

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from Bamberg County
Honorable Martha Rivers, Circuit Court Judge
Honorable Walton J. McLeod, IV, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

KURTINO DAMON WEATHERSBEE,

APPELLANT

APPELLATE CASE NO. 2025-000246

RECORD ON APPEAL

JESSICA M. SAXON
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

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General

ATTORNEY FOR APPELLANT

R. BRANDON LARRABEE
Assistant Attorney General
PO Box 11549
Columbia, SC 29211-1549
(803) 734-6305

JOHN WILLIAM WEEKS
Solicitor, Second Judicial Circuit
PO Drawer 3368
Aiken, SC 29802
(803) 642-1557

ATTORNEYS FOR RESPONDENT

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**[THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:
FROM THE OCTOBER 25, 2024 HEARING: DFEENSE EXHIBITS NOS. 1-6 (PHOTOS)]**

STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSIONS
COUNTY OF BAMBERG	)	2024-GS-05-00042
	)	2024-GS-05-00043
	)	2024-GS-05-00044
	)	
	)	
	)	
THE STATE,	)	
	)	
PLAINTIFF,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
KURTINO DAMON WEATHERSBEE,	)	
DEFENDANT.	)	
_____	)	

October 25, 2024
Bamberg, South Carolina

B E F O R E:

THE HONORABLE MARTHA RIVERS, JUDGE.

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

DAVID MILLER, ESQ.
Attorney for the Plaintiff

JOSHUA KOGER, ESQ.
Attorney for the Defendant

PENNY M. JOHNSON
Court Reporter III

I N D E X

(PW) - Denotes Plaintiff's Witness
(DW) - Denotes Defense Witness

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All Exhibits were retained by the Clerk of Court for Bamberg County.

P R O C E E D I N G S

THE COURT: Okay. Mr. Miller.

MR. MILLER: Thank you, Your Honor. May it please the Court. Your Honor, we are proceeding at this time with regard to Indictment 2024-GS-05-00042, State vs. Kurtino Damon Weathersbee. That is a true billed indictment for murder. Indictment 2024-GS-05-00043, possession of a weapon during the commission of a violent crime. And Indictment 2024-GS-05-00044, an indictment for possession of a firearm by a person convicted of a violent felony.

Mr. Weathersbee is represented by Mr. Joshua Koger. This is Mr. Koger's motion for protection and immunity under the stand your ground act.

THE COURT: Thank you, sir.

Mr. Koger, are you ready?

MR. KOGER: May it please the Court. I am ready, Your Honor.

THE COURT: All right. You may proceed.

MR. KOGER: I'd like to call Kurtino Weathersbee to the stand.

THE CLERK: Will you please raise your right hand.

KURTINO WEATHERSBEE,

after being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. KOGER:

1 Q Mr. Weathersbee, how long have you been a resident of
2 Bamberg County?

3 A About three and a half years.

4 Q Okay. And --

5 THE COURT: Mr. Weathersbee, please make sure to speak
6 up. We don't have any microphones in this room.

7 THE WITNESS: Okay.

8 THE COURT: And there's air running and we don't want
9 to cut that off, okay?

10 THE WITNESS: Okay. I apologize.

11 THE COURT: Thank you.

12 All right. Sorry, Mr. Koger.

13 MR. KOGER: No problem.

14 BY MR. KOGER:

15 Q How long have you been a resident of Bamberg County?

16 A About three and a half years, sir.

17 Q And prior to being a resident of Bamberg County, what
18 state or county you was a resident in?

19 A In Richland County, Columbia.

20 Q Where were you born?

21 A In Richland County.

22 Q In Richland County?

23 A Yes, sir.

24 Q And before being a resident of Bamberg County, how long
25 were you a resident of Richland County?

- 1 A About five months.
- 2 Q About five months?
- 3 A Yeah.
- 4 Q Okay.
- 5 A And I was incarcerated before that.
- 6 Q Where did you grow up?
- 7 A I grew up in Columbia and -- exactly where?
- 8 Q Yes.
- 9 A On Liberty Street, off Farrow Road in Columbia, Farrow
10 Road and Beltline.
- 11 Q Where did you go to school?
- 12 A W.A. Perry Middle School, Burton Elementary School and
13 C.A. Johnson High School.
- 14 Q And did you finish C.A. Johnson?
- 15 A Yes, sir.
- 16 Q Okay. What year did you finish?
- 17 A 1999.
- 18 Q Okay. All right. And after you finished in 1999, did
19 you go to college?
- 20 A I had some college.
- 21 Q What college did you go to?
- 22 A Benedict.
- 23 Q How long did you attend Benedict?
- 24 A One semester.
- 25 Q Okay. Now, what was your course of study?

1 A Business.

2 Q And what is your line of work?

3 A My line of work right now is I cut down trees for a
4 living.

5 Q Okay.

6 A And I was working at Husqvarna in Orangeburg about two
7 years before that.

8 Q And how long have you been cutting trees?

9 A For the last -- before I got locked up this time, about
10 19 months.

11 Q Okay. All right. And do you cut trees independently
12 or do you work with someone?

13 A I work for an independent contractor out of Ehrhardt,
14 Jay's Tree Service.

15 Q And you've worked there for two and a half years?

16 A Around 19 months.

17 Q Okay. And do you have any children?

18 A Yes, I got four kids. Three of them are grown and I've
19 got a four-year-old.

20 Q And what are the ages of your children?

21 A 23, 22, 21 and four years old.

22 Q Do any of the children live with you?

23 A Yes, my baby boy.

24 Q And what is your youngest son's name?

25 A Son [REDACTED].

1 Q Now, do you recall what happened on the day of August
2 7th, 2023?

3 A Yes, sir, I do.

4 Q And you know that's the reason you're here?

5 A Yes, sir.

6 Q How did that day get started?

7 A Well, it started off uneventful like you do any other
8 day. I got together with two of my partners and we went out
9 to Orangeburg to go to the plasma place. I went to go get
10 some food for a get-together I was throwing for my son that
11 we ordered the day before from the Wal-Mart and parts for my
12 truck.

13 Q All right. Let's back up just a little bit. Why did
14 you go to the plasma place?

15 A I was donating plasma to get extra cash.

16 Q Is that something you usually do or have done in the
17 past?

18 A Every so often. When the gas prices went up, that's
19 when everybody needed to do something extra.

20 Q Okay. I believe you said two other people were with
21 you. What are their names?

22 A James McCreary and Red, Josh.

23 Q And what's his last name?

24 A Martin.

25 Q Have y'all donated plasma in the past?

1 A Yeah, a few times on occasion.

2 Q In Orangeburg?

3 A Yes, sir, out of Orangeburg.

4 Q Okay. What happened next?

5 A Well, we went and got the food from the Wal-Mart. We
6 got something to eat. We came back to the house and we
7 pulled all the way into the driveway --

8 Q Let's do this in order. So you got the food from the
9 Wal-Mart in Orangeburg. What was the food for?

10 A Okay. I was throwing a get-together for my son's
11 birthday. His is on the 4th of August, mine's on the 6th.
12 That weekend, we had bad weather, so we wasn't able to get
13 the stuff. But on that Monday, on the 7th, we was able to
14 get the ice cream, cake, the hot dog buns, the hot dogs, the
15 charcoal and everything for the get-together.

16 Q Did y'all actually shop to get those items or --

17 A No, sir, we ordered them the night before. We had them
18 on preorder at the Wal-Mart.

19 Q So what other places did y'all go besides the plasma
20 place and besides the Wal-Mart? Did you go any other
21 places?

22 A Yes, sir, I believe it was Hardee's to get a little
23 meal. Then we went to Advance Auto Parts to get my parts
24 for my truck.

25 Q All right. And what time did y'all arrive in

1 Orangeburg and what time did y'all depart from Orangeburg?

2 A I think we arrived in Orangeburg approximately ten
3 o'clock. We came back about 3:30 maybe.

4 Q And during that time from ten o'clock until the time
5 you came back, what was the attitude among the three of you
6 during that trip from 10:00 to 3:00?

7 A Well, there was really no attitude. We was doing what
8 we do, like we usually do. We always do what we do. James
9 didn't have his vehicle. I assist him and take him to add
10 gas. Red always be with us. This time, I was getting parts
11 for my truck and we just went about doing our thing.

12 Mostly on the way there and back, I was in the back
13 sleep. Because I always got kids, my spouse, she visually
14 impaired, she blind, so I'm always doing something. I was
15 just getting my nap while we were riding there and back.

16 Q Now, you said your spouse, are y'all legally married or
17 y'all live together?

18 A We just live together.

19 Q Now, how long at that point had you known Mr. McCreary?

20 A About a good year and a half, two years.

21 Q And at that point, how long had you known Mr. Martin?

22 A About a year. I met him on the job at the pillow
23 plant, Pegasus, in Denmark.

24 Q You met Mr. Martin at that plant?

25 A Yes.

1 Q So you testified you were getting the groceries for
2 your party?

3 A Yes, sir.

4 Q And where did you get something to eat from again?

5 A I believe it was Hardee's.

6 Q And then what happened next?

7 A Well, I got awoken to James cursing me out about the
8 groceries.

9 Q Where did you get awoken?

10 A We had done pulled all the way in the yard parallel to
11 the front door so we could relay the groceries over the
12 railing instead of going up the ramp. Because the woman is
13 blind and it's a long ramp to the door.

14 Q Okay. Now, you say up to the door. What address is
15 that?

16 A [REDACTED] Cardinal Road.

17 Q And do you live at [REDACTED] Cardinal Road?

18 A Yes, sir.

19 MR. KOGER: Your Honor, beg the Court's indulgence.

20 THE COURT: Yes, sir.

21 (Pause.)

22 BY MR. KOGER:

23 Q Mr. Weathersbee, you mentioned a ramp. Identify that
24 picture for me.

25 A Okay. This right here is the walk ramp. This right

1 here is the septic parallel. And we pulled all the way up
2 over here in front of this septic so we could relay the
3 groceries.

4 Q Over the --

5 A Over the wooden railing, the bannister.

6 MR. KOGER: I'd like to submit this into evidence.

7 MR. MILLER: No objection, Your Honor.

8 THE COURT: Okay. It's admitted.

9 (WHEREUPON, Defendant's Exhibit No. 1 was admitted into
10 evidence.)

11 BY MR. KOGER:

12 Q Okay. So you testified you were awoken to -- Mr.
13 Weathersbee, I'm going to approach you again and get you to
14 identify this picture for the Court. What is this picture
15 here?

16 A This is a picture of my red truck all the way on the
17 side, almost in the backyard. James's car right here
18 halfway to the driveway backing out.

19 Q What about the ramp? Is that another picture of the
20 ramp?

21 A Yes, the walkway.

22 Q Yeah, that's a walkway. Now, where was the car -- when
23 y'all came back from Orangeburg, where was the car?

24 A Parallel to the door all the way up front. The septic
25 tank is on the other side. We was all the way up and we was

1 handing the groceries over the railing so we wouldn't have
2 to walk back and forth.

3 Q And when you say we, who are you referring to?

4 A Josh, James and myself.

5 MR. KOGER: I'd like to submit this in evidence, Your
6 Honor.

7 THE COURT: Mr. Miller?

8 MR. MILLER: No objection.

9 (WHEREUPON, Defendant's Exhibit No. 2 was admitted into
10 evidence.)

11 BY MR. KOGER:

12 Q What was Mr. McCreary saying to you when he was
13 yelling?

14 A Do I have to use the language?

15 MR. KOGER: Your Honor, I would like -- there's some
16 inappropriate language, but it's a part of our case.

17 THE COURT: I won't take any offense.

18 MR. KOGER: Okay. Thank you.

19 BY MR. KOGER:

20 Q Go ahead.

21 A He was like damn, I got to take you to get your damn
22 groceries, get up and get your fucking groceries, you moving
23 slow.

24 Q Okay.

25 A Y'all gonna make me do something, gonna give you what

1 you want.

2 Q And what was your response to that?

3 A I got up, I grabbed -- I went to the back -- he popped
4 the trunk, I went to the back. I grabbed the last case of
5 water. I walked in the house. By the time I walked in and
6 put it down, he was up on me again.

7 Q Let me ask you, when you say you walked in the house,
8 did you walk up that ramp?

9 A Yes, sir, I walked around the ramp and walked in. And
10 he was all up on me again.

11 Q He being who?

12 A James.

13 Q Okay. What happened next?

14 A Black Cat.

15 Q Okay.

16 A He in my grill talking trash, saying --

17 Q What type of trash was he talking?

18 A Mother Fuckers going to respect his name. He been
19 doing this. We were just moving slow. He ain't had time to
20 waste. Just talking trash in general.

21 Q Okay. Now, was he talking outside to you or was he
22 talking that type of talk to you inside?

23 A All the way up the ramp. When we got in the house,
24 this is the first time I responded. I looked -- I got about
25 ten kids waiting on me, three other females. I looked and I

1 was like, Well, James, man, what you mean? What's going on?
2 Why you doing all this in front of the kids? And I shot out
3 the door to get him away from them.

4 Q Now, why was the kids at the --

5 A We was getting ready for the get-together. We was
6 supposed to do it since the fourth, but it was inclement
7 weather and we couldn't make it to get the birthday cake and
8 the charcoal and the hot dogs buns and stuff for the
9 birthday party for my baby boy.

10 Q Okay. What happened next?

11 A So he followed me out the door this time, still talking
12 trash about he was going to break my ribs, bust my teeth
13 out. I went down to the end of the ramp. By the time I got
14 to the end of the ramp, he went to the left and got in the
15 car.

16 Q Okay.

17 A That's when I went back up the ramp. I went in the
18 house and I said, Lisa, you need to tell to tell Junior he
19 not welcome over here no more. He don't need to come back
20 over here no more.

21 Q Now, who is Lisa?

22 A Norma. She just came in.

23 Q So you walked out. Why did you walk out?

24 A Because he was being disruptive up in my house in front
25 of all the kids. And I asked him, I said, You gonna

1 disrespect the kids in the house? I said, James, you need
2 to get the fuck on out of here. You need to leave.

3 Q Now, when you asked him was he going to continue to
4 disrespect the kids, what was his response?

5 A He was just going on about who he was and what he was
6 going to do to me. Me and Red, really. We was moving slow.
7 We acting like he ain't built like that. He break ribs.
8 When he touch, he break bones.

9 Q Now, at the time, what was your height and weight?

10 A I was about 145. I'm like 5'8, 5'7" and a half right
11 now.

12 Q And at the time, what was Mr. McCrary's size?

13 A Almost 300 pounds.

14 Q And what's his height?

15 A 5'10", taller than me, 5'11."

16 Q Okay. What was your response as far as -- you said he
17 got in his car?

18 A Yeah, he got in his car.

19 Q What type of car was he driving?

20 A A silver, what is it, Sunfire? A silver car.

21 Q Okay.

22 MR. KOGER: Your Honor, I'm going to approach Mr.
23 Weathersbee.

24 BY MR. KOGER:

25 Q Is that Mr. McCrary's car?

1 A Yes, sir.

2 MR. KOGER: I'd like to admit that, Your Honor.

3 THE COURT: Any objection, Mr. Miller?

4 MR. MILLER: No objection, Your Honor.

5 THE COURT: That's Defendant's 3?

6 THE COURT REPORTER: Yes, ma'am.

7 (WHEREUPON, Defendant's Exhibit No. 3 was admitted into
8 evidence.)

9 BY MR. KOGER:

10 Q What happened next?

11 A I said, Lisa, Norma, I said, You need to tell Junior
12 not to bring his ass back over here. I said, He
13 disrespecting the house. He said he don't give a F. She
14 said, Well, I hear y'all. What y'all got going on? Where
15 he at?

16 Q Just testify -- you can't testify to what someone else
17 say. So what happened next?

18 A Okay. My response to whatever she said, I looked out
19 the diamond in the door, because it's a trailer, I said,
20 Well, he leaving now. That's when I grabbed the parts for
21 my truck and the charcoal --

22 Q How did you know that he was leaving?

23 A I looked out the diamond in the door.

24 Q When you say leaving, was he leaving physically on
25 foot?

1 A He was in his car. He was backing out.

2 Q He was backing out?

3 A Yes, sir.

4 Q Okay. All right. And how far did you see him back out
5 of the yard?

6 A When I looked out, he was at the back first part of the
7 driveway parallel to the mailbox in the line of fence.

8 Q You said he was parallel to the mailbox?

9 A Yes, sir, at the beginning of the driveway.

10 Q And that is where the mailbox was located, at the end
11 of the driveway?

12 A Yes, sir.

13 MR. KOGER: Your Honor, beg the Court's indulgence.

14 (Pause.)

15 BY MR. KOGER:

16 Q Is the mailbox in that picture?

17 A Yes, sir.

18 Q Is that where the car was backed up?

19 A Yes, sir, he was all the way at the end of the driveway
20 barely up to the mailbox, almost to the main road.

21 Q Now, is there any type of fence around your home?

22 A Yes, sir, there's a partial fence right there.

23 MR. KOGER: I'd like to admit Defendant's Exhibit No.
24 4, Your Honor.

25 THE COURT: Any objection?

1 MR. MILLER: No objection, Your Honor.

2 (WHEREUPON, Defendant's Exhibit No. 4 was admitted into
3 evidence.)

