the case. Since you, the jury, are the
18 sole judge of the facts in this case, you are not to infer
19 from what I've said during the progress of this trial in
20 ruling upon the admissibility of evidence, or otherwise, or
21 anything that I say now during the course of this
22 instruction to you, that I have an opinion about the facts
23 in this case. The law does not allow me to have an opinion
24 about the facts of this case. Again, ladies and gentlemen,
25 this is a matter solely for you, the jury, to determine.

1 Now, there are typically two types of evidence which
2 are presented during a trial; that is direct evidence and
3 circumstantial evidence. Direct evidence is the testimony
4 of a person who claims to have actual knowledge of a fact,
5 such as an eyewitness. It is evidence which immediately
6 establishes the main fact to be proved.

7 Circumstantial evidence is a proof of a chain of facts
8 and circumstances indicating the existence of a fact. It is
9 evidence which immediately establishes collateral facts from
10 which the main fact may be inferred. Circumstantial
11 evidence is based on inference and not on personal knowledge
12 or information.

13 Ladies and gentlemen, the law makes absolutely no
14 distinction between the weight or value to be given to
15 either direct or circumstantial evidence. Nor is a greater
16 degree of certainty required of circumstantial evidence than
17 direct evidence. You should weigh all the evidence in this
18 case. And after weighing all the evidence, if you are not
19 convinced of defendant's guilt beyond a reasonable doubt,
20 you must find the defendant not guilty.

21 Now, again, ladies and gentlemen, it is your duty to
22 determine the credibility of the witnesses who have
23 testified in this case. Credibility simply means
24 believability. It's your duty as jurors to analyze and
25 evaluate the evidence and determine which evidence convinces

1 you of its truth. Now, in determining the believability of
2 the witnesses who have testified in this case, you may
3 believe one witness over several witnesses, and you may
4 believe a part of the testimony of a witness and reject the
5 remaining part of the testimony of that same witness.

6 You may believe the testimony of a witness in its
7 entirety or reject the testimony of a witness in its
8 entirety. You may consider whether any witness has
9 exhibited to you any interest, bias, prejudice, or other
10 motive in this case. And you can also consider the
11 appearance and the manner of the witness while they are on
12 the witness stand.

13 Now, ladies and gentlemen, as I told you earlier, the
14 rules of evidence ordinarily do not permit witnesses to
15 testify to opinions or conclusions. An exception to this
16 rule exists for witnesses we call expert witnesses. A
17 witness who by education and experience have become an
18 expert in some art, science or field or profession may state
19 an opinion as to the relevance and material matter in which
20 the witness claims to be an expert in, and may also state
21 the reasons for the opinion.

22 You should consider any expert opinion received in
23 evidence in this case, and like any other evidence, give it
24 the weight you think it deserves. If you decide that the
25 opinion of an expert witness is not based on sufficient

1 education and experience, or if you conclude that the
2 reasons given in support of the opinions are not sound, or
3 that the opinion is outweighed by other evidence, you may
4 disregard the opinion entirely. An expert witness'
5 testimony is to be given no greater weight than that of the
6 other witnesses, simply because the witness is an expert.
7 And further, ladies and gentlemen, you are not required to
8 accept an expert's opinion, even though it is not
9 contradicted.

10 Now, I instruct you, and emphasize that the fact that
11 the defendant did not testify in this case is not a factor
12 to be considered by you in any way in your deliberations and
13 in your consideration on the question of the guilt or
14 innocence of the defendant. It must not be considered by
15 you in any manner whatsoever. A defendant has the
16 constitutional right to remain silent, and the assertion of
17 this right must not be considered by you in your
18 deliberations.

19 I repeat, under your oath, you are to draw no
20 conclusion whatsoever from the fact that the defendant in
21 this case did not testify. The fact that the defendant did
22 not testify should not even be discussed in the jury room.
23 The burden of proof as I have stated to you is on the State.
24 The defendant is not required to prove his innocence. And
25 the burden of proof remains on the State to prove guilt

1 beyond a reasonable doubt.

2 Now, ladies and gentlemen, the indictment in this case
3 charges the offense of murder. Now, to prove murder, the
4 State must prove beyond a reasonable doubt that the
5 defendant killed another with malice aforethought.

6 Now, ladies and gentlemen, malice is hatred or ill-will
7 or hostility towards another person. It is the intentional
8 doing of a wrongful act without just cause or excuse, and
9 with an intent to inflict an injury, or under circumstances,
10 the law will infer an evil intent.

11 Malice aforethought does not require that malice exist
12 for any particular time before the act is committed, but
13 malice must exist in the mind of the defendant just before
14 and at the time the act is committed. Therefore, there must
15 be a combination of the previous evil intent and the act.

16 Malice aforethought may be either express or inferred.
17 Now these terms "express" and "inferred" do not mean
18 different types of malice, but rather the manner in which
19 malice may be shown to exist. That is, either by direct
20 evidence or by inference from the facts and circumstances
21 which are proved.

22 Ladies and gentlemen, express malice is shown when a
23 person speaks words which express hatred or ill-will for
24 another, or when the person prepared beforehand to do the
25 act which was later accomplished. For example, lying in

1 wait for a person, or any other act of preparation, going to
2 show that the deed was within the defendant's mind, would be
3 express malice. Ladies and gentlemen, malice may be
4 inferred from conduct showing a total disregard for human
5 life.

6 Now, ladies and gentlemen, if you find that the State
7 has failed to prove beyond a reasonable doubt that the
8 defendant committed murder, you may consider whether the
9 State has proved beyond a reasonable doubt that the
10 defendant committed voluntary manslaughter. To prove
11 voluntary manslaughter, the State must prove beyond a
12 reasonable doubt that the defendant took the life of another
13 in the sudden heat of passion based on sufficient legal
14 provocation.

15 Now, ladies and gentlemen, both heat of passion and
16 sufficient legal provocation must be present at the time of
17 the killing to constitute voluntary manslaughter. Sudden
18 heat or passion may for a time affect a person's self-
19 control and temporarily disturb a person's reason. The
20 sudden heat of passion must be the type that would make the
21 ordinary person unable to coolly reflect on his actions,
22 that would produce an uncontrollable impulse to be violent.

23 Sufficient legal provocation must be the type that
24 would make a person of ordinary reason and caution to become
25 enraged and to lose control temporarily. The provocation

1 needed for voluntary manslaughter must come from some act of
2 or related to the victim. Now, words alone, however vulgar
3 or insulting, are not enough to be legal provocation. Where
4 death is caused by the use of a deadly weapon, the words
5 must be accompanied by some overt threatening act which
6 could have produced the heat of passion.

7 Now, ladies and gentlemen, the exercise of a legal
8 right, no matter how offensive it is to another is never
9 sufficient legal provocation for voluntary manslaughter. If
10 the heat of passion has cooled, or if there was enough time
11 between the provocation, if any, and the killing, for the
12 passion of a reasonable person to cool, the killing would
13 not be voluntary slaughter.

14 In describing whether a reasonable person would have
15 enough time to cool off, you should consider all the
16 circumstances surrounding the killing. You may consider the
17 nature of the provocation, if any, the defendant's mental
18 and physical state, and the circumstances and relationships
19 between the parties.

20 Now, ladies and gentlemen, the defendant has raised a
21 defense in this case of self-defense. Self-defense is a
22 complete defense and if it is established, you must find the
23 defendant not guilty. The State has the burden of
24 disproving self-defense by proof beyond a reasonable doubt.
25 If you have a reasonable doubt of the defendant's guilt

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

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

15 Ladies and gentlemen, self-defense is not available to
16 a person who uses language which is so contemptuous that a
17 reasonable person would expect it to bring on a physical
18 encounter, and which did actually contribute to that
19 physical encounter.

20 The second element of self-defense is that the
21 defendant was actually in imminent danger of death, or
22 serious bodily injury, or that the defendant actually
23 believed he was in imminent danger of death or serious
24 bodily injury. If the defendant was actually in imminent
25 danger, it must be shown that the circumstances would have

1 warranted a person of ordinary firmness and courage to
2 strike the fatal blow to prevent death or serious bodily
3 injury. If the defendant believed he was in imminent danger
4 of death or serious bodily injury, it must be shown that a
5 reasonable and prudent person of ordinary firmness and
6 courage would have had that same belief.

7 Now, in deciding whether the defendant actually was, or
8 believed he was, in imminent danger of death or serious
9 bodily injury, you should consider all the facts and
10 circumstances surrounding the crime, including the physical
11 condition and characteristics of the defendant and the
12 victim.

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

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

24 Ladies and gentlemen, words accompanied by hostile acts
25 may, depending on the circumstances, establish self-defense.

1 Any evidence of prior difficulty between the defendant and
2 the victim may be considered in deciding whether a threat
3 existed, whether the defendant had a reason to believe a
4 threat existed, and how serious that threat was. The
5 relative sizes, ages, and weight of the defendant and the
6 victim may be considered in deciding the appearance or
7 actual need for force in self-defense and the amount of
8 force needed. Ladies and gentlemen, the threats made by the
9 victim may be considered in determining whether the
10 defendant actually was or believed he was in imminent
11 danger.

12 Now, the final element of self-defense is the defendant
13 had no other probable way to avoid the danger of death or
14 serious bodily injury, than to act as the defendant did in
15 the particular instance. Ladies and gentlemen, if the
16 defendant was on the premises, the defendant had no duty to
17 retreat before acting in self-defense.

18 Additionally, ladies and gentlemen, a person cannot be
19 required to make an exact calculation as to the degree or
20 amount of force which may be needed to avoid death or
21 serious bodily injury. Therefore, in self-defense, the
22 defendant has the right to use the force needed to avoid
23 death or serious bodily harm. The force used in self-
24 defense does not have to be limited to the degree or amount
25 of force used by the victim. The defendant has the right to

1 use so much force as appears to be necessary for complete
2 self protection, in which a person of ordinary reason and
3 firmness would have believed he needed to prevent death or
4 serious bodily harm.

5 Madame Foreperson, and members of the jury, as you
6 retire to begin your deliberations in this case, I wish to
7 express the hope that each of you will understand and be
8 mindful of the importance of your duty here today. You're
9 not called upon very often to serve as jurors and that
10 proper performance of that duty requires that each of you
11 will reach the heights of freeing your mind of all improper
12 influences.

13 You've observed during the trial of this case the
14 presiding officer is always addressed as Your Honor. The
15 reason is that the Court is entrusted with the honor of this
16 community, the honor of this state, and the honor of this
17 country in seeing that every case tried here in this
18 courthouse receives fair and impartial justice. Now, you,
19 the jury, are taking into your care and keeping the honor of
20 this community, the honor of this state, and the honor of
21 this country.

22 Now, ladies and gentlemen, please don't get the idea
23 that I'm trying to tell you or intimate to you how I think
24 you should decide this case. As I've already told you,
25 under the laws of our state, you are the sole judge of all

1 facts, and it would be highly improper for me to influence
2 you in that duty.

3 However, ladies and gentlemen, I am vitally concerned
4 that when a verdict's been reached, as the result of the
5 twelve of y'all going back there, and confining your
6 consideration to the evidence and the law that you've heard
7 in this courtroom, when fairly and partially, which I have
8 every confidence you will. Ladies and gentlemen, everyone
9 is entitled to justice in this case, both the State and the
10 defense, and you owe no support or sympathy to anyone. The
11 Court is of the opinion that whatever verdict you reach in
12 this case will represent truth and justice for all parties
13 concerned.

14 Now, Madame Foreperson, I remind you, your verdict must
15 be unanimous. It must be the verdict of all 12 jurors. And
16 to that end, my law clerk has prepared a verdict form. It
17 has the case caption on it, The State of South Carolina,
18 County of Jasper, and it reads: The State of South Carolina
19 versus Antonio Demazio Scott. And it has two questions.
20 The first is: We, the jury, unanimously find the following:
21 as to Indictment Number 2011-GS-27-192, the charge of
22 murder, we, the jury, unanimously find the defendant Antonio
23 Demazio Scott not guilty or guilty.

24 Ladies and gentlemen, please don't infer by the order
25 that I put "not guilty" or "guilty" on the verdict form has

1 any significance. In each trial, I just reverse them.

2 Ladies and gentlemen, there goes on the question that
3 says, if you find the defendant is guilty of murder, you are
4 to stop your deliberations. Madame Foreperson, you would
5 sign the verdict form and knock on the door and we will
6 accept you in.

7 However, ladies and gentlemen, if you find the
8 defendant is not guilty of murder, you may then go on to
9 consider whether or not he has committed the lesser-included
10 offense of voluntary manslaughter. And it goes on to ask,
11 as to Indictment Number 2011-GS-27-192, the charge of
12 voluntary manslaughter, we, the jury, unanimously find the
13 defendant Antonio Demazio Scott, and again, either not
14 guilty or guilty. And I remind you, there is a place for
15 the foreperson to sign the verdict form and then date it.
16 Again, when you have reached a verdict, please knock on the
17 jury room door and we're going to accept you back here to
18 read your verdict.

19 Madame Foreperson, and members of the jury, for the
20 very last time, I'm going to send you back to your jury room
21 and I'm going to ask you not to begin your deliberations.
22 If there's something further the attorneys would like me to
23 charge you on the law, I'm going to bring you back out here
24 and charge you. If there is not, ladies and gentlemen, I'm
25 going to send the verdict form, along with any other

1 evidence that's been entered into this case, and that will
2 be your signal to begin your deliberations. All right?

3 Ladies and gentlemen, I will also tell you that while
4 we have had a court reporter here during the entire trial of
5 this case, we do not have a transcript of the case. So, for
6 instance, you wanted to have a certain testimony repeated or
7 heard, what we can do is bring you in here and replay it for
8 you on the audio system; all right?

9 Additionally, if there's any portion or all of my
10 charges that you would further like to hear again, I will do
11 the same thing. Bring you back out here and I will re-read
12 it for you. All right?

13 Again, I'm going to send you back to your jury room. I
14 want to tell you how much I appreciate your attention.
15 Again, do not begin your deliberation until either we bring
16 you back here and further charge you or I send you the
17 verdict form and the evidence. All right? Thank you. You
18 are excused.

19 (1:00 P.M., 12-7-11, WHEREUPON, THE JURY EXITS THE
20 COURTROOM AND THE FOLLOWING PROCEEDINGS ARE HELD ON THE
21 RECORD.)

22 THE COURT: Any exceptions or additions to the charge
23 from the State?

24 ASST. SOL FERGUSON: No, ma'am, Your Honor.

25 THE COURT: From the defense?

1 MR. HUGHES: No, Your Honor.

2 THE COURT: All right. You both have looked at and
3 agreed to the verdict form, I think it was back in chambers.
4 I just want to verbally, for the record, reiterate that you
5 have no objection, is that correct, Mr. Ferguson?

6 ASST. SOL. FERGUSON: No, ma'am, Your Honor.

7 MR. HUGHES: No, Your Honor.

8 THE COURT: All right. We'll go ahead, gentlemen.
9 Let's make sure we have the proper evidence that's going
10 back.

11 (BRIEF PAUSE WHILE EXHIBITS ARE PUT IN ORDER AND
12 ACCOUNTED FOR. THE VERDICT FORM, ALONG WITH ALL EXHIBITS
13 ARE TAKEN BACK TO THE JURY BY THE BAILIFF AND THEY ARE
14 INSTRUCTED TO BEGIN THEIR DELIBERATIONS.)

15 (THE COURT RELEASES THE ALTERNATE JURORS FROM THE TRIAL
16 IN THIS CASE AND FROM THE COURTROOM.)

17 (3:10 PM, 12-7-11, WHEREUPON THE COURT IS NOTIFIED THAT
18 THE JURY HAS REACHED A VERDICT AND THE FOLLOWING IS HELD ON
19 THE RECORD.)

20 THE COURT: Ladies and gentlemen, for those of you that
21 have been sitting through this trial, I'm going to bring the
22 jury out to read their verdict. If there is anyone in the
23 courtroom that cannot contain themselves when that verdict
24 is read, I'm going to ask you to excuse yourself at this
25 time. If there is any type of outburst whatsoever, the

1 deputy is going to take you into custody and we'll re-visit
2 the issue on Friday. All right? Let's bring them out.

3 THE COURT: Mr. Hughes, go get your client. Thank you.

4 (3:12 P.M., 12-7-11, WHEREUPON, THE JURY ENTERS THE
5 COURTROOM AND THE FOLLOWING IS HELD ON THE RECORD.)

6 THE COURT: All right. Is the State ready?

7 ASST. SOL FERGUSON: Yes, ma'am, Your Honor.

8 THE COURT: The defense now ready?

9 MR. HUGHES: Yes, ma'am.

10 THE COURT: Thank you.

11 MADAME CLERK: Madame Foreperson, have you reached a
12 verdict?

13 MADAME FOREPERSON: Yes, ma'am, we have.

14 THE COURT: If you will please publish the verdict.

15 MADAME CLERK: The State of South Carolina v. Antonio
16 Demazio Scott, we, the jury, unanimously find the following
17 as to Indictment Number 2011-GS-27-0192, the charge of
18 murder, we, the jury, unanimously find the defendant,
19 Antonio Demazio Scott, guilty.

20 THE COURT: Ladies and gentlemen of the jury, if that
21 was your verdict, will you please indicate by raising your
22 right hand?

23 (ALL TWELVE JURORS RAISE THEIR HANDS.)

24 THE COURT: All right. Ladies and gentlemen, I'm going
25 to go through and individually poll you. My question is

1 going to be as follows. I'm going to ask you if this is
2 your verdict and if this is still your verdict. When your
3 name is called, just indicate by saying "yes" or "no". All
4 right? Vaughn Goodall, is this your verdict?

5 MR. GOODALL: Yes, ma'am.

6 THE COURT: Is it still your verdict?

7 MR. GOODALL: Yes, ma'am.

8 THE COURT: David Shipes. Sir, is this your verdict?

9 MR. SHIPES: Yes, ma'am.

10 THE COURT: Is it still your verdict?

11 MR. SHIPES: Yes, ma'am.

12 THE COURT: Arinn Poston. Sir, is this your verdict?

13 MR. POSTON: Yes, ma'am.

14 THE COURT: Is it still your verdict?

15 MR. POSTON: Yes, ma'am.

16 THE COURT: Dometric Lewis. Sir, is this your verdict?

17 MR. LEWIS: Yes.

18 THE COURT: Is it still your verdict?

19 MR. LEWIS: Yes.

20 THE COURT: Abigail Gomez. Is this your verdict?

21 MS. GOMEZ: Yes.

22 THE COURT: Is it still your verdict?

23 MS. GOMEZ: Yes.

24 THE COURT: Rachael Wilson. Is this your verdict?

25 MS. WILSON: Yes.

1 THE COURT: Is it still your verdict?
2 MS. WILSON: Yes.
3 THE COURT: Chester Newton.
4 MR. NEWTON: Yes.
5 THE COURT: Is this your verdict?
6 MR. NEWTON: Yes, Your Honor.
7 THE COURT: Is it still your verdict?
8 MR. NEWTON: Yes, Your Honor.
9 THE COURT: Kerry Raymond. Sir, is this your verdict?
10 MR. RAYMOND: Yes.
11 THE COURT: Is it still your verdict?
12 MR. RAYMOND: Yes.
13 THE COURT: Shirlayne Albergottie, is this your
14 verdict?
15 MS. ALBERGOTTIE: Yes, ma'am.
16 THE COURT: Is it still your verdict?
17 MS. ALBERGOTTIE: Yes.
18 THE COURT: Louis Aiken?
19 MR. AIKEN: Yes.
20 THE COURT: Is this your verdict?
21 MR. AIKEN: Yes.
22 THE COURT: Is it still your verdict?
23 MR. AIKEN: Yes.
24 THE COURT: Zachary Smith. Sir, is this your verdict?
25 MR. SMITH: Yes.

1 THE COURT: Is it still your verdict?

2 MR. SMITH: Yes.

3 THE COURT: Robert Priester.

4 MR. PRIESTER: Yes.

5 THE COURT: Is this your verdict, sir?

6 MR. PRIESTER: Yes.

7 THE COURT: And is it still your verdict?

8 MR. PRIESTER: Yes.

9 THE COURT: Is anything further required of this jury
10 from the State?

11 ASST. SOL FERGUSON: No, ma'am, Your Honor.

12 THE COURT: From the defense?

13 MR. HUGHES: No, Your Honor.

14 THE COURT: All right. Ladies and gentlemen of the
15 jury, I want to thank you for your hard work here this week.
16 These cases are not easy to sit on, and I appreciate and
17 understand that, particularly when there's a death involved.
18 But I know you-all have worked hard and you've been very
19 diligent and we appreciate that. On behalf of the State and
20 the defense, we are grateful for your service. You have
21 helped us not only resolve this case, but many others that
22 were on the docket this week that are going to be before us.

23 At this time, I'm going to go ahead and excuse you from
24 your jury service. If you would like to stay for Mr.
25 Scott's sentencing, you are welcome to, but, of course, you

1 are not required to. Also, ladies and gentlemen, at this
2 time, you are permitted to discuss this case, if you would
3 like. Sometimes the attorneys, or a witness, may ask you a
4 question of what you thought about something, and that is
5 permissible, but you do not have to speak about the case in
6 any way. If someone wants to ask you a question and you are
7 not interested in talking about the case, simply say, "No,
8 thank you" and go on your way. If someone were to persist,
9 I want you to call up to Ms. Bostick's office, give her
10 their name, and I will take care of them. All right?

11 So ladies and gentlemen, at this time, I'm going to go
12 ahead and excuse you. If you would like to leave, now is
13 the time to go. After that, if you would like, you can
14 remain and stay where you are. I will sentence Mr. Scott
15 and then I can excuse you after that as well. So if anyone
16 wants to leave, again, now is the time to do it. All right?
17 Does anyone want to leave? Does anyone want to go? All
18 right. Very well. Well, you go ahead and take a seat. And
19 if you want to come forward.

20 ASST. SOL. FERGUSON: We have the sentencing sheet
21 printing, Your Honor.

22 THE COURT: Thank you.

23 ASST. SOL. FERGUSON: It's in our back office and
24 coming right up.

25 THE COURT: Thank you. Obviously, I've tried the case,

1 Mr. Ferguson. I don't think I need to hear too much more
2 from you.

3 ASST. SOL FERGUSON: Yes, ma'am.

4 THE COURT: I do need to know what Mr. Scott's prior
5 record is, though.

6 ASST. SOL FERGUSON: Yes, ma'am. 1998, minor
7 possession of alcohol; 1999, simply assault and battery,
8 trespassing; 2004, assault and battery of a high and
9 aggravated nature; 2009, malicious injury to personal
10 property; 2010, criminal domestic violence, first; malicious
11 injury to personal property. Later in 2010, criminal
12 domestic violence, second offense. From 2000 in the State
13 of New York, criminal possession of a controlled substance,
14 fifth, attempt to sell. I think that's fifth degree, not
15 fifth offense. And that is the extent of his criminal
16 record, Your Honor.

17 AGENT HERD: Your Honor, if it would please the Court,
18 he is also presently under probation. I'll be serving him
19 with a citation for the new conviction and financial
20 arrears. Would you like me to serve that now?

21 THE COURT: If you'd like to serve it now.

22 AGENT HERD: Your Honor, he's been served with citation
23 CC27, 11, Number 12. And I'm charging him with violating
24 condition six, the new conviction. And also with his
25 monetary arrearages at this time.

1 THE COURT: All right. And the victim of the CDV that
2 he's on probation for, the CDV second, is that Akera Nelson?

3 AGENT HERD: It is, Your Honor. And she's the daughter
4 of the victim in this case.

5 THE COURT: All right. Mr. Hughes?

6 MR. HUGHES: Your Honor, you've heard most of his
7 story. He's 32 years old, father of four. He is actually a
8 pretty good guy. I've spent a number of hours talking to
9 him. He has always felt somewhat responsible, even though
10 he still tells me that it was a self-defense matter, he did
11 feel responsible. That's the reason why I wanted the
12 involuntary, because he did feel responsible for her death;
13 even though he denies that he caused it, he felt responsible
14 for it.

15 Your Honor, we're asking that you show mercy to him. I
16 understand there is a long road ahead of him; there is in
17 any sentence. We're asking for the minimum in this matter,
18 Your Honor. This isn't like -- you heard the facts, he
19 didn't go searching for the victim; the victim came to him.
20 There was an altercation. The victim was the aggressor in
21 some matters. This is not someone who went searching for
22 his victim.

23 This is a horrible accident; a horrible mistake that
24 has taken someone from their family. And we're asking that
25 you show lenience to Mr. Scott, that you do give him the

1 minimum in this. He is 32 years old. He will be an old man
2 before he's even eligible for parole, Your Honor.

3 THE COURT: Anything further from anyone?

4 ASST. SOL. FERGUSON: No, ma'am, Your Honor.

5 THE COURT: Mr. Scott, clearly you have a history of
6 criminal domestic violence and aggression issues with having
7 a previous ABHAN on the record. The only redemption that I
8 see in any of what I've heard during the trial of this case
9 is your attempt when you did realize that Ms. Nelson was
10 having a severe problem, you did attempt to stop the
11 bleeding with your shirt, and I do give you some credit for
12 that. Again, a jury's convicted you. Obviously, you've
13 been found guilty of murder. Do we have the sentencing
14 sheets?

15 ASST. SOL. FERGUSON: Yes, ma'am.

16 THE COURT: Indictment Number 2011-192, it is for
17 murder. The sentence of this Court, that you should be
18 committed to Department of Corrections for a period of 30
19 years. Good luck to you, sir.

20 MR. HUGHES: Thank you, Your Honor.

21 AGENT HERD: Your Honor, on the probation matter, we
22 just terminate the probation case and then a civil judgment?

23 THE COURT: Absolutely.

24 ASST. SOL. FERGUSON: Thank you, Your Honor.

25 MR. HUGHES: Thank you, Your Honor.

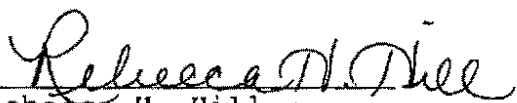
STATE OF SOUTH CAROLINA)
)
COUNTY OF COLLETON)

CERTIFICATE

I, REBECCA H. HILL, Official Court Reporter for the Judicial Department of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had in the hearing of the captioned case, in the Court of General Sessions for Jasper County, South Carolina, on the 5th - 7th day of December 2011.

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

April 3, 2012


Rebecca H. Hill,
Official Court Reporter,

WITNESSES

McIntosh - RPD

23

DOCKET NO. 2011GS2700192

The State of South Carolina

County of Jasper

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I

Hereby appear in my own proper person and plead guilty to the within indictment or to

COURT OF GENERAL SESSIONS

April Term 2011

ARREST WARRANT NUMBER

J386052

THE STATE

VS.

Antonio Demazio Scott

ACTION OF GRAND JURY

TRUE BILL

NO BILL

FOREMAN

DATE

Foreperson of Grand Jury

Date:

VERDICT

Indictment for

Murder / Murder

SC Code: 16-03-0010; 16-03-0020

CDR Code:0116

C.C.C. PLS. and G.S.

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA)
COUNTY OF JASPER)

FILED
CLERK OF COURT
JASPER COUNTY
SOUTH CAROLINA
APR 19 2011

INDICTMENT

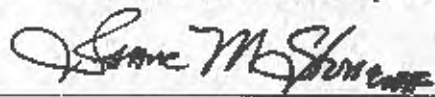
2011GS2700192

At a Court of General Sessions, convened on April 19, 2011, the Grand Jurors of Jasper County present upon their oath:

Murder / Murder

That in Jasper County on or about March 20, 2011, with malice aforethought, Antonio Demazio Scott did kill and murder Cynthia Nelson by means of stabbing, and that Cynthia Nelson did die ^{Chs} ~~in Jasper County~~ as a proximate result thereof on March 21, 2011; in violation of Section 16-3-10 of the South Carolina Code of Laws (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



Solicitor

STATE OF SOUTH CAROLINA

COUNTY OF Jasper
 STATE VS.
Antonio Demazio Scott

AKA: _____
 Race: B Sex: M Age: 33
 DOB: [REDACTED] SS#: [REDACTED]
 Address: [REDACTED] Shadetree St
 City, State, Zip: Ridgeland, SC 29936-9132
 DL#: [REDACTED] SID#: _____

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
 TO: Murder / Murder

IN THE COURT OF GENERAL SESSIONS

235235

INDICTMENT/CASE#: 2011GS2700192A/W#: J386052Date of Offense: 3/20/2011S.C. Code §: 16-03-0010; 16-03-0020CDR Code #: 0116

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-03-0010; 16-03-0020 of the S.C. Code of Laws, bearing CDR Code # 0116

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
 w/minor 1st or Lewd Act)

The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: [Signature] 74809
Ferguson, Robert E SC Bar# _____ Defendant Attorney for Defendant SC Bar# _____

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
 probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
 by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
 Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:	\$	0
§ 14-1-206 (Assessments 107.5 %)	\$	0
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	0
§ 56-5-2995 (DUI Assessment)	\$12	0
§ 56-1-286 (DUI Breath Test)	\$25	0
Proviso 47.9 (Public Def/Prob)	\$500	0
§ 14-1-212 (Law Enforce. Funding)	\$25	25
§ 14-1-213 (Drug Court Surcharge)	\$150	0
§ 50-21-114(BUI Breath Test Fee)	\$50	0
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	0
Proviso 90.5 (SCCJA Surcharge)	\$5	5
3% to County (if paid in installments)	\$	3.90
TOTAL	\$	133.90

Clerk of Court/ Deputy Clerk

[Signature]
Becky Hill Court Rpt

PTUP _____
 _____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐

Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly
 pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,
 § 47.12 requires \$500 be paid to Clerk
 during probation.

Presiding Judge

Judge Code: 2192

12.7.11

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Jasper County

Carmen T. Mullen, Circuit Court Judge

STATE OF SOUTH CAROLINA,

RESPONDENT,

V.

ANTONIO SCOTT,

APPELLANT

APPELLATE CASE NO. 2011-205448

FINAL BRIEF OF APPELLANT

BENJAMIN J. TRIPP
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the trial court reversibly erred by failing to instruct the jury with involuntary manslaughter where there was evidence in the record indicating the knife wound to the deceased's neck was unintentionally caused by Appellant's defensive martial arts maneuver while he was acting in self-defense?

STATEMENT OF THE CASE

Appellant Antonio Scott was indicted on April 19, 2011 by the Jasper County grand jury for murder. R. 28, lines 2-9; R. 202 (Indictment). His case proceeded to trial before the Honorable Carmen T. Mullen and a jury from December 5th through 7th, 2011. R. 1. Robert Hughes (Counsel) represented Appellant, while Robert Ferguson represented the State. R. 1.

The jury found Appellant guilty as charged. R. 193, lines 15-23. The trial court imposed a sentence of thirty years. R. 200, lines 16-19; R. 204 (Sentence sheet).

STATEMENT OF THE FACTS

Appellant Antonio Scott was at the apartment of his sister, Shareema Behlin (Behlin), on the evening of March 20, 2011. Specifically, he was waiting for his son's mother, Akera Nelson (Akera), to drop his son off with him. R. 86, line 10—R. 87, line 13. Unknown to Appellant or Behlin, Akera's mother, Cynthia Nelson (Nelson), accompanied Akera in her vehicle. Shortly after Akera arrived, Nelson's mother entered Behlin's apartment uninvited, and began cursing Appellant. Specifically, Nelson told Appellant, "mother fucker, I'm tired of you beating on my daughter." R. 87, line 20—R. 88, line 19; R. 92, lines 15-21; R. 93, lines 10-13. The two argued in the apartment while Akera, Behlin, and Child stood by. R. 108, lines 1-24.

According to Akera, Appellant struck Nelson on the right side, and neither Akera nor Behlin saw a weapon in Appellant's hands at that time.¹ R. 88, line 17—R. 89, line 23; R. 106, lines 4-5; R. 107, lines 9-12; R. 107, line 21; R. 108, lines 15-16. According to testimony from Investigator Daniel Litchfield (Litchfield), of the Ridgeland Police Department, Appellant later confessed to him that Nelson pulled something shiny and silver from her pocket during the argument, and came towards Appellant.² R. 99, line 12—R. 100, line 1. Appellant stated he stepped to the side and performed a martial arts move, pushing Nelson's elbow up, which in turn caused Nelson to be stabbed in the throat.³ R. 100, lines

¹ Although Akera stated she saw a knife in Appellant's hand when she entered the apartment, she did not see a knife when Appellant struck Nelson. Behlin testified that Appellant hit Nelson with the inside of his hand. R. 88, lines 3-21; R. 108, lines 15-16. Akera also testified that the apartment was not dark, but well lit. R. 89, line 24—R. 90, line 3.

² Appellant turned himself in to authorities. R. 102, lines 8-12.

³ Litchfield demonstrated this maneuver before the jury. R. 100, lines 4-21.

1-3. Litchfield also testified on cross-examination that he knew Appellant's father, who had a black belt in martial arts, and that Appellant's father taught Appellant. R. 102, line 23—R. 103, line 1.

Nelson fell to the couch in Behlin's apartment, and Appellant used his own shirt to apply pressure to the cut on the left side of Nelson's neck at the jaw line. R. 91, lines 2-5; R. 106, lines 10-17; R. 108, lines 15—R. 109, line 22. When police arrived, Appellant left out the back, and Akera followed after. R. 91, lines 6-9; R. 94, lines 3-9. Nelson was taken to the hospital, and was declared brain dead at 10:05 pm on March 21, 2011. R. 113, lines 16-18.