4 BY MR. KOGER:

5 Q After he backed up to that particular location, what
6 happened next?

7 A I grabbed my parts and charcoal and went out to my
8 truck.

9 Q Now, what type of car parts did you purchase?

10 A I got a distributor cap and the rotator.

11 Q Was it your plan to put the distributor cap on before
12 the party started? Or what were you doing out there? Were
13 you going to put it on then or put it on after the party?
14 What was your course of plan with repairing your truck and
15 the birthday party?

16 A Well, we was just getting started. Me and Red pretty
17 much do whatever we do together. We always together. I was
18 just going to start the grill and replace the part on the
19 truck. Because I know -- the kids, they always waiting on
20 me to get there. When I get outside, I know they coming.

21 Q Okay. And then how long would it have taken you to put
22 that part on your truck?

23 A I'd say about no longer than 30 minutes.

24 Q Okay. Now, getting back to your testimony as far as
25 Mr. McCreary backing up. You stated that after he was

1 backing up, what was his next step again?

2 A Okay. I went to my truck, put my parts in the truck.
3 Took my hat off, put it in there, put my doo rag in there.
4 He was still talking trash.

5 Q Okay, now, he was talking trash as he was backing up?

6 A Yes.

7 Q And what type of trash or language did he use during
8 that time?

9 A All I heard him say was bitch, so I just throwed my
10 hands up, like, yo, go head on. By the time I leaned in my
11 toolbox --

12 Q Let me ask you this, when you threw your hands up,
13 where were you located at that time?

14 A Still right there at the road. He was about to turn to
15 go on out, finish backing up and turn to go on out.

16 Q And you made a motion to him?

17 A Yeah, I was like (indicating) shoo, just go head on.

18 Q And what happened next?

19 A I leaned up in my toolbox to grab a wrench or whatever
20 I needed and by the time I came back out, he was pulling
21 back in.

22 Q All right. And did he pull close to you?

23 A Yeah, he pulled in front of the truck this time.

24 Q Okay. And is this an accurate depiction of how close
25 he was to the truck?

1 A Yes, sir.

2 MR. KOGER: I'd like to admit this as Defendant's
3 Exhibit No. 5, Your Honor.

4 THE COURT: Any objection?

5 MR. MILLER: No objection, Your Honor.

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

8 BY MR. KOGER:

9 Q What was your thought process when you saw him pull
10 back up?

11 A It happened so fast. When he pulled back up, I was in
12 fear for him striking me with something, with hitting me or
13 shooting me with something. I was in fear for my life.

14 Q Was he still talking at that point?

15 A Yeah, he jumped out -- can I demonstrate?

16 Q Yeah.

17 A He jumped out the car, ran up on me and was like, You
18 better have your mother fucking pistol. I already was at
19 the truck with the door open. I jumped back, I fired one
20 shot over the door. He went like this like he was grabbing
21 and ducking and I shot two more times.

22 Q And you was at the driver's side of that red truck?

23 A Yes, sir.

24 Q And, again, what was your thought process when he came
25 towards you?

1 A I thought he was going to make good on his threats,
2 strike me, shoot me or stab me with something. I was in
3 fear for my safety and my life.

4 Q Okay.

5 A I thought he was going to come get me.

6 Q Okay. After that, what happened?

7 A I saw the two shots strike him. He hit the ground.
8 Melissa came out. I went inside the back door. I had a
9 word with Lisa, you know, I apologized. I kept telling him
10 -- you know, he just wouldn't stop. I don't know what he
11 had going on. I was just apologizing. I told her, like,
12 you know, I ain't supposed to have this, I got to go.

13 Q And where did you go?

14 A I went in the back, actually. Along the back of my
15 property, it's a soybean field. And it's a ravine that
16 separates it. So I just went across the ravine and just
17 stepped back there in the back.

18 Q Did you attempt to find someone to give you a ride to
19 Columbia or anyplace?

20 A No, sir, if I wanted to flee like that, I could have
21 jumped in the car. He left the car running with the door
22 open. I could have jumped in his car and fled.

23 Q How close is that ravine to your home?

24 A Directly in the backyard. It separates the backyard
25 from the soybean field.

1 Q And were you observing what was going on during that
2 time?

3 A Yes, sir.

4 Q And how long did you stay hidden in the field, the
5 soybean field?

6 A About -- may 35 minutes.

7 Q Okay.

8 A Yes, sir.

9 Q Were you discovered there by law enforcement?

10 A Yes, sir.

11 Q Were you discovered by the dogs or law enforcement?

12 A I believe when it got close enough to where I heard the
13 dogs barking, I just walked on out. I was like, You looking
14 for me? I startled them really. I said, I'm right here.

15 Q Were you arrested without -- or taken into custody
16 without incident? Did you give them any problem?

17 A No, sir, I didn't give them a problem.

18 Q Do you recall which law enforcement officers first
19 approached you?

20 A It was the DNR.

21 Q You didn't give them any problem?

22 A Only thing I told them was I had a right to defend
23 myself. That's the only thing I was saying is I had a right
24 to defend.

25 Q You told that to a person with DNR?

1 A Yes, sir.

2 Q Department of Natural Resources?

3 A Yes, sir.

4 Q What happened next?

5 A He escorted me to a Bamberg vehicle. I asked them to
6 see my son and Lisa. And Mr. Fate, Mr. Jeb Fate, he said,
7 We'll let you see your son. You willing to talk to us and
8 tell us what happened? I said, I ain't got no problem with
9 that. I ain't did nothing wrong. So he allow me to come
10 and I told him -- you know, my sister, Cameron Davis, coming
11 to get him. She'll be here. He wrote it down. He let me
12 speak with Norma and kiss my baby boy and then drove me off
13 to the Bamberg County jail.

14 Q Now, at the time, you said you spoke with a Mr. Fay,
15 what law enforcement agency was he with?

16 A I think he was like the supervisor at SLED.

17 Q So on the scene was Department of Natural Resources?

18 A Yes, sir.

19 Q SLED. And was there another -- was Bamberg County
20 Sheriff's Office --

21 A Bamberg County Sheriff's Office, yes, sir.

22 Q And you talked to how many officers that day?

23 A I didn't really talk to anybody. I was just saying I
24 ain't do nothing wrong.

25 Q Did you communicate to any officers again that it was

1 self-defense?

2 A Yes, that was the only thing I was saying, you know, I
3 got the right to defend myself.

4 Q And what happened next?

5 A I was taken to the new building here in Bamberg. And
6 the SLED agents attempted to get -- they read my rights,
7 attempted to get a statement. I asked him what he was
8 charging me with, he told me murder. I told him I needed to
9 have advisement. So they processed me and did the gunshot
10 residue and took my phone and my money and processed me
11 through and locked me up.

12 Q Okay. Now, describe that picture for the Court.

13 A This is my red truck that I was going to replace my
14 part right here close to my bedroom where me and Norma sleep
15 and that's the deceased, where he ran up on me at, whatever
16 he was trying to do.

17 Q Is there any question that the deceased was in your
18 yard?

19 A No, sir.

20 Q Okay. Is there any question the deceased was close to
21 your arm?

22 A No, sir, no question.

23 Q And the deceased, again, is under that pink sheet?

24 MR. MILLER: I'm sorry, what was that last question?

25 MR. KOGER: Under the pink sheet.

1 MR. MILLER: Okay.

2 MR. KOGER: The next exhibit, Your Honor.

3 THE COURT: Defendant's Exhibit No. 6?

4 THE COURT REPORTER: Yes.

5 (WHEREUPON, Defendant's Exhibit No. 6 was admitted into
6 evidence.)

7 BY MR. KOGER:

8 Q Mr. Weathersbee, why did you shoot Mr. McCreary?

9 A I was in fear for my life.

10 Q How were you in fear for your life?

11 A The man who's threatening you is smack -- he's a
12 certified smacker. That's the slang for, you know, taking
13 somebody's life or murder. And he's going to break my ribs,
14 knock my teeth out. He's going to show me how to get rid of
15 somebody. I was telling him, Man, you got to leave, just go
16 ahead and leave. He said, Well, you know, I come with the
17 land, I'm family. You'll be gone before me. And then he
18 acted upon that.

19 So I'm not from here and he just -- we never had no
20 emotion. He never was like this. It was just different.
21 It was just all of a sudden. And I kept telling him, I'm
22 not about to fight your big ass. Like, why is you doing
23 this? You know, all the kids in there, like, leave. And he
24 bring his grands and stuff over there. I don't know what
25 was going on with him just this day. Just this one time.

1 And I just felt like, you know, I couldn't let him get me.

2 I just felt like he wouldn't stop. And I thought he had
3 something to shoot me. He telling me I better have mine.

4 Q Did you think it was reasonable for you to shoot him?

5 A What you mean reasonable?

6 Q I mean, did you think you supposed to have shot him
7 based upon the circumstances?

8 A Yeah, to save myself, yes, sir. From an attack, from
9 the assailant, from an aggressive attack, yeah, it was
10 reasonable for me to defend myself.

11 Q And at the time of this incident, how long had you
12 stayed with Ms. Smith?

13 A Two and a half years.

14 Q Two and a half years?

15 A Yes, sir.

16 Q Now, Mr. Weathersbee, you mentioned about -- and I'm
17 sure Mr. Miller is going to bring this up, but you mentioned
18 you did some time?

19 A Yes, sir.

20 Q And you did a total of how many years?

21 A Fifteen years, three months and 18 days.

22 Q Okay. And tell the Court what was that time based upon
23 and how did you get through it?

24 A You mean the crime and all of that?

25 Q Yeah, the crime.

1 A Back in 2004, I was, like, 17 and I had -- I got
2 convicted of kidnapping, armed robbery and burglary first.
3 All those charges stem from one incident. I did all my time
4 in Lee County Correctional. Basically, I came home and I
5 didn't take nothing for granted. I got to working. I got
6 with my aunties. I got a son. And I had my life on track.
7 I got with Norma. We was doing everything together.

8 Our place is like the nest, like Big Mama's house.
9 Everybody is in and out, back and forth. We babysit the
10 kids all the time. If one of the daughters is in transition
11 in her life, everything comes to the house through us. When
12 people want to have a good time and they know they can come
13 out there to the country, everybody comes over there with
14 Lisa and Kurtino. We takes care of all of the family, my
15 brothers, her children, offspring and grandchildren. We got
16 everything out there in the country where we are.

17 That's why it was just too much. I don't ask for that.
18 I don't hang out on the block. I don't move around. I got
19 a big responsibility. This woman is visually impaired.
20 I've got a two-year-old and I work ten-hour shifts. I have
21 to cook and everything, deal with the different attitudes
22 and bodies back and forth.

23 So I believe the time that I did -- I didn't take
24 nothing for granted when I came home this time. And I feel
25 like it's my duty to protect and provide, so that's what my

1 mind frame was from the beginning. When the man was turning
2 up in my house, I ran away from him purposely outside so the
3 kids wouldn't see all of that. I begged this man, I asked
4 him, like, What's going on with you? You need to leave.
5 I'm telling you, man, it's not fixing to happen. You know,
6 you disrespect me in the house. Like, just go. Get out.
7 Go. I didn't want to hear no talking and all this
8 egotistical stuff. I begged the man to just go, leave.

9 Q And when did you -- I'm trying to establish a time
10 line. When did you finish your time in the Department of
11 Corrections?

12 A April the 1st, 2019.

13 Q Okay.

14 A And this is the first thing that happened since I been
15 home.

16 Q So from 2019 up until August 7th, 2023, you've just
17 been working and providing?

18 A Right, yes, sir. My life belong to my baby boy and
19 that's the way I live it.

20 Q Do you think that you was at fault in bringing the
21 situation -- bringing about the difficulty?

22 A No, sir, not at all. I tried to defuse it. I
23 swallowed my pride and shied away, went in the back. I
24 tried every way to avoid it.

25 Q Do you think you were in danger of either losing your

1 life or suffering great bodily injury?

2 A This man is threatening me and then he run up like he
3 about to hit me or shoot me, I felt like I was it was
4 immediate danger, yes, sir.

5 Q And you felt it was reasonable for you to have felt
6 that way?

7 A Yes, sir, it was reasonable.

8 Q And this incident, there's no doubt happened at your
9 home?

10 A Yes, sir.

11 Q In your yard?

12 A In my yard, yes, sir.

13 Q Near your mobile home?

14 A Yes, sir.

15 Q And there was about 10 or 11 people -- there was a lot
16 of people there?

17 A Yes, sir, lot of people, mostly kids.

18 Q Mostly kids, okay. When this happened?

19 A Yes, sir, they was waiting on us.

20 MR. KOGER: Your Honor, beg the Court's indulgence just
21 one second.

22 THE COURT: Okay.

23 (Pause.)

24 BY MR. KOGER:

25 Q Now, you testified that you did significant time. And

1 you listed the offenses for which you did the time, which
2 they are felonies, correct?

3 A Yes, sir.

4 Q And you're, also, charged with possession of a weapon
5 by a convicted felon, correct?

6 A Yes, sir.

7 Q And that is a present and pending charge?

8 A Yes, sir.

9 Q Why did you possess a gun?

10 A I was already going through a lot of different stuff in
11 Denmark. People had done shot my truck up on both sides
12 with me and Norma. I'm an out-of-towner, so that's what the
13 excuse was. It was a little gang. And I tried to go to
14 whoever was governing the gang and tell them, like, them
15 boys can catch me anytime in the street, but I'm with this
16 blind and that's off limits. They got to answer to
17 somebody. Somebody need to regulate them little dudes. And
18 the excuse was oh, I ain't from here. I get treated like
19 I'm not from here.

20 Like, I work. Me and Norma, we invest. I get
21 vehicles. I add to them and resell them. I drive them and
22 resell them. And we always -- you know, we matching
23 outfits, leather jackets. It was just a lot of envy and
24 hate. A couple of months before, somebody came through and
25 shot up the house and the truck. In Denmark, anybody that

1 lives close to here know I arm myself. I do. If I go to
2 Orangeburg, I don't take nothing. If I go to Barnwell,
3 Williston, Aiken, Columbia, I don't take nothing with me.
4 If I go up the street to the store in Denmark, yes, sir, I
5 got me something to protect me and my family.

6 Q Now, in these pictures here, the truck you was working
7 on, it's a red GMC truck, is that the truck you're talking
8 about or was it another truck shot up?

9 A It was another truck that I had. It was a 2002 Ram
10 truck that was seized by Barnwell Police because of the
11 investigation. Somebody told them I was trying to
12 retaliate. They pulled me over and confiscated my truck.

13 Q And approximately when did that happen?

14 A About two months before this incident, so I'd say about
15 June.

16 Q Okay.

17 A Yes, sir.

18 Q One more question. You say that before that particular
19 day, y'all were, basically, cool?

20 A Yeah.

21 Q Y'all had just a guy-to-guy relationship?

22 A Yeah.

23 Q Sometimes y'all would get in arguments?

24 A Yeah.

25 Q Okay.

1 A Well, you mean guy-to-guy relationship and get in an
2 argument, what you mean?

3 Q I'm just talking about y'all used to hang --

4 A Yeah, all the time. James was back and forth. And
5 when Ms. Brenda was still living, his sister babysat my son.
6 It was a connection. Always go by -- and he commended me
7 for that because Ms. Brenda told him Weathersbee, you know,
8 Kurtino, yeah, he straight, he good. He take care of his
9 son. He does things for him. So we got tight.

10 And I started renting from Ms. Norma and then that's
11 when he really came in the picture. He was like, You know
12 that's my sister-in-law and, you know, I take care and
13 handle her business and stuff. You know, just letting you
14 know. And it just kind of took off from there. We backed
15 each other up. If I didn't have my vehicles or nothing
16 running, he would take me. If he didn't have nothing, I
17 would take him. You know, we do our little drinking and
18 smoking either at his Mom B house or out there in the
19 country where we are.

20 Q When you say smoking, smoking weed?

21 A Yeah.

22 Q When the two of you were smoking weed, would his
23 behavior be different?

24 A No, not really, not irregular. Everybody different
25 when they smoke, but nah, it wasn't really.

1 Q Was it different on this day?

2 A This day right here was -- I was wondering what was
3 going on, like, what the issue was. I was suspecting it was
4 something more than marijuana.

5 MR. KOGER: Your Honor, I have no further questions at
6 this time.

7 THE COURT: Thank you, Mr. Koger.

8 Mr. Miller.

9 CROSS-EXAMINATION

10 BY MR. MILLER:

11 Q So Mr. Koger just asked about you and Mr. McCreary
12 smoking weed, did his attitude changed when he was smoking
13 weed. Were you smoking weed that day?

14 A Nah, that was earlier. We wasn't doing nothing like
15 that, not yet. We hadn't started yet.

16 Q So none of that was going on that day, no weed smoking?

17 A I don't know what he did. We had the kids at the
18 house. We wasn't doing none of that.

19 Q So you didn't smoke any weed that day?

20 A No, sir.

21 Q Okay. And you didn't see him smoking any weed that
22 day?

23 A No, sir.

24 Q Because you were napping when y'all were on the way to
25 the plasma center and you were napping on the way back,

1 correct?

2 A Yes, sir.

3 Q So your testimony is that all of these photographs show
4 where Mr. McCrary's car is, but you're saying now that
5 wasn't where his car was when we came back, that's where his
6 car was after all of this arguing and after he had gone out
7 to the mailbox and after he had pulled back up, that's where
8 his car was, correct?

9 A Yes, sir.

10 Q Okay. So nobody moved the car after you shot and
11 killed Mr. McCreary?

12 A No, sir.

13 Q Okay. So when you got back to the house after going to
14 the grocery store and after going to -- excuse me, after
15 going to Wal-Mart -- going to Orangeburg, we'll just call it
16 going to Orangeburg. When you got back to the house, you
17 testified that he was talking smack to you, that he said to
18 you, Y'all going to make me do something to you. Where was
19 he when he said that?

20 A Following me out the front door.

21 Q Out the front door. So you had already gone into the
22 house and he says this as you're walking out the front door.
23 So he was inside the trailer when he said that, wasn't he?

24 A Yes.

25 Q And you said the last thing that you carried in, the

1 last thing that came in from his car was the case of water.
2 And you came in and you put down the case of water and he
3 got in your face and started talking trash to you; is that
4 correct?

5 A He continued to talk.

6 Q Continued, okay. So was it after you put down the case
7 of water, was that when he said y'all going to make me do
8 something to you or was it before that?

9 A I'm not really sure, either or. He just was responding
10 to me saying, like, What you going to give somebody? What
11 we want from you? What you going to give me? What you got
12 going on? You going to disrespect the house and the kids?
13 Bruh, I think you need to go. That's when he said what he
14 said and more.

15 Q Where did all of this happen?

16 A From transitioning from that car all the way up that
17 ramp to in the house, back out the house till he got in his
18 car, rolled down the window. I done stayed in the house,
19 watched him backing out. When I came out and went to my
20 truck, he still talking that trash. And the last thing he
21 said was, you know, Bitch. Throwing my hand up like go head
22 on while I was doing what I was doing with my truck. Next
23 thing I know, he back in my face, like, he's brandishing a
24 weapon under his shirt telling me I better have my MF
25 pistol. And unfortunately, those was his last words.

1 Q We'll get to that. How long from the time that he
2 started, as you put it, getting in your grill, how long did
3 that take from start to finish? And I'm not talking about
4 the backing up and all of the other stuff. How long did it
5 take from you walking up the ramp, going into the house,
6 this conversation is going on inside the house, it's already
7 started outside? How long of a conversation is this? Was
8 it a minute?

9 A No more than a minute, it happened so fast.

10 Q Five minutes?

11 A No more than a minute, it happened so fast.

12 Q The conversation, all of this back and forth and
13 carrying the water in, all of that stuff and him leaving,
14 all happened within one minute?

15 A About a minute, two minutes at most, yes, sir.

16 Q Who else was inside the house?

17 A About 10 or 11 children, three other females.

18 Q Do you know any of their names?

19 A Yes.

20 Q These are all children that were friends with your son?

21 A My son, my two grandkids and Norma's sister-in-law and
22 her kids.

23 Q Who is Norma's sister-in-law?

24 A Pip. I know her alias. Pip, Von.

25 Q Do you know Melissa Smith?

1 A Yes.

2 Q She was there, wasn't she?

3 A Yeah, she was in there.

4 Q Norma was there, wasn't she?

5 A Yeah, she was there.

6 Q How much do you weigh now?

7 A 178.

8 Q So when you go into the house and you put down the
9 water, who's in the room?

10 A Okay, you got Norma Smith was in the back room with the
11 three smallest kids.

12 Q She's in the back room?

13 A Yes.

14 Q Okay.

15 A You got Melissa, she in the front room. She's the
16 caretaker. She was doing something in the kitchen. She
17 said something to me. I just kept on in my motion because I
18 had this gorilla on my back. The kids were right here in
19 the front room --

20 Q Hold on a second, who's this gorilla on your back?

21 A Black Cat, James.

22 Q Okay.

23 A And the kids were right here in the front room. And
24 the three little rooms, they hang on my neck. I was really
25 trying to avoid them because once they see me and get me,

1 they acting up. They can't be in my vicinity. Me and
2 Norma, we know that, so she had them getting then ready,
3 putting their shoes on because it was all out. We was going
4 out the door. She was getting them ready. We knowed that.
5 And Von and her kids were right here. And I don't know
6 where Joshua Martin was. He was so skittish, I don't know
7 where he was at.

8 Q Why was he skittish?

9 A Black Cat.

10 Q So you said you walked out and he was coming out behind
11 you, Mr. McCreary was coming out behind you?

12 A Yes, sir.

13 Q But then you, also, said that you looked out the window
14 of the front door and you saw him backing up?

15 A Yes, sir, that's after I --

16 Q How did you get back inside?

17 A When we got to the bottom of the ramp, he went on to --
18 he busted a left and went back up parallel to the ramp to
19 get in the car, which is parallel to the door. It was by
20 the septic tank. Because we was pulled all the way up so we
21 could relay the groceries. Once he got in his car, I rolled
22 back in the house and closed the door. I went in the room.
23 I say, Lisa, you tell him not to even come back. He ain't
24 welcome.

25 Q Okay. So he gets into his car and closes the door?

1 A Yes.

2 Q You go into the house?

3 A Right.

4 Q And you're going to have a conversation with Norma
5 Smith, Lisa, correct? That's the same person, right?

6 A It wasn't really a conversation, I just made a
7 statement.

8 Q So you made a statement to her?

9 A Yes.

10 Q And what did she say? What did she tell you in
11 response to your question?

12 A She said, I hear y'all. What y'all got going on?
13 Where he at? And by that time, we coming up the hallway,
14 the three kids, the youngest. I looked out the diamond in
15 the trailer, I said, Oh, his ass leaving right now. I
16 grabbed my bags --

17 Q Hold on. So how long did that take? From the time you
18 -- you said he was already backing up and he was in his car
19 when you were walking up the ramp to go in the door?

20 A Yeah.

21 Q So you went in the front door. How long is it from
22 where he was parked to this mailbox?

23 A I didn't time it.

24 Q So you don't know what the distance is from where his
25 car was parked to the mailbox?

1 A I know what the distance is, but I ain't timed it.

2 Q So what is the distance, that is the question?

3 A Oh, you mean what's the distance?

4 Q The distance from where his car was parked to the
5 mailbox at the end of the driveway up by the road?

6 A I think that's about 60 feet, 50 feet.

7 Q So he's in his car, he's got his door closed. You walk
8 into the house. You go down the hall saying stuff to Ms.
9 Smith, Lisa. You're talking to her. She's talking to you.
10 You've got these kids around. And now you look out the
11 window. How long did all of that take? That's what I'm
12 saying. How long did it take from you walking in the house
13 to go --

14 A Probably about 10 or 12 seconds, I'm not sure. It's a
15 trailer, it's not no big house.

16 Q All right. So your testimony is you see him, you say,
17 He's leaving now. Then you pick up your parts and you go
18 outside. How long did that take?

19 A Probably within about 10 or 12 seconds.

20 Q And by the time you get outside and you walk down the
21 ramp and you go to your truck, he says -- basically,
22 hollering out the window at you?

23 A Yeah.

24 Q He calls you a bitch?

25 A Yes.

1 Q And you didn't have time for it?

2 A Yeah.

3 Q So it's your testimony that he then drives back
4 forward, parks his car in front of your truck and gets out
5 of his car and charges at you?

6 A (Witness nods head.)

7 Q All right. You're Mr. McCreary, that's the driver's
8 seat of the car. I'm you. I'm over by the truck. Okay?

9 A Yeah.

10 Q Am I far enough away or further?

11 A I mean, you probably where the car is.

12 Q Probably where the truck is?

13 A Probably where the car is.

14 Q No, you're the car?

15 A Yeah, you're about far enough, yes, sir.

16 Q So I'm over here. Have you got your truck door open?

17 A Yes, sir, I've got my truck door open.

18 Q Are you standing behind your truck door?

19 A Yes, sir.

20 Q Are you in the area like you would be able to sit down
21 in the driver's seat if you wanted to?

22 A I was leaning in my toolbox.

23 Q Which is behind -- you're talking about like --

24 A Toolbox on the bed of the truck.

25 Q A truck toolbox?

1 A Yeah.

2 Q So you're behind the cab. Now, explain to me just like
3 he did it, demonstrate -- come out of the car the way he
4 came at you?

5 A (Witness indicated.)

6 Q Okay.

7 A But he was moving a little faster.

8 Q He was moving a little faster?

9 A He was saying, You better have that Mother F'er pistol.

10 Q And so you said he's 5'10", 300 pounds?

11 A Yeah.

12 Q Go ahead and have a seat.

13 A (Witness complies.)

14 Q And at that point, you shot three times?

15 A No, sir. I shot once from where I was. Grabbed the
16 gun off the seat, shot once.

17 Q Then where did you go?

18 A I stepped from behind and he was ducking and grabbing,
19 like he was ducking and grabbing for whatever he had and I
20 let off two more shots.

21 Q So you stepped from behind -- you said earlier that you
22 shot over the window. So you mean you shot over your
23 driver's side window?

24 A My driver's side window.

25 Q And then you stepped from behind. So you get out from

1 behind the door?

2 A Well, I was backing up, yeah.

3 Q But he's coming at you, right?

4 A Yeah.

5 Q And you shot two more times?

6 A Well, when I shot the first time, he flexed like he was
7 grabbing. He went like this right here, like he was turning
8 and grabbing. I think the law enforcement term is blading.
9 He was blading, like he was going for his thing and I shot
10 two more times.

11 Q So you testified that you felt it was reasonable for
12 you to shoot him at that point. But let's be clear about
13 something, your basis for shooting at him is you claim you
14 thought your life was in danger, correct?

15 A Yeah, I feared for my safety, for my life.

16 Q You were not trying to eject him from your property.
17 You weren't trying to make him leave. You shot him because
18 you thought he was attacking you?

19 A I mean, the truth of the matter, I was begging him to
20 leave. I kept telling him to leave.

21 Q So you never saw a gun on him, did you?

22 A No.

23 Q Because he didn't have one, did he?

24 A I'm not sure. It appeared that he did reaching under
25 his shirt.

1 Q It was reasonable for you to shoot him after what, I
2 guess you would call a warning shot over the top of the
3 door, it was reasonable for you to shoot him. That's your
4 testimony?

5 A At the time that man attacked me after he said he was
6 going to kill me, I felt like it a necessity when he made
7 good on his threats. At that point, I felt like I needed to
8 defend myself, defend my life.

9 Q Well, let's talk about what else you felt like you
10 needed to do.

11 A Okay.

12 Q You ran away, didn't you?

13 A I walked in the back, crossed the ditch and I sit out
14 there and I smoked me some cigarettes until they brought
15 them big dogs over there. Then I raised my hands and came
16 on out.

17 Q Well, that's not all you did?

18 A I could have ran. I could have jumped in his car and
19 ran and go away. I could have went to any one of the
20 neighbors or somebody and paid them to take me somewhere.

21 Q Well, let's talk about what you didn't do. You didn't
22 call the police, did you?

23 A No, sir.

24 Q You had a phone, though, didn't you?

25 A No, my phone was dead. It was broken.

1 Q Your phone was dead and broken?

2 A Yes, sir. You can ask the SLED agents when they got it
3 from me, yes, sir.

4 Q When did you call Mr. Bamberg?

5 A I never called Mr. Bamberg.

6 Q You didn't call anybody that day after the shooting and
7 tell them that you shot somebody, but it was in
8 self-defense?

9 A Willie Bamberg?

10 Q Willie Bamberg.

11 A Absolutely not.

12 Q So you don't know why Willie Bamberg --

13 A When I had my phone, I had four percent. I had enough
14 to make two calls. You can look in my call log. I called
15 my brother and I called my sister. I never called Mr.
16 Bamberg.

17 Q You didn't call 911, did you?

18 A I never called Mr. Bamberg.

19 Q Did you call 911?

20 A Somebody else called 911. I never called Mr. Willie
21 Bamberg.

22 Q Okay. And you walked across the ravine and you sat
23 down in the soybean field and you started smoking cigarettes
24 and you waited until the dog came?

25 A Yes, sir. I watched them process the scene. They

1 brought two dogs and I came on out.

2 Q Where in this process did you get rid of the gun?

3 A Well, that's actually the reason I did walk away
4 because I knew I wasn't supposed to have it.

5 Q That didn't answer the question. When did you get rid
6 of the gun?

7 A When I walked away.

8 Q What did you do with the gun?

9 A It's gone. I got rid of it.

10 Q You had this gun for protection, correct?

11 A Yes, sir.

12 Q And you had it because you were going through a lot of
13 stuff?

14 A I had it because I was protecting myself in Denmark.

15 Q You testified you were going through a lot of stuff.
16 What kind of stuff were you going through that led to
17 somebody shooting up your house and your truck?

18 A Well, I don't know the reasoning to this day. The only
19 thing I can say is I had my stuff together. I was always
20 riding, always had me and my family with matching outfits.
21 And you got a lot of weak people drinking and drugging.
22 That's the only answer I can give you.

23 Q So what gang was it that was after you?

24 A They wasn't after me, they was just hating, trying to
25 get a quick lick.

1 Q What gang was it?

2 A I ain't even sure. Folk Nation.

3 Q You aren't sure what gang it was?

4 A They all mixed up now. It's Crips and Folk and all
5 that.

6 Q Well, if you weren't sure what gang it was, how did you
7 know who to go to to talk to the person that was in charge
8 of those boys?

9 A I never got around to it. I said I was trying to go to
10 somebody to regulate it and the only response I got was,
11 like, normally, yeah, I ain't from here, I get treated like
12 I ain't from here. I didn't get no answer. They hate me.
13 They hate Kurtino because I'm from Columbia. And I guess
14 because I got good features, my shoes tight, my trucks, my
15 cars. That's the only reason I can give you because I
16 believe that's the truth. I'm a working man. I don't play
17 the block. I ain't messing with none of these females. I
18 ain't serving. I be at the house.

19 Q So why did they shoot up your house and your truck?
20 Because they just don't like you?

21 A The truth of the matter is --

22 Q Well, that's what we're asking for.

23 A -- everything got dangerous when they bought the Molly.
24 When they brought that Molly around there, them boys went
25 fool. They didn't care -- it could be their school teacher,

1 their grandmama, they tried to take something from them. So
2 that's the God's honest truth. When they came with the
3 Molly drug, it got dangerous.

4 Q So they were on drugs and they were just hurting
5 people?

6 A I can't really testify to that, but that's what --

7 Q That's what you just said.

8 A That's what -- I don't know what they doing, but that's
9 what -- check the police blotters.

10 Q Well, let's talk about that. Did you report the truck
11 and house getting shot up?

12 A Absolutely. It's on the police blotters. And it's on
13 the police blotters how James can beat people up and the
14 people had to come -- he threatening the officers in Bamberg
15 and Denmark. It's all in police reports, police blotters.

16 Q So you told the police that this was gang activity and
17 these people were shooting at you?

18 A They came and took pictures and they asked me what it
19 was and I was like, I don't really know. I ain't know. All
20 the message I got behind that was I had five minutes to get
21 the F out the neighborhood. I should have left them. I
22 should have tucked my tail then.

23 Q You said later on in your testimony that you ran away
24 from this man, that you went in the back and avoided him?

25 A Yes, sir.

1 Q If you were so scared of this guy, if you were so
2 worried about this guy and you see out the window him
3 backing up, why didn't you just wait until he left?

4 A I didn't expect him to stop. He was at the road. It
5 was like he was lurking for it.

6 Q He was at the road?

7 A He was at the road about to go, man. He should have
8 kept going.

9 Q Whenever you looked out the window, he was at the road?

10 A He was at the road about to turn and go on the main
11 road.

12 Q And he came charging out of his car to you because,
13 according to your testimony, when he called you a bitch, you
14 just waved him off? So that's what your testimony is of why
15 he got so mad that he pulled back up and jumped out of his
16 car and started running towards you, correct?

17 A That's the truth, yes, sir.

18 Q You never did answer where you put the gun?

19 A Well, we need in a bunch of farm land. You would need
20 an excavator to get it. It's like wells and holes, it's
21 just gone. I discarded it.

22 Q Did you tell the police where you left the gun?

23 A I didn't even talk to them after they told me they was
24 charging me with murder and I'm at my own house.

25 Q Did you dig a hole and put the gun in it?

1 A No, sir.

2 Q Did you bury the gun?

3 A No, sir.

4 Q So any of those ten kids that were at the trailer could
5 be walking through that field and find that gun?

6 A No, sir, absolutely not. I wouldn't even keep it in
7 the house because we got kids. I get upset if somebody
8 leave a garden tool and we got toddlers.

9 Q Did you get the gun after or before your truck and
10 house got shot up?

11 A I can't remember that.

12 Q Where did you get the gun?

13 A Off the street somewhere.

14 Q Who did you buy it from?

15 A I wouldn't give you nothing but his street name. I
16 don't see where that's relevant, sir.

17 Q Well, that's the good part, you don't need to see the
18 relevance.

19 A Okay.

20 Q So when all of this conversation is going on between
21 you and Mr. McCreary, there was somebody there to hear all
22 of this stuff, correct?