Dr. Lee Marie Tormos (Dr. Tormos) was the forensic pathologist who autopsied Nelson on March 24, 2011. R. 118, lines 2-7. She confirmed that Nelson died from blood loss due to the single stab wound to the neck. R. 118, lines 12-13; R. 123, lines 20-22. Although Dr. Tormos categorized the death as a homicide, she agreed the wound was consistent with accident as well. R. 125, line 4-5; R. 132, lines 12-15. Furthermore, on cross-examination, Dr. Tormos confirmed that there were no defensive wounds on Nelson. R. 126, lines 2-14. Finally, after demonstrating the martial arts maneuver with Counsel, Dr. Tormos confirmed that the movement demonstrated could have accidentally inflicted the wound to Nelson, and that there would be no marks on Nelson's wrist or arm.⁴ R. 127, line 2—R. 128, line 22.

During discussions regarding jury instructions, Counsel sought, *inter alia*, instructions on self-defense and involuntary manslaughter. R. 146, line 1—R. 147, line 23;

⁴ Contrary to the State's assertion at trial, Dr. Tormos also indicated that Counsel did not move her wrist during the demonstration, but that the movement of her forearm by Counsel could have resulted the wound to Nelson. R. 130, lines 18-23.

R. 149, line 1—R. 151, line 25. The trial court ultimately charged self-defense and voluntary manslaughter, yet refused to give an instruction on involuntary manslaughter. R. 153, line 12—R. 154, line 13; R. 183, line 6—R. 188, line 4. Specifically, the court acknowledged that evidence of struggle over a weapon between the defendant and victim is sufficient for submission of an involuntary manslaughter jury instruction to the jury. R. 149, lines 1-8. The court interpreted the defense to be that Appellant performed a martial arts move to avoid being hit himself or hurt in some way. R. 147, lines 13-15; R. 149, lines 9-14. Thus, the trial court stated the following:

I don't see—if either what he did was self-defense or—and **you have to believe one way or the other, either he came with a knife or she came with a knife. I mean, that's the problem I have with that. I don't see how criminal negligence, what he did—I mean, I don't see how under any circumstances he could be criminally negligent.**

R. 149, lines 19-25 (emphasis added). The State then argued that it did not “see **how you could act in self-defense in a criminally negligent way, because it is an intentional act,**” to which the trial court agreed, “**Right.**” R. 151, lines 20-22 (emphasis added).

Counsel explained that Litchfield's testimony regarding Appellant's martial arts move, which was also demonstrated with Dr. Tormos, not only was possible, but also was what directly caused the death of Nelson. R. 150, lines 1-8. The trial court held “[t]hat would be purely self-defense.” R. 150, line 9.

The jury found Appellant guilty of murder, and the trial court imposed a sentence of thirty years. R. 193, lines 15-23; R. 200, lines 16-19; R. 204 (Sentence sheet).

This appeal follows.

ARGUMENT

The trial court reversibly erred by failing to instruct the jury with involuntary manslaughter where there was evidence in the record indicating the knife wound to the deceased's neck was unintentionally caused by Appellant's defensive martial arts maneuver while he was acting in self-defense.

The trial court erred by failing to charge involuntary manslaughter where evidence was present indicating Appellant unintentionally caused Nelson's death without malice while engaged in the lawful activity of self-defense with reckless disregard for the safety of others. Investigator Litchfield testified that Appellant was taught martial arts by his father, who was a black belt, and that Appellant demonstrated the maneuver in question for Litchfield when interviewed. Litchfield also demonstrated this move for the jury, as did Dr. Tormos with the assistance of Counsel. Even with the knife in Nelson's hand rather than Appellant's, the martial arts maneuver that Appellant executed on Nelson could have unintentionally caused the fatal wound to the left side of Nelson's neck, consistent with a verdict of involuntary manslaughter.

The law to be charged is determined from the evidence presented at trial. State v. Knoten, 347 S.C. 296, 302, 555 S.E.2d 391, 394 (2001). Reversible error is committed if the trial court fails to give a requested charge on an issue raised by the evidence. State v. Hill, 315 S.C. 260, 262, 433 S.E.2d 848, 849 (1993). Moreover, when determining whether the evidence requires a charge on a lesser included offense, the court views the facts in the light most favorable to the defendant. See Knoten, 347 S.C. at 302, 555 S.E.2d at 394 (providing a court must view the facts in the light most favorable to a defendant when determining if evidence required a charge on the lesser included offense of involuntary manslaughter).

“Importantly, our courts have long emphasized that to warrant a court’s eliminating the offense of manslaughter, it should very clearly appear that there is no evidence whatsoever tending to reduce the crime from murder to manslaughter.” State v. Brayboy, 387 S.C. 174, 180, 691 S.E.2d 482, 486 (Ct. App. 2010); see also State v. Cole, 338 S.C. 97, 101, 525 S.E.2d 511, 513 (2000); State v. Burriss, 334 S.C. 256, 265, 513 S.E.2d 104, 109 (1999); Casey v. State, 305 S.C. 445, 447, 409 S.E.2d 391, 392 (1991). Thus, a request to charge a lesser-included offense is properly refused only when there is no evidence that the defendant committed the lesser rather than the greater offense. Casey, 305 S.C. at 447, 409 S.E.2d at 392.

Involuntary manslaughter is the unintentional killing of another without malice, but while engaged in an unlawful activity not naturally tending to cause death or great bodily harm; or (2) the unintentional killing of another without malice, while engaged in a lawful activity with reckless disregard for the safety of others. State v. Crosby, 355 S.C. 47, 51-2, 584 S.E.2d 110, 112 (2003); see also State v. Light, 378 S.C. 641, 648, 664 S.E.2d 465, 468 (2008); Burriss, 334 S.C. 256, 265, 513 S.E.2d 104, 109 (1999). Further, evidence of a struggle over a weapon between a defendant and victim supports submission of an involuntary manslaughter charge. Tisdale v. State, 378 S.C. 122, 125, 662 S.E.2d 410, 412 (2008) Casey, 305 S.C. at 447, 409 S.E.2d at 392.

Moreover, “a self-defense charge and an involuntary manslaughter charge are not mutually exclusive, as long as there is any evidence to support both charges.” Light, 378 S.C. at 650, 664 S.E.2d at 470. Thus, “when there is a factual issue as to whether the [killing] was committed intentionally in self-defense or was committed unintentionally, then

the defendant is entitled to both charges as there is ‘any evidence’ to support each charge.” Id. 378 S.C. at 651, 664 S.E.2d at 470.

In the case at bar, evidence is present in the record which, when viewed in the light most favorable to Appellant, supports the charge of involuntary manslaughter. First, the testimony of Litchfield and Dr. Tormos readily indicate that Nelson’s death may have been unintentionally caused. Appellant’s statement to Litchfield indicated that Appellant reacted to a knife attack by Nelson. R. 99, line 12—R. 100, line 1; R. 100, lines 1-3. Litchfield also indicated that Appellant had martial arts training from his father, but was not certain regarding the level of Appellant’s skill. R. 102, line 23—R. 103, line 1.

Additionally, Dr. Tormos testified that the wound to Nelson’s neck could have been accidental. R. 125, line 4-5; R. 132, lines 12-15. More importantly, after going through the in-court demonstration of the martial arts maneuver with Counsel, Dr. Tormos indicated that it was indeed possible for the wound to Nelson’s neck to be inadvertently caused by such a move. R. 127, line 2—R. 128, line 22.

Second, the record contains evidence that Appellant was engaged in the lawful activity of self-defense at the time Nelson was unintentionally killed. See, e.g., Light, 378 S.C. at 649, 664 S.E.2d at 469 (explaining the elements of self-defense). As Akera stated, Appellant did not know Nelson was coming with her to drop off Appellant’s son. Also, Nelson unexpectedly entered Behlin’s apartment and began cursing and arguing with Appellant. R. 87, line 20—R. 88, line 19; R. 92, lines 15-21; R. 93, lines 10-13. As Litchfield indicated, Appellant stated he saw Nelson take out a shiny silver object from her pocket and come at him with it. R. 99, line 12—R. 100, line 1. Therefore, under these circumstances, Appellant was without difficulty bringing on the difficulty, and had the

right to act on the appearances that he was being attacked by Nelson with a knife. See, e.g., State v. Nichols, 325 S.C. 111, 117, 481 S.E.2d 118, 121 (1997) (citing State v. Jackson, 227 S.C. 271, 87 S.E.2d 681 (1955), and State v. Rash, 182 S.C. 42, 188 S.E.2d 435 (1936)). In response, Appellant performed a martial arts maneuver, apparently not only intended to get out of the way of an attack, but also to counter attack. R. 100, lines 1-3. Accordingly, Appellant was engaged in the lawful activity of self-defense at the time he caused Nelson to be stabbed in the neck.

Third, evidence is present in the record indicating Appellant's martial arts move was conducted with reckless disregard for the safety of others. Specifically, Dr. Tormos confirmed that the movement demonstrated could have inflicted the wound to Nelson, and that the wound could have been accidental. R. 127, line 2—R. 128, line 22. Additionally, pursuant to Appellant's statement to Litchfield, the maneuver performed was in response to a knife attack and specifically would have handled the forearm of Nelson's knife-wielding arm. R. 99, line 12—R. 100, line 1; R. 100, lines 1-3. As a result, such testimony is evidence of a physical struggle between Appellant and Nelson with the knife. Accordingly, Appellant was entitled to a jury instruction on the lesser-included offense of involuntary manslaughter, and the trial court reversibly erred by failing to do so. See, e.g., Tisdale, 378 S.C. at 125, 662 S.E.2d at 412; Casey, 305 S.C. at 447, 409 S.E.2d at 392.

Furthermore, the trial court's concern that it could not charge both self-defense and involuntary manslaughter under the circumstances of this case was also erroneous. The South Carolina Supreme Court has already held that "a self-defense charge and an involuntary manslaughter charge are not mutually exclusive, as long as there is any evidence to support both charges." Light, 378 S.C. at 650, 664 S.E.2d at 470. As indicated

above, evidence was present in the record supporting both a self-defense charge—which the trial court gave—and an involuntary manslaughter charge—which the court did not give. Therefore Appellant was entitled to both charges of self-defense and involuntary manslaughter because there was a factual issue for the jury to determine as to whether the killing was committed intentionally in self-defense or was committed unintentionally.” Id. 378 S.C. at 651, 664 S.E.2d at 470.

Finally, Appellant was prejudiced by the trial court’s failure to give an involuntary manslaughter jury instruction. Appellant’s defense was not that his actions did not result in Nelson’s death; rather, Appellant’s defense was that he was either justified in killing her, or that his reckless actions unintentionally resulted in her death. However, Appellant was denied the opportunity to have the jury consider a lesser-included offense when deliberating his case. See, e.g., Hill, 315 S.C. at 262, 433 S.E.2d at 849 (stating reversible error is committed if the trial court fails to give a requested charge on an issue raised by the evidence). Thus, Appellant was prejudiced by the trial court’s refusal to charge involuntary manslaughter. As a result, Appellant seeks reversal of his conviction, and a new trial granted.

CONCLUSION

For the foregoing reasons, Appellant Antonio Scott respectfully requests reversal of his conviction, and remand for a new trial.

Respectfully submitted,

for Robert M. Tripp
Benjamin J. Tripp
Appellate Defender

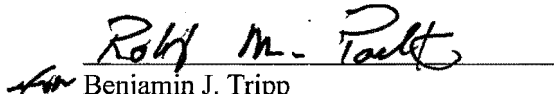
ATTORNEY FOR APPELLANT

This 13th day of June 2013.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

June 13, 2013


for Benjamin J. Tripp
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Jasper County

Carmen T. Mullen, Circuit Court Judge

STATE OF SOUTH CAROLINA,

RESPONDENT,

V.

ANTONIO SCOTT,

APPELLANT

Appellate Case No. 2011-205448

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Donald J. Zelenka, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 13th day of June, 2013.

for Rollin M. Tripp

Benjamin J. Tripp
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 13th day of June, 2013.

Talal McKay (L.S.)

Notary Public for South Carolina

My Commission Expires: July 24, 2022.



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332
Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1330
Facsimile: (803) 734-1397

Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

June 13, 2013

Donald J. Zelenka, Esquire
Senior Assistant Deputy Attorney General
Office of the Attorney General
PO Box 11549
Columbia, SC 29211

Re: The State v. Antonio Scott

Dear Don:

Enclosed are two copies of the Final Brief of Appellant in the above-entitled case, which I have filed today with the South Carolina Court of Appeals.

Please call me if you have any questions.

Sincerely,

for Benjamin J. Tripp
Appellate Defender

BJT/pcm

Enclosure

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Jasper County
The Honorable Carmen T. Mullen, Circuit Court Judge

Appellate Case No. 2011-205448

THE STATE,

Respondent,

v.

ANTONIO SCOTT,

Appellant.

FINAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Senior Assistant Deputy Attorney General

ANTHONY MABRY.
Assistant Attorney General
S.C. Bar No. 11973
Post Office Box 11549
Columbia, SC 29211
(803) 734-6305

ISAAC McDUFFIE STONE, III
Solicitor, Fourteenth Judicial Circuit
P.O. Box 1880
Bluffton, SC 29910
(843) 470-3725

ATTORNEYS FOR RESPONDENT

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APPELLANT'S STATEMENT OF ISSUE ON APPEAL

Whether the trial court reversibly erred by failing to instruct the jury with involuntary manslaughter where there was evidence in the record indicating the knife wound to the victim's neck was unintentionally caused by appellant's defensive martial arts maneuver while he was acting in self-defense?

STATEMENT OF THE CASE

On March 20-21, 2011, appellant Antonio Scott murdered Cynthia Nelson in Ridgeland, S.C. (R. pp. 28, 29, 193-97). Appellant was arrested on March 21, 2011 for Nelson's murder. (R. pp. 98-104). Appellant was subsequently indicted on April 11, 2011 by the Jasper County grand jury for murder (2011-GS-27-216). (R. pp. 1, 28, 29, 33, 34). Appellant was represented by Robert Hughes, Esquire. (R. p. 1). Appellant proceeded to trial December 5-7, 2011 before the Honorable Carmen T. Mullen and a jury. (R. pp. 1, 193-200). At the conclusion of the trial, the jury found appellant guilty of murder. (R. pp. 193-97). Judge Mullen sentenced appellant to thirty (30) years imprisonment for murder. (R. pp. 197-200).

RESPONDENT'S STATEMENT OF FACTS

On the night of March 19, 2011, the victim Cynthia Nelson ("Cynthia") called police in reference to appellant, Antonio Scott, her daughter's boyfriend and the father of Cynthia's grandchild, being outside the front door of her apartment trying to break in. (Tr. pp. 98-99). Cynthia was outside her home in her car when she witnessed appellant at the front door of her apartment and called police using her cell phone. (R. pp. 17-23, 71-73). Ridgeland City Police Officers Kevin Smith and Rob Nelson responded to the scene; however, by the time the officers arrived appellant was gone. (R. pp. 71-72). When appellant realized the victim had called police, he threw away the knife he was carrying and hid in a nearby garbage dumpster. (R. pp. 72, 75-85). At Cynthia's request, Officer Smith searched her home to make sure appellant was not in her home and it was safe for Cynthia to enter. (R. p. 72-73). Officer Smith eventually talked to appellant on the phone, and appellant admitted he had called Cynthia. (R. p. 72).

The following day, March 20, 2011, Ms. Monique Chester, a resident of Baytree Apartments, was attending a wake at a residence located behind Baytree Apartments. The wake was for appellant's cousin who had recently died. While there, Ms. Chester overheard appellant talking about what had occurred the previous evening. Appellant told a fellow family member that he had tried to kill Cynthia the night before, but she had called the police. Appellant stated he had hid in a dumpster to avoid being arrested by police, and he had thrown the knife somewhere. Appellant also stated that the next time he saw Cynthia he was going to stab her. (R. pp. 75-85).

On the same date, March 20, 2011, the victim's daughter, Akera Nelson ("Akera") and Cynthia drove to appellant's sister's (Shareema Behlin's) apartment because appellant had

requested that the victim's daughter (Aker) bring their son to him at his sister Shareema's apartment. Shareema also lived in Baytree Apartments. Aker and the child entered Shareema's apartment. Cynthia remained in the vehicle. Cynthia's daughter, Aker, saw a knife in appellant's hand when she entered Shareema's apartment and appellant got up of the couch. Appellant knew Cynthia was outside in the vehicle and stated to Aker with the knife in his hand: "Is this how you wanna do things?" "You gonna let your mom come between us?" Aker told appellant: "Its not that serious. Chill out." Aker continued to try and calm appellant down and while doing so put her son down on a chair. About one (1) minute later, Cynthia got out of the car and entered the apartment where her daughter and grandson were, and Cynthia told appellant she was not going to put up with him beating her daughter any more.¹ (R. pp. 86-98, 105, 108, 115-25, 154-58, 160-161).

Appellant started arguing with Cynthia. At this point, Aker could no longer see the knife in appellant's hand. Aker then witnessed appellant strike Cynthia one (1) time in the face/neck area with his fist. Appellant's sister, Shareema, testified at trial that appellant struck the victim in the face/neck area with the open part of his hand. Neither woman saw appellant and Cynthia wrestling or tussling before appellant struck Cynthia. They were just arguing. After appellant struck Cynthia, Cynthia then staggered forward and collapsed on the couch in the living room unable to speak. Blood was pouring from Cynthia's neck. It was subsequently discovered that appellant had not just struck Cynthia with his fist but had actually stabbed her with the knife. The knife wound penetrated Cynthia's neck approximately two (2) and one half (½) inches and was stopped by a bone in her neck. The knife wound severed an artery in

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Appellant was on probation at the time of trial for CDV 2nd Offense. Aker was the victim in that offense.

Cynthia's neck resulting in a severe loss of blood, cardiac arrest, and eventual death.² (Tr. pp. 114-26, 135, 138, 145-55, 85-89, 91-92).

Cynthia's daughter, Akema, then went in the kitchen, obtained a mop handle and swung it at appellant because he had attacked her mother. When Akera stopped swinging at appellant with the handle, appellant took off his shirt and used it to try to stop the bleeding from Cynthia's neck. Appellant then fled the scene going behind Baytree Apartments in the direction of where the wake had been the day before. Akera followed appellant but did not leave the scene. (R. pp. 86-98).

Appellant's sister, Shareema, called 911. (State's Ex. 1, 1st call, R. pp. 38-44). On the 911 tape, appellants' sister can be heard telling someone to the effect "you better get out of here." (State's Ex. 1, 1st call). Appellant's sister was asked by the 911 operator what happened to the victim and Sharema stated *someone stabbed her in the neck*. (State's Ex. 1, 1st call). When appellant's sister was specifically asked who stabbed the victim, she did not answer. She then stated she needed to walk outside the home. Sharema then became belligerent with the 911 operator. (State's Ex. 1, 1st call).³

The victim's daughter, Akema, then called 911. (State's Ex. 1, 2nd call, R. pp. 38-44). She informed the 911 operator her boyfriend, appellant Antonio Scott, had struck her mother with his fist but she did not know what he had in his hand at the time. She informed the 911

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The victim, Cynthia, was first taken by E.M.S. to a local hospital and then, because of her condition, she was transported to a hospital in Savannah, Georgia. She died there on March 21, 2011 as a result of the stab wound to her neck just below the ear. (Tr. pp. 72-86, 140-55).

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When police responded one (1) of the officers was wearing a body camera that showed the jury exactly what occurred when police arrived at the scene. (State's Ex. 2, Video). Police attempted to interview appellant's sister Shareema but she was not cooperative in the initial investigation. The victim's daughter, Akera, was present at the scene and was cooperative and related to police how appellant had attacked her mother. (State's Ex. 2, Video).

operator that her mother was bleeding profusely. She also gave police a description of appellant and where he had run to. (State's Ex. 1, 2nd call). (R. pp. 86-98, 105, 108, 115-25, 154-58, 160-61)

When police arrived at the scene, appellant had already fled behind the apartment. Officer Rob Nelson went behind the apartment looking for appellant. When he approached a group of people behind the apartment complex [appellant's family] asking if they had seen appellant and where he had fled, the individuals told Officer Nelson to leave. The murder weapon, the knife, was never found. (R. pp. 86-98, 105, 108, 115-25, 154-58, 160-61).⁴

Appellant was subsequently arrested on March 21, 2011 and charged with attempted murder.⁵ He was interviewed by police. Appellant claimed the victim, Cynthia, came to the apartment with a knife and attempted to stab him, whereupon he used, for lack of a better word, a martial arts move to block the attempted stab, which resulted in the victim stabbing herself in the face / neck with the knife. Appellant asserted that as the victim came at him with her knife, he side-stepped her and pushed her elbow up and she stabbed herself with the knife still in her hand. (R. pp. 95-104). Investigator Daniel Litchfield testified that appellant stated as follows:

He [appellant] told us he was there. He had an altercation, a verbal argument with Cynthia Nelson. During this argument, he stated that Cynthia Nelson pulled something shiny and silver out of her pocket, went towards him, and he stepped to the side and did a - - for lack of a better term, a martial arts move, pushing her elbow up, causing her to stab herself in the throat.

Q: Now, did he physically show you how this occurred?

A: Yes, sir.

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Police interviewed the victim's daughter, Akera, at the scene and she gave police a statement regarding what had occurred. Appellant's sister, Shareema, would not give police a statement. (State's Ex. 2).

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The victim died later that day and the charge was upgraded to murder. (R. pp. 95-104, 110-25).

OFFICER LITCHFIELD: Be okay, Judge?

THE COURT: Sure.

A: Now, mind you, he was handcuffed, but he said he was standing there. She reached into her pocket, and when she went towards him, he said he did this and this. In other words, her arm went by him and he pushed the arm and she stabbed herself in the neck. That was his statement.

(R. p. 99, ln. 22 - p. 100, ln. 15). Investigator Litchfield further testified appellant admitted he and the victim exchanged words before she was killed. (R. p. 100). And, appellant was confronted with what Ms. Chester had related he had said at the wake the day before Cynthia's murder. Investigator Litchfield related appellant denied he had ever threatened the victim before, but admitted that he and the victim had argued before and they did not like each other. (R. p. 101). Investigator Litchfield further testified that police interviewed others regarding Cynthia's death but they were unable to find anyone to corroborate his claim that Cynthia was the aggressor in the incident. (R. p. 101).⁶

At the close of the trial, based on the evidence, Judge Mullen charged the jury on the crimes of murder and the lesser included offense of voluntary manslaughter. The trial judge also charged the jury on the complete defense of self-defense. Judge Mullen also instructed the jury that they could return a verdict of not guilty if the State failed to meet their burden of proof. The trial judge did not charge the jury on the *offense of* involuntary manslaughter or the *defense of* accident finding they were not applicable under either the factual scenario testified to by the

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Appellant did not testify at trial. After the State rested, appellant presented no evidence. (R. p. 138). Akera also testified appellant, prior to trial, attempted to persuade her give false testimony that he was trying to stab her, Akera, and her mother jumped between them and was accidentally stabbed. Akera refused to testify falsely for appellant.

State or appellant's version of events. (R. pp. 134-36, 138-54).⁷ On appeal, appellant only challenges the trial judge's declining to instruct the jury on involuntary manslaughter.

ARGUMENT

Judge Mullen did not err in declining to charge involuntary manslaughter, where taking the evidence in the light most favorable to the defendant, the victim always had the knife in her possession and appellant was acting in self-defense when he blocked the victim's knife with a defensive move causing the victim to stab herself with the knife that was always in her hand.

At trial, given the evidence in the record, Judge Mullen appropriately charged the jury on the defense of self-defense. Appellant asserts on appeal that Judge Mullen erred in refusing to charge the jury on *involuntary* manslaughter. Appellant is wrong. Judge Mullen did not err in refusing to instruct the jury on involuntary manslaughter.

What Occurred Below

The charge conference took place over the last two (2) days of trial. (R. pp. 134-36, 138-54). Appellant requested a charge of involuntary manslaughter arguing the jury could find he acted recklessly or negligently while acting in self-defense.⁸ Appellant's counsel eventually admitted his request for an involuntary manslaughter instruction was based on the fact that the trial judge was going to instruct the jury on murder, voluntary manslaughter, and not guilty (based on self-defense) and counsel believed the jury would compromise on voluntary

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Appellant admitted below the defense of accident was not applicable to the facts of this case and withdrew his request for a charge on the defense of accident. (R. p. 145, ll. 9-25).

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Appellant's counsel argued, although he did not know, there might have been a different defensive move his client could have used rather than the one described by appellant to police; therefore, he was recklessly acting in self-defense and was entitled to an involuntary manslaughter charge. (R. p. 150, ll. 1-8). However, there was no testimony at trial that there was some alternative defensive move or maneuver appellant could have used. (R. pp. 134-200). Further, there was no testimony appellant had any formal training or was an expert in martial arts. In fact, the only testimony was his father, who was a black belt, had taught him some martial arts moves.

manslaughter if they were not given a 4th option of involuntary manslaughter as well. (R. p. 147, ll. 5-12, R. p. 150, ll. 16-22). The Solicitor pointed out to the Court that jury instructions must be based on the evidence in the record and not on defense counsel's strategic concerns about what the jury might or might not do with only three (3) choices. (R. p. 152, ln. 20 - p. 153, ln. 3). Judge Mullen even recessed overnight so she could study the matter further and so counsel could provide her with any authority supporting a charge on involuntary manslaughter. The following day, after receiving authority, reviewing the same, conducting further research, and hearing further argument on the issue, Judge Mullen determined charging involuntary manslaughter on this record would not be appropriate. (R. pp. 148-54). Judge Mullen thereafter instructed the jury on murder, voluntary manslaughter, and self-defense. As previously stated, the jury convicted appellant of murder.

The Lack of Merit of this Issue

Standard of Review

The conduct of a criminal trial is left largely to the discretion of the trial judge, and this Court will not interfere unless the rights of the appellant were prejudiced. State v. Bridges, 278 S.C. 447, 448, 298 S.E.2d 212, 212 (1982). Therefore, this Court reviews errors of law only and is bound by the trial court's factual determinations unless they are clearly erroneous. State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). In criminal cases, the appellate court sits to review errors of law only. State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). A trial court's decision regarding jury charges will not be reversed where the charges, as a whole, properly charged the law to be applied. State v. Rye, 375 S.C. 119, 123, 651 S.E.2d 321, 323 (2007). If the instructions given to the jury afford the proper test for determining the issues, the

failure to give one side's requested instructions is not prejudicial. State v. Hughey, 339 S. C. 439, 452, 529 S.E.2, 721, 728 (2000).

Jury Charges

"The law to be charged must be determined from the evidence presented at trial." State v. Cole, 338 S.C. 97, 101, 525 S.E.2d 511, 512 (2000). In determining whether the evidence requires a charge of manslaughter, the Court views the facts in the light most favorable to the defendant. State v. Byrd, 323 S.C. 319, 321, 474 S.E.2d 430, 431 (1996). For a court to refuse to charge a jury on manslaughter, there must be no evidence in the record tending to reduce the crime from murder to manslaughter. State v. Dickey, 380 S.C. 384, 669 S.E.2d 917 (Ct. App. 2008). However, "[a]n instruction should not be given unless it is justified by the evidence." State v. Moultrie, 273 S.C. 532, 534, 257 S.E.2d 730, 731 (1979). "Only the law applicable to the case should be charged to the jury." State v. Blurton, 352 S.C. 203, 208, 573 S.E.2d 802, 804 (2002). "If a jury instruction is provided that does not fit the facts of the case, it may confuse the jury." Id. Furthermore, a trial judge must be cautious in charging a lesser included offense. If a trial judge improperly charges the jury on a lesser included offense that is not supported by the facts, and the jury returns a verdict of guilty on the lesser included offense, then upon reversal of the conviction of the lesser included offense, the Double Jeopardy clause prevents retrial of the defendant on the greater offense. *See* Price v. Georgia, 398 U.S. 323 (1970); Gill v. State, 346 S.C. 209, 552 S.E.2d 26 (2001)(discussing fact that prosecution on retrial of greater offense than that for which defendant was convicted would constitute a violation of the Double Jeopardy Clause); Bozeman v. State, 307 S.C. 172, 414 S.E.2d 144 (1992)(finding trial counsel ineffective for falsely informing defendant he could be convicted of murder on retrial if he appealed and

succeeded in vacating his manslaughter conviction). This Court will not reverse the trial court's ruling regarding jury instructions unless the trial court abused its discretion. State v. Williams, 367 S.C. 192, 195, 624 S.E.2d 443, 445 (Ct. App. 2005). When the record contains no evidence to support a lesser included offense, a charge on the lesser included offense should not be given. See State v. Smith, 363 S.C. 111, 609 S.E.2d 528 (Ct. App. 2005), *referencing* State v. Cooley, 342 S.C. 63, 67-68, 536 S.E.2d 666, 668-69 (2000).

At trial, there were two (2) versions of what occurred between the appellant and the victim. The State's version was appellant had threatened the victim the night before, had stalked her, and on the date in question, appellant stabbed her one (1) time in the face/neck area with the knife he had in his possession when the victim and her daughter arrived at his sister's residence. Appellant's version was that *the victim* brought the knife to his sister's apartment, tried to stab him with it, and he used a defensive move and blocked the knife thrust resulting in the victim stabbing herself with the knife she always possessed. In the State's version of how the crime occurred, appellant always had the knife and stabbed the victim intentionally with it. In appellant's version of what occurred, the victim always had the knife, and he blocked it while acting in self-defense, and she stabbed herself. As a result, appellant was not entitled to a charge of involuntary manslaughter.

While self-defense and involuntary manslaughter are not mutually exclusive, as Judge Mullen correctly found, the facts of this case did not entitle appellant to an instruction on involuntary manslaughter. According to the State's evidence, appellant was guilty of murder. According to appellant's version of events, appellant was entitled to an acquittal under the theory of self-defense. However, under neither version of events was appellant entitled to an instruction

on involuntary manslaughter.

These facts would not entitle appellant to an instruction on involuntary manslaughter under South Carolina law and only supported murder, voluntary manslaughter, or self-defense. State v. Wharton, 381 S.C. 209, 672 S.E.2d 786 (2009); State v. Reese, 370 S.C. 31, 36, 633 S.E.2d 898, 900-01 (2006), *overruled on other grounds by* State v. Belcher, 385 S.C. 597, 685 S.E.2d 802 (2009); State v. Cabrera-Pena, 361 S.C. 372, 381, 605 S.E.2d 522, 526-27 (2004)(finding defendant is not entitled to a charge on involuntary manslaughter where no evidence exists to support the charge). Under South Carolina law, involuntary manslaughter is the killing of another without malice and unintentionally while engaged in either: (1) *an unlawful act* not amounting to a felony and not naturally tending to cause death or great bodily harm; or (2) a lawful act with *reckless disregard* for the safety of others. State v. Smith, 391 S.C. 408, 706 S.E.2d 12 (2011); State v. Tucker, 324 S.C. 155, 478 S.E.2d 260 (1996). There is nothing in the record which would have entitled Appellant to an instruction on involuntary manslaughter because he does not fit in either of these two (2) categories.

First, under the State's version, appellant intentionally stabbed the victim with a knife that he had in his possession when the victim and her daughter arrived at the apartment. State v. Pittman, 373 S.C. 527, 647 S.E.2d 144 (2007)(defendant not entitled to involuntary manslaughter instruction where after altercation with his grandfather he obtained shotgun, returned to his grandparents room and shot them, even though he claimed involuntary intoxication from Zoloft); Cabrera-Pena, 361 S.C. at 381, 605 S.E.2d at 526 (involuntary manslaughter instruction not warranted where accused was "engaged in unlawful, felonious and harmful conduct" at the time

of the incident);⁹ State v. Smith, 315 S.C. 547, 446 S.E.2d 411 (1994)(trial court did not err in refusing to instruct on involuntary manslaughter where defendant wielded knife in an intentional manner, because the intentional use of a dangerous instrumentality does not support the allegation of mere criminal negligence); Bozeman v. State, 307 S.C. 172, 177, 414 S.E.2d 144, 147 (1992)(no evidence of mere criminal negligence in use of a dangerous instrumentality because the defendant intentionally fired his weapon);¹⁰ Gibson v. State, 390 S.C. 347, 701 S.E.2d 766 (Ct. App. 2010), *cert. granted* March 22, 2012 (“the essence of involuntary manslaughter is the involuntary nature of the killing” and because co-defendant admitted he voluntarily and intentionally fired his weapon, the trial court properly denied the instruction on involuntary manslaughter to accomplice defendant); State v. Pickens, 320 S.C. 528, 466 S.E.2d 364 (1996)(holding where defendant admitted he intentionally shot his gun, contending he was acting recklessly but lawfully in self-defense, involuntary manslaughter charge was not warranted); State v. Morris, 307 S.C. 480, 483-84, 415 S.E.2d 819, 821-22 (Ct. App. 1991)(noting that under involuntary manslaughter, the act must be unintentional and defendant intentionally shot his gun though he claimed self-defense); State v. Light, 378 S.C. 641, 664 S.E.2d 465 (2008)(finding defendant had lawfully armed himself in self defense and was entitled

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See also State v. Cooney, 320 S.C. 107, 112, 463 S.E.2d 597, 600 (1995)(“no error in refusal to charge involuntary manslaughter when the defendant admitted intentionally firing the gun, but claimed only he meant to shoot over the victim’s head”); Harris v. State, 354 S.C. 382, 581 S.E.2d 154 (2003)(PCR Court erred in granting relief because defendant was not entitled to involuntary manslaughter instruction where he admitted he intentionally fired gun, but meant to only fire warning shots); State v. Craig, 267 S.C. 262, 269, 227 S.E.2d 306, 310 (1976) (involuntary manslaughter charge not warranted where defendant intentionally fired his shotgun but claimed he meant to shoot over the victim’s head); Douglas v. State, 322 S.C. 67, 74, 504 S.E.2d 307, 310 (1998)(involuntary manslaughter charge not warranted where defendant admitted he intentionally fired gun into a crowd in self-defense despite testimony that defendant had been rushed by a group of people during a fight).