23 A Everybody heard it. And the only thing I ask for is
24 the truth.

25 Q Since your attorney brought it up, what were the facts

1 of the case involving the armed robbery and burglary first
2 and kidnapping? Did you have a gun then?

3 A I was about 17. I didn't have a care in the world.
4 Somebody had just killed my mama. I didn't care if I lived
5 or died, so yeah, I committed those crimes almost 20 years
6 ago, sir.

7 Q That's already been established, I asked you what
8 happened?

9 A That's the best answer I'm going to give you right now.
10 I paid my debt to society for those crimes already.

11 Q You went into somebody's house and you took stuff from
12 them at gunpoint, didn't you?

13 A (No response.)

14 Q It's a yes or no question?

15 A I paid my debt to society for those crimes when I was
16 young guy, sir.

17 THE COURT: Mr. Weathersbee?

18 THE WITNESS: Yes, ma'am.

19 THE COURT: The solicitor is asking you a question, you
20 have to answer.

21 THE WITNESS: Okay. I apologize.

22 Well, they compound the charges. They stacked the
23 charges. It was armed robbery, they stacked the charges.
24 So yes, sir.

25 BY MR. MILLER:

1 Q Who were you robbing?

2 A I don't know, some dope boy, gang member.

3 Q So you were stealing dope from him and money,
4 presumably?

5 A (Witness nods.)

6 Q Is that a yes?

7 A Yes, sir.

8 MR. MILLER: Your Honor, I don't have any further
9 questions.

10 THE COURT: Thank you, sir.

11 Mr. Koger, any redirect?

12 MR. KOGER: Briefly.

13 REDIRECT EXAMINATION

14 BY MR. KOGER:

15 Q Mr. McCreary was at your house on August 7th, 2023,
16 correct?

17 A Yes, sir.

18 Q Mr. McCreary got out of his car on August 7th, 2023,
19 correct?

20 A Absolutely, yes.

21 Q On August 7th, 2023, Mr. McCreary approached you at
22 your truck, correct?

23 A Yes, sir, aggressively.

24 Q And when he approached you at your truck on August 7th,
25 2023, what was going through your mind?

1 A I was in fear for my life that I was going to get hit
2 or shot.

3 Q Did you create the situation?

4 A No, sir. I avoided it. I tried to.

5 Q And did you think you acted proper?

6 A Yes, I did.

7 MR. KOGER: Yes, I did, at my home.

8 THE COURT: Mr. Weathersbee, you may return to the
9 table with your attorney.

10 THE WITNESS: Yes, ma'am.

11 THE COURT: Mr. Koger, anything else?

12 MR. KOGER: Yes, I call Ms. Norma Smith. She's
13 visually impaired.

14 THE COURT: If she could have somebody come help her
15 get in a seat, that would be good.

16 MR. KOGER: Okay.

17 THE CLERK: Would you raise your right hand?

18 NORMA SMITH,

19 after being duly sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MR. KOGER:

22 Q Ms. Smith, how long have you been a resident of Bamberg
23 County?

24 A All my life.

25 Q And where did you go to school?

- 1 A Denmark.
- 2 Q Did you finish high school at Denmark?
- 3 A Yes.
- 4 Q And after you finished school in Denmark, where did you
5 go next?
- 6 A OC Tech.
- 7 Q What was your course of study at OC Tech?
- 8 A Basic mechanical trades.
- 9 Q Did you finish OC Tech?
- 10 A Yes.
- 11 Q What year did you finish OC Tech?
- 12 A Mmm.
- 13 Q I'm not asking your age, just when did you finish OC
14 Tech?
- 15 A Years ago. I don't remember exactly.
- 16 Q Years ago, okay. Do you have any children?
- 17 A Yes.
- 18 Q How many children do you have?
- 19 A Four.
- 20 Q Okay. What are their ages?
- 21 A Soon to be 34, 29, 28, 23.
- 22 Q Okay. All right. And what was your line of work?
- 23 A Nursing home. I did CNA work.
- 24 Q And how long before you visually became impaired, how
25 long had you did CNA work?

1 A About ten years.

2 Q And you mind me asking how did you become visually
3 impaired?

4 A I contracted meningitis.

5 Q And how long have you been visually impaired?

6 A Fifteen years.

7 Q How long have you known Mr. Weathersbee?

8 A Just as long as we been together.

9 Q Okay. And how long is that?

10 A Almost three years.

11 Q Almost three years.

12 A Well, it's four now.

13 Q How did you meet Mr. Weathersbee?

14 A He was a mutual friend to my brother.

15 Q Okay. And when did y'all start living together?

16 A July 2021.

17 Q Okay. All right. Do you recall the events of August
18 7th, 2023?

19 A Yes.

20 Q And what do you recall about that day?

21 A Specifically, what you mean?

22 Q On that morning, do you recall Mr. Weathersbee going to
23 Orangeburg with Mr. McCreary and Mr. Martin?

24 A Yes.

25 Q And do you recall the purpose or the reason why Mr.

1 Weathersbee was going to Orangeburg on that particular day?

2 A Yes.

3 Q What was that reason?

4 A He was going to pick up food and stuff for the cookout.

5 Q And during the time they was in Orangeburg, I think the
6 testimony was from 10:00 to 3:00, did Mr. Weathersbee call
7 you in between?

8 A Yes, he always do.

9 Q And do you remember the conversation?

10 A Yes.

11 Q And what time did Mr. Weathersbee arrive back, around
12 three o'clock?

13 A Approximately. I wasn't particular sure.

14 Q And, again, you use your hearing more?

15 A Yes.

16 Q What did you hear after the three of them got back
17 home?

18 A You can hear the disruption when they entered the ramp.
19 It was Mr. McCreary being belligerent and Mr. Weathersbee
20 was asking him to leave.

21 Q Now, you said when they got to the ramp. When you
22 heard this disruption, where were you located?

23 A I was in my bedroom. The double windows are at the end
24 of the ramp.

25 Q So in close proximity with the ramp, correct?

1 A Yes.

2 Q And you said disruption, did you know exactly what was
3 said?

4 A I know James was cussing. I know he was saying punk
5 boy and bitch boy and Kurtino asked him to leave.

6 Q All right. And if you could tell us what was Mr.
7 Weathersbee's response?

8 A He asked him to leave.

9 Q Okay.

10 A He just asked him to go.

11 Q Okay. And at this time, you were still in the bedroom?

12 A Yes.

13 Q Do you know what happened next?

14 A I remember him coming in. I remember him coming back
15 and talking to me. I remember him saying what he was going
16 to do with the truck. And I told him well, you know the
17 routine. The kids are on the way. I was putting the last
18 baby's shoes on. I don't remember which one it was.

19 Q And just to clarify for the Court, when you say, you
20 mean Mr. Weathersbee?

21 A Yes.

22 Q And what happened next?

23 A I was getting the kids prepared to go out. He was
24 coming up. I could hear the car stop. I could hear
25 McCreary says you better have something. And I heard

1 Kurtino say no or something to that effect. And then I
2 heard gunshots.

3 Q And what was your response to hearing gunshots?

4 A I didn't know what to think. I didn't know what was
5 happening.

6 Q After you heard the gunshots, what happened next? Did
7 anyone approach you?

8 A I went up the hall and I went outside. McCreary was on
9 the ground. I came back in and I talked to Weathersbee at
10 the back door. He didn't want handcuffs to be put on him in
11 front of Casey, his son. That's why he went in the back of
12 the trench.

13 Q Now, you say that Mr. McCreary was on the ground. Who
14 told you that Mr. McCreary was on the ground?

15 A The commotion.

16 Q The commotion?

17 A It was my sister-in-law and Pip.

18 Q Now, just to back up a little bit, what kind of
19 relationship did you have with Mr. McCreary?

20 A We was fine.

21 Q What was his usual behavior?

22 A I mean, he can be arrogant sometimes, but for the most
23 part, he was all right. He just had his way about what he
24 wanted and how he wanted things to be done.

25 Q What relation are you to Mr. McCreary?

1 A We call each other brother and sister. My baby sister
2 is his sister -- I mean, her brother.

3 Q Okay. All right. Was his behavior different on that
4 day than his behaviors in the past around your house?

5 A Yes.

6 Q And how often did he visit in your home?

7 A All the time.

8 Q So after you heard the commotion, what happened next?

9 A I really wanted to know what was going on. I kind of
10 already knew James done got out of place with us. I already
11 heard the things that he was saying. And I could tell by
12 the response of Mr. Weathersbee, he was asking him to leave.
13 He asked me to ask him to leave and tell him don't come
14 back.

15 Q Now, do you recall about soon after you heard the
16 commotion and soon after Mr. Weathersbee left, were you
17 approached by law enforcement?

18 A Was I first --

19 Q Between the time that Mr. Weathersbee left, how much
20 time lapsed between that and when you were first approached
21 by law enforcement about what happened?

22 A It always take them a little while to get there because
23 I'm in the country. I'm saying maybe -- I'm not really
24 sure. It was a little minute.

25 Q A little minute, okay. And what did law enforcement

1 ask of you and what was your response?

2 A They was asking what happened. I couldn't give them
3 the initial -- what brought on what was going on. I did
4 tell them the conversation I heard, you know, what I heard.
5 That was it. They just asked what happened, what I knew.
6 One of the investigators was, like he -- what I said didn't
7 really matter because I couldn't see it.

8 Q Okay. Do you recall how many members of law
9 enforcement you spoke with on that particular day?

10 A Maybe two.

11 Q Maybe two?

12 A The initial was -- I don't know that man's name. Maybe
13 two, year.

14 Q And do you recall how long those conversations took?

15 A It was short and brief.

16 Q And after you spoke with those two law enforcement
17 officers, did you speak with anyone else about the case?

18 A David Hayes and Ryan.

19 Q And those are Mr. Weathersbee's former attorneys?

20 A Yes.

21 Q Okay.

22 A No other law enforcement really contact me. Now, when
23 they was looking for my sister-in-law for the case, it was
24 Coach doing it. I didn't like the way he handled me.

25 Q Let me ask you this and this will be my last question,

1 again, what do you recall about Mr. McCreary on that
2 particular day with his communication towards Mr.
3 Weathersbee?

4 A What's your question? Was he belligerent and
5 aggressive?

6 Q What was his demeanor? What was Mr. McCreary's
7 demeanor on that particular day?

8 A It was different. He was a little more aggressive. He
9 was out of the ordinary. He wasn't himself.

10 MR. KOGER: Thank you. I have no further questions.

11 THE COURT: Mr. Miller.

12 MR. MILLER: Thank you, Your Honor.

13 CROSS-EXAMINATION

14 BY MR. MILLER:

15 Q Ms. Smith, what is your telephone number?

16 A What's the relevance of it.

17 Q I get to ask the questions. What is your telephone
18 number?

19 THE DEFENDANT: Just tell him.

20 THE WITNESS: (803) [REDACTED].

21 BY MR. MILLER:

22 Q Now, the Defendant has been at the Barnwell [sic]
23 County jail for some time, hasn't he?

24 A Yes.

25 Q Do you know about how long he's been there?

1 A Over a year.

2 Q Okay. And you've continued to communicate with the
3 Defendant while he's been in jail, haven't you?

4 A I'm supposed to. That's my significant other.

5 Q That's what?

6 A He's my significant other.

7 Q He's your significant other. Would it surprise you if
8 he had called you on the phone 381 times since he has been
9 in the Barnwell County jail?

10 A No, it wouldn't.

11 Q Okay. Because he's your significant other?

12 A Right.

13 Q The way you point that out, did you feel like you had
14 an obligation to talk to him?

15 A No, I feel like I'm going to answer the phone for him.

16 Q Okay. Do you know whose number is (803) [REDACTED]-7442?

17 A I do not.

18 Q Okay. So on the day of this incident, you were
19 interviewed by SLED, correct?

20 A Correct.

21 Q And during that interview, you said when they returned
22 home, Martin was unloading the groceries while McCreary and
23 Weathersbee were outside. How did you know that?

24 A I'm blind, I'm not deaf.

25 Q Okay. Well, then it says that you told SLED that

1 Weathersbee came in the house and went to the bedroom where
2 you were. So you and Mr. Weathersbee were in the bedroom
3 together. And Mr. Weathersbee said something to you, but
4 you didn't hear what he was saying?

5 A That was when he walked in. He walked in the room and
6 I didn't hear what he said then.

7 Q Okay.

8 A And we had a conversation and he was telling me he was
9 going outside to work on the truck. He addressed the kids.
10 That was, also, what I said to them.

11 Q And you said you didn't know if he took anything out of
12 the room or not?

13 A No, I told them that he got the parts and the tools.
14 It was two wrenches on the rack. I know that's what was up
15 there because I placed them there.

16 Q There was two what?

17 A Wrenches.

18 Q Two wrenches?

19 A Tools.

20 Q Okay. Well, what about the parts to fix the truck,
21 were those in the bedroom, too?

22 A No, they was outside.

23 Q Okay. And then according to your statement to SLED,
24 when he went back outside, you heard them arguing and then
25 you heard a gunshot and then you said you heard three more

1 shots; is that correct?

2 A I don't recall giving how many.

3 Q And then Melissa Smith, who is your sister-in-law,
4 correct?

5 A Correct.

6 Q Melissa Smith said James is on the ground. And she
7 went to try to give medical care to James, correct?

8 A She applied pressure to the wounds.

9 Q So you told SLED that Mr. Weathersbee and Mr. McCreary
10 had several heated conversations in the past, but they never
11 got physical?

12 A I didn't say heated. I said they do what home boys do.
13 They have little spats, but it's never gotten this
14 aggressive.

15 Q What made this time different?

16 A I don't know. I'm not in Mr. Weathersbee's head or
17 McCrory's.

18 Q So did you ever go outside of the trailer at any point
19 during this entire situation?

20 A Yes.

21 Q When?

22 A After the gunshots.

23 Q How did you get outside?

24 A I know my house, I can walk.

25 Q So do you walk outside down the ramp?

- 1 A Yes.
- 2 Q Okay. And where did you go?
- 3 A To the bottom of the ramp.
- 4 Q And at that point, who was out there?
- 5 A I can't say all that. I do remember Melissa was there.
- 6 Q I'm sorry, you do remember who?
- 7 A My sister-in-law.
- 8 Q Okay. You referred to somebody named Pip?
- 9 A Yes.
- 10 Q Who is that?
- 11 A That's my baby girl's aunt.
- 12 Q What's her real name?
- 13 A Von.
- 14 Q Von?
- 15 A Yes.
- 16 Q What's her last name?
- 17 A Hightower.
- 18 Q Von Hightower?
- 19 A Yes.
- 20 Q When did Von Hightower leave?
- 21 A I don't understand the question.
- 22 Q When did she leave your house that day? She was in the
- 23 house?
- 24 A I don't know what time.
- 25 Q Was it before the police got there?

1 A They was there.

2 MR. MILLER: I don't have any further questions of this
3 witness, Your Honor.

4 THE COURT: Anything further, Mr. Koger?

5 MR. KOGER: No further questions from Ms. Smith.

6 THE COURT: All right. Mr. Koger, anything else?

7 MR. KOGER: I have one more witness to call.

8 THE CLERK: Please raise your right hand.

9 MELISSA SMITH,

10 after being duly sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY MR. KOGER:

13 Q How are you doing?

14 A Well, how are you?

15 Q I'm doing okay.

16 A Good.

17 Q How long have you been a resident of Bamberg County?

18 A Well, all my life, basically, till about 20 years ago.

19 Q Okay. And where did you move to?

20 A I moved to Barnwell County, then after that, I moved to
21 Greenwood County. Now, I'm in Blackville.

22 Q Okay. Where did you go to school?

23 A I graduated Denmark-Olar High in 1994.

24 Q And do you have any children?

25 A Yes.

1 Q How many children do you have?

2 A Four.

3 Q And what are their ages?

4 A 29, 26 -- 29, 26, how old is Jayden, I'm sorry, y'all,
5 23 and 21.

6 Q What is your line of work?

7 A I do home healthcare. I take care of my sister-in-law
8 and I work at the Caribbean in Barnwell.

9 Q Okay. And how long have you been doing home health?

10 A About ten years.

11 Q And how long have you been looking after Ms. Norma
12 Smith or Lisa?

13 A Doing the home healthcare?

14 Q Yes.

15 A About six years, but I always been there, basically,
16 all my life.

17 Q And you were married to Mr. McCreary at one time?

18 A Me?

19 Q Yes.

20 A Yes, sir.

21 Q And how long were you married?

22 A A year.

23 Q A year?

24 A Yes, sir.

25 Q Do you recall the events of August 7th, 2023?

1 A Yes, sir.

2 Q Okay. What time were you at Ms. Smith's house that
3 day?

4 A I got there probably about 1:00, but the incident took
5 place I'm going to say 3:00 or a little after.

6 Q Okay. And when you arrived at 1:00, what were you
7 doing there at one o'clock?

8 A Just the typical cleaning.

9 Q And when do you recall Mr. McCreary, Mr. Weathersbee
10 and Mr. Martin arriving?

11 A After 3:00.

12 Q After 3:00?

13 A Yes, sir.

14 Q Tell me, what transpired when the three of them
15 arrived? What was the first thing you noticed, if anything?

16 A Do I say a curse word in here?

17 Q Yes, you can.

18 A Well, Mr. Weathersbee walked by me real fast and I
19 said, Well, how the hell are you? And he put the water
20 bottles down. And Mr. McCreary was walking behind him
21 talking trash and Kurtino walked back out the door. Then
22 James walked back out the door --

23 Q Let me stop you, you said talking trash. Talking trash
24 meaning?

25 A I don't remember what he said, I ain't gonna lie. I

1 know he was talking. Kurtino wasn't saying nothing.