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Under South Carolina law, a deadly weapon is generally defined as any article, instrument, or substance which is likely to produce death or great bodily harm. State v. Davis, 374 S.C. 581, 649 S.E.2d 132 (Ct. App. 2007), *referencing* State v. Bennett, 328 S.C. 251, 262, 493 S.E.2d 845, 850-51 (1997). A knife is a deadly weapon or dangerous instrumentality. State v. Smith, 315 S.C. 647, 446 S.E.2d 411 (1994).

to instruction on involuntary manslaughter where there was evidence the gun *unintentionally* discharged); State v. Brayboy, 387 S.C. at 181-82, 691 S.E.2d at 486 (holding although unlawful to point and present a firearm, when defendant lawfully armed himself in self defense his failure to immediately disarm himself when the threat subsided did not amount to unlawful pointing and presenting a firearm and evidence suggesting gun *accidentally* discharged was sufficient to warrant instruction on involuntary manslaughter). *See also* State v. Tyler, 348 S.C. 526, 560 S.E.2d 888 (2002)(“An unintentional killing resulting from an unlawful assault and battery, **not of a character of itself to cause death**, is involuntary manslaughter...”) *quoting* State v. Chatman, 336 S.C. 149, 152-53, 519 S.E.2d 100, 101 (1999), *citing* C.J.S. Homicide Section 40 (1991), *other citations omitted* (emphasis added).¹¹ State v. Davis, 374 S.C. 581, 649 S.E.2d 132 (Ct. App. 2007)(defendant was not entitled to a jury instruction on involuntary manslaughter where striking someone in the head with a five-pound sledgehammer would naturally tend to cause death or great bodily injury *and* there was no evidence defendant handled sledgehammer with reckless disregard for the safety of others but *intentionally struck the victim on the head* with the weapon). Under the State’s version of what occurred, appellant would not be entitled to an instruction on involuntary manslaughter.

Nor was appellant entitled to an involuntary manslaughter instruction under his version of events. Under appellant’s version of events, the victim brought the knife with her to the apartment, she removed the knife from her pocket, she attempted to stab him with the knife, and

¹¹

See also Smith v. Padula, 444 F.Supp. 531 (D.S.C. 2006)(habeas corpus petitioner failed to show S.C. Supreme Court unreasonably applied United States Supreme Court precedent in reversing PCR Court’s grant of relief on ineffective assistance of counsel for failing to preserve trial judge’s refusal to charge involuntary manslaughter where S.C. Supreme Court determined Petitioner was not entitled to involuntary manslaughter instruction under S.C. law).

he blocked her stabbing thrust with his hand, resulting in the victim accidentally stabbing herself in the neck with the knife that was still in her hand.¹² Under appellant's version of events, he was not acting recklessly but in self-defense. If the jury believed appellant's version of events, he was entitled to an acquittal but would not have been entitled to be convicted of the offense of involuntary manslaughter.¹³ As a result, appellant was entitled to an instruction on the absolute defense of self-defense, which he received, but not a jury instruction on involuntary manslaughter.

CONCLUSION

For the above stated reasons, appellant's conviction and sentence must be affirmed.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

12

Contrary to Appellant's assertion on appeal, the record reveals there was no struggle over the knife. According to appellant's version of events, the victim always had the knife in her hand and in her complete possession. Appellant simply sidestepped the victim and blocked her stabbing thrust by pushing her arm resulting in the victim stabbing herself. If appellant's version is true, he should not be subject to three (3) years in prison for such lawful and non-reckless conduct. Further, those cases cited by appellant on appeal are not apposite to the facts of this case. Tisdale v. State, 378 S.C.122, 125, 662 S.E.2d 410 (2008) and Casey v. State, 305 S.C. 445, 447, 409 S.E.2d 391 (1991) both involve *the struggle over a firearm* that allegedly accidentally discharged. Further, a case not cited by appellant, State v. Gorey, 235 S.C. 301, 111 S.E.2d 560 (1959), is not apposite or helpful to appellant. In Gorey, the Court found involuntary manslaughter was warranted where the testimony showed the defendant was negligent in voluntarily engaging in a friendly tussle with a friend while he, the defendant, had an open pocket knife in his, the defendant's, hand which ultimately ended up causing the victim's death. Further, Gorey was under the old law in which one could be convicted of involuntary manslaughter based on simple negligence not recklessness. And, in State v. Light, the appellant had taken a gun away from his girlfriend, stumbled backwards with the firearm in his hand, and he claimed it accidentally discharged killing her. The facts of this case are simply not the same.

13

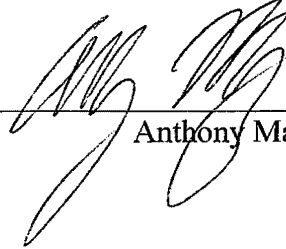
Another way to appropriately analyze this issue is to imagine the State had requested an involuntary manslaughter instruction, appellant had objected, the jury was instructed on the same, the jury had returned a verdict of involuntary manslaughter, and appellant had been sentenced to prison. On appeal, appellant would have been entitled to vacation of his conviction of involuntary manslaughter because under his version of what occurred he was acting in complete self-defense and was not acting with recklessness by sidestepping and blocking a knife thrust by the victim resulting in her stabbing herself with her own knife. This appellate ground must be dismissed.

DONALD J. ZELENKA
Senior Assistant Deputy Attorney General

J. ANTHONY MABRY
Assistant Attorney General

P.O. Box 11549
Columbia, SC 29211
(803) 734-6305

ATTORNEYS FOR RESPONDENT

By:  _____
Anthony Mabry

June 5, 2013

**STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

Appeal from Jasper County
The Honorable Carmen T. Mullen, Circuit Court Judge

Appellate Case No. 2011-205448

THE STATE,

Respondent,

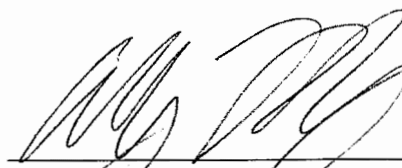
v.

ANTONIO SCOTT,

Appellant.

CERTIFICATE OF COMPLIANCE

The undersigned certifies that this Final Brief of Respondent complies with Rule 211 (b), SCACR, and the August 13, 2007 Order of the South Carolina Supreme Court entitled "Re Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

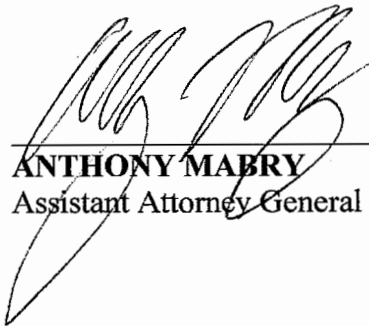


ANTHONY MABRY
Assistant Attorney General
P.O. Box 11549
Columbia, SC 29211-1549
(803) 734-6305

June 5, 2013

CERTIFICATE OF SERVICE

I, **Anthony Mabry**, hereby certify that I have served the *Final Brief of Respondent* in the foregoing action by depositing copies in the Interagency Mail to Breen R. Stevens, Appellate Defender, Division of Appellate Defense, 1330 Lady Street, Suite 401, Columbia, SC 29201 this 5th day of June, 2013.



ANTHONY MABRY
Assistant Attorney General

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

Antonio Scott, Appellant.

Appellate Case No. 2011-205448

Appeal From Jasper County
Carmen T. Mullen, Circuit Court Judge

Opinion No. 5199
Heard January 8, 2014 – Filed February 19, 2014

AFFIRMED

Appellate Defender Benjamin John Tripp, of Columbia,
for Appellant.

Attorney General Alan McCrory Wilson, Chief Deputy
Attorney General John W. McIntosh, Senior Assistant
Deputy Attorney General Donald J. Zelenka, and
Assistant Attorney General J. Anthony Mabry, all of
Columbia; and Solicitor Isaac McDuffie Stone, III, of
Bluffton, for Respondent.

FEW, C.J.: A jury convicted Antonio Scott for the murder of Cynthia Nelson. Scott asserts the trial court erred by not charging involuntary manslaughter because under his version of the facts, he unintentionally caused Nelson's death when he lawfully but recklessly performed a martial arts move in self-defense. We find no

basis to conclude Scott acted recklessly in defending himself because the circumstances Scott alleges to be reckless are the same circumstances that justified his use of force. We affirm.

I. Facts and Procedural History

On March 20, 2011, first responders from Jasper County Fire and Rescue arrived at the home of Scott's sister to investigate a "possible stabbing." They found Nelson "slumped over" on the couch with "a significant amount of blood on her clothing, emanating from her neck." Upon inspecting the wound, one of the first responders concluded "an object or some type of weapon was . . . put into [the left side of] her neck." Paramedics transported Nelson to Coastal Carolina Medical Center, where she later died due to blood loss.

The State indicted Scott for murder. At trial, the State's witnesses established the events leading up to Nelson's death. Nelson and her daughter Akera—who has a child with Scott—drove to Scott's sister's apartment to drop off the child. Nelson remained in the car while Akera took the child inside. When Akera walked in, she and Scott began arguing. "A minute later," Nelson walked into the apartment and began yelling at Scott.

Under the State's version of events, Scott had a knife in his hand when Akera walked in, and during the argument with Nelson, he stabbed Nelson in the neck with the knife. Scott's statement to police, however, described a different version of events.¹ Investigator Daniel Litchfield testified to what Scott told the police:

[Scott] had an altercation, a verbal argument, with Cynthia Nelson. During this argument, he stated that Cynthia Nelson pulled something shiny and silver out of her pocket, went towards him, and he stepped to the side and did a -- for lack of a better term, a martial arts move, pushing her elbow up, causing her to stab herself in the throat.

Dr. Lee Tormos, a forensic pathologist, performed Nelson's autopsy and testified to his findings. Initially, Dr. Tormos stated Nelson's stab wound was not "the result of an accident" and was "consistent with someone having a knife in their hand

¹ Scott did not testify at trial.

[and] striking someone." He further testified he had never "seen a wound like this that was self-inflicted," and stated, "It is not possible that this could be a self-inflicted wound." On cross-examination, however, Scott's attorney demonstrated a martial arts move similar to what Scott allegedly performed and asked Dr. Tormos whether this move could cause a person holding a knife to stab herself in the neck. Dr. Tormos admitted the stabbing "could have been an accident," and acknowledged "[i]t is very possible" Nelson's wounds were caused by a self-inflicted stab wound.

Scott requested the trial court charge self-defense and involuntary manslaughter. The court agreed to charge self-defense but expressed concerns with charging involuntary manslaughter. The court explained, "I honestly think that it has to be either murder or voluntary manslaughter or self-defense" because "I don't see how . . . under any of the circumstances he could be criminally negligent" in defending himself. Scott argued the martial arts move could be considered negligent, to which the court responded, "[t]hat would be purely self-defense," and "[Scott] should be acquitted" and not "convicted of involuntary manslaughter." The State agreed with the court's position, arguing a person cannot "act in self-defense in a criminally negligent way, because it is an intentional act."

The court instructed the jury on murder, voluntary manslaughter, and self-defense. The jury found Scott guilty of murder, and the court sentenced him to thirty years in prison.

II. Involuntary Manslaughter

Involuntary manslaughter is defined as the unintentional killing of another without malice while engaged in (1) an unlawful activity not naturally tending to cause death or great bodily harm or (2) a lawful activity with reckless disregard for the safety of others. *State v. Smith*, 391 S.C. 408, 414, 706 S.E.2d 12, 15 (2011). Scott argues the trial court erred by not charging involuntary manslaughter because there was evidence he unintentionally caused Nelson's death while engaged in the lawful activity of self-defense with reckless disregard for her safety.² We find no

² Scott asserts only that his conduct falls under the second definition of involuntary manslaughter. Thus, we do not address whether Scott was engaged in "an unlawful activity not naturally tending to cause death or great bodily harm" for the purposes of determining whether he was entitled to an involuntary manslaughter charge. See

basis to conclude Scott acted recklessly because if he was justified in defending himself with the martial arts move, there is no ground on which to find he did so recklessly. See *State v. Gibson*, 390 S.C. 347, 355-56, 701 S.E.2d 766, 770 (Ct. App. 2010) ("The evidence presented at trial determines the law to be charged . . .").

Scott premises his argument—that performing the martial arts move was reckless—on his belief that the "shiny and silver" object Nelson pulled from her pocket was a knife. He argues he exceeded the amount of justifiable force because the combination of his action and the presence of the knife created a danger to Nelson that could support a jury finding that he consciously disregarded the risk his conduct created. See *State v. Brayboy*, 387 S.C. 174, 180, 691 S.E.2d 482, 485 (Ct. App. 2010) ("Recklessness is a state of mind in which the actor is aware of his or her conduct, yet consciously disregards a risk which his or her conduct is creating." (citation omitted)). The argument is counterintuitive. If Nelson approached Scott in a manner that gave him a reasonable fear of imminent bodily harm, but she had no knife, Scott would be entitled to use a reasonable amount of force to defend himself. See generally *State v. Dickey*, 394 S.C. 491, 499, 716 S.E.2d 97, 101 (2011) (providing a person may use reasonable force in defending himself when he "believed he was in imminent danger" and "a reasonable prudent man . . . would have entertained the same belief" (citation omitted)). However, under Scott's version of the facts, in which Nelson approached Scott with a knife, the degree of force Scott was entitled to use increased, not decreased, based on the heightened threat posed by the knife. See *Douglas v. State*, 332 S.C. 67, 72, 504 S.E.2d 307, 309 (1998) (stating the law allows a defendant "the right to use as much force as required for his complete protection from loss of life or serious bodily harm" (citation omitted)). Thus, the circumstance Scott relies on to argue he recklessly exceeded justifiable force—Nelson's possession of a knife—actually justifies the use of more force. This is the basis on which the trial court refused to charge involuntary manslaughter, and we agree with the trial court's reasoning.

III. *State v. Light*

Scott cites *State v. Light*, 378 S.C. 641, 651, 664 S.E.2d 465, 470 (2008), to support his argument. We find *Light* is inapplicable to this case because the supreme court's ruling in *Light* depended on the existence of evidence showing the

id. (addressing only the second definition of involuntary manslaughter when the defendant did not seek a charge under the first definition).

defendant acted unintentionally. From that evidence, the court found the jury could infer the defendant acted recklessly. *Id.* Here, there is no evidence Scott acted unintentionally. Therefore, Scott's argument that we may find evidence of recklessness based on the reasoning of *Light* is misplaced.

In *Light*, the victim pulled a gun on the defendant. 378 S.C. at 645-46, 664 S.E.2d at 467. When the defendant "jerked the weapon out of [the victim's] hand, . . . it fired." 378 S.C. at 646, 664 S.E.2d at 467. The defendant admitted he had possession of the gun "when it went off," 378 S.C. at 644, 664 S.E.2d at 466, but claimed "it was not intentional[]." 378 S.C. at 646, 664 S.E.2d at 467. The supreme court found there was evidence that the defendant "recklessly handled the gun because . . . it fired almost immediately after he took possession of it." 378 S.C. at 648, 664 S.E.2d at 469.

The *Light* court's discussion of *State v. Pickens*, 320 S.C. 528, 466 S.E.2d 364 (1996), indicates the *Light* court relied on evidence that the defendant unintentionally fired the gun to find the defendant's conduct was reckless. In *Pickens*, the court held the defendant was not entitled to a charge of involuntary manslaughter when he "admit[ted] he intentionally shot his gun, but that he did so while acting lawfully but recklessly in defending himself." *Light*, 378 S.C. at 650, 664 S.E.2d at 470. The *Light* court clarified its holding in *Pickens*, stating,

[A] self-defense charge and an involuntary manslaughter charge are not mutually exclusive, as long as there is any evidence to support both charges. When there is a factual issue as to whether the shooting was committed intentionally in self-defense or was committed unintentionally, then the defendant is entitled to both charges as there is "any evidence" to support each charge.

378 S.C. at 650-51, 664 S.E.2d at 470 (internal citations omitted).

The evidence in *Light* that distinguished the case from *Pickens* was evidence that the defendant did not intentionally fire the gun.³ *Light*, 378 S.C. at 648, 664

³ See also *State v. Burriss*, 334 S.C. 256, 265 n.10, 513 S.E.2d 104, 109 n.10 (1999) ("*Pickens* may be distinguished from this case because there we based our decision on the fact [the] defendant admitted he shot intentionally. Here, Appellant claimed the shooting was not intentional." (internal citation omitted)).

S.E.2d at 468-69. Thus, the *Light* court held an involuntary manslaughter charge was warranted because there was a factual issue as to whether the defendant fired the gun intentionally in self-defense, or unintentionally in the course of a struggle. 378 S.C. at 651, 664 S.E.2d at 470. Here, there is no evidence Scott acted unintentionally. Therefore, we find *Light* is inapplicable.

IV. Conclusion

We find the trial court correctly refused to charge involuntary manslaughter. The decision of the trial court is **AFFIRMED**.

KONDUROS, J., concurs.

PIEPER, J., dissenting.

I respectfully dissent and would find the evidence in the record warrants an involuntary manslaughter charge. *See State v. Wharton*, 381 S.C. 209, 216, 672 S.E.2d 786, 789 (2009) ("If there is any evidence warranting a charge on involuntary manslaughter, then the charge must be given."). Accordingly, I would find the trial court erred by failing to charge involuntary manslaughter, and I would reverse and remand for a new trial.

**THE STATE OF SOUTH CAROLINA
In The Supreme Court**

The State, Respondent,

v.

Antonio Scott, Petitioner.

Appellate Case No. 2014-001124

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

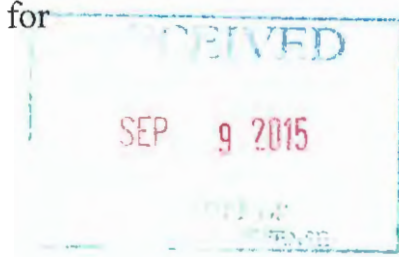
Appeal from Jasper County
Carmen T. Mullen, Circuit Court Judge

Opinion No. 27571
Heard June 3, 2015 – Filed September 9, 2015

AFFIRMED

Appellate Defender Benjamin John Tripp, of Columbia,
for Petitioner.

Attorney General Alan Wilson, Chief Deputy Attorney
General John W. McIntosh, Senior Assistant Deputy
Attorney General Donald J. Zelenka, and Assistant
Attorney General Anthony Mabry, all of Columbia, and
Solicitor Isaac McDuffie Stone, III, of Bluffton, for
Respondent.



CHIEF JUSTICE TOAL: Petitioner Antonio Scott was convicted of murder. On appeal, Scott argues that the court of appeals erred in finding that the evidence did not support a jury instruction on involuntary manslaughter, and thus, in upholding the trial court's failure to charge involuntary manslaughter. *State v. Scott*, 408 S.C. 21, 757 S.E.2d 533 (Ct. App. 2014). We affirm.

FACTS/PROCEDURAL BACKGROUND

On March 19, 2011, Cynthia Nelson called the police and reported that Scott tried to break into her apartment. Scott was allegedly resentful of Cynthia's disapproval of Scott's relationship with her daughter, Akera. Scott departed Cynthia's apartment before the police arrived.

The following day, Scott attended a wake for his cousin in Ridgeland, South Carolina. At the wake, Scott told several people that he used a knife to threaten Cynthia's life the previous night. Scott stated that he was going to kill Cynthia the next time he saw her.

Later that day, Akera and Cynthia arrived at Scott's sister's apartment in Ridgeland to drop off Akera and Scott's child. Akera took the child into the apartment while Cynthia waited outside. When Akera walked inside, Scott stood with a knife in his hand and asked her, "Is this how you wanna [sic] do things?" and "You gonna [sic] let your mom come between us?" A short time later, Cynthia walked in and told Scott, "I'm tired of you beating on my daughter."¹ Cynthia and Scott then engaged in a physical altercation, during which Cynthia was stabbed in the neck.

Scott's sister called 911, and Scott initially attempted to apply pressure to Cynthia's wound. However, Scott fled when the police arrived, and the officers were unsuccessful in their attempts to locate Scott in the apartment complex. Cynthia later died from the wound.

Eventually, Scott contacted a detective in the Ridgeland Police Department and surrendered himself. Investigator Daniel Litchfield interviewed Scott at the police station. Scott told Investigator Litchfield that he engaged in a verbal altercation with Cynthia, during which Cynthia pulled "something shiny and silver out of her pocket" and stepped towards Scott. Scott stated that he then executed a

¹ At the time of the altercation, Scott was on probation for criminal domestic violence, second offense, and Akera was the victim.

"martial arts move, pushing her elbow up, [and] causing her to stab herself in the throat." Investigator Litchfield interviewed several other people in connection with the case and was not able to locate anyone who could corroborate Scott's story.²

Scott was indicted and tried for murder. At trial, Scott did not testify and rested without presenting any evidence. After excusing the jury, the trial judge indicated that she would instruct the jury on murder, voluntary manslaughter, and self-defense. However, the trial judge denied Scott's request to charge involuntary manslaughter.

Scott's counsel candidly admitted that he desired the involuntary manslaughter charge so as to avoid a compromise verdict of voluntary manslaughter. At no point during the charge conference did Scott's counsel ever specifically articulate what evidence supported an involuntary manslaughter charge, instead reiterating his fears of a compromise verdict.

After closing arguments, the trial court charged the jury on the law. The jury deliberated for a short time and found Scott guilty of murder. During sentencing, the State informed the trial court that Scott had a very extensive criminal history and was on probation for criminal domestic violence. The trial court noted Scott's history of violent crime and sentenced him to thirty years' imprisonment.

Scott appealed, contending that the trial court erred by failing to charge involuntary manslaughter. The court of appeals affirmed, *Scott*, 408 S.C. at 27, 757 S.E.2d at 536, and we granted Scott's petition for a writ of certiorari to review the court of appeals' decision.

STANDARD OF REVIEW

"In criminal cases, this Court sits to review errors of law only and is bound by factual findings of the trial court unless an abuse of discretion is shown." *State v. Laney*, 367 S.C. 639, 643, 627 S.E.2d 726, 729 (2006) (citing *State v. Wilson*, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001)). "An abuse of discretion occurs when

² The closest any eyewitness came to corroborating Scott's story was Scott's sister. She testified that she was present when the altercation occurred, and did not see a knife before or after the struggle. Rather, she stated that she saw Scott strike Cynthia, saw Cynthia fall to the couch, and saw blood pouring down the front of Cynthia's body. Scott's sister did not describe Scott making a martial arts move.

the conclusions of the trial court either lack evidentiary support or are controlled by an error of law." *Id.* at 643–44, 627 S.E.2d at 729 (citing *State v. McDonald*, 343 S.C. 319, 325, 540 S.E.2d 464, 467 (2000)). "The refusal to grant a requested jury charge that states a sound principle of law applicable to the case at hand is an error of law." *State v. Pittman*, 373 S.C. 527, 570, 647 S.E.2d 144, 167 (2007) (citing *Clark v. Cantrell*, 339 S.C. 369, 390, 529 S.E.2d 528, 539 (2000)).

ANALYSIS

Scott contends the court of appeals erred in determining there was no evidence to support a charge of involuntary manslaughter. We disagree.

"The law to be charged to the jury is determined by the evidence presented at trial." *State v. Sams*, 410 S.C. 303, 308, 764 S.E.2d 511, 513 (2014) (quoting *State v. Hill*, 315 S.C. 260, 262, 433 S.E.2d 848, 849 (1993)). "The trial court is required to charge a jury on a lesser-included offense if there is evidence from which it could be inferred that the defendant committed the lesser, rather than the greater, offense." *Id.* (citations omitted). In determining whether the evidence requires a charge on a lesser-included offense, courts view the facts in the light most favorable to the defendant. *Id.* (citing *State v. Cole*, 338 S.C. 97, 101, 525 S.E.2d 511, 512–13 (2000)).

Involuntary manslaughter is a lesser-included offense of murder, and "is defined as the unintentional killing of another without malice while engaged in either (1) the commission of some unlawful act not amounting to a felony and not naturally tending to cause death or great bodily harm, or (2) the doing of a lawful act with a reckless disregard for the safety of others." *Id.* at 309, 764 S.E.2d at 514 (citation omitted). Involuntary manslaughter requires a showing of criminal negligence, which "is defined as the reckless disregard of the safety of others." S.C. Code Ann. § 16-3-60 (2003). "Recklessness is a state of mind in which the actor is aware of his or her conduct, yet consciously disregards a risk which his or her conduct is creating." *State v. Brayboy*, 387 S.C. 174, 180, 691 S.E.2d 482, 485 (Ct. App. 2010) (quoting *Pittman*, 373 S.C. at 571, 647 S.E.2d at 167).

Here, Scott asserts that his conduct falls under the second definition of involuntary manslaughter, claiming the evidence demonstrates that he unintentionally killed Cynthia while executing a martial arts move, and therefore that he must have recklessly disregarded the safety of others. However, the only evidence presented at trial that supports Scott's version of the facts is Investigator Litchfield's testimony that Scott told him Cynthia charged at him with a "shiny []

silver" object, at which point he executed a "martial arts move, pushing her elbow up, [and] causing her to stab herself in the throat." Scott did not testify, nor did he offer any evidence that he was criminally negligent in executing the martial arts move. To the contrary, Investigator Litchfield testified that Scott's father had a black belt in martial arts, and that he trained Scott. Thus, the only testimony regarding Scott's martial arts background suggests that his actions were anything but reckless, and that he intentionally caused Cynthia's death.

We acknowledge that under Scott's version of the facts, the evidence supported a self-defense instruction, which he received. However, on appeal, Scott attempts to argue that he was also entitled to an involuntary manslaughter instruction because the jury could have inferred that he acted recklessly in self-defense.³ We recently rejected this argument in *State v. Sams*, wherein the defendant "argue[d] that he acted lawfully in self-defense, but that he perhaps acted excessively and recklessly in doing so." 410 S.C. at 314, 764 S.E.2d at 517. We found that argument "tantamount to imperfect self-defense," which is a doctrine that "South Carolina has not expressly adopted." *Id.* at 315, 764 S.E.2d at 517 (citations omitted). Moreover, we noted that "even if this Court were to accept the doctrine of imperfect self-defense, it is of no consequence to [the defendant's] proceeding as it would, at most, entitle him to an instruction on voluntary manslaughter, which he already received."⁴ *Id.* at 316, 764 S.E.2d at 517 (citations omitted).

Simply put, Scott has not presented any evidence that he acted with reckless disregard for the safety of others. As the trial court noted, if the jury accepted Scott's version of the facts as true, he would be entitled to acquittal because the killing would have been justified. *See Robinson v. State*, 308 S.C. 74, 79, 417 S.E.2d 88, 91 (1992) ("Self-defense is a complete defense; if established, a jury must find that the defendant is not guilty." (citing *State v. Davis*, 282 S.C. 45, 46, 317 S.E.2d 452, 453 (1984) (per curiam))). Thus, we hold that the evidence did not warrant an involuntary manslaughter charge. *See State v. Smith*, 315 S.C. 547, 549, 446 S.E.2d 411, 413–14 (1994) ("The trial court may and should refuse to charge on a lesser-included offense where there is no evidence that the defendant

³ *See State v. Light*, 378 S.C. 641, 650, 664 S.E.2d 465, 470 (2008) ("[A] self-defense charge and an involuntary manslaughter charge are not mutually exclusive, as long as there is any evidence to support both charges." (citations omitted)).

⁴ Scott also received a jury instruction on voluntary manslaughter.

committed the lesser rather than the greater offense." (citation omitted)).

CONCLUSION

For the foregoing reasons, we affirm the court of appeals' decision.

AFFIRMED.

BEATTY, HEARN, JJ., and Acting Justice Alison Renee Lee, concur.
PLEICONES, J., dissenting in a separate opinion.

JUSTICE PLEICONES: I respectfully dissent and would reverse the decision of the Court of Appeals because I find, viewing the evidence in the light most favorable to petitioner, that there is "evidence from which it could be inferred that [he] committed" involuntary manslaughter. *State v. Sams*, 410 S.C. 303, 308, 764 S.E.2d 511, 513 (2014). Unlike the majority, I would not require that a defendant testify or present evidence that he acted in a criminally negligent manner in order to obtain such a charge but rather would review the evidence, including that presented by the State, to determine whether a charge was warranted. Here, there is evidence from which a jury could find that petitioner acted intentionally in moving to deflect the perceived threat, but with reckless disregard of the possible consequences. That petitioner is an experienced martial arts practitioner goes to his intent when acting and to the skill with which he executed the move, not to his reasoned consideration of the possibility that the consequence could be that the victim would stab herself in the neck.

I would reverse the decision of the Court of Appeals and order a new trial.

Antonio Scott #320475

9 September 2021

MECI FI-186

386 Redemption way

McCormick, SC 29899

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S.C. SUPREME COURT

Honorable Patricia A. Howard

Clerk of Court

Supreme Court of South Carolina

P.O. Box 11330

Columbia, SC 29211

RE: 2016 PCR Application, Antonio Scott #320475 v. STATE
And the Amended Application.

Your Honor,

I Am writing in efforts in Receiving
A copy of my PCR Application that I mailed
to Jasper County Clerk of Court on January 15,
2016 to be clock stamped and returned. I
then Amended my PCR Application in April 2016.

However, I have never received my
Clock Stamped Copy of the PCR Application,
Nor did I receive a clock stamped copy
of my Amended Return, And I have not
Received Any Reply to Any of the letters
I have mailed them, Asking where my
Copies are! The last letter I wrote
inquiring about my PCR Application & my
Amended Return to my PCR Application was
January 24, 2020. Obviously timing is
Key here and Since I have received
Absolutely No Reply in these regards. I
Simply ask your Honor to Compel the
Jasper County Clerk of Court to Reply
to my Submissions of paperwork. I have

mailed the Aforementioned Applications, and
 letters to the Honorable Margaret Bostick,
 Clerk of Court, Jasper County at P.O. Box
 248 Ridgeland SC 29936 Requesting the
 Copies and again today September 9, 2021
 just for the Record, I thank you in
 Advance for any and all help with this
 matter.

Sincerely,

Antonio Scott

9-9-2021

DATE

CC: Honorable Margaret Bostick
 Clerk of Court
 Jasper County.

LEGAL MAIL
 MAIL ROOM

Antonio Scott # 320475
 M561 F1-184
 386 Redemption Way
 McCormick, S.C. 29899

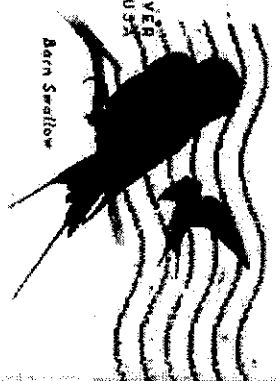
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Barn Swallow

Honorable Patricia A. Howard
 Clerk of Court
 Supreme Court of South Carolina
 P.O. Box 11338

29211 Columbia S

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
Division of Inmate Services

Exhibit - A

AGREEMENT TO DEBIT E.H. COOPER ACCOUNT

Inmate's Name: <i>A. Scott</i>	SCDC #: <i>320475</i>	Housing Unit:	Date: <i>1/15/16</i>
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GENERAL MATERIAL

**** Inmate must have the funds in his/her account to pay for the materials.**

To be completed by
SCDC staff:

Item	Amount
Envelope	
Pen	
Paper	
Postage	
Tape	
Box	
Electronic Repair	
Other	

Cost

Sub-Total:

LEGAL MATERIAL

**** Inmate is not required to have the funds in his/her account to pay for the materials; however, his/her account must be debited for all materials s/he elects to receive.**

To be completed by
SCDC staff:

Item	Amount
Envelope	
Pen	
Paper	
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**** Inmate may be required to have funds in his/her account. See SCDC Procedure GA-01.03(OP), "Inmate Access to the Courts," to determine if inmate may receive copies with/without funds.**

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SCDC staff:

Item	Amount
------	--------

Cost



The Supreme Court of South Carolina

PATRICIA A. HOWARD
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

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COLUMBIA, SOUTH CAROLINA
29211

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COLUMBIA, SOUTH CAROLINA 29201
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FAX: (803) 734-1499
www.sccourts.org

September 15, 2021

The Honorable Margaret Bostic
Clerk of Court, Jasper County
PO box 248
Ridgeland, SC 29936-0248

Dear Ms. Bostic:

Enclosed is correspondence received from Mr. Antonio Scott. As you will see, Mr. Scott asserts he filed an post-conviction relief application in Jasper County in 2016 and amended application in January 2020. He indicates his inquiries to your office about this post-conviction relief application have gone unanswered.¹

I am sure that you will want to respond to Mr. Scott's latest correspondence, and provide him with the status of any post-conviction relief application he may have filed with your office. I do ask that your please provide this office with a copy of any response which may send to Mr. Scott.

Very truly yours,

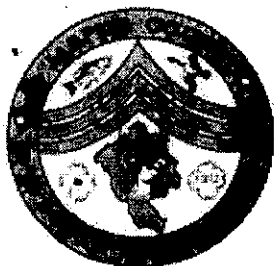
Patricia Howard
CLERK

Enclosure

¹ A review of the public case index for Jasper County fails to indicate that Mr. Scott has filed any post-conviction case.

2021 SEP 20 AM 10:52

cc: Office of the Attorney General (with enclosure)
Mr. Antonio Scott, #320475



Jasper County Clerk of Court

P.O. BOX 248 • RIDGELAND, SOUTH CAROLINA 29836

PHONE: 726-7710
MARGARET BOSTICK
Clerk

September 30, 2021

Mr. Antonio Scott
MC CI F1- 186
386 Redemption Way
McCormick ,SC 29899

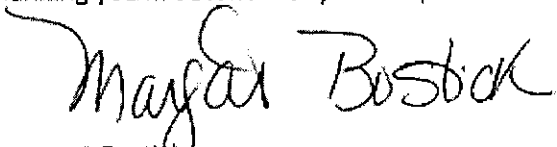
Dear Sir:

Please be advised that we have researched our records and we do not have a PCR application on file for you. Our records do not indicate that one was ever received or filed.

If you would please resubmit your application and send it to my attention I will make sure that it is processed in a timely manner.

I am enclosing a PCR application for you to complete.

Thanking you in advance for your cooperation.


Margaret Bostick

cc: Supreme Court of South Carolina
Office of the attorney General

ANTONIO D. SCOTT-320475
 386-REDEMPTION WAY
 MCCORMICK CORRECTIONAL INST.
 MCCORMICK SC. 29899

10/8/2021

FILED
 JASPER COUNTY
 CLERK OF COURT
 2021 OCT 12 PM 4:47

DEAR Hon. Clerk:

PLEASE STAMP CLOCK AND FILE
 THIS POST-CONVICTION APPLICATION / ALONG WITH
 MY PRO-SE AMENDMENT / AND PLEASE
 APPOINT ME A LEGAL COUNSEL, BECAUSE I
 INDIGENT AND IN NEED OF COUNSEL.

Respectfully,

Antonio D. Scott

FORM 5

STATE OF SOUTH CAROLINA)

County of JASPER #1 320425)Antonio Demazio Scott)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2021-CP-2700-444

APPLICATION FOR

POST-CONVICTION RELIEF

2021 OCT 12 PM 4:23

JASPER COUNTY
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 Correctional Institution
386 Redemption Way - McCormick, SC 29899
2. Name and location of Court which imposed sentence JASPER County
Fourteenth Circuit, Jasper County General Session Ridgeland, S
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2011-GS-27-00192 - MURDER
 - (b) _____

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) 12-7-2011 30 yrs
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty XXXXXX
- (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. SUPREME COURT OF South CAROLINA: COURT OF APPEALS
- ii. SUPREME COURT OF S.C. Petition For Rehearing COURT OF APPEALS
- iii. SUPREME COURT OF S.C. PETITION FOR WRIT CERTIORARI
- (b) the result in each such Court to which you appealed:
- i. AFFIRMED
- ii. DENIED
- iii. _____
- (c) the date of each such result:
- i. Feb 19, 2014
- ii. MAY 2, 2014
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. STATE V. SCOTT, Op. No. 5199 (S.C. Ct. App. Filed Feb 19, 2014)
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) INEFFECTIVE ASSISTANCE OF COUNSEL
- (b) BRADY VIOLATION
- (c) VIOLATION DUE PROCESS
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) COUNSEL WAS INEFFECTIVE for failing to investigate
- (b) this case by failing to interview potential witnesses.
- (c) Counsel has a duty to investigate [SEE ARD V. CATOE, 642 S.E. 2d 597 (2007)]
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? Yes
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. Petition for Rehearing
- ii. Writ OF CERTIORARI
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. S.C. SUPREME COURT/COURT OF APPEALS
- ii. S.C. SUPREME COURT OF SOUTH CAROLINA
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. DENIED
- ii. AFFIRMED
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. MAY 2, 2014
- ii. Sept 9, 2015
- iii. _____
- iv. _____

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

- i. SEE COPY OF ORDER, PAGE 8 OF THIS
- ii. APPLICATION
- iii. _____
- iv. _____

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

NO

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

(a) which grounds have been presented:

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

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

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

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

(a) THIS IS THE FIRST OPPORTUNITY THE APPLICANT
 (b) HAS HAVE TO PRESENT THESE ISSUES.
 (c) _____

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

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

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

(a) the name and address of each attorney who represented you:
 i. ROBERT HUGHES, HAMPTON County Public DEFENDER
OFFICE HAMPTON, SC.
 ii. BREEN R. STEVENS, APPELLATE DEFENDER, S.C. Commission
ON INDIGENT DEFENSE
 iii. BENJAMIN J. TRIPP, APPELLATE DEFENDER, S.C. Commission
ON INDIGENT DEFENSE
 (b) the proceedings at which each such attorney represented you:
 i. TRIAL
 ii. DIRECT APPEAL
DIRECT APPEAL • REHEARING
 iii. WRIT OF CERTIORARI

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

REVERSE conviction and SENTENCE AND Remand
For A NEW TRIAL, AND ANY OTHER RELIEF this
COURT DEEM JUST AND PROPER.

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

NO

STATE OF SOUTH CAROLINA)

County of McCormick)

VERIFICATION

I, Antonio Demazio Scott #320475, 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.

Antonio D. Scott

SWORN to and subscribed before me this 8th
 day of October, 2024.

Lakisha 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, Antonio Demazio Scott #320475, 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.

Antonio D. Scott
Applicant

SWORN or affirmed to and subscribed before me this

8th day of October, 2021.

Lakisha D. Gray
Notary Public

My Commission Expires: 01/13/30



STATE OF SOUTH CAROLINA)
COUNTY OF JASPER)
ANTONIO D. SCOTT, #320475)
Petitioner,)
vs.,)
STATE OF SOUTH CAROLINA)
Respondent)
_____)

IN THE COURT OF COMMON PLEAS

C/A No:

2021-CP-2700-444

AMENDMENT TO PCR APPLICATION

2021 OCT 12 PM 4:24

CLERK OF COURT

Comes now Petitioner in the above captioned PCR case amend his post conviction application (PCR) pursuant to Rule 15 of the South Carolina Rules of Civil Procedure.

The Petitioner would like to show:

1. Counsel was ineffective during the amendment of the indictment for his failure to move to quash or object to the fatal defect in the murder indictment referring to the place of death.
2. Counsel was ineffective by failing to object or file motion to the fact the court failed to charged the jury on the element of criminal intent in violation of the Due Process Clause of the 14th Amendment of the United States Constitution.
3. The Solicitor committed a Brady Violation.
4. Counsel was ineffective for failing to hire an expert to rebut Dr. Lee M. Tormos testimony that the case was a homicide and testimony that the wound was inconsistent with an accident or self inflicted as the Defendant stated.

5. Counsel was ineffective for his failure to prepare me to testify and demonstrate in this case instead of him trying to do it himself.

6. Counsel was ineffective for failing to inform me of the plea offer for ten years.

7. Counsel was ineffective for failing to object to the vouching by the Solicitor during the closing argument.

Dated

October 8th 2021

Antonio D. Scott
ANTONIO D. SCOTT

1. Counsel was ineffective during the amendment of the indictment for failure to move to quash or object to the fatal defect in the murder indictment referring to the place of death of the victim.

In a post-conviction relief proceeding, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C.. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064 (1984).

A two-prong test is used in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong attorney performance is measured by its "reasonableness under professional norms." Cherry 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudice the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry 300 S.C. at 117-18, 386 S.E.2d at 625.

ASST. SOL. FERGUSON: And Your Honor, finally, Mr. Hughes pointed out this morning that on the indictment it does read that Cynthia Nelson died in Jasper County as a proximate result of

stabbing. Well, in fact, she was declared dead and was transferred to Savannah, So I would ask Your Honor to just basically scratch out "in Jasper County" as a scribner error on the indictment.

The Court: Okay Any objections

Mr. Huges: No, Your Honor.

The Court: Y'all, do have that indictment? Oh, okay, I've got it right here. Okay. I will go ahead and strike that out and make the change on the indictment. Tr. p. 54 to end p. 55, lines 1-5.

FACTS

Here defense counsel did not object to the amending of the murder indictment changing the place of murder from Jasper County to Savannah nor did he filed motion to quash the murder indictment.

MEMORANDUM OF LAW

It is absolutely essential in an indictment for murder that the place of death of the party kill should be alleged therein, and in the absence of such allegations such indictment is fatally defective and should be quash on motion made. Furthermore, such a defective indictment is beyond the reach of amendment as to such essential allegations. State v Blakeney 33 S.C. 11, 11S.E. 637 (S.C. 1890).

FACTS

In the case not only did defense counsel brought to the

Solicitor attention that there was an error in the place of death of the victim in the murder indictment, counsel failed to file motion to quash a fatally defective indictment. I am prejudiced by defense counsel's performance and counsel deprived me of Due Process to be tried by a valid indictment.

Counsel was ineffective by failing to object or file motion to the fact the court failed to charge to the jury on the element of criminal intent in violation of the Due Process Clause of the 14th Amendment of the United States Constitution.

Instructions that allow a jury to convict without finding every element of the crime violates In Re Winship's requirement, that every fact necessary to constitute the crime must be proven beyond a reasonable doubt. In Re Winship 397 U.S. 358, 364, 90 S.Ct. 1068 (1970). Due Process requires criminal conviction to rest upon a jury determination that the defendant is guilty of every element of the crime with which he is charged beyond a reasonable doubt. United States v. Gaudin 515 U.S. 506, 510, 115 S.Ct. 2310 (1995).

Therefore, an instruction that relieves the state of the burden of proving mens-rea beyond a reasonable doubt contradicts the presumption of innocence and invades the function of the jury, thereby violating Due Process.

5.

*The matter presented below for review is not a challenge to the Court's general grant of authority to hear and determine case. That authority is rightfully granted by our Constitution, State v. Gentry, 610 S.E.2d 494 (2005), and will not be issue here.

The 4th Circuit made clear, the definition now located in Title 16-3-10 "in no wise affects ingredients which are necessary to constitute murder but leaves them exactly and in every particular as they stood at common law. Griffen vs Martin, 785 F.2d 1172 (4th Cir. 1986)(quoting State v. Judge, 208 S.C. 447, 505, 38 S.E.2d 715, 719 (1946) consequently, the element of criminal intent for example though not alluded in the Title 16-3-10, still is in South Carolina an essential element of the crime of murder. Martin supra (quoting State v Thrallkill 73 S.C. 314, 318, 53 S.E. 482 (1906)(..."Criminal Intent...is an element in every common law crime.

*

The Court failed to charge Criminal Intent in its charged to the jury which violates Due Process and therefore Petitioner was convicted of less than proof of every element necessary to constitute the crime of murder. The Petitioner's conviction and sentence must be vacated.

3. The Solicitor committed a Brady violation.

The Solicitor withheld evidence that was material. In this context material means there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceedings would have been different. The Petitioner will produce two witness of the evidence. and will prove that there is a reasonable probability the outcome of the trial would be different.

* State v Lee-Grigg, 649 S.E.2d 41 (S.C. App. 2007) Now, criminal intent is a necessary element of each crime that must be proved by the State beyond a reasonable doubt, criminal intent is always a matter that must be determined by the jury from the circumstance surrounding the situation. There is no way to prove criminal intent to any mathematical certainty. ...

4. Counsel was ineffective for failing to hire an expert to rebut Dr. Lee M. Tormas testimony that the case was a homicide and testimony that the wound was inconsistent with an accident or self-inflicted as Defendant stated.

FACTS.

Applicant has petitioned the Court for authorization of expert funds and at trial counsel did not vigorously cross examine the state's witness.

CONCLUSION

Applicant prays the Court will grant his motion for expert funds.

5. Counsel was ineffective for his failure to prepare me to testify and demonstrate in this case instead of him trying to do it himself.

6. Counsel was ineffective for failing to inform me of the plea offer for ten years.

7. Counsel was ineffective for failing to object to the vouching by the Solicitor during closing argument.

6.

*

So, the law says that criminal intent may be inferred from the circumstances shown to have been in existence or have existed at the time in question. This is how the jury make a determination of whether or not the element of criminal intent as required was present. Criminal intent is a state of mind which operates jointly with an act in the commission of a crime, criminal intent is a mental state, a conscious wrong doing. So it is up to you the jury to determine what the defendant intended to do.

A Solicitor may not vouch for the credibility of a State's witness based on personal knowledge or other information outside the record. State v. Kelly 540 S.E.2d 851 (2001) In Kelly the solicitor impermissibly bolstered the state's witness testimony.

Vouching constitutes an assurance by the prosecuting attorney of the credibility of a Government witness through personal knowledge or by other information outside of the testimony before the jury A prosecutor vouching for the credibility of a government witness raises two concerns: (1) Such comment can convey the impression that evidence not presented to the jury but known to the prosecution, support the charged against the defendant and can thus jeopardize the defendant's right to be tried solely on the basis of the evidence presented to the jury and (2) the prosecutor's opinion carries with it the imprimatur of the Government and may induce the jury in trust there Government's judgment rather than its own view of the evidence. Kelly (quoting United States v. Walker 155 F.3d 180 (3rd Cir. 1998) the Court of Appeals for the Third Circuit discussing generally the concept of vouching.

FACTS

Dr. Tormos, in her expert opinion, told you this was a homicide and she gave you two reasons for that. The first being information from law enforcement. The second being the nature of the wound itself. In her experience, she never seen a wound like that be self-inflicted. Tr. p. 191, lines 17-21.

Now, Dr. Tormos was also under oath. She had to tell the truth, just like all the witnesses were supposed to, and that's what she did. She told you that anything's possible, anything's possible, so matter how probable, no matter how ludicrous, anything's possible. To say anything otherwise would be lying, and I don't think Dr. Tormos is going to lie. She doesn't have a dog in the fight. She is a scientist, she is an expert. Her finding were that the injuries that Cynthia Nelson suffered is consistent with a homicide. Tr. p. 191, lines 22-25, p. 192, lines 1-6.

No where in the record can this vouching but excused and so the solicitor vouching is a reversible error and I'm prejudice by counsel performance to allow the Solicitor to vouch for state's witness.

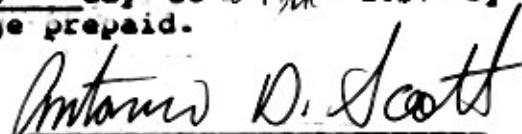
Dated

Verdara 8th 2021

Antonio D. Scott
Antonio D. Scott

CERTIFICATE OF SERVICE

The undersigned hereby certify that he mail the foregoing post conviction application and an amendment to Margaret Bostick, Clerk of Court, Jasper County, this 8TH day of OCTOBER - 2021 by depositing same in the U.S. mail postage prepaid.


Antonio D. Scott

STATE OF SOUTH CAROLINA)
COUNTY OF JASPER)
Antonio Demazio Scott, SCDC #320475,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
FOR THE FOURTEENTH JUDICIAL CIRCUIT

Case No.: 2021-CP-27-00444

**RETURN TO THE APPLICATION
FOR POST-CONVICTION RELIEF
AND MOTION TO DISMISS**
(Appointment of Counsel NOT Requested)

FILED
JASPER COUNTY
CLERK OF COURT
22 JAN 25 PM 1:13

In response to the application for post-conviction relief filed by Applicant Antonio Demazio Scott on October 12, 2021, Respondent the State of South Carolina makes this return¹ and moves to dismiss the application as untimely pursuant to Section 17-27-45 of the South Carolina Code. Respondent respectfully offers the following in support of its return and motion to dismiss:

I. Procedural History

Applicant is presently confined in the South Carolina Department of Corrections. During its April 2011 term, the Jasper County Grand Jury indicted Applicant for one count of murder (2011-GS-27-00192). Robert Hughes, Esquire, represented Applicant on the charge. Robert Ferguson of the Fourteenth Circuit Solicitor's Office prosecuted the case. Applicant proceeded to

¹ Respondent's return was due to be filed within ninety days of receipt. *See* Rule 12(a), SCRCP ("[T]he State of South Carolina shall answer or otherwise respond to an application for post-conviction relief within 60 days after service of the application, if it arises out of a guilty plea, and 90 days if it arises out of a trial.") Now, having completed the return required in this matter, and in light of no demonstrable prejudice to Applicant as a consequence of the delay, Respondent respectfully asks this Court to accept this return as timely filed. *See* S.C. Code Ann. § 17-27-70(a) (establishing that the Court may fix the time in which the State must respond and that "respondent shall file with its answer the record or portions thereof that are material to the questions raised in the application."); *Guinyard v. State*, 260 S.C. 220, 195 S.E.2d 392 (1973) (holding the trial court may extend the time for filing and that the time limit prescribed by the statute is not mandatory, but discretionary with the trial court.).

a jury trial before the Honorable Carmen T. Mullen from December 5 to December 7, 2011, and was found guilty as indicted. Judge Mullen sentenced Applicant to thirty years for murder.

Applicant filed a timely notice of appeal, which was perfected by Breen Richard Stevens, Esquire, of the South Carolina Commission on Indigent Defense – Division of Appellate Defense. On appeal, Applicant raised one issue:

Whether the trial court reversibly erred by failing to instruct the jury with involuntary manslaughter where there was as evidence in the record indicating the knife wound to the deceased's neck was unintentionally caused by [Applicant's] defensive martial arts maneuver while he was acting in self-defense?

On February 19, 2014, the Court of Appeals affirmed Applicant's conviction and sentence. *State v. Scott*, 408 S.C. 21, 757 S.E.2d 533 (Ct. App. 2014). On March 6, 2014, Applicant filed a petition for rehearing², which was denied by the Court of Appeals on May 2, 2014.

Applicant then petitioned the Supreme Court of South Carolina for a writ of certiorari and was represented by Benjamin Tripp, Esquire, of the South Carolina Commission on Indigent Defense – Division of Appellate Defense. On September 11, 2014, the Supreme Court granted the Petition for Certiorari.

In Applicant's Brief of Petitioner, Applicant raised the following issue:

Whether the trial court reversibly erred by failing to instruct the jury on involuntary manslaughter where [Applicant] defended himself from an attack by an older, heavyset, and sickly woman wielding a small, knife-like weapon; where Petitioner told police he deflected her thrust towards him by manipulating her arm using a martial arts maneuver; where the woman died from a single, pocket-knife sized puncture wound to the side of her neck; and where eyewitness testimony showed he was surprised by the woman's wound and quickly attempted to treat it.

On September 9, 2015, the Supreme Court affirmed Applicant's conviction and sentence. *State v. Scott*, 414 S.C. 482, 779 S.E.2d 529 (2015). On September 18, 2015, filed a petition for

² The remittitur was issued on March 7, 2014. The Court of Appeals issued an Order Recalling Remittitur on March 10, 2014.

rehearing, which was denied by the Supreme Court on December 16, 2015. The case was remitted back to the circuit court on December 16, 2015. The instant application for post-conviction relief was filed on October 12, 2021.³

II. Summary of Testimony Adduced at Trial

On the night of March 19, 2011, the victim Cynthia Nelson (Cynthia) called police in reference to Applicant, her daughter's boyfriend and the father of Cynthia's grandchild, being outside the front door of her apartment trying to break in. (R. 71-72). Cynthia was outside her home in her car when she witnessed Applicant at the front door of her apartment and called police using her cell phone. (R. 17-23, 71-73). Ridgeland City Police Officers Kevin Smith and Rob Nelson responded to the scene; however, by the time the officers arrived Applicant was gone. (R. 71-72). When Applicant realized the victim had called police, he threw away the knife he was carrying and hid in a nearby garbage dumpster. (R. 72, 75-85). At Cynthia's request, Officer Smith searched her home to make sure Applicant was not in her home and it was safe for Cynthia to enter. (R. 72-73). Officer Smith eventually talked to Applicant on the phone, and Applicant admitted only that he had called Cynthia. (R. 72).

The following day, March 20, 2011, Ms. Monique Chester, an elderly resident of Baytree Apartments, was attending a wake at a residence located behind Baytree Apartments. The wake was for Applicant's cousin who had recently died. While there, Ms. Chester overheard Applicant

³ Applicant sent a letter to the Supreme Court of South Carolina, received on September 13, 2021, requesting a copy of his PCR application. In that letter Applicant claims he mailed a copy of his application to the Jasper County Clerk of Court in January 2016. Applicant further contends he sent amendments to that application in April 2016. In the letter, Applicant states he has not received any replies to letters he has mailed to the Jasper County Clerk of Court. Upon receipt of Applicant's letter, the Supreme Court forwarded it to the Jasper County Clerk of Court on September 15, 2021. By letter dated September 30, 2021, the Jasper County Clerk of Court responded to Applicant and advised him their office had reviewed their records; however, their records did not indicate any application was ever received by or filed with the Jasper County Clerk of Court.

talking about what had occurred the previous evening. Applicant told a fellow family member that he had tried to kill Cynthia the night before, but she had called the police. Applicant stated he had hid in a dumpster to avoid being arrested and had thrown the knife somewhere. Applicant also stated that the next time he saw Cynthia he was going to stab her. (R. 75-85).

On the same date, March 20, 2011, the victim's daughter, Akera Nelson (Akera) and Cynthia drove to Applicant's sister's (Shareema) apartment because Applicant had requested that the victim's daughter [Akera] bring their son to him. Shareema also lived in Baytree Apartments. (R. 86-98, 105, 108, 115-25, 154-58, 160-61).

Akera and the child entered Shareema's apartment while Cynthia remained in the vehicle. Cynthia's daughter, Akera, saw a knife in Applicant's hand when she entered Shareema's apartment and Applicant got up off the couch. Applicant knew Cynthia was outside in the vehicle and stated to Akera with the knife in his hand: "Is this how you wanna do things?" "You gonna let your mom come between us?" Akera told Applicant: "It's not that serious. Chill out." Akera continued to try and calm Applicant down. About one minute later, Cynthia got out of the car and entered the apartment where her daughter and grandson were. Cynthia told Applicant she was not going to put up with him beating her daughter any more.⁴ (R. 86-98, 105, 108, 115-25, 154-58, 160-61).

Applicant started arguing with Cynthia. At that point, Akera could no longer see the knife in Applicant's hand. Akera then witnessed Applicant strike Cynthia one time in the face/neck area with his fist. Applicant's sister, Shareema, testified at trial that Applicant struck the victim in the face/neck area with the open part of his hand. Neither Akera nor Shareema saw Applicant and Cynthia wrestling or tussling before Applicant struck Cynthia. After Applicant struck Cynthia,

⁴Applicant was on probation at the time of trial for CDV 2nd Offense. Akera was the victim in that offense.

Cynthia staggered forward and collapsed on the couch in the living room unable to speak. Blood was pouring from Cynthia's neck. It was subsequently discovered that Applicant had not just struck Cynthia with his fist but had actually stabbed her with the knife. The knife wound penetrated Cynthia's neck approximately two and one half inches and was stopped by a bone in her neck. The wound was downward and toward the spinal column. The knife wound severed an artery in Cynthia's neck resulting in a severe loss of blood, cardiac arrest, and eventual death.⁵ (R. 86-98, 105, 108, 115-25, 58-62, 64-65).

Cynthia's daughter, Akera, then went to the kitchen, obtained a mop handle, and swung it at Applicant because he had attacked her mother. When Akera stopped swinging at Applicant with the handle, Applicant took off his shirt and used it to try to stop the bleeding from Cynthia's neck. Applicant then fled the scene going behind Baytree Apartments in the direction of where the wake had been. Akera followed Applicant briefly but did not leave the scene. (R. 86-98).

Applicant's sister, Shareema, called 911. (R. 38-44). Applicant's sister was asked by the 911 operator what happened to the victim, and Shareema stated *someone stabbed her in the neck*. (State's Ex. 1, 1st call). When Applicant's sister was specifically asked who stabbed the victim, Shareema did not answer. She then stated she needed to walk outside her home.

The victim's daughter, Akera, then called 911. (R. 38-44). She informed the 911 operator her boyfriend, Applicant Antonio Scott, had struck her mother with his fist but she did not know what he had in his hand at the time. She informed the 911 operator that her mother was bleeding profusely. She also gave police a description of Applicant and where he had run to. (R. 86-98, 105, 108, 115-25, 154-58, 160-61).

⁵The victim, Cynthia, was first taken by E.M.S. to a local hospital and then, because of her condition, she was transported to a hospital in Savannah, Georgia. She died there on March 21, 2011, as a result of the stab wound to her neck just below the ear at the jaw line. (R. 44-59, 110-25).

When police arrived at the scene, Applicant had already fled. Officer Rob Nelson went behind the apartment to look for Applicant. When he approached a group of people behind the apartment complex [Applicant's family] he asked if they had seen Applicant and where he had fled. The individuals told Officer Nelson to leave. The murder weapon, the knife, was never found. (R. 86-98, 105, 108, 115-25, 154-58, 160-61).

Applicant was subsequently arrested on March 21, 2011, and charged with attempted murder.⁶ He was interviewed by police. Applicant claimed the victim, Cynthia, came to the apartment with a knife and attempted to stab him, whereupon he used a martial arts move to block the attempted stab, which resulted in the victim stabbing herself in the face/neck with the knife. Applicant asserted that as the victim came at him with her knife, he side-stepped her and pushed her elbow up and she stabbed herself with the knife still in her hand. (R. 95-104). Investigator Daniel Litchfield testified that Applicant stated as follows:

He [Applicant] told us he was there. He had an altercation, a verbal argument with Cynthia Nelson. During this argument, he stated that Cynthia Nelson pulled something shiny and silver out of her pocket, went towards him, and he stepped to the side and did a - - for lack of a better term, a martial arts move, pushing her elbow up, causing her to stab herself in the throat.

Q: Now, did he physically show you how this occurred?

A: Yes, sir.

OFFICER LITCHFIELD: Be okay, Judge?

THE COURT: Sure.

A: Now, mind you, he was handcuffed, but he said he was standing there. She reached into her pocket, and when she went towards him, he said he did this and this. In other words, her arm went by him and he pushed the arm and she stabbed herself in the neck.

That was his statement.

(R. 99, ln. 22 - p. 100, ln. 15).

Investigator Litchfield further testified Applicant admitted he and the victim exchanged words before she was killed. (R. 100). And, Applicant was confronted with what Ms. Chester had

⁶The victim died later that day and the charge was upgraded to murder. (R. 95-104, 110-25).

related he had said at the wake before Cynthia's murder. Investigator Litchfield testified Applicant denied he had ever threatened the victim before, but admitted that he and the victim had argued before and they did not like each other. (R. 101). Investigator Litchfield further testified that police interviewed others regarding Cynthia's death, but they were unable to find anyone to corroborate Applicant's claim that Cynthia was the aggressor in the incident. (R. 101).

III. Allegations Raised and Relief Sought in Post-Conviction Relief Action

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

1. Ineffective assistance of counsel;
 - a. "Counsel was ineffective for failing to investigate this case by failing to interview potential witnesses";
 - b. "Counsel was ineffective during the amendment of the indictment for his failure to move to quash or object to the fatal defect in the murder indictment referring to the place of death";
 - c. "Counsel was ineffective by failing to object or file motion to the fact the court failed to charge the jury on the element of criminal intent in violation of the Due Process Clause of the 14th Amendment of the United States Constitution";
 - d. "Counsel was ineffective for failing to hire an expert to rebut Dr. Lee M. Tormos testimony that the case was a homicide and testimony that the wound was inconsistent with an accident or self-inflicted as the [Applicant] stated";
 - e. "Counsel was ineffective for his failure to prepare [Applicant] to testify and demonstrate in this case instead of [Counsel] trying to do it himself";
 - f. "Counsel was ineffective for failing to inform [Applicant] of the plea offer for ten years";
 - g. "Counsel was ineffective for failing to object to the vouching by the Solicitor during the closing argument";
2. Brady violation;
 - a. "The Solicitor withheld evidence that was material" and
3. Violation due process.

As relief, Applicant requests: "reverse conviction and sentence and remand for a new trial, and any other relief this court deem just and proper".

Attached to this return and incorporated by reference are the Jasper County Clerk of Court records regarding the subject convictions; Applicant's records from the South Carolina Department of Corrections; the records from Applicant's direct appeal, including the trial

transcript; and the records of the current PCR action. The State reserves the right to amend this return upon receipt of any relevant materials.

IV. Motion to Dismiss

The State moves for summary dismissal pursuant to section 17-27-70 of the South Carolina Code on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing. *See Welch v. MacDougall*, 246 S.C. 258, 260, 143 S.E.2d 455, 456 (1965) (requiring a PCR applicant to make a *prima facie* showing he is entitled to relief before the court will hold an evidentiary hearing). Because this application is procedurally barred, the State requests this Court issue a conditional order of dismissal indicating the Court's intent to dismiss the application and its reasons for so doing.⁷ *See* S.C. Code Ann. § 17-27-70(b) (establishing procedure for summary disposition of PCR applications); *Leamon v. State*, 363 S.C. 432, 434, 611 S.E.2d 494, 495 (2005) (summary disposition appropriate when there is no need to develop facts and the applicant is not entitled to relief); *Sutton v. State*, 361 S.C. 644, 647, 606 S.E.2d 779, 780 (2004) ("A PCR action is a civil action generally subject to rules and statutes that apply in civil proceedings"), *abrogated on other grounds by Bray v. State*, 366 S.C. 137, 620 S.E.2d 743 (2005); *see also Re: Appointment of Counsel in Post-Conviction Relief Cases before the Circuit Court*, (S.C. Sup. Ct. Order filed Oct. 6, 2008); Rule 71.1(d), SCRCP (providing for appointment of counsel only where there is a question of law or fact which necessitates a hearing). In making its return in support of the motion for summary judgment, the State would respectfully show this Court:

⁷ A proposed conditional order of dismissal consistent with this return and motion to dismiss is concurrently submitted for the Court's consideration.

Summary Dismissal Based on Statute of Limitations

Respondent submits this application should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. § 17-27-10 to -160. Specifically, the Act requires as follows:

- (A) An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.
- (B) When a court whose decisions are binding upon the Supreme Court of this State or the Supreme Court of this State holds that the Constitution of the United States or the Constitution of South Carolina, or both, impose upon state criminal proceedings a substantive standard not previously recognized or a right not in existence at the time of the state court trial, and if the standard or right is intended to be applied retroactively, an application under this chapter may be filed not later than one year after the date on which the standard or right was determined to exist.
- (C) If the applicant contends that there is evidence of material facts not previously presented and heard that requires vacation of the conviction or sentence, the application must be filed under this chapter within one year after the date of actual discovery of the facts by the applicant or after the date when the facts could have been ascertained by the exercise of reasonable diligence.

S.C. Code Ann. § 17-27-45(A – C).

Our Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. *Peloquin v. State*, 321 S.C. 468, 469 S.E.2d 606 (1996). A motion for summary judgment may properly be used to raise the defense of statute of limitations. *McDonnell v. Consol. Sch. Dist. of Aiken*, 315 S.C. 487, 445 S.E.2d 638 (1994). Additionally, section 17-27-70(c) authorizes this Court to “grant a motion by either party for summary disposition of [an] application when it appears from the pleadings . . . there is no genuine issue of material fact and

the moving party is entitled to judgment as a matter of law.” *See Leamon*, 363 S.C. at 435, 611 S.E.2d at 49 (“Ignorance of the statute of limitations is not an excuse for late filing . . .”); *Sutton*, 361 S.C. at 648, 606 S.E.2d at 781 (declining “to impose a duty on trial or appellate counsel to inform a convicted defendant of the availability of PCR or the one-year deadline to file an application”).

In the present case, Applicant was sentenced on December 7, 2011, and the remittitur from the subsequent appeal was issued December 16, 2015. Pursuant to Section 17-27-45(A), Applicant had until December 16, 2016, to timely file his application for post-conviction relief challenging his convictions. Applicant did not file his present application until October 12, 2021—more than *four years* after the requisite filing period expired. Applicant failed to comply with the filing requirements under Section 17-27-45(A).

Moreover, Applicant has not alleged any claims based on a change of law or statute or alleged any newly discovered evidence. Therefore, Applicant has failed to comply with the filing requirements under Section 17-27-45(B-C). Accordingly, this application is untimely pursuant to Section 17-27-45 and should be dismissed for failure to file within the time mandated by Uniform Post-Conviction Procedure Act.

V. Any and All Other Claims

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

VI. Conclusion

WHEREFORE, having made its return, the State moves to summarily dismiss the application because it was filed after the statute of limitations had expired.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

SAMANTHA J. WEIDAUER
Assistant Attorney General

By: 

ATTORNEYS FOR THE STATE
Office of the Attorney General
P.O. Box 11549
Columbia, S.C. 29211

January 20, 2022

STATE OF SOUTH CAROLINA)

COUNTY OF JASPER)

IN THE COURT OF COMMON PLEAS

2021-CP-27-00444

ANTONIO DEMAZIO SCOTT, #320475)

Applicant,)

v.)

STATE OF SOUTH CAROLINA,)

Respondent,)

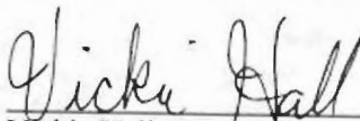
CERTIFICATE OF SERVICE BY MAIL

2022 JAN 20 PM 1:23

FILED
JASPER COUNTY
CLERK OF COURT

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return and Motion to Dismiss in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Antonio Demazio Scott #320475 (U10-0111-A)
Tyger River Correctional Institution
200 Prison Road
Enoree, SC 29335-9308

DATED this 20th day of January, 2022.


Vickie Hall, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF JASPER	)	FOR THE FOURTEENTH JUDICIAL CIRCUIT
	)	
Antonio Demazio Scott, SCDC #320475,	)	Case No.: 2021-CP-27-00444
	)	
Applicant,	)	CONDITIONAL ORDER OF DISMISSAL
	)	
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

FILED
JASPER COUNTY
CLERK OF COURT
022 FEB 23 AM 8:46

This matter comes before the Court by way of post-conviction relief application filed by Applicant Antonio Demazio Scott on October 12, 2021. In response, Respondent the State of South Carolina filed its return¹ and moved to dismiss the application as untimely pursuant to Section 17-27-45 of the South Carolina Code.

I. Procedural History

Applicant is presently confined in the South Carolina Department of Corrections. During its April 2011 term, the Jasper County Grand Jury indicted Applicant for one count of murder (2011-GS-27-00192). Robert Hughes, Esquire, represented Applicant on the charge. Robert Ferguson of the Fourteenth Circuit Solicitor's Office prosecuted the case. Applicant proceeded to a jury trial before the Honorable Carmen T. Mullen from December 5 to December 7, 2011, and was found guilty as indicted. Judge Mullen sentenced Applicant to thirty years for murder.