2 Q Was he joking or was he serious?

3 A Well, I thought it was because I was like, nobody don't
4 hear that? I was like, I'm about to be nosy. So I peeped
5 my head out the door and I saw James opening his door. I
6 was like, James, come here --

7 Q Okay, before you get to that part, you say that he made
8 a comment to Mr. Weathersbee?

9 A Yes, sir.

10 Q He was carrying some water or something?

11 A Yes, sir.

12 Q Okay. I think you testified Mr. McCreary was talking
13 trash?

14 A Yes, sir.

15 Q What happened next as far as inside the house with Mr.
16 McCreary and Mr. Weathersbee?

17 A They walked back out the door.

18 Q Who walked out first?

19 A Kurtino.

20 Q So he walked out first?

21 A Uh-huh.

22 Q And Mr. McCreary walked behind him?

23 A Yes, sir.

24 Q When they walked back out the door, was there any
25 talking going on at that particular point?

1 A Well, once they walked back out the door, I was still
2 in the house. I'm just looking around, like, nobody don't
3 see this? They arguing.

4 Q So you was kind of taken aback about the arguing. You
5 say arguing, they were going back and forth?

6 A No. I just used the term they arguing, but Kurtino
7 didn't say a thing. He didn't say a thing.

8 Q So it was solely Mr. McCreary?

9 A Yeah.

10 Q So you saw both -- did you see both of them go out the
11 door?

12 A Yes, sir.

13 Q Okay. And, again, Mr. Weathersbee went out first?

14 A Yes, sir.

15 Q How far was Mr. McCreary behind Mr. Weathersbee?

16 A He was just like walking right behind him.

17 Q What happened next?

18 A I just said, You see they arguing. But I don't think
19 nobody is paying me attention, so me being nosy, I was like,
20 I'm going to stick my head out the door. So when I stuck my
21 head out the door, I saw Mr. McCreary getting out his car.
22 And I was like, James, come here.

23 Q Okay. Now, you said you saw Mr. McCreary getting out
24 of his car. Do you know what particular location that car
25 was at when he got out of his car?

1 A It was facing frontward.

2 Q Was it near the road?

3 A No, sir.

4 Q It was close to --

5 A The trailer.

6 Q The trailer?

7 A Yes, sir.

8 Q What happened next?

9 A Well, when I looked, I said, James, come here. He
10 didn't say nothing. I said, James, come here. And then I
11 heard a gunshot and I saw him falling, so I duck. I was
12 about to run out there, but I was -- excuse me, y'all. I
13 was thinking about my husband, so I said I better not go out
14 there, but then I said, that's a life. So I went down and
15 he was struggling trying to say something, so I got down on
16 my knees and put his head. He was trying to tell me
17 something, but the blood was coming through his shirt and
18 his nose.

19 Q Let's back up just a little bit. You just testified
20 you saw him got out the car?

21 A Yes, sir.

22 Q And went towards --

23 A Like, it's a truck right there.

24 Q The red truck?

25 A It was like he was walking.

1 Q Okay.

2 A But when I called his name the second time, I actually
3 saw him drop. I heard the gunshots and he dropped. But I
4 duck and I hesitate to go out there. But I was like that's
5 a life.

6 Q Why did you call him when he was walking towards the
7 truck?

8 A Because like I said, I heard him fussing when he was in
9 the house, so I'm thinking he going to fuss some more. So I
10 was like, James, come here. But he ain't came.

11 Q Was he -- did you hear anything when he got out of the
12 truck? Was he fussing when he got out of the truck?

13 A No, honestly, I just -- when I went to be nosy, I saw
14 him getting out of his car. I called his name, James, come
15 here.

16 Q Okay. And can you -- do you recall how he was going
17 towards the truck?

18 A Just walking. Well, he didn't take that many steps,
19 but, you know, he got out and I called his name.

20 Q And you testified that you did not see a gun, correct?

21 A No, sir.

22 Q But you don't know what was in his pocket, correct?

23 A No, sir.

24 Q You don't know whether he had a gun in his waistband or
25 anything?

1 A No, sir.

2 Q Now, you testified that you attempted to render aid to
3 him?

4 A Yes, sir.

5 Q What happened next?

6 A Like I said, I dropped to my knees and put his head up
7 and turned him to the side a little bit. I just kept
8 telling him to breathe.

9 Q Okay. How soon did law enforcement arrive after that
10 happened?

11 A I called 911.

12 Q All right. And when law enforcement arrived, did they
13 speak with you?

14 A Yes.

15 Q Do you recall how many members of law enforcement you
16 spoke to?

17 A Well, I know I spoke to two. I remember an Officer
18 Shawn and the other guy, I don't know his name.

19 Q To back up just a little bit, after you experienced
20 that, did you speak to someone or anyone back in the home?

21 A Yes, sir.

22 Q And who did you speak to?

23 A I went in the house and I asked Lisa what happened, but
24 she said she didn't know. And the guy named Red, I said
25 somebody should know something, and he said, No. I said

1 something happened, but nobody knew.

2 Q Just one more question, I know it's very difficult for
3 you, Ms. Smith. You didn't actually see the shooting,
4 correct?

5 A No.

6 MR. KOGER: Your Honor, beg the Court's indulgence one
7 moment.

8 (Pause.)

9 BY MR. KOGER:

10 Q One other thing, when you was attempting to render aid
11 to Mr. McCreary, did you tell Mr. McCreary anything about
12 what had just transpired?

13 A No, he wasn't able to talk. He wasn't able to talk.

14 Q Did you ask him or tell him anything?

15 A No, I just kept telling him to breathe, just breathe.

16 MR. KOGER: I have no further questions of this
17 witness, Your Honor.

18 CROSS-EXAMINATION

19 BY MR. MILLER:

20 Q Good morning, Ms. Smith.

21 A Good morning, sir. How are you?

22 Q I'm okay.

23 A That's good.

24 Q So just for some clarification, you said that you
25 talked to Shawn, was that Shawn Murray with SLED?

1 A Yes, sir.

2 Q Okay. So you testified that when Kurtino came into the
3 house and you spoke to Kurtino, he came into the house
4 carrying a case of water. He put the water down, correct?

5 A Yes, sir.

6 Q And you said well, hello to you, too?

7 A Yes, sir.

8 Q I'm paraphrasing that, but you spoke to him?

9 A Yes, sir.

10 Q And McCreary was behind him?

11 A Yes, sir.

12 Q And he's bumping his gums? He's just sitting there
13 talking?

14 A Yes, sir.

15 Q And Mr. Weathersbee didn't say a word?

16 A No, sir.

17 Q And he turned around and he walked out the front door?

18 A Yes, sir.

19 Q And McCreary went behind him?

20 A Yes, sir.

21 Q And because they were arguing, like a lot of people,
22 me, too, you were like I wonder what's going on?

23 A Right.

24 Q So you go to the door and you look out the door and
25 what did you see? Where was everybody when you looked out

1 the door?

2 A Mr. McCreary was opening his door.

3 Q Like, was he standing on the outside opening his door
4 or was he already in the car getting back out?

5 A He was in his car getting out.

6 Q I want to show you what's been introduced as
7 Defendant's Exhibit No. 3 -- excuse me, let's go to
8 Defendant's Exhibit No. 2. This has been entered. It's a
9 picture of the house, correct?

10 A Yes, sir.

11 Q And this silver car is Mr. McCrary's car?

12 A Yes, sir.

13 Q And this red truck is Mr. Weathersbee's truck, correct?

14 A Yes, sir.

15 Q So your testimony is that you're standing in the
16 doorway up here at the top of the ramp, correct?

17 A Yes, sir.

18 Q So you could see Mr. McCrary's car?

19 A That's correct.

20 Q But you couldn't see Mr. Weathersbee, could you?

21 A No, sir.

22 Q Could you even see past the very front of the truck?

23 A No, sir.

24 Q Okay. And Mr. McCreary, according to your testimony,
25 was getting out of his car at that point in time?

1 A Yes, sir.

2 Q So if we can just step back a minute. Mr. Weathersbee
3 puts down this case of water and he turns around and walks
4 out the door?

5 A Yes, sir.

6 Q McCreary is following him. How long do you think it
7 was after that before you looked out the door?

8 A About a minute.

9 Q So you looked out the door and you see -- did you see
10 McCreary's car actually move?

11 A No, sir.

12 Q Do you -- and I don't know if you do or not, but do you
13 know where Mr. McCreary parked his car when they pulled up?

14 A No, sir.

15 Q So the car is stopped and Mr. McCreary gets out. Did
16 you hear him say to Mr. Weathersbee anything about you
17 better have a pistol?

18 A No, sir.

19 Q Was Mr. McCreary saying anything to Weathersbee at that
20 point in time or was he just getting out of his car and
21 walking over?

22 A I just saw him getting out of his car and walking.

23 Q Did he have anything in his hand?

24 A No, sir.

25 Q And then you started hearing gunshots, but you don't

1 know where those gunshots are coming from?

2 A Right.

3 Q So you duck?

4 A Right.

5 Q Until the gunshots stopped?

6 A Right.

7 Q And then you look back out the door and Mr. McCreary is
8 on the ground, correct?

9 A Correct.

10 Q So you ran to him -- just for clarity, Mr. McCreary is
11 your ex-husband, correct?

12 A Right.

13 Q But y'all are all -- with the exception of Mr.
14 Weathersbee, y'all are all kind of related to each other,
15 Ms. Smith and you and Mr. McCreary?

16 A Yes, correct.

17 Q So you go out there and you're trying to help him. Did
18 you stay with him until EMS got there?

19 A I did.

20 Q Did you see a gun anywhere around him?

21 A I didn't.

22 Q You didn't pat him down looking for a gun, did you?

23 A No.

24 Q But you didn't take a gun from him either, did you?

25 A No, sir.

1 MR. MILLER: Ms. Smith, that's all the questions that I
2 have for you. Thank you.

3 THE WITNESS: You're welcome, sir.

4 THE COURT: Mr. Koger, anything else?

5 MR. KOGER: No further questions.

6 THE COURT: You may be excused.

7 MR. KOGER: That's my case, Your Honor.

8 THE COURT: Yes, sir.

9 Mr. Miller?

10 MR. MILLER: Thank you, Your Honor. The State would
11 call Special Agent Kade Steppe from SLED.

12 THE COURT: I'm sorry, can we take a brief break before
13 you get started?

14 MR. MILLER: Yes, ma'am.

15 (WHEREUPON, a short break was taken.)

16 THE COURT: Mr. Miller.

17 MR. MILLER: Thank you, Your Honor.

18 The State calls Special Agent Kade Steppe with the
19 South Carolina Law Enforcement Division.

20 THE COURT: Can you state his name again, please?

21 MR. MILLER: It's Kade --

22 THE WITNESS: Kade Steppe, last name Steppe,
23 S-T-E-P-P-E.

24 THE COURT: Thank you.

25 THE CLERK: Raise your right hand, please.

1 KADE STEPPE,
2 after being duly sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY MR. MILLER:

5 Q Agent Steppe, who are you employed by?

6 A The South Carolina Law Enforcement Division.

7 Q Is that more commonly known as SLED?

8 A Yes, sir.

9 Q How long have you been with SLED?

10 A I've been employed by SLED since 2016. I've been in
11 the role I am now since 2022, I believe.

12 Q And did you work anywhere before you worked for SLED?

13 A I did some part-time jobs, not official full-time jobs.

14 Q This is your first-time law enforcement job?

15 A Yes, sir.

16 Q Okay. And did you go to school anywhere?

17 A I went to Swansea High School and I went to the
18 University of South Carolina.

19 Q And what did you get a degree in?

20 A Criminal justice.

21 Q And you, actually, come from a SLED background,
22 correct?

23 A Yes, sir, my father worked at SLED.

24 Q Were you involved in the investigation of the death of
25 Mr. James McCreary back in August of 2023?

1 A Yes, sir, I was the lead case agent.

2 Q And as the lead case agent, were you -- who was helping
3 you? Let's get to that first.

4 A The night of the incident, I had Special Agent Jeb Fay
5 was out there with me, Lieutenant Charles Gent, Lieutenant
6 Mitchell Altman, Special Agent Shawn Murray.

7 Q So did you, along with them, conduct the investigation
8 in this case?

9 A Yes, sir.

10 Q I want to talk to you a little bit about the scene.
11 When you arrived on the scene, do you recall who was present
12 at the house?

13 A I know I saw Ms. Norma Smith, Ms. Melissa Smith,
14 Bamberg County Sheriff's Office was on the scene, medical
15 service was on the scene, South Carolina Department of
16 Natural Resources was there. And that's all I recall.

17 Q How about Mr. Martin, did you see him there?

18 A Yes, sir.

19 Q And did you get statements from Mr. Martin and both Ms.
20 Smiths?

21 A Yes, sir, I conducted an interview with Mr. Martin.

22 Q And subsequent to that, did you review body-worn camera
23 footage of the officers that had arrived on scene and spoken
24 to the witnesses?

25 A Yes, sir, I did.

1 Q And at any point in time, did anyone tell you there was
2 an individual named Pip or Von Hightower who was present
3 during this incident?

4 A Not that I can recall.

5 Q And no interview was done of Pip or Von Hightower?

6 A No, sir.

7 Q And nobody by that name was on any of the body-worn
8 camera videos from any of the officers that showed up?

9 A Not that I can recall.

10 Q But you did interview Ms. Smith, Ms. Norma Smith, and
11 you did interview Ms. Melissa Smith, correct?

12 A That's correct.

13 Q Now, once an investigation is started, how does that
14 usually start with SLED?

15 A We're requested by the local law enforcement. If it's
16 a critical incident, being an officer-involved shooting, a
17 homicide or something of that nature, we'll come out that
18 night, and that's when we'll start the investigation as soon
19 as the incident occurs.

20 Q So this happened around 3:00, 3:30 in the afternoon, so
21 this would have been -- you would have gotten contacted that
22 day?

23 A Yes, sir, I was contacted that afternoon.

24 Q And then after you -- how do y'all, SLED, in
25 particular, how does SLED go about processing the crime

1 scene? Do you do it yourself?

2 A We have a unit that processes the crime scene, yes,
3 sir.

4 Q Okay. So that crime scene unit is with SLED, but it's
5 not the region agent?

6 A That's correct. It's in a different department.
7 They're based out of Columbia.

8 Q So was crime scene called to this location?

9 A Yes, sir.

10 Q And when crime scene comes out and they process the
11 scene and they gather what they hope is going to be
12 evidence, they submit that evidence to the lab at SLED?

13 A That's correct.

14 Q And then as part of your investigation, before you
15 close out your investigation, you then review that
16 information that came from the lab to see if it changes
17 anything about the case, correct?

18 A That's correct.

19 Q So in this case, there were a couple of items that were
20 collected outside where the crime scene was that were
21 firearms related, correct?

22 A That's correct.

23 Q And do you recall what those items were that were
24 collected?

25 A I believe it was a shell casing and two fired

1 projectiles.

2 Q Okay. And there was a gun that was collected as well,
3 wasn't there?

4 A Yes, sir.

5 Q Where was that gun collected from?

6 A That gun was collected from the back bedroom of the
7 residence.

8 Q So it was inside the residence?

9 A Yes, sir.

10 Q All right. And after all of that stuff -- was all of
11 that stuff sent off to the lab for testing?

12 A Yes, sir, it was.

13 Q Okay. And based upon your review of the firearms
14 report from the SLED analyst, what can you tell us about the
15 gun that was collected from inside the house?

16 A It was inoperable.

17 Q Okay. So that gun wasn't involved in the shooting, was
18 it?

19 A No, sir.

20 Q In addition to sending stuff off to the lab, at your
21 direction or the direction of the coroner in cases of
22 homicide or suspected homicide, an autopsy is conducted; is
23 it not?

24 A That's correct.

25 Q I want to show you what's been marked for

1 identification as State's Exhibit No. 1. Do you recognize
2 that?

3 A Yes, sir.

4 Q What is it?

5 A This is the autopsy report.

6 Q And did you review that autopsy report?

7 A Yes, sir, I did.

8 Q And did you change anything about the conclusions of
9 your investigation based upon the autopsy report?

10 A No, sir.

11 MR. MILLER: Your Honor, at this time, the State would
12 move to enter State's Exhibit No. 1. This has been provided
13 to Mr. Koger.

14 MR. KOGER: Without objection, Your Honor.

15 THE COURT: State's Exhibit No. 1.

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

18 BY MR. MILLER:

19 Q Now, Agent Steppe, were you present whenever Mr.
20 Weathersbee was located in the soybean field?

21 A I was not with those agents. I was at the residence at
22 that time.

23 Q But you had already gotten to the house?

24 A Yes, sir.

25 Q Do you recall approximately what time that was? I

1 don't know if you have it in your notes?