¹ Respondent's return was due to be filed within ninety days of receipt. See Rule 12(a), SCRPC ("[T]he State of South Carolina shall answer or otherwise respond to an application for post-conviction relief within 60 days after service of the application, if it arises out of a guilty plea, and 90 days if it arises out of a trial.") However, having completed the return required in this matter, and in light of no demonstrable prejudice to Applicant as a consequence of the delay, this Court grants the State's request and accepts this return as timely filed. See S.C. Code Ann. § 17-27-70(a) (establishing that the Court may fix the time in which the State must respond and that "respondent shall file with its answer the record or portions thereof that are material to the questions raised in the application."); *Guinyard v. State*, 260 S.C. 220, 195 S.E.2d 392 (1973) (holding the trial court may extend the time for filing and that the time limit prescribed by the statute is not mandatory, but discretionary with the trial court.)

Applicant filed a timely notice of appeal, which was perfected by Broen Richard Stevens, Esquire, of the South Carolina Commission on Indigent Defense – Division of Appellate Defense. On appeal, Applicant raised one issue:

Whether the trial court reversibly erred by failing to instruct the jury with involuntary manslaughter where there was as evidence in the record indicating the knife wound to the deceased's neck was unintentionally caused by [Applicant's] defensive martial arts maneuver while he was acting in self-defense?

On February 19, 2014, the Court of Appeals affirmed Applicant's conviction and sentence. *State v. Scott*, 408 S.C. 21, 757 S.E.2d 533 (Ct. App. 2014). On March 6, 2014, Applicant filed a petition for rehearing², which was denied by the Court of Appeals on May 2, 2014.

Applicant then petitioned the Supreme Court of South Carolina for a writ of certiorari and was represented by Benjamin Tripp, Esquire, of the South Carolina Commission on Indigent Defense – Division of Appellate Defense. On September 11, 2014, the Supreme Court granted the Petition for Certiorari.

In Applicant's Brief of Petitioner, Applicant raised the following issue:

Whether the trial court reversibly erred by failing to instruct the jury on involuntary manslaughter where [Applicant] defended himself from an attack by an older, heavysset, and sickly woman wielding a small, knife-like weapon; where Petitioner told police he deflected her thrust towards him by manipulating her arm using a martial arts maneuver; where the woman died from a single, pocket-knife sized puncture wound to the side of her neck; and where eyewitness testimony showed he was surprised by the woman's wound and quickly attempted to treat it.

On September 9, 2015, the Supreme Court affirmed Applicant's conviction and sentence. *State v. Scott*, 414 S.C. 482, 779 S.E.2d 529 (2015). On September 18, 2015, filed a petition for rehearing, which was denied by the Supreme Court on December 16, 2015. The case was remitted

² The remittitur was issued on March 7, 2014. The Court of Appeals issued an Order Recalling Remittitur on March 10, 2014.

back to the circuit court on December 16, 2015. The instant application for post-conviction relief was filed on October 12, 2021.³

II. Summary of Testimony Adduced at Trial

On the night of March 19, 2011, the victim Cynthia Nelson (Cynthia) called police in reference to Applicant, her daughter's boyfriend and the father of Cynthia's grandchild, being outside the front door of her apartment trying to break in. (R. 71-72). Cynthia was outside her home in her car when she witnessed Applicant at the front door of her apartment and called police using her cell phone. (R. 17-23, 71-73). Ridgeland City Police Officers Kevin Smith and Rob Nelson responded to the scene; however, by the time the officers arrived Applicant was gone. (R. 71-72). When Applicant realized the victim had called police, he threw away the knife he was carrying and hid in a nearby garbage dumpster. (R. 72, 75-85). At Cynthia's request, Officer Smith searched her home to make sure Applicant was not in her home and it was safe for Cynthia to enter. (R. 72-73). Officer Smith eventually talked to Applicant on the phone, and Applicant admitted only that he had called Cynthia. (R. 72).

The following day, March 20, 2011, Ms. Monique Chester, an elderly resident of Baytree Apartments, was attending a wake at a residence located behind Baytree Apartments. The wake was for Applicant's cousin who had recently died. While there, Ms. Chester overheard Applicant talking about what had occurred the previous evening. Applicant told a fellow family member that

³ Applicant sent a letter to the Supreme Court of South Carolina, received on September 13, 2021, requesting a copy of his PCR application. In that letter Applicant claims he mailed a copy of his application to the Jasper County Clerk of Court in January 2016. Applicant further contends he sent amendments to that application in April 2016. In the letter, Applicant states he has not received any replies to letters he has mailed to the Jasper County Clerk of Court. Upon receipt of Applicant's letter, the Supreme Court forwarded it to the Jasper County Clerk of Court on September 15, 2021. By letter dated September 30, 2021, the Jasper County Clerk of Court responded to Applicant and advised him their office had reviewed their records; however, their records did not indicate any application was ever received by or filed with the Jasper County Clerk of Court.

he had tried to kill Cynthia the night before, but she had called the police. Applicant stated he had hid in a dumpster to avoid being arrested and had thrown the knife somewhere. Applicant also stated that the next time he saw Cynthia he was going to stab her. (R. 75-85).

On the same date, March 20, 2011, the victim's daughter, Akera Nelson (Akera) and Cynthia drove to Applicant's sister's (Shareema) apartment because Applicant had requested that the victim's daughter [Akera] bring their son to him. Shareema also lived in Baytree Apartments. (R. 86-98, 105, 108, 115-25, 154-58, 160-61).

Akera and the child entered Shareema's apartment while Cynthia remained in the vehicle. Cynthia's daughter, Akera, saw a knife in Applicant's hand when she entered Shareema's apartment and Applicant got up of the couch. Applicant knew Cynthia was outside in the vehicle and stated to Akera with the knife in his hand: "Is this how you wanna do things?" "You gonna let your mom come between us?" Akera told Applicant: "It's not that serious. Chill out." Akera continued to try and calm Applicant down. About one minute later, Cynthia got out of the car and entered the apartment where her daughter and grandson were. Cynthia told Applicant she was not going to put up with him beating her daughter any more.⁴ (R. 86-98, 105, 108, 115-25, 154-58, 160-61).

Applicant started arguing with Cynthia. At that point, Akera could no longer see the knife in Applicant's hand. Akera then witnessed Applicant strike Cynthia one time in the face/neck area with his fist. Applicant's sister, Shareema, testified at trial that Applicant struck the victim in the face/neck area with the open part of his hand. Neither Akera nor Shareema saw Applicant and Cynthia wrestling or tussling before Applicant struck Cynthia. After Applicant struck Cynthia, Cynthia staggered forward and collapsed on the couch in the living room unable to speak. Blood

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was pouring from Cynthia's neck. It was subsequently discovered that Applicant had not just struck Cynthia with his fist but had actually stabbed her with the knife. The knife wound penetrated Cynthia's neck approximately two and one half inches and was stopped by a bone in her neck. The wound was downward and toward the spinal column. The knife wound severed an artery in Cynthia's neck resulting in a severe loss of blood, cardiac arrest, and eventual death.⁵ (R. 86-98, 105, 108, 115-25, 58-62, 64-65).

Cynthia's daughter, Akera, then went to the kitchen, obtained a mop handle, and swung it at Applicant because he had attacked her mother. When Akera stopped swinging at Applicant with the handle, Applicant took off his shirt and used it to try to stop the bleeding from Cynthia's neck. Applicant then fled the scene going behind Baytree Apartments in the direction of where the wake had been. Akera followed Applicant briefly but did not leave the scene. (R. 86-98).

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⁵The victim, Cynthia, was first taken by E.M.S. to a local hospital and then, because of her condition, she was transported to a hospital in Savannah, Georgia. She died there on March 21, 2011, as a result of the stab wound to her neck just below the ear at the jaw line. (R. 44-59, 110-25).

When police arrived at the scene, Applicant had already fled. Officer Rob Nelson went behind the apartment to look for Applicant. When he approached a group of people behind the apartment complex [Applicant's family] he asked if they had seen Applicant and where he had fled. The individuals told Officer Nelson to leave. The murder weapon, the knife, was never found. (R. 86-98, 105, 108, 115-25, 154-58, 160-61).

Applicant was subsequently arrested on March 21, 2011, and charged with attempted murder.⁶ He was interviewed by police. Applicant claimed the victim, Cynthia, came to the apartment with a knife and attempted to stab him, whereupon he used a martial arts move to block the attempted stab, which resulted in the victim stabbing herself in the face/neck with the knife. Applicant asserted that as the victim came at him with her knife, he side-stepped her and pushed her elbow up and she stabbed herself with the knife still in her hand. (R. 95-104). Investigator Daniel Litchfield testified that Applicant stated as follows:

He [Applicant] told us he was there. He had an altercation, a verbal argument with Cynthia Nelson. During this argument, he stated that Cynthia Nelson pulled something shiny and silver out of her pocket, went towards him, and he stepped to the side and did a - - for lack of a better term, a martial arts move, pushing her elbow up, causing her to stab herself in the throat.

Q: Now, did he physically show you how this occurred?

A: Yes, sir.

OFFICER LITCHFIELD: Be okay, Judge?

THE COURT: Sure.

A: Now, mind you, he was handcuffed, but he said he was standing there. She reached into her pocket, and when she went towards him, he said he did this and this. In other words, her arm went by him and he pushed the arm and she stabbed herself in the neck.

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Investigator Litchfield further testified Applicant admitted he and the victim exchanged words before she was killed. (R. 100). And, Applicant was confronted with what Ms. Chester had

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III. Allegations Raised and Relief Sought in Post-Conviction Relief Action

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

1. Ineffective assistance of counsel;
 - a. "Counsel was ineffective for failing to investigate this case by failing to interview potential witnesses";
 - b. "Counsel was ineffective during the amendment of the indictment for his failure to move to quash or object to the fatal defect in the murder indictment referring to the place of death";
 - c. "Counsel was ineffective by failing to object or file motion to the fact the court failed to charge the jury on the element of criminal intent in violation of the Due Process Clause of the 14th Amendment of the United States Constitution";
 - d. "Counsel was ineffective for failing to hire an expert to rebut Dr. Lec M. Tormos testimony that the case was a homicide and testimony that the wound was inconsistent with an accident or self-inflicted as the [Applicant] stated";
 - e. "Counsel was ineffective for his failure to prepare [Applicant] to testify and demonstrate in this case instead of [Counsel] trying to do it himself";
 - f. "Counsel was ineffective for failing to inform [Applicant] of the plea offer for ten years";
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2. Brady violation;
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3. Violation due process.

As relief, Applicant requests: "reverse conviction and sentence and remand for a new trial, and any other relief this court deem just and proper".

Before this Court are the Jasper County Clerk of Court records regarding the subject convictions; Applicant's records from the South Carolina Department of Corrections; the records

from Applicant's direct appeal, including the trial transcript; and the records of the current PCR action including Respondent's return and motion to dismiss.

IV. Findings of Fact and Conclusions of Law

This Court has reviewed the pleadings, the records submitted to it by the parties, and the applicable law. This Court finds there is no genuine issue of material fact which would necessitate an evidentiary hearing. *See* S.C. Code Ann. § 17-27-70(b) (establishing procedure for summary disposition of PCR applications); *Leamon v. State*, 363 S.C. 432, 434, 611 S.E.2d 494, 495 (2005) (summary disposition appropriate when there is no need to develop facts and the applicant is not entitled to relief). Pursuant to South Carolina Code Annotated Sections 17-27-70 and -80, this Court informs the parties of its intent to dismiss the application based upon the following findings:

Summary Dismissal Based on Statute of Limitations

This Court finds this application should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. § 17-27-10 to -160. Specifically, the Act requires as follows:

- (A) An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.
- (B) When a court whose decisions are binding upon the Supreme Court of this State or the Supreme Court of this State holds that the Constitution of the United States or the Constitution of South Carolina, or both, impose upon state criminal proceedings a substantive standard not previously recognized or a right not in existence at the time of the state court trial, and if the standard or right is intended to be applied retroactively, an application under this chapter may be filed not later than one year after the date on which the standard or right was determined to exist.
- (C) If the applicant contends that there is evidence of material

facts not previously presented and heard that requires vacation of the conviction or sentence, the application must be filed under this chapter within one year after the date of actual discovery of the facts by the applicant or after the date when the facts could have been ascertained by the exercise of reasonable diligence.

S.C. Code Ann. § 17-27-45(A – C).

Our Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. *Peloquin v. State*, 321 S.C. 468, 469 S.E.2d 606 (1996). A motion for summary judgment may properly be used to raise the defense of statute of limitations. *McDonnell v. Consol. Sch. Dist. of Aiken*, 315 S.C. 487, 445 S.E.2d 638 (1994). Additionally, section 17-27-70(c) authorizes this Court to “grant a motion by either party for summary disposition of [an] application when it appears from the pleadings . . . there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.” See *Leamon*, 363 S.C. at 435, 611 S.E.2d at 49 (“Ignorance of the statute of limitations is not an excuse for late filing . . .”); *Sutton*, 361 S.C. at 648, 606 S.E.2d at 781 (declining “to impose a duty on trial or appellate counsel to inform a convicted defendant of the availability of PCR or the one-year deadline to file an application”).

In the present case, Applicant was sentenced on December 7, 2011, and the remittitur from the subsequent appeal was issued December 16, 2015. Pursuant to Section 17-27-45(A), Applicant had until December 16, 2016, to timely file his application for post-conviction relief challenging his convictions. Applicant did not file his present application until October 12, 2021—more than *four years* after the requisite filing period expired. Applicant failed to comply with the filing requirements under Section 17-27-45(A).

Moreover, Applicant has not alleged any claims based on a change of law or statute or alleged any newly discovered evidence. Therefore, Applicant has failed to comply with the filing

requirements under Section 17-27-45(B-C). Accordingly, this application is untimely pursuant to Section 17-27-45 and this Court intends to dismiss it for failure to file within the time mandated by Uniform Post-Conviction Procedure Act.

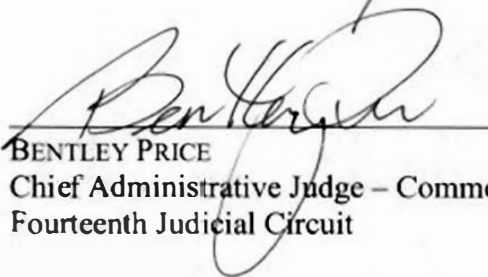
V. Conclusion

Pursuant to S.C. Code Ann. § 17-27-70(b), this Court intends to dismiss this application with prejudice unless Applicant provides specific reasons, factual or legal, why the application should not be dismissed in its entirety. Applicant is granted twenty (20) days from the date of service of this Order upon him to show why this Order should not become final. Applicant shall file any reasons he may have with the Jasper County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General
Samantha J. Weidauer
Post-Conviction Relief Division – 14th Circuit
Post Office Box 11549
Columbia, South Carolina 29211

Applicant is cautioned that his response to this order must be actually received by the Jasper County Clerk of Court and opposing counsel within twenty (20) days, and this Court will not consider any issues raised in his response if not so timely filed and served.

AND IT IS SO ORDERED this 11th day of February, 2022.


BENTLEY PRICE
Chief Administrative Judge – Common Pleas
Fourteenth Judicial Circuit

Jasper, South Carolina



ALAN WILSON
ATTORNEY GENERAL

February 16, 2022

The Honorable Margaret Bostick
Jasper County Clerk of Court
Post Office Box 248
Ridgeland, South Carolina 29936

Re: Antonio Demazio Scott, #320475 v. State of South Carolina
Case No.: 2021-CP-27-00444

Dear Ms. Bostick:

Enclosed please find the original Conditional Order of Dismissal signed by the Honorable Bentley Price, in the above-captioned case, for filing in your office. In addition, please forward proof of service and a time stamped copy back to our office for our file.

Sincerely,

Samantha J. Weidauer
Assistant Attorney General

SJW/vh

FILED
JASPER COUNTY
CLERK OF COURT
2022 FEB 23 AM 8:47



ALAN WILSON
ATTORNEY GENERAL

January 20, 2022

The Honorable Bentley D. Price
Fourteenth Circuit Chief Administrative Judge
100 Broad Street, Suite 432
Charleston, SC 29401

Re: Antonio Demazio Scott, #320475 v. State of South Carolina
Case No.: 2021-CP-27-00444

Dear Judge Price:

Enclosed please find the proposed Conditional Order of Dismissal in the above-captioned case. Respondent's return and motion to dismiss has also been sent to your chambers for your consideration. If this proposed order meets your approval, please sign and forward to the Jasper County Clerk of Court for filing with the enclosed stamped envelope.

If you have any questions, please do not hesitate to contact me.

Sincerely,

Samantha J. Weidauer
Assistant Attorney General

SIW/vh
Enclosure(s)

cc: Antonio Demazio Scott, #320475.

MAILED

2022 FEB 23 AM 8:48

JAC
CL
FILED

STATE OF SOUTH CAROLINA
COUNTY OF JASPER

Antonio Demazio Scott #320475

APPLICANT

V.

STATE OF SOUTH CAROLINA

Respondent

IN THE COURT OF COMMONS
PLEAS FOR
THE FOURTEENTH JUDICIAL
CIRCUIT

CASE NO: 2021-CP-27-00444

Motion To Dismiss THE
CONDITIONAL ORDER OF
Dismissal by the Respondent

THE APPLICANT ASSERT THAT HE IS NOT A
PROFESSIONAL IN LAW. Additionally, THE Applicant misunderstood
the Reply of THE Honorable MARGARET Bastick, Clerk of
Court for Jasper County that if I, the Applicant now she
would ACCEPT IT, SINCE she the clerk of COURT STATE
she could not find my Application for the Post Conviction
that was filed in January 2016. The Applicant has
enclosed a copy from May 22, 2017 A certified
mail receipt where the Applicant requested the status
of the afore-mentioned PCR Applicant filed 2016.

2022 FEB -8 AM 10:37
CLERK OF COURT
COUNTY

the Applicant filled out another PCR Application³³⁹
And simply forgot to include the PCR Application
filed in 2016, based upon the Reply from the
Honorable Margaret Bostick, the Applicant thought
if he refiled the PCR Application it would be
Accepted And timely filed. The Applicant sent the
Original and only copy of the PCR Application
from 2016 to the Clerk of Court in Jasper
County in hopes of receiving the clock stamped
Copy back for further litigation. The Applicant
prayerfully asks this Honorable Court to Accept
the Refiled PCR (Case No. 2021-CP-27-00444) as
the Same PCR filed in 2016 the Clerk of
Court lost, and the Applicant has no copy,
however the Applicant does have a copy of
the Amendment that was filed a couple of

340 Months after the PCR was filed. The Applicant would ~~not~~ not continue to make such a claim from 2016 if in fact this claim was ~~frivolous~~ frivolous. The Applicant failed to explain thoroughly that the current PCR Application was ~~not~~ in fact the PCR Application filed in 2016.

The Applicant Apologizes to ~~the~~ ^{this} Honorable Court and the ATTORNEY General's office for the ~~mis~~ misunderstanding. Additionally, the Applicant respectfully prays this Honorable Court and ATTORNEY General's Office will accept this PCR Application as the original PCR filed in 2016.

2-2-2022
DATE

Antonio D. Scott
Antonio D Scott #326475
Tyger River C.I. U10-111-A
200 Prison Road
Enclave SC 29335

STATE OF SOUTH CAROLINA
COUNTY OF JASPER

Antonio Demazio Scott #320475
Applicant

V.

STATE OF SOUTH CAROLINA
Respondent

IN THE COURT OF COMMON
341
PLEAS FOR THE FOURTEENTH
Judicial Circuit

CASE No: 2021-CP-27-00444

CERTIFICATE OF SERVICE

FILED
JASPER COUNTY
CLERK OF COURT
2022 FEB -8 AM 10:30

I, THE APPLICANT CERTIFY THAT I HAVE PLACED

- Original of the Motion of Dismiss THE conditional
ORDER of Dismissal by the Respondent and 1 Copy
of the card Motion in United STATES MAIL Box with
the original mailed to, THE Honorable MARGARET Bastick, Clerk
of Court in Jasper County, P.O. Box 248 Ridgeland, S.C.
29936 and the copy to the S.C. ATTORNEY General
Office 1000 ASSEMBLY ST. Columbia, SC 29201 postage
repaid by the Applicant

2-2-2022

DATE

Antonio D. Scott

Antonio D. Scott #320475

SENDER - COMPLETE THIS SECTION

- 1. Complete items 1, 2, and 3.
- 2. Print your name and address on the reverse so that we can return the card to you.
- 3. Attach this card to the back of the mailpiece, or on the front if space permits.

Article Addressed to:

Margaret Bastick
Clerk
PO Box 248
Ridgeland SC 29936



9590 9402 2215 6193 3144 78

7015 1730 0001 0873 8173

9 Form 3811, July 2015 PSN 7630-02-000-9053

COMPLETE THE SECTION ON DELIVERY

A. Signature Margaret Bastick ☐ Agent ☒ Addressee

B. Received by (Printed Name) _____ C. Date of Delivery 5/25/17

D. Is delivery address different from item 1? ☐ Yes ☒ No
If YES, enter delivery address below: _____

3. Service Type
- | | |
|--|---|
| ☐ Adult Signature | ☐ Priority Mail Express® |
| ☐ Adult Signature Restricted Delivery | ☐ Registered Mail™ |
| ☒ Certified Mail® | ☐ Registered Mail Restricted Delivery |
| ☐ Certified Mail Restricted Delivery | ☒ Return Receipt for Merchandise |
| ☐ Collect on Delivery | ☐ Signature Confirmation™ |
| ☐ Collect on Delivery Restricted Delivery | ☐ Signature Confirmation Restricted Delivery |
| ☐ Insured Mail | |
| ☐ Insured Mail Restricted Delivery (over \$500) | |

Domestic Return Receipt

7015 1730 0001 0873 81

NO POSTAGE
NECESSARY
IF MAILED
IN THE
UNITED STATES

Postage and Fees: 1.19
Total Postage and Fees: 7.29
Sent to: Margaret Bastick Clerk
PO Box 248
Ridgeland SC 29936
Date of Delivery: 5/25/17
Signature: Margaret Bastick
Return Receipt for Merchandise: ☒
Signature Confirmation: ☐
Signature Confirmation Restricted Delivery: ☐
Registered Mail: ☐
Registered Mail Restricted Delivery: ☐
Priority Mail Express: ☐
Adult Signature: ☐
Adult Signature Restricted Delivery: ☐
Certified Mail: ☒
Certified Mail Restricted Delivery: ☐
Collect on Delivery: ☐
Collect on Delivery Restricted Delivery: ☐
Insured Mail: ☐
Insured Mail Restricted Delivery (over \$500): ☐

7014 0510 0000 4943 259

FILED
JASPER COUNTY
CLERK OF COURT

2022 APR 25 AM 9:18

Margaret Bostick, Clerk
Jasper County Clerk of Court
P.O. Box 248
Ridgeland, SC 29936

RE: Antonio D. Scott, # 320475 v. State of South Carolina

Case NO; 2021-CP-27-00444

Dear Ms Bostick:

Enclosed for filing would you please find motion for leave to amend and attachment and purpose amendment that is served upon you.

Sincerely,

Antonio D. Scott

STATE OF SOUTH CAROLINA
COUNTY OF JASPER

Antonio D. Scott, # 320475

Applicant,

v.

STATE OF SOUTH CAROLINA

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE 14th JUDICIAL CIRCUIT

Case NO; 2021-CP-27-0044

PURPOSED AMENDMENT

FILED
JASPER COUNTY
CLERK OF COURT

2022 APR 25 AM 9:18

1. Counsel was ineffective by his failure to file motion or bring to the Court's attention that the indictment was drawn on an ill-legal grand jury. and the Court lacked jurisdiction to try Antonio D. Scott.

LAW

A criminal defendant has a constitutional and statutory right to have the indictment issued by a legally constituted grand jury. See e.g. State v Means Op No. 26105 (SC Supreme Court filed February 6, 2006). See S.C. Constitution Art. 1 § 11 and Art. v, § 22, S.C. Code Ann. §14-9-210.

In State v Hann 125 S.E. 2d 720 (S.C. 1940), the Court said, We adhere fully to the decision of this Court rendered by Mr. Justice Woods, in the case of State V. Lazau, 65 S.E. 270, 271, when the court held that the law requires the presentment of a

grand jury as a condition precedent to the trial of a crime, the grand jury being a constitute part of the Court and without it presentment the court has no jurisdiction of the cause. Hence, an appellate court will declare void a conviction obtained in such case without the presentment of a grand jury, for lack of jurisdiction of the subject matter in the trial court.

In this case the Applicant has produced a term of court record for April 1011, and the grand jury did not meet in April 2011 and the foreman's name is what I'm alleging is fraud upon the Court.

CONCLUSION

Accordingly, and for the reasons shown above, this Court should release the Petitioner from the custody of the Respondent.

Dated

4/ 7 /2022


Antonio D. Scott

STATE OF SOUTH CAROLINA
COUNTY OF JASPER
Antonio D. Scott, # 320475

Applicant,

v.

STATE OF SOUTH CAROLINA
Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE 14th JUDICIAL CIRCUIT
Case No. 2021-CP-27-00444

MOTION FOR LEAVE TO AMEND

FILED
JASPER COUNTY
CLERK OF COURT
2021 APR 26 AM 11:26

This cause is before this court for motion for leave to amend post conviction relief application on the ground that the grand jury indictment was issued by a ill-legally grand jury.. Rule 15. SCRPC, that the amendment is freely given as justice so requires and Mangal v State, 421 S.C. 85, 805 S.E.2d 568 (S.C. 2017) quoting Simpson where Simpson did not specifically raise it in his PCR application. The Court held, Simpson should have been permitted to amend his PCR application to confirm/to the evidence presented. 367 S.C. at 559, 627 S.E.2d at 708. Rule 15(b), SCRPC, states pleading may be amendment, even after judgment, to conform to issues tried by express or implied consent. but not raised in the original pleading. Moreover, a party may amend his pleading once as a matter of course at any time before or within 30 days after a responsive pleading is served.... Otherwise a party may amend his pleading only be leave of court or by written consent of the adverse party. Love v State, 428 S.C. 231, 834 S.E.2d 196 (S.C. 2019))quoting Rule 15 and 15(b), SCRPC.

In this matter applicant has made a showing of a ill-legal form grand jury. See Attachments. And he requested an evidentiary hearing on the matter. See purpose amendment

CONCLUSION

Applicant prays this Court would grant leave to amend.

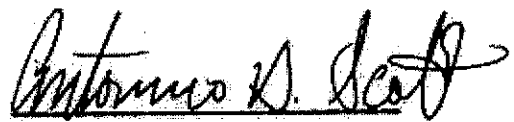
Submitted

4/7/2022


Antonio D. Scott.

CERTIFICATE OF SERVICE

The undersigned hereby certify that he mailed motion for leave to amend and proposed amendment with attachments to Jasper County Clerk of Court, Margaret Bostick, Clerk, P.O. Box 248, Ridgeland, S.C. 29936 and to the Office of the Attorney General, Samantha J. Weidauer, Esquire P.O. Box 11549, Columbia SC 29211 this 7 day of April 2022 by depositing same in the U.S. mail.



Antonio D. Scott

FILED
JASPER COUNTY
CLERK OF COURT

2022 APR 25 AM 9:19



South Carolina Court Administration
South Carolina Supreme Court
Columbia, South Carolina

1220 SENATE STREET, SUITE 200
COLUMBIA, SOUTH CAROLINA 29201

April 1, 2022

Antonio D. Scott #320475
Tyger River Correctional Institution
200 Prison Road
Enoree, SC 29335

Dear Mr. Scott,

Please find enclosed a courtesy copy the information that you requested from this office.

Sincerely,
Court Services Section

/MF

350

April ▼ 2011 ▼

Search

Terms of Circuit and Family Court April 2011

Circuit Number	4/4/2011	4/11/2011	4/18/2011	4/25/2011
14	Common Pleas Beaufort Buckner, Perry	Common Pleas Non-Jury Kinard, J. BROWN	Common Pleas Non- Jury/PCR Brown, D.	Common Pleas Allendale Buckner, Perry
	EVERETT	General Sessions Jasper Buckner, Perry	CROSS 18, 19, 20, 21 NO CR NEEDED 22	YOUNG 25, 26, 27 NO CR NEEDED 28, 29
	Common Pleas Hampton Mullen, Carmen	HILL 11, 12, 13 NO CR NEEDED 14 HILL 15	General Sessions Colleton Buckner, Perry	General Sessions Beaufort Maddox, J.
	HILL	Common Pleas Beaufort Mullen, Carmen	HILL	THOMAS 25, 26, 27, 28 NO CR NEEDED 29
		EVERETT	Common Pleas Beaufort Mullen, Carmen	General Sessions Beaufort Mullen, Carmen
			EVERETT 18, 19 am NO CR NEEDED 19 pm EVERETT 20, 21, 22	EVERETT 25, 26, 27, 28 NO CR NEEDED 29

WITNESSES

C. McIntosh - APD

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

The State of South Carolina

County of Jasper

COURT OF GENERAL SESSIONS

April Term 2011

Hereby appear in my own proper person and plead guilty to the within indictment or to

THE STATE

vs.

Antonio Demazio Scott

Defendant

Indictment for

Murder / Murder

Witness:

SC Code: 16-03-0010; 16-03-0020
CDR Code: 0116

G.C.C. PLS. and G.S.

ARREST WARRANT NUMBER

J386052

ACTION OF GRAND JURY

TRUE BILL

NO BILL

FORFEIT

DATE

Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA)
COUNTY OF JASPER)

INDICTMENT

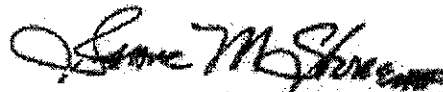
2011GS2700192

At a Court of General Sessions, convened on April 19, 2011, the Grand Jurors of Jasper County present upon their oath:

Murder / Murder

That in Jasper County on or about March 20, 2011, with malice aforethought, Antonio Demazio Scott did kill and murder Cynthia Nelson by means of stabbing, and that Cynthia Nelson did die in Jasper County as a proximate result thereof on March 21, 2011; in violation of Section 16-3-10 of the South Carolina Code of Laws (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



Solicitor

Jasper County Clerk of Court
Margaret Bostick, Clerk
P. O. Box 248
Ridgeland, S. C. 29936

FILED
JASPER COUNTY
CLERK OF COURT
2021 AUG - 1 A 9:07

Re: Case Number: 2021-CP-2700-444 (Post-Conviction
Relief) ANTONIO D. Scott, #320475 vs State of South
Carolina.

Dear Ms Bostick:

Please find enclosed is a copy and true objection
to the Conditional Order of Dismissal that is
served upon you for filing, please return stamp
filed copy to me.

Sincerely,

Antonio D. Scott
Antonio D. Scott #320475

FILED
JASPER COUNTY
CLERK OF COURT

State of South Carolina
County of Jasper

In the Court of Common Pleas
For the 14th Judicial Circuit

Antonio D. Scott, # 320475
Applicant,

Case NO. 2021-CP-27-00444

v.
State of South Carolina,
Respondent.

Objection To the Conditional
Order of Dismissal

This matter come before the Court by Objection To the Conditional Order of Dismissal filed in response to the State's moving to dismiss the P.C.R Application pursuant to Section 17-27-45 of the S.C. Code as untimely.

The Applicant Objects to the Summary Dismissal Based on Statute of limitations. Petitioner sent a letter to the Supreme Court of South Carolina, requesting a copy of his P.C.R application, where Petitioner contends he mailed his P.C.R application to the Jasper County Clerk of Court in January 2016 and Amended the P.C.R Application in April 2016.

The S.O.C.D. mailroom would have deducted a filing fee from my account or charge my account for mailing A.P.C.R. Application. I request counsel and a hearing and to note what was going on at the Clerk's office at the time of my mailing the application. See *Gary v. State* 349 S.C. 627, 557 S.E2d 662, where the Court explained that under Rule 71.1(d) ASCRCP, an indigent applicant who is granted a hearing has a statutory ~~right~~ right to be represented by a court appointed attorney - See *Moses v. State* 803 S.E2d 718, 723 (S.C. 2017) quoting *Hooper v. Ebenezer Senior Servs + Rehab, Ctr* 366 S.C. 108, 115, 687 S.E2d 29 (2009) (where a statute set a limitation period for actions Courts have invoked the equitable tolling doctrine to suspend or extend the statutory period to ensure fundamental practicality and fairness.

The Respondent states the Petitioner had until December 16, 2016, to timely file his P.C.R. Application. It appears the Respondent has ignored the filing made by Applicant in January of 2016. There we have a genuine issue of material fact whether the court will consider a valid defense to the Statute

of limitation after full investigation of the facts and whether this current application would be considered successive. See *Odom v State*, 523 S.E.2d 753 (S.C. 1999) Where the court explained, Under the PCR rules, an applicant is entitled to a full adjudication on the merits of the original petition, or "one bite at the apple." *Rice v State*, 305 S.C. 448, 452, 409 S.E.2d 392, 395 (1991). This bite included an applicant's right to appeal the denial of a PCR application and the right to assistance of counsel in that appeal. When considering the Amendment to the PCR and the lack of jurisdiction of the Court a hearing would be proper. See *Robertson v. State*, 795 S.E.2d 29 where an applicant alleges facts that would establish an exception to either the Statute of limitations or prohibition against successive P.C.R. applications and those facts are not conclusively refuted by the record before the Court, a question

fact is raised which can only be resolved by a hearing.

Conclusion

Applicant prays this Court would appoint counsel and order a hearing to resolve this claims herein.