2 A I do not, no, sir.

3 Q When he was arrested, did you attempt to interview him?

4 A Yes, sir, myself, Special Agent Fay and Lieutenant
5 Mitchell Altman.

6 Q During the course of your investigation, did you learn
7 of an individual named Willie Bamberg who had contacted
8 Sheriff Kenny Bamberg and told him that he had gotten a call
9 from Kurtino Weathersbee?

10 A Yes, sir.

11 Q And he relayed that he had gotten this call and there
12 had been -- well, basically, that he had acted in
13 self-defense, correct?

14 A Yes, sir.

15 Q And did you attempt to talk to Mr. Bamberg about that
16 telephone call?

17 A Special Agent Shawn Murray spoke to him.

18 Q And did he cooperate with Special Agency Shawn Murray?

19 A Yes, sir.

20 Q And he told him the substance of the call and when the
21 call had come in?

22 A Yes, sir.

23 MR. MILLER: Thank you, Agent. That's all the
24 questions I have. Please answer any questions Mr. Koger
25 might have for you.

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Q Agent Steppe, you would be considered the lead investigator in this case, correct?

Q And you just received what was put in evidence, autopsy report, correct?

Q And you heard testimony about the size of the victim, right?

Q And as you testified, you had the opportunity to review this report?

Q Could you read State's Exhibit No. 1, the second paragraph under external examination?

Q So you would say that at the time of his death, he was 69 inches and 250 pounds?

A According to the report, yes, sir.

1 Q Now, you were here for the testimony of Ms. Melissa
2 Smith and Ms. Norma Smith, right?

3 A Yes, sir.

4 Q And as the lead investigator, you were involved in
5 looking over your staff persons or who assisted you
6 memorandums and interviews?

7 A That's correct.

8 Q And, essentially, what they testified to is what they
9 told you?

10 A Say that again.

11 Q Essentially, what they testified to is what they told
12 you as a law enforcement officer?

13 A Yes, sir.

14 Q Now, within this investigative report, there's a
15 toxicology report. You would agree that this report, I'll
16 show it to you, is part of the investigator's file, correct?

17 A That's correct.

18 Q And I understand you cannot interpret the report
19 because you're not a toxicologist, but you would agree with
20 me that this is part of the investigative file?

21 A Yes, sir.

22 Q I'll hand that to you. Is that a report relaying
23 information about the toxicology of Mr. James McCreary?

24 A That's correct.

25 Q The victim in this particular case?

1 A Yes, sir.

2 Q Can you turn to the second page?

3 A (Witness complies.)

4 Q In the highlighted portion, is there the presence of
5 cocaine in his blood?

6 A That's correct.

7 Q And as far as the next page, is there the presence of
8 THC or marijuana in his blood?

9 A That's correct.

10 Q And do you know anything about particular levels or you
11 just know about the presence of it in his blood?

12 A There's some numbers here with results for nanograms
13 per milliliter.

14 Q Okay. And from your experience in law enforcement,
15 what are those levels or what's the effect of having those
16 levels?

17 MR. MILLER: Objection, Your Honor.

18 THE COURT: Mr. Miller, what's the nature of your
19 objection?

20 MR. MILLER: Your Honor, this witness does not have the
21 requisite training and experience to be able to interpret
22 the results. He certainly can testify that -- because he
23 can read that he understands that there was cocaine and THC
24 or THC metabolites or cocaine metabolites present in the
25 toxicology, but he's not a toxicologist and he can't talk

1 about what the effects of any of those amounts would be or
2 how they differ from what the effects of other amounts would
3 be.

4 THE COURT: Mr. Koger, I think you said it when you
5 handed him the report.

6 MR. KOGER: Okay. Well, I'll withdraw that question,
7 Your Honor. I'd like to rephrase it maybe another way.

8 THE COURT: Thank you.

9 BY MR. KOGER:

10 Q You stated that you've been in law enforcement since
11 2016, correct?

12 A I've worked for the South Carolina Law Enforcement
13 Division since 2016.

14 Q Okay.

15 A I've, actually, been in law enforcement since 2022.

16 Q 2022?

17 A Yes, sir.

18 Q And have you had the opportunity to deal with suspects
19 that have been under the influence of either marijuana or
20 cocaine?

21 A Yes, sir.

22 Q Have you had an opportunity to deal with suspects that
23 have been under the influence of both cocaine and marijuana?

24 A Possibly, yes, sir.

25 Q How does cocaine and/or marijuana affect a person -- or

1 can affect a person?

2 A I believe it can affect each individual in different
3 ways. There's really no way to determine how it would
4 affect a certain individual.

5 Q But it will affect them in different ways?

6 A Exactly.

7 Q It could reduce anxiety?

8 A Possibly.

9 Q Cause paranoia?

10 A Possibly.

11 Q Psychosis?

12 A Yes, sir.

13 Q Depression?

14 A Possibly.

15 Q Poor judgment?

16 A Possibly.

17 Q And those two substances, according to that report, the
18 presence of those two substances were in Mr. McCreary at the
19 time?

20 A That's correct.

21 Q And is Mr. Weathersbee, essentially, the same size or
22 smaller now than he was a year ago?

23 A I don't recall his weight.

24 Q You don't recall his weight?

25 A No, sir.

1 Q Did you participate in drawing up the warrants?

2 A Yes, sir.

3 Q So any information involving the height and weight on
4 the warrants, you would say is true at that particular time?

5 A Yes, sir.

6 Q What is that particular document?

7 A This is a warrant.

8 Q And who is that warrant in reference to?

9 A Mr. Weathersbee.

10 Q And over to the right under height, what is the height
11 listed on that warrant?

12 A Height is 5'8."

13 Q And what is the weight listed on that warrant?

14 A 166 pounds.

15 MR. KOGER: I'd like to enter this as the next exhibit,
16 Your Honor.

17 MR. MILLER: No objection.

18 THE COURT: No objection.

19 (WHEREUPON, Defendant's Exhibit No. 7 was admitted into
20 evidence.)

21 BY MR. KOGER:

22 Q Now, also, in your role as lead investigator, you had
23 an opportunity to look at the NCIC report for Mr.
24 Weathersbee and you had an opportunity to look at the NCIC
25 report for Mr. McCreary?

1 A Yes, sir.

2 Q And what do you recall from Mr. McCrary's NCIC report?

3 MR. MILLER: Your Honor, I'm going to object to any
4 testimony about Mr. McCrary's criminal history.

5 MR. KOGER: Your Honor, as a part of a stand your
6 ground hearing, we can take into consideration the
7 propensity of this victim to do violence or be a violent
8 person. And possibly within this NCIC report, there are
9 things that he was convicted of. Of course, Mr. Miller had
10 the opportunity to thoroughly Mr. Weathersbee on his prior
11 criminal history.

12 THE COURT: Mr. Miller.

13 MR. MILLER: Your Honor, first of all, any response
14 about Mr. Weathersbee's criminal history was invited by Mr.
15 Koger asking repeatedly about his history and how he had
16 done his time. Otherwise, we would not have gotten into
17 that. But there's been absolutely no testimony from Mr.
18 Weathersbee that he was aware of Mr. McCrary's prior
19 criminal history.

20 And any propensity towards violence has to be something
21 that the person who was perceiving the situation was aware
22 of because otherwise they get to do exactly what Mr. Koger
23 is trying to do, which is he had no idea about Mr. McCrary's
24 history of violence. All he was doing is looking at the
25 record and he sees something on the record that he thinks is

1 helpful, but his client doesn't have any prior knowledge of
2 it.

3 So without the testimony from the Defendant that he was
4 aware that this person had a reputation for violence or, in
5 fact, that the person actually did have a reputation for
6 violence, then this is attempting to corroborate something
7 that hasn't been established in the first place. And it's
8 not admissible for those purposes, which is exactly what
9 it's being -- exactly what the line of questioning is for
10 those purposes.

11 MR. KOGER: Judge, Mr. Weathersbee testified to some of
12 the language that was used as far as about I'm going to
13 smack you. And I think he testified, too, in the language,
14 that means murder. So, basically, he testified to it.

15 THE COURT: I think what Mr. Miller is getting at is he
16 didn't testify that he did that to anyone else in the past,
17 therefore, you couldn't use his past conduct in order to
18 show the propensity to do it again.

19 Is that correct, Mr. Miller?

20 MR. MILLER: That is correct, Your Honor.

21 MR. KOGER: The ruling from the Court is?

22 THE COURT: Well, I'm waiting to see if you have any
23 other argument on that point. I don't think your client
24 testified to any past problems, in fact, I think your client
25 testified that they had gotten along and had three

1 altercations like gentlemen may have, but it was no issue.

2 MR. KOGER: I'll move on.

3 Court's indulgence?

4 THE COURT: Yes, sir.

5 (Pause.)

6 THE COURT: Okay, Mr. Koger?

7 MR. KOGER: Judge, I just want to remind you of some of
8 the testimony. My client responded to one of the questions
9 and told the solicitor to check police blotters and this is
10 what he does. Of course, it's in the Court's discretion
11 whether I can continue.

12 THE COURT: What are you saying?

13 MR. KOGER: That under oath, the testimony is that the
14 respondent checked police blotters to indicate that Mr.
15 McCreary had a prior record. He, also, testified at one
16 point that this is what he does to people, indicating that
17 he had a reputation of doing this to people.

18 THE COURT: I'm not going to allow it at this juncture.

19 MR. KOGER: Okay.

20 THE COURT: Figure out a different way.

21 MR. KOGER: All right.

22 BY MR. KOGER:

23 Q So Agent Steppe, you noted in your notes in the
24 investigative file and your investigative report the threats
25 that were made by Mr. McCreary as relayed to you by

1 witnesses in this case?

2 A I don't understand the question.

3 Q As far as him being belligerent, as far as him being
4 wild, as far as him being aggressive, these are things that
5 witnesses stated in this case to you in statements or any
6 memorandum of interviews?

7 A They said that they were going back and forth arguing,
8 yes, sir.

9 MR. KOGER: No further questions.

10 REDIRECT EXAMINATION

11 BY MR. MILLER:

12 Q Did they ask you -- or did anyone specifically tell
13 you, anyone specifically tell you what it was they were
14 arguing about?

15 A No, sir.

16 Q Because no one knew, did they?

17 A They mentioned it could have possibly been groceries,
18 Martin mentioned groceries, but they didn't know
19 specifically what. I believe they stated they had been
20 trying to figure it out for a while, maybe a couple of days
21 and they were unable to figure it out.

22 Q I know you haven't been in law enforcement for a long
23 time, but is it common for people arguing about who's going
24 to carry in the groceries to end up shooting and killing
25 each other?

1 A No, sir.

2 MR. MILLER: No further questions.

3 RE CROSS-EXAMINATION

4 BY MR. KOGER:

5 Q But the pictures that SLED took of the vehicles, the
6 mobile home and everything, those are the official pictures?

7 A Correct.

8 Q Where the red GMC truck was located, where the silver
9 Grand Prix was located, where the body was located, these
10 are the official pictures and official positions that y'all
11 investigated on August 7th, 2023?

12 A Yes, sir.

13 MR. KOGER: Thank you. No further questions.

14 THE COURT: May this witness be excused?

15 MR. MILLER: Yes, ma'am. No further witnesses, Your
16 Honor.

17 THE COURT: Agent, you may be excused.

18 Yes, sir, Mr. Koger.

19 MR. KOGER: All right, brief closing statement?

20 THE COURT: Yes, sir.

21 MR. KOGER: Your Honor, from the testimony here today,
22 we think that we have established by the preponderance of
23 the evidence as far as stand your ground immunity for Mr.
24 Weathersbee. Again, we have established that the Defendant
25 was not at fault in bringing about the difficulty. We have

1 established that Mr. Weathersbee was actually in imminent
2 danger or believed he was in imminent danger of losing life
3 or limb. It was reasonable for him to base that belief
4 upon. He was at home, so he didn't have any type of duty to
5 retreat.

6 You know, the solicitor -- and this is under State V.
7 Dennis. This is the most recent stand your ground case. It
8 came out of Lexington County in August of this year. Mr.
9 Miller questioned about the reasonableness of his belief,
10 but when you're doing an immunity hearing, you don't even
11 have to really prove that because just presumption under
12 subsection A that a person who uses deadly force as
13 permitted by provision of law, which would be in this case
14 self-defense, is justified in using deadly force and is
15 immune from criminal prosecution and civil action for the
16 use of deadly force.

17 So even if -- there was a discussion was it reasonable
18 to believe that he was about to attack him, whether he had a
19 gun or not, when we do these hearings under this particular
20 act, there is a presumption that his actions were
21 reasonable.

22 Again, it is undisputed that Mr. Weathersbee was at
23 home. The pictures that have been submitted into evidence,
24 things that have been testified to, he was -- you know, Mr.
25 McCreary was well into Mr. Weathersbee's yard, close to the

1 mobile home. Basically, they came back from Orangeburg.
2 They argued back and forth. Mr. Weathersbee told Mr.
3 McCreary, basically, you know, just go head on, this is not
4 the day for this right here, according to testimony of Mr.
5 Weathersbee. Actually, Mr. McCreary went and backed up and
6 everything supposedly could have been fine. Mr. Weathersbee
7 came back into the yard, got out the car, approached Mr.
8 Weathersbee at the truck. Mr. Weathersbee said he came
9 walking or approaching him in a certain way.

10 Again, even though we don't have to even prove
11 reasonableness under this particular statute, it was
12 reasonable for him to act the way he was supposed to act
13 because he thought his life and limb was in danger. Again,
14 it was reasonable even though we don't have to prove that.
15 He had no duty to retreat. He was at his home.

16 So we ask that -- we have more than established the
17 three or four elements of self-defense by a preponderance of
18 the evidence and we ask that this case be dismissed -- the
19 murder case be dismissed and possession of a weapon during a
20 violent crime be dismissed based upon immunity under the
21 protection of personal and property act of stand your
22 ground.

23 THE COURT: Mr. Miller.

24 MR. MILLER: Your Honor, there's a -- Mr. Koger cited,
25 and there's a number of cases, stand your ground cases in

1 South Carolina that talk about the duty of the Court that
2 hears the testimony to make credibility findings and
3 credibility determinations. And, Your Honor, this case
4 comes down to the credibility of Kurtino Weathersbee.

5 Mr. Weathersbee testified, it is my recollection, when
6 he was talking about the extreme difference between the size
7 of Mr. McCreary and Mr. Weathersbee, he said at the time of
8 this incident, he was 5'8" and weighed 145 pounds. Well,
9 that's odd because he's 166 pounds on the warrant. He
10 weighed 173 pounds is what he said to me later on right now.
11 So it would be kind of odd for somebody to gain 30 pounds
12 while they were in jail, but it seems a lot more reasonable
13 that he might have gained ten pounds, seven pounds. But
14 that's just one of the things that is not consistent with
15 his testimony.

16 His testimony tells a story, but where the facts get
17 inconvenient, he just changes the facts or he doesn't
18 mention the fact. The most important fact that he doesn't
19 mention is in State's Exhibit No. 1. And I was going to ask
20 him, I had to fight myself not to ask him, was it reasonable
21 for you to shoot him? Oh, yeah, it was. I didn't have any
22 choice. I had to shoot him. You shot him in the back.

23 The autopsy report establishes -- the forensic examiner
24 actually goes through each individual gunshot. Mr. McCreary
25 got shot twice. One time, he got shot almost straight

1 through. The bullet wasn't traveling up. The bullet wasn't
2 traveling down. Physics will tell you if you get shot in
3 your left side and it comes out your right side and it
4 doesn't go up and it doesn't go down, then the bullet
5 started and it went straight on through.

6 Well, that's not consistent with what his testimony is.
7 Because his testimony was when I fired the shots that hit
8 him, I had backed up and I had stepped back away from the
9 door. He shoots the first shot over the door, over the
10 window of the driver's side door. And then he backs up and
11 gets away from the door so he can shoot him two more times.

12 Now, we don't know what order the shots came in, but
13 aside from the one that went into his left side and came out
14 his right side and didn't really go a whole lot different
15 from front to back or back to front, certainly, didn't go a
16 whole lot different from top to bottom. The other shot was
17 right back here. And when that shot came out, it went
18 through his arm. Went into his back, out of the front of
19 his body, kind of in the armpit area, went through his arm.
20 That's not consistent with his testimony. It's not
21 consistent with Mr. McCreary charging at him.

22 You know, there was a big question that was raised in
23 the first couple of Defense Exhibits, how far away was Mr.
24 McCrary's car from your truck? And we see that in
25 Defendant's Exhibit 2. There's some distance. It's not a

1 huge amount of distance, but there's some distance. So how
2 does he -- how does he from over here end up, what, 15 feet,
3 20 feet, shot twice? If he's running, shot twice in the
4 back?

5 Well, you heard what the testimony of Ms. Melissa Smith
6 was. And Your Honor, we would submit that that testimony
7 was, in fact, credible. Because there's nothing about Ms.
8 Smith's testimony that doesn't match with the physical
9 evidence. Her testimony was she saw James. He was already
10 in his car. He got out of his car. Apparently, he closed
11 the door because nobody was messing with the car. Nobody
12 moved the car after the incident occurred. He gets out of
13 his car and he's walking towards Mr. Weathersbee. She
14 doesn't hear -- and she's heard all of the other stuff, but
15 she doesn't hear him saying you better go get your pistol.
16 You better have your pistol, whatever it is that puts such
17 fear into Mr. Weathersbee that he decided all he could do
18 was shoot at this guy who was his friend for a couple of
19 years before this incident. This guy who came over to his
20 house that day and picked him up to take him to Orangeburg.

21 I don't know what happened out there as far as what
22 caused this argument. And I honestly do not believe that
23 anyone in that house knows what caused this event. But for
24 whatever reason, it was not justification for an unarmed man
25 to get shot in the back at three o'clock in the afternoon on

1 an August day in Bamberg. Because that's what happened.

2 Ms. Smith testified about hearing the argument, hearing
3 them going back and forth, but she said something else that
4 was interesting, too. She said when they walked in, Mr.
5 Weathersbee had water, put the water down, turned around and
6 walked out. None of this he's hanging out by the door and
7 he's looking out the window to see Mr. McCreary backing up
8 and all of the other stuff that he said, none of that. He
9 walked in, he set down the water, she spoke to him, he
10 didn't respond. He turns around and walks out the door.
11 McCreary walks out behind him. And within a minute, she's
12 walking out there, too, because she wants to see what's
13 going on.

14 She sees him get out of the car. He doesn't have
15 anything in his hand. He's not running. He's walking. And
16 by the time he gets up really to the corner of the house,
17 the edge of the house, she's hearing gunshots. And she
18 ducks, which is reasonable. You hear gunshots, you duck.
19 She looks out and McCreary is laying on the ground. There's
20 no gun. There's no weapon of any kind. He got shot by Mr.
21 Weathersbee in cold blood. What she didn't know at the time
22 was that he had been shot in the back.

23 So, Your Honor, the stories and the statements are not
24 consistent with the evidence in the case. There wasn't
25 another gun. There's no evidence there was another gun. He

1 doesn't even claim that there was another gun. He was the
2 only one who was armed out there.

3 Mr. McCreary was in his car and for whatever reason, we
4 may never know, he stopped the car and he got out of the
5 car. But I'd point out to the Court, the last time he
6 stopped the car and got out of the car it was because he was
7 picking them up to take them to Orangeburg. Then he stopped
8 the car and got out of the car because he was helping them
9 take in their groceries. This is not somebody who is some
10 long-term enemy of this guy, knows he shouldn't be around
11 this guy, knows him and this guy have some kind of beef
12 going on. Nobody knew anything about that because it didn't
13 happen.

14 The problem with Mr. Weathersbee's story is that Mr.
15 Weathersbee's story does not match the evidence and it
16 doesn't match anybody else's story. Even Ms. Norma Smith,
17 who says well, I don't know what he took out of the room
18 because I'm blind. I heard what happened outside because
19 I'm blind, I'm not deaf is what she told me. But then she
20 told the police that night that when he was in the bedroom,
21 he walked back into the bedroom where she was and he said
22 something to her, but she didn't hear what it was. He says
23 they had a conversation with each other. He said he talked
24 to her about the fact that she needed to tell Mr. McCreary
25 he shouldn't be allowed to come back over there.

1 Your Honor, at the end of the day, what this is about
2 is whether or not the Defendant has met its burden of proof
3 by the preponderance of the evidence in this case that he
4 is, in fact, entitled to immunity under the act. And the
5 problem that they have is not whether or not his actions
6 were reasonable, not whether or not there was a duty to
7 retreat, because there was not. Nobody has tried to argue
8 Mr. Weathersbee didn't live there.

9 The problem is Mr. Weathersbee didn't get attacked.
10 And it doesn't matter where you are, whether it's your house
11 or a street or a public park, you can't get into a verbal
12 disagreement with somebody and pull out a gun and shoot and
13 kill them. That's not standing your ground unless they
14 attack you. And there is only one person who claims that he
15 was attacked, and that's Mr. Weathersbee.

16 There is no evidence that Mr. McCreary ever laid a
17 hand on him, that Mr. McCreary ever pointed a weapon at him,
18 that Mr. McCreary ever threatened him with a weapon or, in
19 fact, that Mr. McCreary even had a weapon. None. If there
20 had been a mark on Mr. Weathersbee that had been caused by
21 Mr. McCreary, I think we would have heard about it. We did
22 not. Because there weren't any. Because he never touched
23 him.

24 If you believe his testimony, if you look at the
25 positioning of the body and you look at where the truck was,

1 Mr. McCreary was on the ground dying whenever Mr.
2 Weathersbee was, at least, 15, 20 feet away from him.
3 Because he said he was standing in the door of the truck,
4 the door was open, he shoots over the top. Then he gets out
5 from behind the door -- and he made the point, he corrected
6 me -- and I was backing up with the gun in my hand. He
7 never got closer than I am to the court reporter before he
8 was vaulted around and shot twice in the back. That's not
9 standing your ground, that's murder. Maybe, maybe just
10 because I'm not sure I even understand it anymore. Maybe
11 it's voluntary manslaughter, but it is not subject to the
12 protections of the stand your ground law. It is not a
13 burden that the defense can meet. And that's no criticism
14 of the defense, Mr. Koger. The facts just aren't there to
15 support immunity. And, Your Honor, for that reason, the
16 Defense's motion should be denied.

17 MR. KOGER: Judge, I'd like brief reply.

18 THE COURT: Briefly, Mr. Koger.

19 MR. KOGER: Briefly. The State had an opportunity in
20 this particular case to bring a pathologist as far as the
21 autopsy. What Solicitor Miller put forth before the Court
22 is just his version of what happened on how the gunshots
23 occurred. He said it occurred in the back. We say that,
24 basically, there was testimony from Mr. Weathersbee how Mr.
25 McCreary approached him as far as coming this way in this

1 particular position.

2 THE COURT: Mr. Koger, you don't have any dispute? I
3 mean, that's the autopsy. Did you put that in? It says
4 from the back to the front was the fatal bullet.

5 MR. KOGER: The State put it in, but --

6 THE COURT: Without objection.

7 MR. KOGER: Without objection. But if we had had a
8 pathologist here, Your Honor, they could -- they can't even
9 testify to angle. They can only testify to what they
10 observe in autopsy. They can't testify well, you know,
11 because this person was in this position and this person was
12 in this position, this is how it happened. They can't
13 testify to well, the gun was in this position. So,
14 basically, it's improper mischaracterization, what Mr.
15 Miller is saying as far as in reference to what happened on
16 that particular day in reference to being shot in the back
17 and things of that. You know, that could have been cleared
18 up and I had opportunity to cross-examine if that person had
19 been here today. So we ask you to not take that into
20 consideration.

21 THE COURT: He, also, argued that Ms. Smith said Mr.
22 McCreary was walking towards, so I think -- there was no
23 testimony that the victim had turned around at any point.

24 MR. KOGER: Well --

25 THE COURT: I mean, totally turned around is what I'm

1 saying.

2 MR. KOGER: Right.

3 THE COURT: I think what you're arguing is you don't
4 want a characterization that he was walking away or running
5 away or anything like that.

6 MR. KOGER: That's correct.

7 THE COURT: And there was no testimony of that
8 whatsoever.

9 MR. KOGER: So, basically, just to reiterate, we think
10 that we have met the four prongs as far as preponderance of
11 the evidence to be granted immunity. We, also, based upon
12 your ruling or if you take it under advisement, we would
13 like to go forward since we have all the parties here
14 today -- he has been without bond since August 7th, 2023.
15 We have all the parties here today, that you would consider
16 -- whatever your ruling is or you take it under advisement,
17 that he should be entitled to a bond.

18 THE COURT: I am going to take it under advisement. I
19 just pulled the State vs. Dennis case. I have read it when
20 it came out. I had Mr. Planatis pull that for me before he
21 came down here so I'm going to take the opportunity to
22 review that again. There is some movement in this part of
23 the law, so I want to make sure I fully apprise myself of
24 the most recent.

25 Mr. Miller, are you prepared to go forward on the bond

1 issue today?

2 MR. MILLER: Your Honor, I don't think it is -- I am
3 prepared. The State is prepared. I would object.

4 THE COURT: I think what Mr. Koger is saying is the
5 victims are here -- I think the victim's family is here
6 today. So we could hear it if y'all wanted to, but it's,
7 also, fine with me if you wait until I give a ruling and see
8 whether --

9 And to everybody who's in the gallery, what that means
10 is I've listened to all the testimony, I've taken notes.
11 I'm going to sit down and think about this. This is not a
12 light issue in any way and I know there is a death involved
13 in this and we don't want to treat that lightly. So I'm not
14 going to issue a ruling right here from the bench on this
15 type of issue. I want to go back and review the law again.
16 As I said, I've read it before, but sometimes you read it
17 again after you hear the testimony, you might think a little
18 differently on this point or that point. So I've got to
19 look at that and then I will advise y'all of a ruling.

20 Mr. Koger, I think that might be the better time to
21 take up the bond issue simply because if I don't rule for
22 your client, then you'll know when your trial outlook is.
23 And if I do rule for your client, you wouldn't need a bond.
24 So it may be a little premature to take that up on his
25 behalf right here today. I understand that he would

1 probably like a bond if he has not had one since that day,
2 but it may be better to postpone that until after we look at
3 this.

4 And I don't intend to keep this a month. I'm going to
5 keep it more than a day, I'll tell you that, but I won't
6 keep it forever. Then we can go forward and deal with the
7 bond issue at that time, okay.

8 MR. KOGER: Okay.

9 THE COURT: Thank you, Mr. Koger.

10 Mr. Miller, anything else?

11 MR. MILLER: Nothing further from the State, Your
12 Honor.

13 THE COURT: All right.

14 (WHEREUPON, the proceedings were concluded.)

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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)

COUNTY OF BAMBERG)

I, PENNY M. JOHNSON, Official Court Reporter for the Second Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and the evidence introduced in the hearing of the captioned case, relative to appeal, in the Court of General Sessions for Bamberg County, South Carolina, on the 25th day of October, 2024.

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

July 15, 2025

Penny M. Johnson
Penny M. Johnson
Official Court Reporter

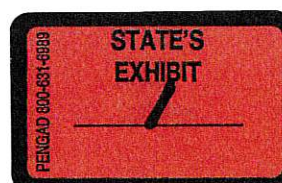


Newberry Pathology Group, LLC
 Newberry, SC 29108
 Phone: 803-276-0201
 Fax: 803-276-0208

Autopsy Number: FA23-580	Name: James McCreary
Date of Birth: 05/09/1975 (Age: 48)	Race: Black Sex: Male
Date of Death: 08/07/2023	Date of Autopsy: 08/10/2023
County: Bamberg	Pathologist: Kelly L. Rose, MD

FINAL AUTOPSY DIAGNOSES

- I. Perforating, indeterminate range gunshot of back (GSW A)
 - a. Entrance on left upper back
 - b. No soot or stippling identified
 - c. Pathway through the skin and subcutaneous tissue of the left upper back, the left posterolateral intercostal muscle #2 and posterolateral rib #3, the left upper pulmonary lobe, the aorta, the trachea, the hilum of the right lung, the right middle pulmonary lobe, the right lateral intercostal muscle #5, the skeletal muscles of the right upper lateral chest, and the subcutaneous tissue of the right upper lateral chest
 - d. Exit on right upper lateral chest adjacent to the axilla
 - i. Re-entry wound on right upper inner arm
 - ii. Pathway through subcutaneous tissue and skeletal muscles of the right anterior arm
 - iii. Exit on right anterolateral arm just above the antecubital fossa
 - e. Resultant: Disruption of soft tissues and skeletal muscles along pathway, perforation and contusion of right and left lungs, gaping laceration of aorta, fracture of left rib #3, approximately 800 mL of blood within the left chest cavity, approximately 650 mL of blood within the right chest cavity, collapse of both lungs, bilateral hemoaspiration, bloody edema fluid exuding from the mouth and nose, and generalized organ pallor
 - f. Direction: Left-to-right, back-to-front, and downward
- II. Perforating, indeterminate range gunshot of left flank (GSW B)
 - a. Entrance on left flank
 - b. No soot or stippling identified
 - c. Pathway through skin and subcutaneous tissue of left flank, the skeletal muscles of the left lower back, the left ilium of the pelvis, the fifth lumbar vertebra, the right ilium of the pelvis, and the skeletal muscles and subcutaneous tissue of the right lower back
 - d. Exit on right flank



Autopsy Number: FA23-580

County: Bamberg

Name: James McCreary

Pathologist: Kelly L. Rose, MD

e. Resultant: Fracture of the left and right hemipelves, perforation and fracture of lumbar vertebra #5, and disruption and hemorrhage of soft tissues along pathway

f. Direction: Left-to-right and forward with minimal deviation up-or-down

III. Other findings

a. Evidence of hypertension

i. Enlarged heart, 430 grams

ii. Mildly granular kidney with few simple cysts

b. Pulmonary anthracosis

c. Benign thyroid goiter

d. Early benign prostatic hyperplasia

CAUSE OF DEATH

a. Perforating, indeterminate range gunshot of back

Contributory: Perforating, indeterminate range gunshot of left flank

MANNER OF DEATH

Homicide

Autopsy Number: FA23-580
County: Bamberg

Name: James McCreary
Pathologist: Kelly L. Rose, MD

CASE HISTORY

According to Coroner Hicks of the Bamberg County Coroner's Office, this 48-year-old black man was shot multiple times.

EXTERNAL EXAMINATION

The decedent is received in a blue plastic body bag, which is labeled with proper identifiers. As received, the decedent is clad in a previously cut white, short-sleeved T-shirt; black, athletic-style shorts; gray boxer briefs; and two white socks. A white, previously cut, sleeveless T-shirt is tied around the right upper arm and two black rubber slides are in the body bag. A previously broken, yellow metal chain necklace is loosely around the neck. The clothing is blood-stained to blood-soaked.

The body is that of a well-developed, overweight, adult black male who measures 69" in length, weighs approximately 250 pounds, and appears consistent with the reported age of 48 years. The body is cool to the touch. Rigor mortis is easily breakable. Livor mortis is faint, posteriorly distributed, and fixed.

The head, neck, nose, mouth, and ears are normally formed. The scalp hair is black, curly, and arranged into dreadlocks up to 4-1/2" in length. The decedent has a beard and mustache. The irides are brown. The corneas are cloudy. The conjunctivae are pale. The teeth are natural and in poor-to-fair condition with some upper teeth remotely absent. The chest and back are normally formed. The abdomen is round. The external genital organs are those of a normal adult male. The upper and lower extremities are well developed and symmetrical.

Identifying marks and scars on the body include a curvilinear scar up to 1-1/4" on the umbilical region; a monochromatic tattoo of a cross on the right chest; a monochromatic tattoo of "TARANA" across the upper abdomen; a monochromatic tattoo of "BRI" on the left anterior forearm; faint, indistinct monochromatic tattoos on the left and right posterior arms; and a faint monochromatic tattoo of a design on the right anterior thigh.

Evidence of medical intervention and/or cardiopulmonary resuscitation on the body includes EKG lead pads on the anterior torso.

Autopsy Number: FA23-580**County:** Bamberg**Name:** James McCreary**Pathologist:** Kelly L. Rose, MD**EVIDENCE OF ACUTE INJURY****Gunshot Wound of Back****(GSW A)**

An entrance gunshot wound (designated A on the body diagram) is on the left upper lateral back, 11-1/2" from top of the head and 9" left of midline. The wound consists of a 3/16" skin perforation surrounded by circumferential abrasion border up to 1/4" between 9 o'clock and 11 o'clock and up to 1/16" elsewhere. Neither soot nor stippling is identified.

The bullet pathway is through the skin and subcutaneous tissue of the left upper back, the left posterolateral intercostal muscle #2 and posterolateral rib #3, the left upper pulmonary lobe, the aorta, the trachea, the hilum of the right lung, the right middle pulmonary lobe, the right lateral intercostal muscle #5, the skeletal muscles of the right upper lateral chest, and the subcutaneous tissue of the right upper lateral chest, exiting the body through a 3/8", slit-like skin perforation (designated A') on the right upper lateral chest, 15-1/2" from top of the head and 10" right of midline. The bullet then re-enters the body on the right upper inner arm through a 1/4" skin perforation (designated A''), 16" from top of the head. The bullet then travels through the subcutaneous tissue and skeletal muscle of the right arm, exiting the body on the right lateral arm just above the antecubital fossa.

The wound track has resulted in disruption of soft tissues and skeletal muscles along pathway, perforation and contusion of right and left lungs, gaping laceration of aorta, fracture of left rib #3, approximately 800 mL of blood within the left chest cavity, approximately 650 mL of blood within the right chest cavity, collapse of both lungs, bilateral hemoaspiration, bloody edema fluid exuding from the mouth and nose, and generalized organ pallor.

The direction of the wound track is left-to-right, back-to-front, and downward.