Date

July 12 2022

Antonio D. Scott
Antonio D. Scott ..

Margaret Bostick, Clerk
Jasper County Clerk of Court
P.O. Box 248
Ridgeland, SC 29936

RE: Antonio D. Scott, # 320475 v. State of South Carolina

Case NO: 2021-CP-27-00444

Dear Ms Bostick:

Enclosed for filing would you please find motion for leave to amend and attachment and purpose amendment that is served upon you.

Sincerely,

Antonio D. Scott

FILED
JASPER COUNTY
CLERK OF COURT

2022 AUG -1 P 12:22

STATE OF SOUTH CAROLINA
COUNTY OF JASPER

Antonio D. Scott, # 320475

Applicant,

v.

STATE OF SOUTH CAROLINA

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE 14th JUDICIAL CIRCUIT

Case NO: 2021-CP-27-00444

PURPOSED AMENDMENT

FILED
JASPER COUNTY
CLERK OF COURT
2021 AUG - 1 P 12:22

1. Counsel was ineffective by his failure to file motion or bring to the Court's attention that the indictment was drawn on an ill-legal grand jury. and the Court lacked jurisdiction to try Antonio D. Scott.

LAW

A criminal defendant has a constitutional and statutory right to have the indictment issued by a legally constituted grand jury. See e.g. State v Means Op No. 26105 (SC Supreme Court filed February 6, 2006). See S.C. Constitution Art. 1 § 11 and Art. v, § 22. S.C. Code Ann. §14-9-210.

In State v Hann 125 S.E. 2d 720 (S.C. 1940), the Court said, We adhere fully to the decision of this Court rendered by Mr. Justice Woods, in the case of State v. Lazau, 65 S.E. 270, 271, when the court held that the law requires the presentment of a

grand jury as a condition precedent to the trial of a crime, the grand jury being a constitute part of the Court and without it presentment the court has no jurisdiction of the cause. Hence, an appellate court will declare void a conviction obtained in such case without the presentment of a grand jury, for lack of jurisdiction of the subject matter in the trial court.

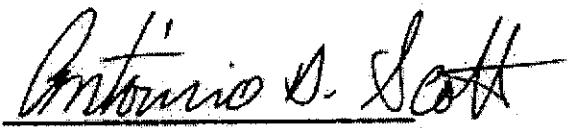
In this case the Applicant has produced a term of court record for April 2011, and the grand jury did not meet in April 2011 and the foreman's name is what I'm alleging is fraud upon the Court.

CONCLUSION

Accordingly, and for the reasons shown above, this Court should release the Petitioner from the custody of the Respondent.

Dated

4/12 /2022



Antonio D. Scott

STATE OF SOUTH CAROLINA
COUNTY OF JASPER

Antonio Demorid Scott

FILED
JASPER COUNTY
CLERK OF COURT

2022 AUG 21 P 12:22
Applicant

v.

STATE OF SOUTH CAROLINA

Respondent

IN THE COURT OF
COMMON PLEAS FOR
THE FOURTEENTH Judicial
Circuit

CASE No.: 2021-CP-27-004

MOTION TO DISMISS THE
CONDITIONAL ORDER OF
DISMISSAL by the Respondent

THE Applicant ASSERTS THAT HE IS NOT A professional in LAW. Additionally, THE Applicant misinterpreted the reply of the Honorable Margaret Bostick, Clerk of Court for Jasper County that IF I, the Applicant would file my Post Conviction Application now she would accept it, since she the Clerk of Court STATED she could not find my Application for Post Conviction that was filed in January 2016. The Applicant HAS enclosed a copy from May 22, 2017 a certified mail receipt where the Applicant requested the status of the Afore-mentioned PCR Application filed in 2016.

The Applicant filled out another PCR Application And simply forgot to include the PCR Application filed in 2016, based upon the Reply from the Honorable Margaret Bottick, the Applicant thought if he refiled the PCR Application it would be Accepted And timely filed. The Applicant sent the Original and only copy of the PCR Application from 2016 to the Clerk of Court in Jasper County in hopes of receiving the clock stamped Copy back for further litigation. The Applicant prayerfully asks this Honorable Court to Accept the refiled PCR (Case No. 2021-CP-27-00444) as the Same PCR filed in 2016 the Clerk of Court lost, and the Applicant has no copy, however the Applicant does have a copy of the Amendment that was filed a couple of

Months after the PCR was filed. The Applicant³⁶³ would ~~not~~ not continue to make such a claim from 2016 if in fact this claim was frivolous. The Applicant failed to explain thoroughly that the current PCR Application was ~~not~~ in fact the PCR Application filed in 2016.

The Applicant apologizes to ~~the~~^{this} Honorable Court and the Attorney General's office for the ~~mis~~ misunderstanding. Additionally, the Applicant respectfully prays this Honorable Court and Attorney General's Office will accept this PCR Application as the original PCR filed in 2016.

7-12-2022
DATE

Antonio D. Scott
Antonio D. Scott #326475
Tyger River C.I. U-10-111-A
200 Prison Road
Enlow SC 29335

STATE OF SOUTH CAROLINA
COUNTY OF JASPER
Antonio D. Scott, # 320475

Applicant,

v.

STATE OF SOUTH CAROLINA
Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE 14th JUDICIAL CIRCUIT
Case No. 2021-CP-27-00444

MOTION FOR LEAVE TO AMEND

FILED
JASPER COUNTY
CLERK OF COURT
AUG 1 P 12:23

This cause is before this court for motion for leave to amend post conviction relief application on the ground that the grand jury indictment was issued by a ill-legally grand jury.. Rule 15. SCRPC, that the amendment is freely given as justice so requires and Mangal v State, 421 S.C. 85, 805 S.E.2d 568 (S.C. 2017) quoting Simpson where Simpson did not specifically raise it in his PCR application. The Court held, Simpson should have been permitted to amend his PCR application to confirm to the evidence presented. 367 S.C. at 559, 627 S.E.2d at 708. Rule 15(b), SCRPC, states pleading may be amendment, even after judgment, to conform to issues tried by express or implied consent, but not raised in the original pleading. Moreover, a party may amend his pleading once as a matter of course at any time before or within 30 days after a responsive pleading is served.... Otherwise a party may amend his pleading only be leave of court or by written consent of the adverse party. Love v State, 428 S.C. 231, 834 S.E.2d 196 (S.C. 2019))quoting Rule 15 and 15(b), SCRPC.

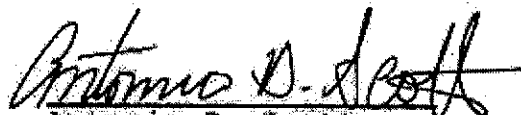
In this matter applicant has made a showing of a ill-legal form grand jury. See Attachments. And he requested an evidentiary hearing on the matter. See purpose amendment

CONCLUSION

Applicant prays this Court would grant leave to amend.

Submitted

7/12/2022


Antonio D. Scott,

STATE OF SOUTH CAROLINA
COUNTY OF JASPER

Antonio Demazio Scott, SCDC #320475,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE FOURTEENTH JUDICIAL CIRCUIT

Case No.: 2021-CP-27-00444

FINAL ORDER OF DISMISSAL

RECEIVED

JUL 26 2023

S.C. SUPREME COURT

FILED
JASPER COUNTY
CLERK OF COURT
2023 JUN 27 A 9:01

This matter comes before the Court by way of post-conviction relief application filed by Applicant Antonio Demazio Scott on October 12, 2021. In response, the State of South Carolina made its return and moved to summarily dismiss the action as procedurally barred pursuant to the Uniform Post-Conviction Procedures Act, located at section 17-27-10 to -160 of the South Carolina Code.

After review of the record and pleadings, this Court agreed this application should be summarily dismissed and provisionally dismissed the action by way of a Conditional Order of Dismissal filed on February 23, 2022, giving Applicant twenty days from the date of service of said Order to show why the dismissal should not become final. Attached to this Final Order and incorporated herein by reference is an Affidavit of Service indicating Applicant was served the Conditional Order of Dismissal on July 20, 2022.

On February 8, 2022, Applicant filed a Motion to Dismiss the Conditional Order of Dismissal, asserting he had attempted to file a PCR application in 2016, and he believed—based on a letter he received from the Jasper County Clerk of Court—that “if he refiled the PCR

TRUE COPY
MARGARET BOSTICK
CLERK OF COURT
JASPER COUNTY, SC

BY: [Signature]
DATE: 07-29-2023

application it would be accepted and timely filed.”¹ On April 25, 2022, Applicant filed a Motion to Amend and a Proposed Amendment asserting “counsel was ineffective for failing to file a motion or bring to the Court’s attention that the indictment was drawn on an ill-legal grand jury, and the Court lacked jurisdiction to try [Applicant].” On August 1, 2022, Applicant filed (1) an Objection to the Conditional Order of Dismissal, again asserting he had previously attempted to file a PCR in 2016; (2) a Motion to Dismiss the Conditional Order of Dismissal, reiterating the argument in his February 2022 Motion to Dismiss the Conditional Order of Dismissal; and (3) a Motion to Amend and a Proposed Amendment raising the same argument in his April 2022 Proposed Amendment. This Court construes these filings as responses to the Conditional Order of Dismissal. This Court further finds Applicant has not made a prima facie showing that he is entitled to an evidentiary hearing. As this Court previously found, the Clerk of Court reviewed its records and did not have any record of receiving or filing a prior PCR application. Further, Applicant’s proposed amendment does not raise an issue warranting a hearing. See S.C. Code Ann. §§ 14-5-910 to -940 (allowing for terms of court not provided for by law); State v. Jeffcoat, 26 S.C. 114, 1 S.E. 440, 441 (1887) (“[M]erely changing the time for holding the court did not make the grand jury illegal.”); Pringle v. State, 287 S.C. 409, 411, 339 S.E.2d 127, 128 (1986). (providing a presumption of regularity attaches to proceedings in the Court of General Sessions); State v. James, 321 S.C. 75, 472 S.E.2d 38, 40 (Ct. App. 1996) (providing courts must presume a

¹ As noted in the Conditional Order of Dismissal, Applicant sent a letter to the Supreme Court of South Carolina, received on September 13, 2021, requesting a copy of his PCR application. In that letter Applicant claims he mailed a copy of his application to the Jasper County Clerk of Court in January 2016. Applicant further contends he sent amendments to that application in April 2016. In the letter, Applicant states he has not received any replies to letters he has mailed to the Jasper County Clerk of Court. Upon receipt of Applicant’s letter, the Supreme Court forwarded it to the Jasper County Clerk of Court on September 15, 2021. By letter dated September 30, 2021, the Jasper County Clerk of Court responded to Applicant and advised him their office had reviewed their records; however, the records did not indicate any application was ever received by or filed with the Jasper County Clerk of Court.

properly returned indictment is valid absent evidence to the contrary); State v. Gentry, 363 S.C. 93, 101, 610 S.E.2d 494, 499 (2005) (“[S]ubject matter jurisdiction of the circuit court and the sufficiency of the indictment are two distinct concepts and the blending of these concepts serves only to confuse the issue. Circuit courts obviously have subject matter jurisdiction to try criminal matters.”).

IT IS THEREFORE ORDERED that for the reasons set forth in the Court’s Conditional Order of Dismissal, this application for post-conviction relief is hereby **DENIED AND DISMISSED WITH PREJUDICE**.

Should Applicant wish to procure appellate review, he must file and serve a notice of appeal within thirty days of this Order. See Rule 203, SCACR. Applicant’s attention is directed to Rule 243, SCACR, for the procedures following the filing and service of the notice of appeal.

AND IT IS SO ORDERED this 19 day of JUNE, 2023.



CARMEN T. MULLEN
Chief Administrative Judge – Common Pleas
Fourteenth Judicial Circuit

RIDGEWOOD, South Carolina

FILED
JASPER COUNTY
CLERK OF COURT

Margaret Bostick, Clerk
Jasper County Clerk of Court
P.O. Box 248
Ridgeland, SC 29936

2023 JUL -5 A 10:38

RE: Antonio Scott, # 320475 v State
C/A NO: 2021-CP-27-00444

Dear Clerk:

Enclosed for filing would you please find objection to the proposed final order of dismissal, please return stamp filed copy to me and please served the Honorable Bentley D. Price.

Sincerely,

Antonio D. Scott

STATE OF SOUTH CAROLINA
COUNTY OF JASPER

FILED IN THE COURT OF COMMON PLEAS
JASPER COUNTY
CLERK OF COURT FOR THE 14th JUDICIAL CIRCUIT

Antonio Demazio Scott, #320475-2023 JUL -5 A D 38

Applicant,

C/A No: 2021-CP-27-00444

v.

State of South Carolina

OBJECTION TO THE PROPOSED

Respondent

FINAL ORDER OF DISMISSAL

The applicant objects to the proposed final order of dismissal based on the ground he has not had one bite at the apple. See *Odom v State*, 523 SE 2d 753 (SC 1999) the court explained, under the PCR rules, an applicant is entitled to a full adjudication on the merit of the original petition, or one bite at the apple. Second, the indictment as a fatal defect in it as to the place of death. See p. 5 N.I. which states the victim, Cynthia was first taken by EMS to a local hospital and then, because of her condition, she was transported to a hospital in Savannah, Georgia. She died there on March 21, 2011, as a result of the stab wound to her neck just below the ear at the jaw line. (R 44-59, 110-251. The indictment does not satisfy the notice requirement for indictment. see Gentry and 410 S.E.2d 494, an indictment is a notice document. see also Posay v Proper Hold, a Engineering, 376 S.W. 2d 2101, 461 S.E.2d 395 (Court of Appeals 2008). The proper procedure for raising lacked of subject matter jurisdiction prior to trial is to file motion to dismiss pursuant to rule 12 (b)(1) rather than a motion for summary judgment

pursuant to rule 56, SCRPC. If a party files a rule 56 motion for summary judgment on the ground of lack of subject matter jurisdiction, trial court should treat the motion as if it were 12(b)(1) motion to dismiss. In speaking of lacked of jurisdiction, in the second or (b) of the allegation he is being held in custody unlawful applicant alleges:

(b) Counsel was ineffective during the amendment f the indictment for his failure to move to quash or object to the fatal defect in the murder indictment referring to the place of death.

When considering the State's motion for summary dismissal, where no evidentiary hearing has been held, the PCR judge, must assume facts presented by the applicant are true and view those facts in the light most favorable to the applicant McCoy v State, 737 S.E.2d 623, 626 (2013). Similarly, when reviewing the propriety of a dismissal, this court must view the facts in the same fashion. The indictment in this case is fatally defective and cannot be cured by amendments. State v Platt, 151 S.E. 206 (S.C. 1930), State v. Blakenev, 11 S.E. 637 (S.C. 1890).

In the jurisdictional matter of the court it appears the indictment for murder must be dismissed and a new indictment issued. In dealing with the discovery rule 17-27-45(c) a hearing is necessary to determine if a genuine issue of material fact as to whether this petition is barred by statute of limitations and whether equitable tolling is available to Applicant.

CONCLUSION

WHEREFORE, having objected to the proposed final order of dismissal, applicant prays this court would consider the facts and dismissed Respondent final order of dismissal.

DATED

June 28 2023Antoni D. Scott

CERTIFICATE OF SERVICE

The undersigned hereby certify that he mail Objections to the Final Order of Dismissal to the Jasper County Clerk of Court Margaret Bostick, South Carolina Attorney General's Office, Danielle DIXON, Esquire and to Honorable Carmen T. Mullen this 28 day of June 2023 by depositing same in the U.S. MAIL.

Antonio S. Scott

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

JUL 26 2023

Appeal From ~~Jasper~~ County Court of Common Pleas
Chief Administrative Judge, Carmen T. Mullen
C/A NO: 2021-CP-27-00444

S.C. SUPREME COURT

State of South Carolina.....Respondent

v.

Antonio Demazino Scott, # 320475.....Appellant

NOTICE OF APPEAL

Antonio Demazio Scott, #320475, appeal the Final Order of Dismissal Signed by the Honorable Carmen T. Mullen on June 19, 2023, and received by me July 6, 2023.

Antonio D. Scott

Antonio Demazio Scott
Tyger River C.I.
200 Prison Rd
Enoree, S.C. 29335

RECEIVED

AUG 07 2023

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal From Jasper County Court of Common Pleas
 Chief Administrative Judge, Carmen T. Mullen
 C/A NO 2021-CP-27-00444

State of South Carolina.....Respondent

v.

Antonio Demazino Scott, # 320475.....Appellant

243 EXPLANATION

This cause is before this court pursuant to Rule 243, SCACR, to explain why the ruling of the lower court was improper. In this matter the Respondent alleges that Petitioner's filing procedure does not comply with the Uniform Post Conviction Act, and Petitioner filed his application too late to be properly filed. In this case Petitioner was never appointed counsel and he was never given a chance to present his claims to the PCR court. Odom v State, 337 S.C. 256, 523 S.E.2d 753 S.C. 1999).

Petitioner filed his PCR January 15, 2016, and when he did not hear anything from the PCR court, he wrote the Supreme Court of South Carolina on September 13, 2021. In that letter he mention that he wrote a letter inquiring about his PCR application any amended Return was January 24, 2020. Petitioner noted he received absolutely no reply from the Clerk of Court. Petitioner said, he mailed another PCR Application on September 9, 2021, requesting a copy just for the record. By request of the clerk of court the PCR application was resubmitted and sent to the Clerk's attention, he she said she would make sure it was process in a timely manner. See Letter dated September 30, 2021.

This court was also sent a copy. There exist a genuine issue of material fact whether Petitioner's first PCR that he sent to the Clerk was misplaced and never filed and did the clerk letter and stating resubmit meant, she just did not filed the first Application. Summary dismissal of a PCR application without a hearing is appropriate only when (1) it is apparent on the face of the application that there is no need for a hearing to develop any facts and (2) the applicant is not entitled to relief. S.C. Code Ann. §17-27-70(b). Pelzer v. State, 378 S.C. 516, 662 S.E.2d 618 (Court of Appeal 2008) quoting Leamon v State, 363 S.C. 432, 611 S.E.2d 494 (2005). When considering the State's motion for summary dismissal of an application for PCR a judge must assume facts presented by an applicant are true and view thos facts in

the light most favorable to the applicant. In quoting Wilson v. State, 348 S.C. 215, 217, 559 S.E.2d 581, 582 (2002). Likewise, this court must view the facts in the same fashion when reviewing the appropriateness of a dismissal.

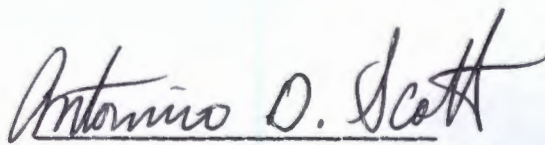
The applicant did not alleged that he attempted to filed a PCR application in 2016, he alleged that he did and the clerk of court for Jasper County in her letter said, please resubmit your application and send it to my attention.

The applicant request his case be remanded for a full hearing arguing the statute of limitations. See Barnes v. State, 433 S.C. 399, 859 S.E.2d 260, where the court said, a clerk of court does not have the authority to reject a filing based on ostensible or perceived failure, including the document is contained on the proper form, because the Clerk's role is ministerial in this respect, the clerk shall not be concerned with the merit of the paper or with their effect and interpretation. See also Mose v State, 420 S.C. 500, 803 S.E.2d 718, where the judge rule the application was untimely, and this court overrule the lower court's findings.

CONCLUSION

This concludes applicant's 243(c) explanation, and applicant prays for a remanded for a hearing.

DATED
August 31 2023


Antonio D. Scott

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Jasper County

Honorable Carmen T. Mullen, Circuit Court Judge

ANTONIO SCOTT,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2023-001186

PETITION FOR WRIT OF CERTIORARI

KATHRINE H. HUDGINS
Appellate Defender

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

ATTORNEY FOR PETITIONER

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ARGUMENT

 The PCR judge who signed the final order of dismissal erred in failing to recuse herself when she was the trial judge and both judges, the judge who signed the conditional order oof dismissal and the judge who signed the final order of dismissal, erred in dismissing the application for post-conviction relief as being filed outside the one-year statute of limitations without appointing counsel and without conducting a hearing when there is evidence in the record that Petitioner, an unrepresented indigent party, mailed the application from the South Carolina Department of Corrections to the Jasper County Clerk of Court, at the correct address, presenting issues of law and fact that entitle Petitioner to the appointment of counsel and an evidentiary hearing on the statute of limitations issue as well as ineffective assistance of counsel claims.....4

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ISSUE PRESENTED

Did the PCR judge who signed the final order of dismissal erred in failing to recuse herself when she was the trial judge and did both judges, the judge who signed the conditional order of dismissal and the judge who signed the final order of dismissal, court err in dismissing the application for post-conviction relief as being filed outside the one-year statute of limitations without appointing counsel and without conducting a hearing when there is evidence in the record that Petitioner, an unrepresented indigent party, mailed the application from the South Carolina Department of Corrections to the Jasper County Clerk of Court, at the correct address, presenting questions of law and fact that entitle Petitioner to the appointment of counsel and an evidentiary hearing on the statute of limitations issue as well as ineffective assistance of counsel claims?

STATEMENT

In April of 2011, the Jasper County Grand Jury indicted Petitioner, Antonio Scott, for murder, indictment #2011-GS-27-00216. (App. pp. 233-234). On December 5, 2011, Petitioner proceeded to jury trial before the Honorable Carmen T. Mullen. Robert Hughes represented Petitioner at trial. Robert Ferguson prosecuted the case. The jury found Petitioner guilty. Judge Mullen sentenced Petitioner to thirty (30) years in prison. (App. p. 235). A timely notice of intent to appeal was filed and the direct appeal perfected. On February 19, 2014, the South Carolina Court of Appeals affirmed the conviction and sentence. State v. Scott, 408 S.C. 21, 757 S.E.2d 533 (Ct.App. 2014). (App. pp. 275-280). A timely petition for rehearing was filed and then denied on May 2, 2014.

On May 20, 2014, Petitioner filed a petition for writ of certiorari with the South Carolina Supreme Court. On September 11, 2014, the South Carolina Supreme Court granted the petition for writ of certiorari. After hearing argument, the Court affirmed. State v. Scott, 414 S.C. 482, 779 S.E.2d 529 (2015). (App. pp. 281-287). A timely petition for rehearing was filed and then denied on December 16, 2015. The remittitur issued on December 16, 2015.

In a letter to the Clerk of the South Carolina Supreme Court dated September 9, 2021, Petitioner wrote that he filed an application for post-conviction relief [PCR] with the Jasper County Clerk of Court on January 15, 2016. (App. pp. 288-292). Petitioner wrote that he filed an amended application in April of 2016. (App. p. 288). Petitioner also stated that he had not received responses from the Jasper County Clerk of Court. (App. p. 289). The Appendix includes an inmate receipt for postage for legal matters dated January 15, 2016. (App. p. 292). In a letter dated September 15, 2021, the Clerk of the South Carolina Supreme Court forwarded Petitioner's letter to the Jasper County Clerk of Court. (App. p. 293). In a letter dated

September 30, 2021, the Jasper County Clerk of Court wrote to Petitioner and advised that her office did not have a PCR application on file. (App. p. 295). The clerk advised Petitioner to resubmit the application and included a blank PCR application. (App. p. 295). On October 12, 2021, Petitioner filed a PCR application and amendment. (App. pp. 296-313).

On January 25, 2022, the State filed a return and motion to dismiss. (App. pp. 314-325). The State did not request the appointment of counsel. (App. p. 314). On February 8, 2022, Petitioner filed a *pro se* motion to dismiss conditional order of dismissal. (App. pp. 338-341). On February 11, 2022, the Honorable Bentley Price signed a conditional order of dismissal. (App. pp. 326-337). On April 25, 2022, Petitioner filed a *pro se* proposed amendment. (App. pp. 343-345). Additionally on April 25, 2022, Petitioner filed a *pro se* motion for leave to amend. (App. pp. 346-348). On August 1, 2022, Petitioner filed a *pro se* objection to the conditional order of dismissal, a *pro se* proposed amendment, a *pro se* motion to dismiss conditional order of dismissal by the Respondent, and a *pro se* motion for leave to amend. (App. pp. 353-365).

On June 19, 2023, the Honorable Carmen T. Mullen signed the final order of dismissal without appointing counsel and without conducting a hearing. (App. pp. 366-368). Judge Mullen was also the trial judge. (App. p. 1). On July 5, 2023, Petitioner filed a *pro se* objection to the proposed final order of dismissal. (App. pp. 369-373). On July 26, 2023, Petitioner filed a timely *pro se* notice of intent to appeal. (App. p. 374). On August 7, 2023, Petitioner filed a *pro se* Rule 243 explanation. (App. pp. 375-377). This petition for writ of certiorari follows.

ARGUMENT

The PCR judge who signed the final order of dismissal erred in failing to recuse herself when she was the trial judge and both judges, the judge who signed the conditional order of dismissal and the judge who signed the final order of dismissal, erred in dismissing the application for post-conviction relief as being filed outside the one-year statute of limitations without appointing counsel and without conducting a hearing when there is evidence in the record that Petitioner, an unrepresented indigent party, mailed the application from the South Carolina Department of Corrections to the Jasper County Clerk of Court, at the correct address, presenting issues of law and fact that entitle Petitioner to the appointment of counsel and an evidentiary hearing on the statute of limitations issue as well as ineffective assistance of counsel claims.

Petitioner's PCR application was dismissed without an attorney being appointed and without a hearing. The judge who signed the final order of dismissal also presided over Petitioner's trial. (App. p. 1, p. 368). First, the judge who signed the final order of dismissal should have recused herself. In Floyd v. State, 303 S.C. 298, 299, 400 S.E.2d 145, 146 (1991), the South Carolina Supreme Court wrote, "Accordingly, in all post-conviction relief hearings held after the date of this opinion, a judge shall, *upon motion*, recuse himself if he was the judge who presided at the guilty plea, criminal trial, or probation revocation proceeding for which relief is being sought. While Petitioner did not move for the judge to recuse herself, Petitioner was acting *pro se*, an attorney was never appointed to represent Petitioner and no hearing was held. The final order of dismissal omits reference to the trial judge's name but purports to rely on the conditional order of dismissal which clearly notes the trial judge's name.

Second, Petitioner wrote in his letter to the Clerk of the South Carolina Supreme Court dated September 9, 2021, that he timely mailed his PCR application to the Jasper County Clerk of Court on January 15, 2016. (App. pp. 288-290). The remittitur issued on December 16, 2015. Petitioner additionally stated that he filed an amended application in April of 2016. (App. p. 288). In the letter Petitioner additionally provided the address where he sent his application and amendment, the correct address for the Jasper County Clerk of Court. (App. p. 290). The

Appendix includes an inmate receipt, with Petitioner's name and SCDC number, for postage for legal matters dated January 15, 2016, the same date he states that he sent the application. (App. p. 292). Petitioner presented material questions of law and fact regarding the statute of limitations.

In response to Petitioner's *pro se* PCR application, the State moved to dismiss as untimely pursuant to S.C. Code §17-27-45. (App. p. 314). In the caption of the return the State noted that appointment of counsel was NOT requested. (App. p. 314). In the conditional order of dismissal the PCR judge wrote:

This Court has reviewed the pleadings, the records submitted by the parties, and the applicable law. This Court finds there is no genuine issue of material fact which would necessitate an evidentiary hearing. *See* § 17-27-70(b) (establishing procedure for summary disposition of PCR applications); *Leamon v. State*, 363 S.C. 432, 434, 611 S.E.2d 494, 495 (2005) (summary disposition appropriate when there is no need to develop facts and the applicant is not entitled to relief. Pursuant to South Carolina Code Annotated Sections 17-27-70 and -80, this Court informs the parties of its intent to dismiss the application based upon the following findings:

(App. p. 333). The order goes on to discuss the statute of limitations. (App. pp. 333-335). In footnote #3 of the conditional order, the PCR judge acknowledged Petitioner's letter to the Clerk of the South Carolina Supreme Court in which he states he mailed a copy of his PCR application to the Jasper County Clerk of Court in January of 2016. (App. p. 328). The order also lists seven allegations of ineffective assistance of counsel, a Brady violation and a Due Process violation that were all included in Petitioner's *pro se* PCR application. (App. p. 332).

The final order of dismissal acknowledges Petitioner's numerous *pro se* responses to the conditional order of dismissal. (App. p. 367). The PCR judge who signed the final order of dismissal denied relief and dismissed with prejudice "for the reasons set forth in the Court's Conditional Order of Dismissal . . ." (App. p. 368). Both PCR judges erred in dismissing the

application without appointing counsel and conducting a hearing when there were material issues of law and fact presented with regard to the statute of limitations.

In Mose v. State, 420 S.C. 500, 505–06, 803 S.E.2d 718, 720 (2017), the South Carolina Supreme Court wrote:

“Summary dismissal of a PCR application without a hearing is appropriate only when (1) it is apparent on the face of the application that there is no need for a hearing to develop any facts and (2) the applicant is not entitled to relief.” Leamon v. State, 363 S.C. 432, 434, 611 S.E.2d 494, 495 (2005); S.C. Code Ann. § 17-27-70(b), (c) (2014). When considering the State's motion for summary dismissal of an application, where no evidentiary hearing has been held, the PCR judge must assume facts presented by the applicant are true and view those facts in the light most favorable to the applicant. Leamon, 363 S.C. at 434, 611 S.E.2d at 495. When reviewing the propriety of a dismissal, an appellate court must view the facts in the same fashion. Id.

The PCR judges erred in summarily dismissing the application without appointing counsel and conducting a hearing. Petitioner presented material issues of law and fact that required a hearing. The PCR judges failed to assume that the facts presented by Petitioner were true and failed to view those facts in the light most favorable to Petitioner. Petitioner’s statement that he timely filed his PCR application is additionally supported by the record showing a receipt for postage on the date he mailed his application. Additionally, it is not apparent on the face of the application that Petitioner was not entitled to relief. The *pro se* PCR application alleges seven instances of ineffective assistance of counsel, a Brady violation and a Due Process violation. (App. p. **).

In Gary v. State, 347 S.C. 627, 630, 557 S.E.2d 662, 664 (2001), Petitioner, an indigent unrepresented party, told the judge during the hearing that he timely filed his PCR application but filed it in the wrong place. On appeal Petitioner argued that the appellate court should allow equitable tolling of the statute of limitations. The South Carolina Supreme Court found that the

issue was not raised below and not properly before the appellate court. The Court, however, citing Rule 71.1, SCRCP, found that the hearing was inadequate and remanded for the appointment of counsel.

Rule 71.1(d) provides that:

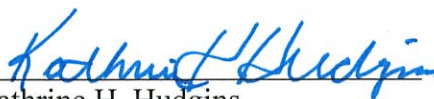
If, after the State has filed its return, the application presents questions of law or fact which will require a hearing, the court shall promptly appoint counsel to assist the applicant if he is indigent. Counsel shall be given a reasonable time to confer with the applicant. Counsel shall insure that all available grounds for relief are included in the application and shall amend the application if necessary.

The Court in Gary wrote, “Further, in the interest of fairness, we find counsel should be appointed under Rule 71.1(d) when the State moves for dismissal under § 17–27–45(A) and the PCR applicant raises an issue of material fact regarding the applicability of the one-year limitation.” 347 S.C. at 630, 557 S.E.2d at 664.

In the present case Petitioner presented questions of law and fact with regard to the statute of limitations. Petitioner, however, was not given a hearing and was not appointed counsel. This Court should remand the case for appointment of counsel and an evidentiary hearing as the Court did in Gary.

CONCLUSION

Based on the above argument, this Court should grant the petition for writ of certiorari and remand for the appointment of counsel and an evidentiary hearing.


Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR PETITIONER

This 21st day of February, 2024.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Jasper County

Honorable Carmen T. Mullen, Circuit Court Judge

ANTONIO SCOTT,

PETITIONER

V.

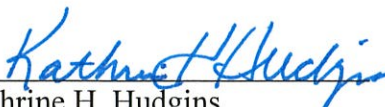
STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2023-001186

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Petition for Writ of Certiorari and Appendix in the above-referenced case has been served upon Danielle E Dixon, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), this 21st day of February, 2024.


Kathrine H. Hudgins
Appellate Defender

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

ATTORNEY FOR PETITIONER

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Petition for Writ of Certiorari
to Jasper County
Bentley D. Price, First PCR Judge
Carmen T. Mullen, Second PCR Judge

Appellate Case No. 2023-001186

ANTONIO DEMAZIO SCOTT,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

**RETURN TO PETITION
FOR A WRIT OF CERTIORARI**

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

DANIELLE DIXON
Assistant Attorney General
S.C. Bar No. 73999

Post Office Box 11549
Columbia, SC 29211
(803) 734-3737

ATTORNEYS FOR RESPONDENT

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 The State concedes Petitioner is entitled to a hearing on the narrow issue of whether
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QUESTIONS PRESENTED

Did the PCR judge who signed the final order of dismissal err in failing to recuse herself when she was the trial judge and did both judges, the judge who signed the conditional order of dismissal and the judge who signed the final order of dismissal, err in dismissing the application for post-conviction relief as being filed outside the one-year statute of limitations without appointing counsel and without conducting a hearing when there is evidence in the record that Petitioner, an unrepresented indigent party, mailed the application from the South Carolina Department of Corrections to the Jasper County Clerk of Court, at the correct address, presenting questions of law and fact that entitle Petitioner to the appointment of counsel and an evidentiary hearing on the statute of limitations issue as well as ineffective assistance of counsel claim?

Is Petitioner entitled to a hearing on the narrow issue of whether the statute of limitations should be equitably tolled?

STATEMENT OF THE CASE

Petitioner is presently confined in the South Carolina Department of Corrections serving a thirty-year-sentence. In April 2011, the Jasper County Grand Jury indicted Petitioner for murder (2011-GS-27-00192). On December 5-7, 2011, Petitioner proceeded to a jury trial before the Honorable Carmen T. Mullen. Public Defender Robert Hughes represented Petitioner, and Assistant Solicitor Robert Ferguson prosecuted the case. The jury convicted Petitioner of murder, and Judge Mullen sentenced him to thirty years' imprisonment.

Petitioner filed a direct appeal, which was perfected by Appellate Defender Benjamin J. Tripp, who filed a brief arguing the trial court erred in failing to instruct the jury on involuntary manslaughter. The Court of Appeals affirmed on the merits. Petitioner filed a petition for a writ of certiorari in the South Carolina Supreme Court, which was granted. On September 9, 2015, the Supreme Court issued an opinion affirming. The remittitur was sent December 16, 2015.

On October 12, 2021, Petitioner filed an application for post-conviction relief (PCR) alleging ineffective assistance of counsel, Brady violation, and due process violation. The State filed a return and motion to summarily dismiss the application based on the statute of limitations. On February 23, 2022, the court issued a Conditional Order of Dismissal.¹ Applicant filed responses to the Conditional Order of Dismissal on February 8, 2022, and August 1, 2022, again asserting he had attempted to file a PCR application in 2016. On June 27, 2023, the Court issued a Final Order of Dismissal. This Petition for a Writ of Certiorari followed.

¹ Pertinently, the Conditional Order of Dismissal noted that Petitioner sent a letter to the Supreme Court of South Carolina on September 9, 2021, asserting he mailed a PCR application to Jasper County Clerk of Court on January 15, 2015, and an amendment in April 2016, but he had not received a clocked copy of his application or amendment. The Order further noted the Supreme Court forwarded the letter to the Jasper County Clerk of Court on September 15, 2021, and the Japer County Clerk of Court sent Petitioner a letter on September 30, 2021, indicating it did not have a PCR application filed for Petitioner or any record that an application was ever received or filed.

STANDARD OF REVIEW

The standard of review for post-conviction relief depends on the specific issue before the appellate court. Smalls v. State, 422 S.C. 174, 810 S.E.2d 836, 839 (2018). When reviewing factual findings, appellate courts defer to the PCR court's factual findings and will uphold them if any probative evidence in the record supports them. Buckson v. State, 423 S.C. 313, 320, 815 S.E.2d 436, 440 (2018); Smalls, 422 S.C. at 180-81, 810 S.E.2d at 839-40. However, pure questions of law will be reviewed *de novo* without deference to the PCR court. Id. Appellate courts will reverse the decision of the PCR court when it is controlled by an error of law. Goins v. State, 397 S.C. 568, 573, 726 S.E.2d 1, 3 (2012).

ARGUMENT

Respondent concedes Petitioner is entitled to a hearing on the narrow issue of whether the statute of limitations for this PCR action should be equitably tolled.

Petitioner asserts the PCR court erred in summarily dismissing his PCR application when he presented a question of fact as to whether the statute of limitations should be equitably tolled. Respondent concedes Petitioner is entitled to a hearing on the narrow issue of whether the statute of limitations for this PCR action should be equitably tolled.

“Summary dismissal of a PCR application without a hearing is appropriate only when (1) it is apparent on the face of the application that there is no need for a hearing to develop any facts and (2) the applicant is not entitled to relief.” Pelzer v. State, 378 S.C. 516, 519, 662 S.E.2d 618, 619 (Ct. App. 2008). “When considering the State’s motion for summary dismissal of an application for PCR, a judge must assume facts presented by an applicant are true and view those facts in the light most favorable to the applicant.” Id. at 519, 662 S.E.2d at 619.

“[S]tatutes of limitations are not simply technicalities, but are fundamental to a well-ordered judicial system.” Id. at 520, 662 S.E.2d at 620. “Equitable tolling is a doctrine rarely applied in South Carolina to stop the running of statutes of limitations.” Id. “The time requirements in lawsuits between private litigants are customarily subject to equitable tolling if such tolling is necessary to prevent unfairness to a diligent plaintiff.” Id. at 521, 662 S.E.2d at 620. However, “equitable tolling . . . is typically available only if the claimant was prevented in some extraordinary way from exercising his or her rights, or, in other words, if the relevant facts present sufficiently rare and exceptional circumstances that would warrant application of the doctrine.” Id.

For PCR actions, equitable tolling has been applied when the applicant timely notarized his application and alleged a warden confirmed it was mailed before the expiration of the statute

of limitations. Mose v. State, 420 S.C. 500, 511-12, 803 S.E.2d 718, 723 (2017). However, “[t]olling the statute of limitations in circumstances in which an applicant demonstrates the failure to timely file for PCR was due to no fault of his own does not create an exception by which incarcerated litigants may avoid time restrictions.” Id. at 510, 803 S.E.2d at 723 (internal quotations omitted).

“[I]f a PCR applicant raises the doctrine of equitable tolling as a defense to the statute of limitations, the judge should make the fact-specific determination of whether equitable tolling is justified.” Id. at 511, 803 S.E.2d at 723. “As part of this determination, the judge should consider any reasonably verifiable evidence of the date the document was purportedly in the possession of prison authorities for purposes of mailing.” Id. “[I]f the circumstances warrant, the statute of limitations shall be tolled from receipt of the document by the prison until formally filed with the clerk's office, **provided that the applicant can verify by competent evidence the date prison authorities received the document for mailing.**” Id. (emphasis added).

Here, Petitioner sent a letter to the Supreme Court of South Carolina in September 2021, asserting he attempted to mail a PCR application to the Jasper County Clerk of Court in January 2016. Although mailing itself does not constitute filing for purposes of a PCR application,² Respondent concedes Petitioner has alleged facts that, if true, *could* support equitable tolling. Thus, Respondent concedes Petitioner is entitled to a hearing on the narrow issue of whether the statute of limitations should be equitably tolled. At the hearing, the PCR court can assess Petitioner's credibility and review any evidence submitted by the parties on this issue.

Respondent further contends Petitioner's request for an evidentiary hearing on the merits of his PCR allegations is premature; the proper procedure here is a remand appointment of counsel

² See Mose, 420 S.C. at 507, 803 S.E.2d at 721 (“[M]ailing does not constitute filing of a PCR application for statute of limitations purposes.”).

and a hearing on the State's motion to dismiss. Should the PCR court find Petitioner is entitled to equitable tolling, Petitioner would then be entitled to an evidentiary hearing on the merits of his PCR allegations.³

CONCLUSION

Based on the foregoing, Respondent requests this Court grant certiorari, dispense with further briefing, and remand this matter to the PCR court to consider the narrow issue of whether the statute of limitations should be equitably tolled.

Respectfully Submitted,

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

DANIELLE DIXON
Assistant Attorney General



Danielle Dixon
Assistant Attorney General

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
803-734-3737
DanielleDixon@scag.gov

This 8th day of July, 2024

³ Respondent does NOT concede that Petitioner is entitled to an evidentiary hearing on the merits of his PCR allegations, but rather that Petitioner is entitled to a hearing on the narrow issue of whether the statute of limitations should be equitable tolled. Respondent reserves the right to continue to assert the statute of limitations.

The Supreme Court of South Carolina

Antonio Demazio Scott, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2023-001186

ORDER

Petitioner seeks a writ of certiorari from the summary dismissal of his application for post-conviction relief (PCR). The State concedes Petitioner is entitled to a hearing on its motion to dismiss the application to determine whether there is any merit to Petitioner's claim of equitable tolling of the statute of limitations. We, therefore, grant the petition for a writ of certiorari, dispense with briefing, and remand this matter to the PCR court to hold a hearing on the State's motion to dismiss.

 C.J.
FOR THE COURT

Columbia, South Carolina

August 7, 2024

cc:

Danielle Dixon

Kathrine Haggard Hudgins

STATE OF SOUTH CAROLINA
COUNTY OF JASPER
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2021-CP-27-00444

FILED - CP
2025 MAR-07 PM03:34
JASPER COUNTY, SC
CLERK OF COURT
R. KEITH HORTON

ANTONIO SCOTT

STATE OF SOUTH CAROLINA

APPLICANT

DEFENDANT

Submitted by: COURT

Attorney for: ☐ Plaintiff ☐ Defendant

or

☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

This matter came before the Court on April 15, 2025 for a hearing on Applicant's equitable tolling argument concerning his petition for Post-Conviction Relief. Mr. Scott was present and represented by Chelsey Marto, Esq. The State was represented by Assistant Attorney General Danielle Dixon. The Court finds as follows:

The Court finds Applicant's testimony at the hearing to be very credible. Coupled with the mail receipt which was introduced in evidence, the Court finds that he timely mailed his application to the Clerk of Court and that it must have simply been misplaced or lost in the mail.

Accordingly, the Court finds that Mr. Scott's PCR Application will be considered on the merits.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.

Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.


Circuit Court Judge

2159
Judge Code

May 5, 2025
Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

Chelsey Marto, Esq.

Danielle Dixon, Esq.

ATTORNEY(S) FOR THE APPLICANT(S)

ATTORNEY(S) FOR THE RESPONDENT

CLERK OF COURT

Court Reporter: Cathy Young

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

STATE OF SOUTH CAROLINA
COUNTY OF JASPER

) IN THE COURT OF COMMON PLEAS
) FOR THE FOURTEENTH JUDICIAL CIRCUIT

Antonio Scott, #320475.
Applicant.

) Case No.: 2021-CP-27-00444

v.
State of South Carolina.
Respondent.

) **APPLICANT'S AMENDED APPLICATION**

NOW COMES Applicant, Antonio Scott, amending his application filed October 12, 2021. In addition to the allegations raised in his initial application, Mr. Scott, through PCR Counsel, submits the following:

1. Ineffective assistance of counsel for:

- a. Failure to meet with Applicant enough and sufficiently communicate with Applicant enough prior to trial.
- b. Failure to communicate plea offer.
- c. Failure to review discovery with Applicant.
- d. Failure to develop a trial strategy.
- e. Failure to effectively move for a directed verdict.
- f. Failure to effectively object to hearsay statements.
 - i. Counsel should have objected to statements Monique attributed to Applicant while testifying.
- g. Failure to challenge the indictments.
- h. Failure to effectively cross-examine witnesses.
- i. Failure to request immunity hearing.
- j. Erroneously advising Applicant not to testify in substantiating his self-defense defense.

Conclusion

Based upon the above, Mr. Scott requests that this Court grant relief, vacate the convictions, and remand the case to the court of general sessions for a new trial.

Chelsey F. Marto
Attorney at Law
S.C. Bar No. #104191

The Law Office of Chelsey F. Marto, LLC
P.O. Box 8795
Columbia, SC, 29201

(864)-404-5583
info@chelseymarto.com

For Applicant Antonio Scott

September 19, 2025

STATE OF SOUTH CAROLINA
COUNTY OF JASPER

) IN THE COURT OF COMMON PLEAS
) FOR THE FOURTEENTH JUDICIAL CIRCUIT
)
)

Antonio Scott, #320475,
Applicant.

) Case No.: 2021-CP-27-00444
)

v.
State of South Carolina.
Respondent.

) Affidavit of Service by Mail
)
)
)

1. I am the attorney for Applicant in the above-captioned matter.
2. Regular communication by mail exists throughout the state of South Carolina and this is a proper circumstance of service by mail.
3. I have this day served a copy of the Amended Application on the above-captioned matter on the following person by their AIS email address:

Office of the Attorney General
Attn: Kylee Kanealey, Esquire
KyleeKanealey@scag.gov

Attorney for Applicant

_____, 2025

FILEDSTATE OF SOUTH CAROLINA)
COUNTY OF JASPER)IN THE COURT OF COMMON PLEAS
IN THE FOURTEENTH JUDICIAL CIRCUITAntonio D. Scott, SCDC #320475,)
Applicant,)

Case No.: 2021-CP-27-00444

v.)

**AMENDED RETURN AND PARTIAL
MOTION TO DISMISS**

(Counsel Already Appointed)

State of South Carolina,)

Respondent.)
_____)

In response to the Application for post-conviction relief (PCR) filed by Antonio D. Scott (Applicant) on Respondent makes the following amended return and partial motion to dismiss:¹

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections serving an active thirty-year sentence. In April 2011, the Jasper County Grand Jury indicted Applicant for murder (2011-GS-27-00192). Robert Hughes, Esquire, represented Applicant. Robert Ferguson of the Fourteenth Circuit Solicitor's Office prosecuted the case. Applicant proceeded to a jury trial before the Honorable Carmen T. Mullen from December 5 to December 7, 2011, and was found guilty as indicted. Judge Mullen sentenced Applicant to thirty years' imprisonment.

Applicant filed a timely notice of appeal, which was perfected by Breen Richard Stevens, Esquire, of the South Carolina Commission on Indigent Defense – Division of Appellate Defense. On appeal, Applicant raised one issue:

Whether the trial court reversibly erred by failing to instruct the jury with involuntary manslaughter where there was as evidence in the record indicating the

¹ Respondent initially filed a return and motion to dismiss, asserting the application was barred by the statute of limitations. On April 15, 2025, a hearing convened on the State's motion to dismiss before the Honorable Frank R. Addy Jr. On May 7, 2025, Judge Addy issued an order finding the statute of limitations should be equitably tolled and denying Respondent's motion to dismiss.

knife wound to the deceased's neck was unintentionally caused by [Applicant's] defensive martial arts maneuver while he was acting in self-defense?

On February 19, 2014, the Court of Appeals affirmed Applicant's conviction and sentence. State v. Scott, 408 S.C. 21, 757 S.E.2d 533 (Ct. App. 2014). On March 6, 2014, Applicant filed a petition for rehearing², which was denied by the Court of Appeals on May 2, 2014.

Applicant then petitioned the Supreme Court of South Carolina for a writ of certiorari and was represented by Benjamin Tripp, Esquire, of the South Carolina Commission on Indigent Defense – Division of Appellate Defense. On September 11, 2014, the Supreme Court granted the Petition for Certiorari.

In Applicant's Brief of Petitioner, Applicant raised the following issue:

Whether the trial court reversibly erred by failing to instruct the jury on involuntary manslaughter where [Applicant] defended himself from an attack by an older, heavyset, and sickly woman wielding a small, knife-like weapon; where Petitioner told police he deflected her thrust towards him by manipulating her arm using a martial arts maneuver; where the woman died from a single, pocket-knife sized puncture wound to the side of her neck; and where eyewitness testimony showed he was surprised by the woman's wound and quickly attempted to treat it.

On September 9, 2015, the Supreme Court affirmed Applicant's conviction and sentence. State v. Scott, 414 S.C. 482, 779 S.E.2d 529 (2015). On September 18, 2015, filed a petition for rehearing, which was denied by the Supreme Court on December 16, 2015. The case was remitted on December 16, 2015.

CURRENT APPLICATION

On October 12, 2021, Applicant filed this PCR application alleging:

1. Ineffective assistance of counsel;
 - a. "Counsel was ineffective for failing to investigate this case by failing to interview potential witnesses";

² The remittitur was issued on March 7, 2014. The Court of Appeals issued an Order Recalling Remittitur on March 10, 2014.

- b. "Counsel was ineffective during the amendment of the indictment for his failure to move to quash or object to the fatal defect in the murder indictment referring to the place of death";
- c. "Counsel was ineffective by failing to object or file motion to the fact the court failed to charge the jury on the element of criminal intent in violation of the Due Process Clause of the 14th Amendment of the United States Constitution";
- d. "Counsel was ineffective for failing to hire an expert to rebut Dr. Lee M. Tornos testimony that the case was a homicide and testimony that the wound was inconsistent with an accident or self-inflicted as the [Applicant] stated";
- e. "Counsel was ineffective for his failure to prepare [Applicant] to testify and demonstrate in this case instead of [Counsel] trying to do it himself";
- f. "Counsel was ineffective for failing to inform [Applicant] of the plea offer for ten years";
- g. "Counsel was ineffective for failing to object to the vouching by the Solicitor during the closing argument";
- 2. Brady violation;
 - a. "The Solicitor withheld evidence that was material";
- 3. Violation of due process.

As relief, Applicant requests: "reverse conviction and sentence and remand for a new trial, and any other relief this court deem just and proper".

Attached to this return and incorporated by reference are the Jasper County Clerk of Court records regarding the subject convictions; Applicant's records from the South Carolina Department of Corrections; the records from Applicant's direct appeal, including the trial transcript; and the records of the current PCR action. The State reserves the right to amend this return upon receipt of any relevant materials.

PARTIAL MOTION TO DISMISS

Respondent moves to dismiss Applicant's claim of violation of due process. Specifically, such claim could have been raised at trial or, if necessary, on direct appeal, and thus is not an appropriate claim for PCR. See S.C. Code Ann. § 17-27-20(B) (providing the PCR Act "is not a substitute for nor does it affect any remedy incident to the proceedings in the trial court, or of direct

review of the sentence or conviction”); Drayton v. Evatt, 312 S.C. 4, 9, 430 S.E.2d 517, 520 (1993) (“Issues that could have been raised at trial or on direct appeal cannot be asserted in an application for post-conviction relief *absent a claim of ineffective assistance of counsel*.” (emphasis added)). Applicant does not provide any facts to support this allegation. Further—and critically—Applicant’s claim of ineffective assistance of counsel is broad enough to encompass all his claims and is the proper lens for analyzing this issue. Respondent thus moves to dismiss as a stand-alone claim Applicant’s allegation of violation of due process.

INEFFECTIVE ASSISTANCE OF COUNSEL

Respondent requests an evidentiary hearing in response to Applicant's allegations of ineffective assistance of counsel. In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that “counsel’s conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result.” Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland v. Washington, 466 U.S. 668. First, Applicant must prove that counsel’s performances was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney’s performance by its “reasonableness under prevailing professional norms.” Cherry, 300 S.C at 117, 386 S.E. 2d at 635 (quoting Strickland, 366 U.S. at 690). The proper measure of performances is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. At 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have rendered adequate

assistance and made all significant decisions in the exercise of reasonable professional judgment." *Id.* (citing Strickland, 466 U.S. at 690). The Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Here, the record likely does not refute or disprove Applicant's claims; therefore, Respondent requests an evidentiary hearing. See Sharper v. State, 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").

PROSECUTORIAL MISCONDUCT

Respondent requests an evidentiary hearing in response to Applicant's allegation of prosecutorial misconduct. It is Applicant's burden to prove actual prosecutorial misconduct. Alabama v. Smith, 490 U.S. 794 (1989). Applicant alleges the solicitor withheld material evidence in violation of Brady.³ Brady requires the State to disclose evidence in its possession favorable to the accused and material to guilt or punishment. Clark v. State, 315 S.C.385, 388, 434 S.E.2d 266, 268 (1993). A Brady claim is based upon the requirement of due process. Such a claim is complete if the accused can demonstrate (1) the evidence was favorable to the accused, (2) it was in the possession of or known to the prosecution, (3) it was suppressed by the prosecution, and (4) it was material to guilt or punishment. Gibson v. State, 334 S.C. 515, 524, 514 S.E.2d 320, 324 (1999). Impeachment or exculpatory evidence is material only if there is a reasonable probability that, had

³ Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194, 10 L.E.2d 215 (1963).

the evidence been disclosed to the defense, the result of the proceeding would have been different. Clark, 315 S.C. at 388, 434 S.E.2d at 268 (citing U.S. v. Bagley, 473 U.S. 667 (1985)).

This allegation raises a question of fact that is not conclusively refuted by the record. Accordingly, Respondent requests an evidentiary hearing on this ground for relief.

ANY FUTURE AMENDMENTS AND INVOCATION OF DISCOVERY

Respondent requests Applicant specify any claims he intends to raise in advance of the hearing. Respondent reserves the right to request a continuance based upon any amendments withheld until the last minute. Respondent further requests all potential exhibits and materials used to produce potential expert witness testimony be sent to Respondent before the hearing. Likewise, Respondent requests all potential evidence and a witness list be sent to Respondent before the hearing. Respondent reserves the right to request a continuance and oppose witness testimony and exhibits that result in undue prejudice to the State.

ALL OTHER ALLEGATIONS

Any allegation not expressly admitted, qualified, or explained is hereby denied.

[CONCLUSION AND SIGNATURE PAGE FOLLOWS]

CONCLUSION

WHEREFORE, Respondent respectfully requests this Court grant its partial motion to dismiss with respect to the stand-alone due process allegation. Respondent requests an evidentiary on Applicant's claims of ineffective assistance of counsel and prosecutorial misconduct.

Respectfully Submitted,

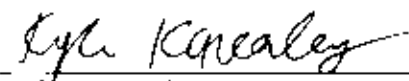
ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

D. RUSSELL BARLOW, II
Senior Assistant Deputy Attorney General

DANIELLE DIXON
Assistant Attorney General

KYLEE KANEALEY
Assistant Attorney General

By: 

Kylee Kanealey, Bar No. 107060

ATTORNEYS FOR RESPONDENT
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
803-734-3737

August 18, 2025

FILED

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF JASPER) IN THE FOURTEENTH JUDICIAL CIRCUIT
2025 AUG 20 PM 3:41)
Antonio D. Scott, #320475.)
ROB)
Applicant.)
v.)
State of South Carolina.)
Respondent.)
_____)

Case No.: 2021-CP-27-00444
Certificate of Service by Mail

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 Amended Return and Partial Motion to Dismiss in the above-captioned matter, on the following person by depositing same in the United States mail, postage prepaid:

Chelsey Faith Marto, Esquire
The Law Office of Chelsey F. Marto
PO Box 8795
Columbia, SC 29201

DATED this 18th day of August, 2025.


Vickie Hall, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF JASPER	)	CASE NO.: 2021-CP-27-00444
	)	
ANTONIO D. SCOTT,	)	
	)	
APPLICANT(S),	)	
	)	
v.	)	<u>TRANSCRIPT OF RECORD</u>
	)	
THE STATE OF SOUTH CAROLINA,	)	
	)	
RESPONDENT(S).	)	
-----	)	

Wednesday, September 24, 2025

COMMENCING AT:
 Beaufort County Courthouse
 Beaufort, South Carolina
 Before The Honorable Eugene P. Warr, Jr., Presiding Judge

APPEARANCES:

For the Applicant:

Ms. Chelsey Faith Marto, Esquire
 The Law Office of Chelsey F. Marto
 PO Box 8795
 Columbia, SC 29201

For the State (Respondent):

Ms. Kylee M. Kanealey, Asst. Attorney General
 S.C. Attorney General's Office
 PO Box 11549
 Columbia, SC 292111549

Heather R. Landry, CVR
 Official Court Reporter

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INDEX OF EXHIBITS

(No exhibits were offered or marked.)

1 (The proceeding commenced at 1:10 p.m.)

2 **MS. KANEALEY:** May it please the Court?

3 **THE COURT:** Yes, ma'am.

4 **MS. KANEALEY:** Kylee Kanealey on behalf of the State.

5 This is the post-conviction relief matter of Antonio Scott
6 versus the State, case number 2021-CP-27-00444 out of
7 Jasper County. Applicant is presently confined to the
8 South Carolina Department of Corrections serving an active
9 30-year sentence. In April 2011, the Jasper County
10 Grand Jury indicted Applicant for murder. That's
11 2011-GS-25-00192 [sic]. Robert Hughes, Esquire, represented
12 Applicant. Robert Ferguson of the 14th Circuit Solicitor's
13 Office prosecuted the case.

14 Applicant preceded to a jury trial before the
15 Honorable Carmen T. Mullen from December 5th to
16 December 7th, 2011, and was found guilty as indicted.
17 Judge Mullen sentenced Applicant to 30 years imprisonment.
18 Applicant filed a timely notice of appeal which was
19 perfected by Breen Richard Stevens of the South Carolina
20 Commission on Indigent Defense. And on October 19, 2014,
21 the Court of Appeals affirmed Applicant's conviction and
22 sentence. On march 6, 2014, Applicant filed a petition for
23 rehearing which was denied by the Court of Appeals on
24 May 2, 2014. Applicant then petitioned the Supreme Court
25 of South Carolina for a writ certiorari and was represented

1 by Benjamin Tripp. And September 11, 2014, the
2 Supreme Court granted the petition for certiorari; and on
3 September 9, 2015, the Supreme Court affirmed Applicant's
4 conviction and sentence.

5 On September 18, 2015, he filed a petition for a
6 rehearing which was denied by the Supreme Court on
7 December 16, 2015. The case was remitted on December 16,
8 2015. And on October 12, 2021, Applicant filed this PCR
9 application. I'll turn it over to opposing counsel.

10 **MS. MARTO:** Judge, we're proceeding forward on the
11 allegations listed in the amended application. And with
12 that, we call Mr. Scott to the stand.

13 **THE COURT:** Very good. Mr. Scott.

14 (Whereupon, the witness, ANTONIO SCOTT, first being
15 duly sworn, testified as follows:)

16 - - - - -

17 **DIRECT EXAMINATION**

18 **BY MS. MARTO:**

19 **Q.** Good afternoon, sir. Mr. Scott, what were you charged
20 with?

21 **A.** Murder.

22 **Q.** Who were you represented by?

23 **A.** Mr. Robert Hughes.

24 **Q.** And did you take this case to trial?

25 **A.** Ma'am?

1 Q. You took the case to trial?

2 A. Mr. Hughes took it to trial.

3 Q. And what was the outcome at that trial? Were you found
4 guilty or not guilty?

5 A. I was found guilty.

6 Q. And you got a 30-year sentence?

7 A. Yes, ma'am.

8 Q. You understand that to go forward today, if you were
9 granted relief, you'd be sent back to General Sessions
10 Court, and you would be able to plead or go to trial then,
11 but you'd still be facing 30 to life? You understand that?

12 A. Yes, ma'am.

13 Q. So you understand that if you were to go back to
14 General Sessions Court you could very well get more time
15 than you already got?

16 A. Yes, ma'am.

17 Q. And you still want to go forward?

18 A. Yes, ma'am.

19 Q. How do you feel like Mr. Hughes did representing you?

20 A. Thank you, ma'am. Thank you, Your Honor.

21 Q. Do you think he did well or not well?

22 A. It was a nightmare. It was a nightmare, ma'am. This
23 is my first time that I actually get to say my truth. And I
24 just want to thank the Court, too, for having me here today.
25 It's been a long time.

1 Q. So how do you feel like counsel did communicating with
2 you prior to the trial? Did he do well?

3 A. It was awful, ma'am. Maybe saw him about once, twice,
4 maybe three times at the most. That was it. And then he
5 was like we're going to trial. And he was very rude and
6 everything. Very disrespectful.

7 Q. So do you feel like you were able to work well together
8 or not?

9 A. No, ma'am.

10 Q. Did he explain to what was gonna happen at trial?

11 A. He instruct -- Mr. Hughes instructed me on -- when I
12 first saw him, he said it was 90 percent my way and
13 10 percent the State's way. And then, like I say, ma'am,
14 about the second, maybe the third time at the most, I saw
15 him, tops. It was just chaotic. It was shocking to me. I
16 never saw him acting like that before. It was awful.

17 Q. Did you get a chance to review the discovery?

18 A. No, ma'am. Like I shared with you earlier, about a
19 week and a half ago, I didn't see it until, like, the last
20 day of trial. I didn't know what that was about either. I
21 didn't have time to talk to him about anything. It was just
22 real awful, ma'am.

23 Q. What was your defense at trial?

24 A. Trial counsel defense, Mr. Hughes, he moved for a
25 directed verdict as you can see, trial transcript 164.

1 Q. Sir. Sir, if you can answer the questions I'm asking.
2 So what was gonna be your defense that would cause the jury
3 to find you not guilty? What was your argument?

4 A. Well, my argument was self-defense.

5 Q. And do you feel like counsel did a good job putting
6 forth the self-defense argument?

7 A. No, ma'am.

8 Q. Now, did you talk to counsel about an immunity hearing
9 in this case?

10 A. To be honest, ma'am, like I say, everything was new and
11 it was moving so fast. I didn't ask him because I didn't
12 understand it and he didn't share -- he didn't share
13 anything with me either.

14 Q. And did you testify at trial?

15 A. He instructed me that I didn't have to. He instructed
16 me he -- simply, he say, "Mr. Scott, you didn't want to look
17 for the trouble or bring on the difficulty. This was
18 90 percent your way, 10 percent the State's way." So I did
19 what counsel asked me to do, the way he instructed me. I
20 did everything he instructed me.

21 Q. So he said you'd be found not guilty if you didn't
22 testify?

23 A. Yes.

24 Q. And what was your telling of what happened that day?
25 Like, what happened that makes you think it was self-defense?

1 **A.** Well, when I explained to Mr. Hughes as well as the
2 detective -- which it's on video and cassette. I shared it
3 with the detective and I shared it with Mr. Hughes, also.
4 And I said all I heard was a bunch of cursing. Before I
5 could realize, I kind of side-stepped to get out of the way,
6 but it was too late. Where as the swing, as I saw a shiny
7 object coming toward me, I swung and I ducked and like
8 pretty much a martial art move to get out of the way off of
9 instance as well. And I told him exactly the same thing I
10 told the homicide detective.

11 **Q.** So, basically, she was coming at you, you ducked, and
12 she got herself?

13 **A.** Right. As me side-stepping, moving out of the way, and
14 I'm pushing her arm. And once my son's mom got to yelling
15 saying something was sticking out of her neck, I immediately
16 took my shirt off and applied CPR until the authority got
17 there.

18 **Q.** So did you have any weapons in your hands?

19 **A.** I never had a weapon in my hand at all, ma'am.

20 **Q.** So you stated that you felt there was a plea offer in
21 this case. Is that correct?

22 **A.** He said that, but it wasn't clear. Like I said, it was
23 real messy, ma'am. It was chaotic. I never felt -- and
24 like I said, I never saw him like that before either. So
25 the weight of what's happening and everything, I

1 couldn't -- everything happened so fast, and my head wasn't
2 in the right place. And they appointed Mr. Hughes to me.
3 And like I say, he instructed me on just 90 percent my way,
4 10 percent the State's way. And like I said, I only saw him
5 like two times, maybe three, tops. And I jumped the line in
6 front of thousands of people.

7 You know, my parents even asked me, like, what's going
8 on. I just told my mom, I said, Mom, I don't even know
9 what's going on. I'm just -- you know, I'm being
10 disrespected. You know, my legal mail being open without me
11 signing for it like I shared with you and asked you about
12 just to verify. I haven't been signing for no legal mail or
13 anything or nothing. So I just tell my mom, I said, you
14 know what, I'm gonna do what he instructs me. I'm not gonna
15 say nothing because I don't know too much. I'm just might
16 go up this road and come back and learn a little bit as I
17 go.

18 **Q.** Going back to the plea offer. So you're stating that
19 there was a plea offer but you were unsure what it was?

20 **A.** Yes. Yes, ma'am. One of the State's witnesses
21 informed me that the solicitor and Mr. Hughes told him that
22 they took me to trial because I didn't want to take the
23 ten-year offer. That never came to me at all.

24 **MS. KANEALEY:** Your Honor, we object to hearsay.

25 **THE COURT:** Ms. Marto, what is your position on that?

1 **MS. MARTO:** I can tell him not to say what other people
2 said.

3 **THE COURT:** Okay.

4 **THE WITNESS:** I apologize.

5 **THE COURT:** That's all right. That's all right.

6 **MS. MARTO:** Yeah. Without saying exactly ---

7 **THE COURT:** It's okay. Just hold on a minute. Sir,
8 it's okay. I don't expect you to know all the rules of how
9 this operates. Go ahead, Ms. Marto.

10 **BY MS. MARTO:**

11 **Q.** Just be careful about holding other people and saying
12 what they said. But it came to you later on that there was
13 a ten-year plea offer?

14 **A.** But actually it was the State -- one of the State's
15 witnesses, Carrie Nelson. Carrie Nelson informed of that.
16 And I apologize, again, for that. It was one of the State's
17 witnesses. And she was wanting to speak with me. So when I
18 reached out, she was at one of my relatives, and she asked
19 to speak with me. She asked me why haven't I took the
20 ten-year plea thing the solicitor and ---

21 **MS. KANEALEY:** Your Honor, we just would object again
22 on the same basis.

23 **THE COURT:** Yeah. I understand. And you're right
24 about that, Ms. Kanealey.

25 Sir, again, we're getting into something somebody told

Direct Examination of Mr. Scott by Ms. Marto

11

1 you. It's okay for you to tell what happened or what your
2 understanding was. Okay?

3 **THE WITNESS:** Yes, sir.

4 **MS. KANEALEY:** Your Honor, we just move to strike his
5 answer from the record.

6 **THE COURT:** We'll do that, yes.

7 **BY MS. MARTO:**

8 **Q.** Yeah, be careful about not saying what other people
9 said. But you found out through a state witness?

10 **A.** Yes, ma'am.

11 **Q.** About an offer?

12 **A.** Yes, ma'am.

13 **Q.** And when did you find out about an offer? Was it
14 before or after trial?

15 **A.** It was way after trial.

16 **Q.** And you think that counsel should have better moved for
17 a directed verdict. Is that true?

18 **A.** Yes, ma'am.

19 **Q.** And what do you think counsel should have argued
20 instead or should've argued more thoroughly that would have
21 led to you winning on directed verdict?

22 **A.** I mean, trial counsel did ask for a directed verdict.
23 But the trial court erred in refusing the defendant's motion
24 for a directed verdict of not guilty at the close of the
25 argument of the State's testimony. That error being that

1 the evidence was entirely circumstantial and did not meet
2 the requirements of the law as to the conviction upon the
3 circumstantial evidence in that it did not point
4 conclusively to the applicant's guilt of murder as to
5 preclude any other reasonable hypothesis, manslaughter or
6 self-defense, and beyond a reasonable doubt, and did not
7 point to applicant's to a moral certainty.

8 Q. So, I could be misunderstanding what you're saying.
9 But you're attacking the trial court in that, right? You're
10 saying the trial court erred?

11 When it comes to PCR, we need to raise an
12 ineffectiveness of counsel claim.

13 A. Right.

14 Q. So concerning the directed verdict, what should counsel
15 have done that would have led to a different outcome, if
16 anything?

17 A. Yes. He should have cross-examined the witness. He
18 should have cross-examined the witness at trial.

19 Q. What witnesses?

20 A. Both Monique and Officer Smith.

21 Q. And what should he have cross-examined Monique about?

22 A. He should have crossed Monique -- he should have
23 crossed Monique's statement that what she heard that the
24 applicant supposed to have said; and Officer Kevin about the
25 night before, a possible break-in, where he never reached

1 out to the applicant to find out where the applicant's
2 whereabouts was.

3 Q. Okay. So Monique -- you wanted counsel to
4 cross-examine Monique about statements she said you said?

5 A. Right.

6 Q. And what did you want him to cross-examine her on, just
7 to see if that was true or not?

8 A. Right. To see if it was -- to see if it was true. And
9 Mr. Smith about the applicant's whereabouts the night before
10 can infer an express intent to murder.

11 Q. What would cross-examining Monique have done for you?
12 How would that have helped your case?

13 A. It would have showed that she was a credibility. She
14 wasn't credible.

15 Q. And how would that have happened if you just asked
16 about the statement she already said? I'm not trying to
17 trip you up, I'm just trying to understand.

18 A. No. Because she waited. She waited and then she said
19 on the record that it was supposed to be -- what's the term
20 she said? -- confidentiality. She said the information that
21 she gave was supposed to be in confidentiality. It's in the
22 record, ma'am.

23 Q. So you wanted counsel to cross-examine her about why
24 she didn't say you said certain things until the day of
25 trial? Is that what you're saying?

1 **A.** Right.

2 **Q.** Okay. And that would've been prior inconsistent
3 statements. Is that what you're saying?

4 **A.** Yes, ma'am.

5 **Q.** Okay. And then Officer Smith, you wanted counsel to
6 ask him about where you were the night before. If counsel
7 asked those questions, what answers do you think would have
8 been provided? Does that make sense? What do you think the
9 officer would've said in response?

10 **A.** He would have spoked the truth. He did when he got
11 called and he came out and checked and see that whoever was
12 supposed to be there, me or whoever was supposed to be
13 there, wasn't there. And then if my name was called, he's
14 supposed to find out where I was and see where my
15 whereabouts was. And that would've created the error, I
16 felt like.

17 **Q.** So are you saying that -- why is the night before
18 relevant, I guess, is my question? Because you went into
19 the house that day and you said that "Momma came out kinda
20 crazy, took a knife, and went like that," right?

21 **A.** The Momma entered somewhere that -- I was at my
22 sister's. And Mamma wasn't welcome. Mamma was pretty
23 much considering and took matters in her hands for whatever
24 reason. And the State took one incident and used it, the
25 incident that occurred. Two totally separate incidents.

1 Q. So was there an altercation between you and the mamma
2 the night before?

3 A. No, ma'am. That's why I'm saying about Officer Kevin
4 and when he got the call and he went out there and checked.
5 It's lit up. There's video cameras all around the area. So
6 not once -- once he say he checked and it was clear, he not
7 once checked to see where I was at the time. He didn't
8 check to see where my whereabouts was. And they just went
9 off of him, just what he just say, how he went out there and
10 checked around and everything was clear and everything.
11 That was it.

12 Q. And when it comes to Monique, you also wanted counsel
13 to object to hearsay statements. Is that correct? And
14 you're saying the hearsay is statements you said. Is that
15 correct? Does that make sense?

16 A. Say that again.

17 Q. You wanted counsel to object to statements that Monique
18 said about things that you said, right?

19 A. Yes.

20 Q. And what do you think the outcome would've been had
21 counsel done that?

22 A. Well, we couldn't really say what the outcome would've
23 been. But the State -- as you can see clearly, the State
24 went off of these two -- these two hearsay from Monique and
25 Officer Smith. I just know had I -- the way I was

1 instructed, had I been instructed, you know, the right way,
2 then I would've been able to testify myself as well. That's
3 pretty much ---

4 Q. That's your main issue?

5 A. Yeah. I didn't get the right to testify myself.

6 Q. Is anything there else you would've said in testifying
7 besides the fact that the mamma came at you and you ducked
8 and she kinda slit her own throat?

9 A. Yes. Like, I'm saying my truth now.

10 Q. Yeah.

11 A. I would have said the truth when I got up there. I
12 have nothing to hide.

13 Q. But is there anything else you would want to add to
14 your testimony?

15 A. Yes.

16 Q. Okay. Just about, like, what happened that night?
17 Like the facts that led up to what happened?

18 A. Yes. I would've said what happened, like I shared on
19 the record and on video camera. And I would've spoke about,
20 also, what they used in the situation. I had two CDVs,
21 right. But me not knowing the law, Ms. Chelsey, instead of
22 sitting there, right, as you can go and check any time of
23 the day, there was no charge being pressed. So being that I
24 didn't know that, I accepted that. That was my fault. Now
25 that I understand, I would've never took that because I

1 never expected to be in a situation like this. And that's
2 what the State used against me, too. They made it seem like
3 this was the reason for that, and it wasn't. I pled to
4 something that never expected this situation, of me to be in
5 this situation right now. And I definitely would've spoke
6 on that that day at trial, too.

7 Q. If you had known about the plea offer of ten years,
8 would you have taken it?

9 A. Yes, ma'am.

10 Q. Are there any other issues you wished to raise today?

11 A. That's pretty much -- that pretty much clears it up.
12 I'm not trying to point the finger or say Mr. Hughes is a
13 bad guy. I just like to say this was the first I actually
14 got to say this. So if I had the opportunity to say this, I
15 would've got on the stand. So we pretty much cleared
16 everything -- touch bases to everything today.

17 Q. Thank you, sir.

18 MS. MARTO: No further questions.

19 MS. KANEALEY: Nothing from the State, Your Honor.

20 THE COURT: Mr. Scott, you may step down.

21 THE WITNESS: Yes, sir. Thank you very much.

22 MS. MARTO: We call Robert Hughes.

23 (Whereupon, the witness, ROBERT HUGHES, first being
24 duly sworn, testified as follows:)

25 - - - - -

DIRECT EXAMINATION

BY MS. MARTO:

Q. Good afternoon, sir.

A. Sorry?

Q. I just said good afternoon.

A. Good afternoon.

Q. You represented Mr. Scott?

A. Yes, I did.

Q. And how long did you have the case? Do you recall, roughly?

A. I'm sorry?

Q. Roughly, how long did you have the case for?

A. I got it probably shortly after he was indicted until trial, which would've been -- I don't remember. The case notes in this are gone.

Q. Do you remember if it was a couple of months, a couple of years, somewhere in between?

A. It had to been months. I mean, they never brought anything to trial fast. But I don't remember it being years.

Q. And what did Mr. Scott tell you about what happened that day? What type of defense was there?

A. He had a self-defense argument that he -- she had swung at him with something. He identified it as a knife. He put up an arm. Her swing caused it to come back -- it caught in

1 the crook of the arm -- come back to hit her in the neck. I
2 demonstrated that with the pathologist and a fake knife,
3 which I had procured.

4 Q. Did you ever consider pursuing an immunity hearing in
5 this case?

6 A. No.

7 Q. Why not?

8 A. There was nothing for immunity to do. He never gave me
9 any indication that that would have been a valid option.

10 Q. Did you believe he had a self-defense claim or no?

11 A. I had questions and was glad it was going to be
12 answered by a jury. But I put everything I could out to the
13 jury.

14 Q. Is there a reason why -- let me back up. Did y'all
15 have discussions about the decision to testify?

16 A. Oh, constantly. I've always maintained that it is
17 their right to testify. And that if they want to tell their
18 side of the story, they're more than welcome to.

19 Q. And what was Mr. Scott's conclusion about testifying?

20 A. I don't have my notes. But he didn't want to testify.

21 Q. Do you specifically recall him saying he didn't want to
22 testify or is that just not based on ---

23 A. If he wanted to testify, I would've put him on. I
24 mean, I make sure that they are fully informed of
25 everything. And it's his choice. Matter of fact, the judge

1 even asked him if he wants to testify or not.

2 **Q.** Did you see anything wrong with the indictments?

3 **A.** No.

4 **Q.** Do you recall if there was any plea offers in this
5 case?

6 **A.** I don't recall any plea offers. I've heard him mention
7 a ten-year offer. That would've had to have been a lesser
8 included. And I would have begged the solicitor for a
9 lesser included. I generally had a number of murder trials
10 or murder cases at one time. And if I had someone make an
11 offer of a lesser included with a ten-year cap, I would've
12 jumped on that in a heartbeat and been at the jail within
13 30 minutes. But I always, with every offer, make sure they
14 understood that they would have to admit to guilt before
15 even accepting the offer. And I wasn't there when it
16 happened, and they were. And if they felt anything like
17 guilt, this is the best offer they're ever going to see in
18 their life.

19 **Q.** But, again, you don't specifically recall whether there
20 was one or not?

21 **A.** I don't recall. But I know how I would've reacted to
22 something like that.

23 **Q.** Do you recall, roughly, how many times you met with him
24 and discussed the case with him prior to trial?

25 **A.** I had a long-standing policy of go to the jail once a

1 month, in the morning, with a list of every one of my
2 clients at the detention center and talk to them as long as
3 they wanted to talk. I usually don't get home until after
4 dark. I would've met with him at least once a month. And I
5 would try to make sure that he understood all we talked
6 about.

7 Q. Do you specifically recall reviewing the discovery with
8 him?

9 A. No. But I would definitely have done so.

10 Q. That was your general practice?

11 A. Beg your pardon?

12 Q. That was your general practice?

13 A. Oh, yes. It's his case. He's the one that has to do
14 the time. So I make sure that they know exactly what we're
15 doing.

16 Q. Mr. Scott is claiming that you were ineffective for
17 failure to object to hearsay statements that came out
18 through Monique about things that he said?

19 A. That's part of -- I mean, I'm not about to call hearsay
20 on something which wasn't hearsay and would basically go to
21 a jury, y'all need to hear this. No. I'm not going to
22 point out to them something which would come in anyway.

23 Q. Now, do you recall whether or not you tried on cross to
24 bring out the fact that she was coming out with statements
25 that were maybe not previously disclosed in the discovery?

1 **A.** No. A lot of times the State's witness says things
2 that may come as a surprise but don't hurt, and sometimes it
3 helps. And I will save that later for closing. But I don't
4 point out things that hurt me.

5 **Q.** And you'd agree that the transcript is the best
6 reflection of what happened at trial at this point, right?

7 **A.** Oh, yes.

8 **Q.** Now, I think my client also argued that he wanted you
9 to cross-examine Officer Smith about his whereabouts the
10 night before the incident?

11 **A.** A prior bad act, it shouldn't have ever come in anyway.
12 And if it did, I don't know why he would want me to cross
13 for a negative. I mean, I don't know what he was wanting.
14 And that trial was about the murder. It was not about
15 whatever happened the night before.

16 **MS. MARTO:** One moment, Your Honor.

17 **THE COURT:** Sure.

18 (Brief pause.)

19 **BY MS. MARTO:**

20 **Q.** My client mentioned how there was maybe an edit made to
21 the indictment after the grand jury found him -- found that
22 he should be indicted for murder, and that he believes that
23 any scrivener's error that's corrected should go back to the
24 grand jury all over again. Did you ever consider requesting
25 that? Does that make sense?

1 **THE COURT:** I'd like to hear it again. I'm not sure he
2 does, but I would. Say it again.

3 **Q.** My client's question is there was an indictment that
4 was initially signed off on by the grand jury. There was a
5 scrivener's error that was corrected. And there's a
6 question as to why that indictment with the corrected
7 scrivener's error wasn't sent back to the jury all over
8 again.

9 **A.** What was the scrivener's error?

10 **Q.** It was a difference in date. Wrong place of death.

11 **A.** It didn't hurt and could readily be blamed on a
12 scrivener's error. There's no reason to prolong something
13 simply that would be -- that was unnecessary.

14 **Q.** So you feel like the Court could've corrected it
15 without sending it back to the grand jury?

16 **A.** It would depend upon whether -- when it was caught. If
17 the judge read the indictment to the potential jurors and
18 gave a wrong location, that might be one situation. But if
19 it was caught prior to the trial and the judge read the
20 correct indictment then there would've been no cause for any
21 objection.

22 **Q.** Do you believe that he met the elements of self-defense
23 in his narrative of what happened?

24 **A.** In his narrative of what happened, yes. And I tried to
25 sell that to the jury.

1 Q. Do you think that you could've sold it to the judge in
2 an immunity hearing?

3 A. I'm sorry?

4 Q. Do you think that you could have sold it to the judge
5 in a Stand Your Ground or immunity hearing?

6 A. No. May I expand upon that?

7 Q. Yeah.

8 A. In an immunity hearing, in a Stand Your Ground hearing,
9 that has a greater burden on me, I did not think we could
10 meet that burden. I did not really care to try to meet that
11 burden. I figured we would fail at meeting that burden.
12 And by doing so, I would have alerted the solicitor, big
13 time, to what was potentially a selling point to at least
14 one or two members of the jury in giving him reasonable
15 doubt and giving at least, at best, a hung jury.

16 MS. MARTO: Nothing further, Your Honor.

17 THE COURT: Ms. Kanealey?

18 MS. KANEALEY: Just briefly, Your Honor.

19 - - - - -

20 CROSS-EXAMINATION

21 BY MS. KANEALEY:

22 Q. So regarding the indictment, you felt the indictment
23 was sufficient to put him on notice and it didn't impact
24 your trial prep in any way?

25 A. No.

1 **MS. KANEALEY:** No further questions, Your Honor.

2 **MS. MARTO:** Nothing further, Your Honor.

3 **THE COURT:** Thank you, sir. You can step down.

4 Appreciate you being here.

5 **THE WITNESS:** Not a problem.

6 **THE COURT:** Ms. Marto?

7 **MS. MARTO:** Judge, I don't believe we have anymore
8 witnesses.

9 **MS. KANEALEY:** No further witnesses, Your Honor.

10 **THE COURT:** I'm sorry. Ms. Marto, you don't have
11 anymore?

12 **MS. MARTO:** I do not.

13 **THE COURT:** You already said that. I'm sorry. Nothing
14 from the State?

15 **MS. KANEALEY:** Nothing from the State, Your Honor.

16 **THE COURT:** Okay. Very well. All right. Did you
17 attorneys wish to make some brief comments in summary? Or
18 leave it up to you.

19 **MS. MARTO:** We'll just rest on the record, Judge.

20 **THE COURT:** Very well.

21 **MS. KANEALEY:** Same, Your Honor.

22 **THE COURT:** Same. Okay.

23 All right. I would like to have some time to review
24 this matter further. I'll look at all the notes. There's
25 quite a few notes here. And I will look at those notes and

1 look back at some of the things in the record. Just double
2 check some things. And as soon as I've had a chance to do
3 that, and I'll do it as promptly as I can, I will let y'all
4 know.

5 Ms. Marto, he's got a question.

6 **APPLICANT:** If it's okay, Your Honor, I'd like to say
7 something to the Court.

8 **MS. MARTO:** Okay.

9 **APPLICANT:** There's something I would like to share
10 with you, Your Honor. I would like for you to see that I
11 took initiative to do in my time ---

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

13 **APPLICANT:** --- incarcerated to further my career and
14 my integrity, Your Honor.

15 **MS. MARTO:** He can't consider what -- I think he wants
16 to show you like GED, some grade reports, things of that
17 nature.

18 **APPLICANT:** Some stuff that I've accomplished since
19 I've been now incarcerated, Your Honor.

20 **THE COURT:** Mr. Scott, that's not something I can take
21 a look at from this proceeding today because it doesn't
22 touch on the issues that I must decide on. But I will say
23 to you, sir ---

24 **APPLICANT:** Yes, sir.

25 **THE COURT:** If there's anything that you can do to

1 prove yourself, is to do well, is worth your time. Keep on
2 doing the best you can. It has nothing to do with what I
3 decide in this matter today. It doesn't touch upon it. But
4 I would encourage you to continue to do the things you can
5 in a positive fashion. All right?

6 **APPLICANT:** Yes, sir. Appreciate it.

7 **THE COURT:** Anything further from anyone?

8 **MS. MARTO:** I don't believe so, Your Honor.

9 **THE COURT:** Okay. Thank y'all. Appreciate it.

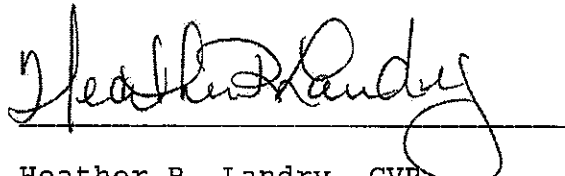
10 (The proceeding concluded at 1:54 p.m.)
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1 STATE OF SOUTH CAROLINA)
2 COUNTY OF COLLETON) CERTIFICATE OF REPORTER
3

4 I, HEATHER R. LANDRY, Court Reporter for the
5 Judicial Department of the State of South Carolina, do
6 hereby certify that the foregoing is a true, accurate and
7 complete Transcript of Record of the proceedings had in the
8 hearing of the captioned case, in the Court of Common Pleas
9 for Jasper County, South Carolina, on the 24th day(s) of
10 September 2021.

11 I do further certify that I am neither of kin, counsel,
12 nor interest to any party hereto.
13

14 March 11, 2026

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18 Heather R. Landry, CVR
19 Official Court Reporter
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TE OF SOUTH CAROLINA
COUNTY OF JASPER

Antonio D. Scott, SCDC #320475,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE FOURTEENTH JUDICIAL CIRCUIT

Case No. 2021-CP-27-00444

ORDER OF DISMISSAL

FILED - CP
2025 NOV-07 PM 04:12
JASPER COUNTY, SC
CLERK OF COURT
R. W. J. FERGUSON

This matter comes before the Court by way of Antonio D. Scott's application for post-conviction relief (PCR) filed on October 12, 2021. On September 24, 2025, an evidentiary hearing was held at the Beaufort County Courthouse before the Honorable Eugene P. Warr, Jr. Applicant was present and represented by Chelsey Marto, Esquire. Assistant Attorney General Kylee Kanealcy represented Respondent. Applicant proceeded forward on the allegations in his amended application. In support of these claims Applicant testified on his own behalf. Respondent presented the testimony of Robert Hughes, Esquire.

Following a thorough review of the record, along with the testimony and evidence presented at the hearing, this Court finds Applicant has failed to establish any constitutional violations or deprivations entitling him to relief and, accordingly, denies and dismisses this action with prejudice.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections serving an active thirty-year sentence. In April 2011, the Jasper County Grand Jury indicted Applicant for murder (2011-GS-27-00192). Robert Hughes, Esquire, represented Applicant. Robert Ferguson of the Fourteenth Circuit Solicitor's Office prosecuted the case. Applicant proceeded to a jury trial

before the Honorable Carmen T. Mullen from December 5 to December 7, 2011, and was found guilty as indicted. Judge Mullen sentenced Applicant to thirty years' imprisonment.

Applicant filed a timely notice of appeal, which was perfected by Breen Richard Stevens, Esquire, of the South Carolina Commission on Indigent Defense – Division of Appellate Defense. On appeal, Applicant raised one issue:

Whether the trial court reversibly erred by failing to instruct the jury with involuntary manslaughter where there was as evidence in the record indicating the knife wound to the deceased's neck was unintentionally caused by [Applicant's] defensive martial arts maneuver while he was acting in self-defense?

On February 19, 2014, the Court of Appeals affirmed Applicant's conviction and sentence on the merits. State v. Scott, 408 S.C. 21, 757 S.E.2d 533 (Ct. App. 2014). On March 6, 2014, Applicant filed a petition for rehearing¹, which was denied by the Court of Appeals on May 2, 2014.

Applicant then petitioned the Supreme Court of South Carolina for a writ of certiorari and was represented by Benjamin Tripp, Esquire, of the South Carolina Commission on Indigent Defense – Division of Appellate Defense. On September 11, 2014, the Supreme Court granted the Petition for Certiorari.

In Applicant's Brief of Petitioner, Applicant raised the following issue:

Whether the trial court reversibly erred by failing to instruct the jury on involuntary manslaughter where [Applicant] defended himself from an attack by an older, heavyset, and sickly woman wielding a small, knife-like weapon; where Petitioner told police he deflected her thrust towards him by manipulating her arm using a martial arts maneuver; where the woman died from a single, pocket-knife sized puncture wound to the side of her neck; and where eyewitness testimony showed he was surprised by the woman's wound and quickly attempted to treat it.

¹ The remittitur was issued on March 7, 2014. The Court of Appeals issued an Order Recalling Remittitur on March 10, 2014.

On September 9, 2015, the Supreme Court affirmed Applicant's conviction and sentence. State v. Scott, 414 S.C. 482, 779 S.E.2d 529 (2015). On September 18, 2015, filed a petition for rehearing, which was denied by the Supreme Court on December 16, 2015. The case was remitted on December 16, 2015.

CURRENT APPLICATION

On October 12, 2021, Applicant filed this PCR application alleging:

1. Ineffective assistance of counsel;
 - a. "Counsel was ineffective for failing to investigate this case by failing to interview potential witnesses";
 - b. "Counsel was ineffective during the amendment of the indictment for his failure to move to quash or object to the fatal defect in the murder indictment referring to the place of death";
 - c. "Counsel was ineffective by failing to object or file motion to the fact the court failed to charge the jury on the element of criminal intent in violation of the Due Process Clause of the 14th Amendment of the United States Constitution";
 - d. "Counsel was ineffective for failing to hire an expert to rebut Dr. Lee M. Tormos testimony that the case was a homicide and testimony that the wound was inconsistent with an accident or self-inflicted as the [Applicant] stated";
 - e. "Counsel was ineffective for his failure to prepare [Applicant] to testify and demonstrate in this case instead of [Counsel] trying to do it himself";
 - f. "Counsel was ineffective for failing to inform [Applicant] of the plea offer for ten years";
 - g. "Counsel was ineffective for failing to object to the vouching by the Solicitor during the closing argument";
2. Brady violation;
 - a. "The Solicitor withheld evidence that was material";
3. Violation of due process.

As relief, Applicant requests: "reverse conviction and sentence and remand for a new trial, and any other relief this court deem just and proper".²

On September 22, 2025, Applicant filed an amended application alleging:

² The State moved to dismiss this application as barred by the statute of limitations. Following a hearing on May 7, 2025, Judge Addy granted equitable tolling.



1. Ineffective assistance of counsel for:

- a. Failure to meet with Applicant enough and sufficiently communicate with Applicant enough prior to trial;
- b. Failure to communicate plea offer;
- c. Failure to review discovery with Applicant;
- d. Failure to develop a trial strategy;
- e. Failure to effectively move for a directed verdict;
- f. Failure to effectively object to hearsay statements Monique attributed to Applicant while testifying;
- g. Failure to challenge the indictments;
- h. Failure to effectively cross examine witnesses;
- i. Failure to request immunity hearing;
- j. Erroneously advising Applicant not to testify in substantiating his self-defense defense.

As relief, Applicant requests the court vacate the convictions, and remand the case to the court of general sessions for a new trial. At the hearing, Applicant proceeded forward on the allegations in his amended application.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the records before it, including the Jasper County Clerk of Court records of the underlying conviction, Applicant's records from the South Carolina Department of Corrections, the trial transcript, Applicant's appellate records, and the records from this PCR action. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility, and weigh their testimony accordingly. After a careful review based on the Strickland standard set forth below, this Court finds Applicant has failed to carry his burden of proof. Below are the Court's findings of fact and conclusions of law as required by section 17-27-80 of the South Carolina Code (2017).

Ineffective Assistance of Counsel

In a PCR action, an applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). To prove ineffective assistance of counsel, the applicant must show counsel was deficient, and the deficiency prejudice applicant. Strickland

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v. Washington, 466 U.S. 668 (1984). When evaluating deficiency, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E. 2d at 635 (quoting Strickland, 366 U.S. at 690). "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Butler, 286 S.C. at 442, 334 S.E.2d at 814 (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption to received relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. To prove prejudice, an applicant must prove counsel's deficient performance prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. Id. at 117-18, 386 S.E.2d at 625.

Failure to Communicate and Review Discovery³

Applicant alleged counsel was ineffective for failing to meet with Applicant enough and sufficiently communicate and review discovery with him prior to trial. The court finds Applicant failed to prove this allegation.

Federal case law holds that there is no constitutional minimum number of meetings between attorneys and their clients to satisfy competency. Campbell v. Polk, 447 F.3d 270, 279 fn.2 (4th Cir. 2006). "Brevity of time spent in consultation, without more, does not establish that counsel was ineffective," Easter v. Estelle, 609 F.2d 756, 759 (5th Cir. 1980) (holding that it is not enough to merely show that counsel only met with his client twice before trial as long as counsel devoted sufficient time to ensure an adequate defense and to become thoroughly familiar with the facts of the case and the law applicable to the case, and holding the record revealed that counsel was so prepared.).

³ This section addresses allegations 1(a) and 1(c) as set forth above.



At the PCR hearing, counsel testified that it is his general practice to meet with his clients once a month. Counsel testified that he would stay and talk to his clients as long as they wanted to talk. Counsel testified he would have reviewed discovery with Applicant and that it was his general practice to do so. This Court finds counsel's foregoing testimony *credible*. This court finds that counsel adequately met with Applicant, reviewed the discovery, and communicated with Applicant regarding his case. This Court finds Applicant has failed to prove deficiency.

Further, this Court finds Applicant failed to prove prejudice. This Court has reviewed the records and finds counsel was fully prepared, and Applicant failed to show how additional meetings with Applicant would have resulted in a different outcome at trial. Applicant has provided no evidence that any additional meeting time or further review of the discovery would had a reasonable probability on changing the outcome of the trial and thus failed to prove prejudice. Therefore, this claim is denied.

Failed to Communicate Plea Offer

Applicant alleged counsel was ineffective for failing to communicate a plea offer. This Court finds Applicant failed to prove this allegation. Applicant testified that there was a ten-year plea offer not communicated to him. The Court finds Applicant's testimony *not credible*. Applicant provided no evidence of this alleged ten-year plea offer. Counsel testified he does not recall a plea offer and that he would have begged for a ten-year plea offer. Counsel testified if there was a ten-year plea offer, he would have been at that jail within thirty minutes to communicate to Applicant the plea offer. This Court finds counsel's testimony *credible*. This Court finds Applicant has failed to prove deficiency and prejudice, this claim is denied.

Failure to Develop a Trial Strategy

Applicant alleged counsel was ineffective for failing to develop a trial strategy. This Court finds Applicant failed to prove this allegation. Applicant testified that his defense was self-defense,

but counsel did not do a good job putting up the self-defense defense. Counsel testified he believed Applicant's narrative fit self-defense, and he tried to sell that to the jury. This Court finds counsel's testimony *credible*. Applicant did not provide what more counsel should have done differently in presenting self-defense. Based on a review of the trial transcript, this Court finds counsel presented a vigorous defense at trial and was not deficient. Further, Applicant did not testify to what counsel should have done differently in his defense or what strategy counsel should have pursued that would have resulted in a different outcome at trial. This Court finds Applicant failed to prove prejudice. Therefore, this Court finds Applicant has failed to prove deficiency and prejudice, this claim is denied.

Failure to Effectively Move for a Directed Verdict

Applicant alleged counsel was ineffective for failing to effectively move for a directed verdict. This Court finds Applicant failed to prove this allegation. The record reflects that counsel did move for a directed verdict. (Tr. 164 – 165). Applicant even testified that counsel did move for a directed verdict. Applicant did not provide what counsel was supposed to further argue in his directed verdict motion. Therefore, this Court finds Applicant has failed to prove deficiency and prejudice, this claim is denied.

Failure to Object to Hearsay

Applicant alleged counsel was ineffective for failing to object to hearsay statements Monique attributed to Applicant while testifying. This Court finds Applicant failed to prove this allegation. "A statement is not hearsay if the statement is offered against a party and it is the party's own statement in either an individual or representative capacity..." SCRE Rule 801.

The statements that Applicant alleges should have been objected to were statements made by a State's witness about what the Applicant had said and therefore were not hearsay. Counsel testified that he did not object because the statements made by Monique about what Applicant had

said were not hearsay. (Tr. 105, 106). This finds that any hearsay objection have been non-meritorious. See Miller v. Keeney, 882 F.2d 1428, 1434 (9th Cir. 1989) (noting that if a petitioner challenges a futile objection, he fails both Strickland prongs); U.S. ex rel. Link v. Lane, 811 F.2d 1166, 1170 (7th Cir. 1987) (finding there is no prejudice from the failure to object unless there is a legally supportable argument for exclusion of the evidence). Therefore, this Court finds Applicant has failed to prove deficiency and prejudice, this claim is denied.

Failure to Challenge the Indictments

Applicant alleged counsel was ineffective for failing to challenge the indictments. This Court finds Applicant failed to prove this allegation. Counsel testified the issue with the indictment was a scrivener's error regarding the wrong place of death. (Tr. 54, 55). Counsel testified that this did not hurt Applicant, and it was readily explained by a scrivener's error and did not need to go back to the grand jury. Counsel testified if this error was caught and corrected prior to trial, there was no reason to object. Counsel testified that he felt the indictment was sufficient to put Applicant on notice and did not impact his trial preparation in any way. Applicant did not allege any grounds at the evidentiary hearing on which the indictments could have been dismissed. This Court finds counsel was not deficient in his performance with regard to this allegation because there was no meritorious ground to challenge the indictments. This Court finds Applicant has failed to prove deficiency and prejudice and thus, this claim is denied.

Failure to Effectively Cross-Examine Witnesses

Applicant alleged counsel was ineffective for failing to effectively cross-examine the witnesses Officer Smith and Monique Chester. This Court finds Applicant failed to prove this allegation. Initially, this Court has reviewed counsel's cross examination of Officer Smith and Monique Chester and finds it was reasonable under prevailing professional norms. Further, Applicant has not set forth what more counsel should have crossed the witnesses about that had a

reasonable probability of a different outcome at trial.

Applicant testified that counsel should have cross-examined Officer Smith about Applicant's whereabouts the night before the stabbing. Applicant testified that counsel should have cross-examined Monique Chester about how she waited to make a statement to law enforcement and how she wanted her statement to be confidential. Counsel testified regarding his cross examination of Officer Smith and explained that Applicant's prior bad act did not come in, and he did not know why Applicant would want him to cross a witness about a negative. The record reflects that counsel thoroughly cross-examined Monique Smith about waiting to make a statement and her wanting the statement to be confidential. (Tr. 109 - 112). Applicant did not allege what more counsel should have cross-examined this witness about. This Court finds cross-examination is a matter of trial strategy, and Applicant has failed to overcome the presumption that Trial Counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Butler, 286 S.C. at 442, 334 S.E.2d at 814 (citing Strickland, 466 U.S. at 690). Trial Counsel articulated a very valid trial strategy in not asking additional questions from Officer Smith, and the record shows counsel cross-examined Monique Chester on the exact things Applicant testified he wished counsel cross-examined her on. Based on the testimony from the hearing and the record this Court finds Counsel was not deficient. Further, Applicant did not prove how further cross-examination of these witnesses had a reasonable likelihood on changing the outcome of his trial and thus, failed to prove prejudice. See Cherry at 117-18, 386 S.E.2d at 625. This Court finds Applicant has failed to prove deficiency and prejudice and thus, this claim is denied.

Failure to Request Immunity Hearing

Applicant alleged counsel was ineffective for failing to request an immunity hearing. This Court finds Applicant failed to prove this allegation. Counsel testified that he believed Applicant's



narrative fit self-defense and he tried to sell that to the jury. Counsel testified he did not think he could have sold that to the judge at an immunity hearing with the burden on Applicant. Counsel testified he does not think they could have met that burden at an immunity hearing. Counsel testified that by having an immunity hearing he also would have alerted the solicitor to the potential selling point that could have led to a hung jury. This Court finds counsel articulated a valid strategic reason for not requesting an immunity hearing. This Court finds Applicant has failed to prove counsel was deficient. Further, Applicant failed to prove there is a reasonable probability the circuit court would have granted him immunity had counsel requested a hearing. See Cherry supra. Thus, Applicant has failed to prove prejudice and this claim is denied.

Advising Applicant Not to Testify

Applicant alleged counsel was ineffective for erroneously advising Applicant not to testify in substantiating his self-defense defense. This Court finds Applicant failed to prove this allegation. Counsel testified he constantly discussed testifying with Applicant. Counsel testified that if Applicant wanted to testify, he would have put him up to testify and he made sure that Applicant was fully informed of that right and that it was his choice. Counsel testified Applicant did not want to testify. This Court finds counsel's testimony *credible*. Based on the record and counsel's testimony, this Court finds counsel was not deficient. Further, Applicant has failed to show a reasonable probability that the outcome of the trial would have been different had he testified. See Cherry supra. Specifically, Applicant did not offer any testimony at the PCR hearing that was different than what the jury considered. This Court finds Applicant has failed to prove deficiency and prejudice and thus, this claim is denied.

CONCLUSION

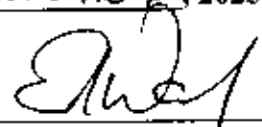
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief is **DENIED and DISMISSED WITH PREJUDICE**.

Should Applicant wish to secure appellate review, he must file and serve a notice of appeal within thirty days of receipt by counsel of written notice of entry of judgment. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf if the Applicant wishes to seek appellate review. Attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant shall be remanded to and remain in the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 4th day of November, 2025.



THE HONORABLE EUGENE P. WARR, JR.
Presiding Judge
Fourteenth Judicial Circuit

Beaufort, South Carolina