Gunshot Wound of Left Flank**(GSW B)**

An entrance gunshot wound (designated B on the body diagram) is on the left flank, 27-1/2" from top of the head and 7-1/2" left of midline. The wound consists of a 1/4" skin perforation surrounded by circumferential abrasion border up to 1/8" inferiorly and up to 1/16" elsewhere. Neither soot nor stippling is identified.

Autopsy Number: FA23-580
County: Bamberg

Name: James McCreary
Pathologist: Kelly L. Rose, MD

The bullet pathway is through the skin and subcutaneous tissue of left flank, the skeletal muscles of the left lower back, the left ilium of the pelvis, the fifth lumbar vertebra, the right ilium of the pelvis, and the skeletal muscles and subcutaneous tissue of the right lower back, exiting the body through a 5/8", slit-like skin perforation (designated B) on the right flank, 27" from top of the head and 9" right of posterior midline.

The wound track has resulted in fracture of the left and right hemipelves, perforation and fracture of lumbar vertebra #5, and disruption and hemorrhage of soft tissues along pathway.

The direction of the wound track is left-to-right and forward with minimal deviation up-or-down.

INTERNAL EXAMINATION

Note: The previously described injuries will not be repeated below.

BODY CAVITIES: The body is opened in the usual manner. All body organs are present in normal anatomic position.

CARDIOVASCULAR SYSTEM: The heart is enlarged and weighs 430 grams. The epicardial surface shows increased fat. The coronary arteries arise normally and show right-dominant distribution. They are all free of significant atherosclerosis. The myocardium is softened which is enhanced by autolysis. The ventricular wall thicknesses are as follows: left ventricle = 1.6 cm; interventricular septum = 1.7 cm; and right ventricle = 0.2 cm. Thin fibrous bands consistent with interstitial fibrosis are noted within the left ventricle and interventricular septum. The myocardium is without evidence of recent or remote infarctions. The ventricular chambers of the heart are enlarged and their endocardial surfaces show prominent trabeculations. The circumferences of the cardiac valves are consistent with heart size. The valve leaflets are unremarkable. The aorta is free of significant atherosclerosis.

RESPIRATORY SYSTEM: The right and left lungs weigh 360 and 290 grams, respectively. The pleural surfaces show prominent anthracosis in a lymphatic distribution. On cut section, the pulmonary arteries of both lungs follow the normal distribution and are without thromboemboli. The pulmonary parenchyma is minimally congested and mildly edematous. Neither lung shows evidence of consolidation, masses, or infarction. The mainstem and distal bronchi are patent.

Autopsy Number: FA23-580
County: Bamberg

Name: James McCreary
Pathologist: Kelly L. Rose, MD

HEPATOBIILIARY AND GASTROINTESTINAL SYSTEMS: The liver weighs 1540 grams. The parenchyma is minimally congested and softened from blood loss but otherwise unremarkable. The gallbladder is present and free of stones. The esophageal and gastric mucosae are autolyzed but otherwise unremarkable. The stomach contains 800 mL of thick fluid and partially digested food. The small and large intestines are normally formed. The appendix is present. The pancreas weighs 125 grams. The cut surface is autolyzed but otherwise unremarkable.

GENITOURINARY SYSTEM: The right and left kidneys weigh 180 and 170 grams, respectively. The cortical surfaces are mildly granular and show few simple cysts up to 1.0 cm in greatest dimension. On cut section, the cortical medullary ratios are not significantly reduced. The ureters and bladder are normally formed and the bladder contains approximately 5 mL of slightly cloudy urine. The prostate gland is slightly enlarged and the cut surfaces show early nodularity.

HEMATOLYMPHOID SYSTEM: The spleen weighs 100 grams. The capsule is thin and smooth. On cut section, the parenchyma shows no evidence of natural disease. Lymphadenopathy is not identified within any of the body regions.

ENDOCRINE SYSTEM: The thyroid gland is symmetrical and normally sized; its cut surface is mildly nodular and mildly fibrotic. The adrenal glands are autolyzed but are otherwise unremarkable. The pituitary gland is unremarkable.

MUSCULOSKELETAL SYSTEM: Excluding injuries, the bony framework, supporting musculature, and soft tissues of the body are normally formed and developed.

CENTRAL NERVOUS SYSTEM: The brain weighs 1550 grams. The leptomeninges are unremarkable. The blood vessels at the base of the brain are normally formed and free of abnormality. The cerebral hemispheres of the brain are symmetrical and normally formed. Sections through the cerebral hemispheres show the usual distribution of gray and white matter and no lesions. The lateral cerebral ventricles are of normal caliber. The cerebellum and brainstem are symmetrical and show no evidence of natural disease on cut sections.

NECK: Examination of the soft tissues and skeletal muscles of the neck reveals no evidence of natural disease and no hemorrhage. The hyoid bone and laryngeal cartilages are intact. The upper airway is patent.

Autopsy Number: FA23-560
County: Bamberg

Name: James McCreary
Pathologist: Kelly L. Rose, MD

AUTOPSY PROCEDURE SUMMARY

Upon request of and after due authorization by the Bamberg County Coroner, a complete autopsy was performed on the body of James McCreary in the Newberry County Memorial Hospital morgue on 08/10/2023 at approximately 9:15 a.m.

Significant gross anatomical autopsy findings are summarized under Final Autopsy Diagnoses.

Vitreous fluid, urine, and femoral blood are collected for toxicology tests to be analyzed at South Carolina Law Enforcement (SLED) Forensic Services. A separate toxicology report will be saved as part of the case file upon receipt.

A gray top tube of iliac blood and a vitreous fluid sample are retained. Two DNA blood spot cards are prepared. One is saved as part of the case file and one is transferred (see below).

Representative sections of organs are submitted into cassettes to be processed into paraffin blocks as follows:

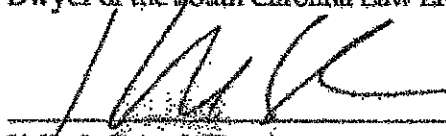
- A. Left cardiac ventricle, right cardiac ventricle, aorta
- B. Representative sections of right and left lungs, spleen
- C. Liver, pancreas, kidney, thyroid
- D. Brain (cerebrum, cerebellum), adrenal

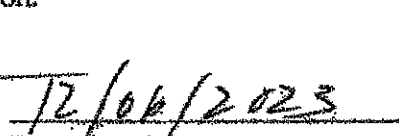
All tissues not retained for diagnostic purposes are returned to the body.

Postmortem radiographs of the torso and right upper arm are obtained and show no evidence of radiopaque foreign objects.

The decedent's necklace is transferred with the body.

The clothing, toxicology specimens, and a DNA blood spot card are transferred to Parker Dwyer of the South Carolina Law Enforcement Division.


Kelly L. Rose, MD


Date signed

KLR:TrUSAle

FILED
BAMBERG COUNTY

STATE OF SOUTH CAROLINA)
 2024 DEC 31 AM 9:58 IN THE GENERAL SESSIONS COURT
 BAMBERG COUNTY) SECOND JUDICIAL CIRCUIT
 YANNIE C. JOHNSON
 CLERK OF COURT
 State of South Carolina, BAMBERG, SC) 2024-GS-05-00042
)
 v.) Order Denying Immunity
) Pursuant to SC Code §16-11-440
 Kurtino Weathersbee,)
 Defendant.)

Defendant moved for a finding of immunity based upon the statute commonly referred to as the stand your ground defense. After a full hearing on this matter, defendant requested dismissal pursuant to §16-11-440(a) and the ruling in *State v. Dennis*, -- SC --, --SE2d --, Case no. 2019-001486 (App Ct. 2024).

Defendant testified that he, the victim, and another friend spent the morning traveling from his home to Orangeburg to pick up items for a cook out birthday party at his house and auto parts defendant needed to repair his truck. Victim picked defendant up from his home and returned him there later in the day. Defendant stated he slept most of the way to and from Orangeburg, South Carolina, from Bamberg County area, waking only after the car was parked next to the handicap ramp leading into his home. The three were lifting groceries over the ramp which was parallel to the car. All witnesses agreed that victim was verbally belligerent towards defendant. Defendant provided no explanation for the hostility other than victim stated defendant should be helping with the groceries when he woke him up. Inside the home were defendant's long-term girlfriend, Norma



Smith, whose home he lived in and her sister. Defendant's girlfriend is visually impaired. Her sister is the ex-wife of victim.

The testimony and photographs indicate that at the time of the shooting the victim's car was no longer parallel to the access ramp. Defendant testified that victim had backed up almost completely out of the yard when he unexpectedly drove towards defendant, parked the car, exited, and made threatening actions and statements. Defendant's personal knowledge of victim and his propensity for violence made defendant fear for his safety. Defendant testified he had told victim to leave the residence earlier. Defendant further testified that victim said, "You better have your piece on you," or words to that effect. Defendant picked up a gun that was in his truck and shot at victim over the open driver's side door. Defendant testified that at the time of this exchange he had exited the residence while victim was leaving the yard and intended to work on the truck.

It is undisputed that victim was arguing with defendant at the residence while they brought in the groceries. The exact nature of the dispute is unclear. All witnesses testified that victim was the main aggressor in the verbal dispute.

Victim's ex-wife and relative of the homeowner testified that once both gentlemen went outside, she popped her head out to see what was going on. She corroborated that victim had stopped his car at the end of the ramp, had exited the vehicle, and was walking in the direction of defendant. At that time, she told the

victim to come towards her which would have been towards the front door of the home. She heard the shots, saw the victim fall, and attempted to render aid to him. She did not hear any words exchanged between victim and defendant prior to the shooting.

Defendant testified that he believed victim to be reaching for a gun at this waist. From his personal knowledge of the victim, the victim's acts at that time, and his relationship with victim, defendant believed he was in imminent danger and thought victim was retrieving a gun when defendant shot at him. Defendant's first shot was made over the truck door window. Victim was shot more than once. He died on the scene. Victim was not found with a gun.

"A claim of immunity under the Act requires a pretrial determination using a preponderance of the evidence standard. . .". *Dennis* citing *State v. Jones*, 416 SC 283, 290, 786 SE2d 132,136 (2016). Conflicting evidence alone is not an appropriate reason for denying an immunity claim. *Dennis* citing *State v. Gray*, 438 SC 130, 141, 882 SE2d 469, 475 (Ct App 2022), *reh'g denied* (January 23, 2023), *cert. denied* (Oct.3, 2023). The trial court should make specific findings on the record. Id.

It is uncontroverted that Defendant Weathersbee was at his residence when he shot the victim. Defense counsel argues that this requires the court to analyze this case pursuant to S.C. §16-11-450(A) and §16-11-440 (A) granting a



presumption of reasonable fear of imminent peril of death or great bodily injury.

This court does not agree. The presumption of reasonable fear does not apply

when the victim also has a right to be at the residence. (See State v. Jones, 416 SC 283, 786 SE2d 132 (2016) (cited in State v. Dennis)

Relying upon *State v. Dennis*, Id., the defense argues that defendant met the elements of justifiable force in a self defense context based upon preponderance of the evidence. The underpinning of this argument is that defendant was at his residence, the victim had been asked to leave the residence, and defendant was justified in defending his residence pursuant to S.C § 16-11-440(A).

The court finds that the victim was an invitee in the home. It is not clear that he had been “uninvited,” and it is not corroborated that he had backed out and returned into the yard as testified to by defendant. Defendant testified that he said something akin to get on out of here and waved his arm away from the house. He saw the victim back up to the mailbox at the street and then suddenly reverse course to enter the yard again.

However, the corroborating witness, who saw the victim shot, testified that when she arrived at the front door shortly after both gentlemen exited the home, the victim’s car was at the end of the ramp to the front door, no further. She saw him exit his car and called him to her direction, thereby inviting him back into the house. This witness was employed at the home daily as the care aid for her sister,

the home owner. There is no evidence she did not have authority to make the invitation. This removes the presumption in 16-11-440(A) which grants a presumption of reasonable fear "if the person whom the deadly force is used in in the process of unlawfully and forcefully entering." The victim could not have been forcefully entering if he was being invited to enter. If defendant recalls correctly that the victim started to leave and then pulled back across the yard, subsection B removes the presumption of reasonable fear if the person had a right to be at the dwelling.

The court is aware that the witness may have been calling the victim towards the door to avoid further confrontation with defendant and in an attempt to diffuse what was a volatile situation. Her intent in inviting him back inside is not the issue. At the time of the invitation, the victim is now in a location he is authorized to be in. Therefore, the court denies defendant's request for statutory immunity based upon a presumption of reasonable fear of imminent danger as stated in subsection (A).

Subsection (C) provides another avenue for immunity if defendant is attacked in another place where he has a right to be and has the right to stand his ground. Defendant must have a reasonable belief that deadly force is necessary to prevent death or great bodily injury to himself or another. S.C. Code §16-11-440(C) (1976). Defendant must prove by a preponderance of the evidence that he

is without fault in the argument, he reasonable believed he was in imminent danger, and he had no other probable means of avoiding the danger to his life or great bodily injury. State v. Dennis, citing *State v. Glenn*, 429 108,116, 383 S.E.2d at 491, 496 (2019).

Defendant testified that the victim was larger than him. The victim had some illegal drugs in his system at the time of death. Defendant stated multiple times that he feared for his life. Defendant testified that victim used colloquial terms for murder and other comments about breaking his ribs. Defendant states victim's last words were telling defendant he better have a gun, as the victim reached under his shirt. Defendant feared victim had a gun in his waist. After the shooting, defendant ran to the back of the property and hid in a ditch at the property line between the fields. The gun he used was not recovered or accounted for in anyway. Defendant could not testify as to where that gun is today.

Defendant testified that he left the home for the yard after seeing victim backing out and almost to the main road. However, his testimony does not match that of his corroborating witnesses. One stated she heard the car stop and then heard the men talking to each other, with victim telling defendant he better have something. The other witness testified she went out the door shortly after both men left the home. She saw victim get out of his car before she called him to come back towards her. The court finds that the preponderance of the evidence is the

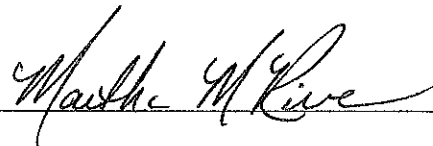
men exited at the same time and the victim stopped his vehicle at the end of the ramp as he was exiting the yard. It is not clear why the victim stopped. One witness heard him threaten the defendant; the other did not. Defendant at that time is behind the door of the inoperable truck. He had the opportunity to retreat to the back yard. These facts undercut defendant's belief that he was in imminent peril. Defendant's witness did not feel endangered as she invited victim back into the home. Under these circumstance, the court does not find defendant's belief of imminent danger to be reasonable and denies his grant of immunity pursuant to subsection (C).

Defendant is not precluded from a self-defense argument in the trial of his case.

IT IS SO ORDERED.

Dec. 19, 2024

Aiken, SC



Hon. Martha M. Rivers
Resident Judge, Seat no. 2.
Second Judicial Circuit

STATE OF SOUTH CAROLINA	)	IN THE GENERAL SESSIONS COURT
	)	SECOND JUDICIAL CIRCUIT
BAMBERG COUNTY	)	
	)	2024-GS-05-00042
State of South Carolina,	)	
	)	
v.	)	Motion For Reconsideration
	)	
Kurtino Weathersbee,	)	
	)	
Defendant.	)	

FILED
 BAMBERG COUNTY
 2024 DEC 30 PM 4:44
 JANNIE C. JOHNSON
 CLERK OF COURT
 BAMBERG, SC

Respectfully, Defendant requests a reconsideration of the Order Denying Immunity in this matter as outlined in the following reasons.

According to the facts as delineated in the unfiled Order of December 19, 2024, Defendant lives with his long-time girlfriend, Norma Smith at [REDACTED] Cardinal Road, Denmark, SC 29042. There was not any indication by Norma Smith, the owner and a resident at [REDACTED] Cardinal Road, Denmark, SC and her live-in boyfriend, Defendant Kurtino Weathersbee through their testimony than anyone else had the authority to determine who could be invited to the home and/or on the premises and whether anyone else had the authority to revoke a directive by either Ms. Smith or Defendant of ordering someone to leave the premises as Defendant did on that day with the victim in this case. This includes Melissa Smith who testified and did not acknowledge having that authority. It was obvious that once Defendant told the victim to leave the premises, he became an attacker, intruder and/or intruder and therefore, the only two (2) people that could have changed that status were Norma Smith and Defendant. The General Assembly has stated it is 'it's intent to provide the protections of the act to persons within their own home facing not only unwelcomed intruders but also attackers', including those who are initially into the home and later placed the homeowner in reasonable fear or great bodily injury". State v. Douglas, 411

S.C. 307, 768 S.E.2d 232 (Ct. App. 2014). Additionally, in State v. Duncan, 392 S.C. 404, 709 S.E.2d 662 (2011), the victim was a guest in the residence when the accused asked him to leave. He then transformed to trespasser when he refused to leave and acted unlawfully. The victim exhibited this behavior in the matter. Thus, the lack of authority by Melissa Smith voided any actions that she engaged on that particular day and did not remove the presumption of subsection (A) within 16-11-440 and, further, Defendant was entitled to immunity with the finding of Defendant meeting the burden of proof by the preponderance on the remaining elements of self-defense.

Briefly, Defendant did not have a duty of retreat at his home and its premises when he is being attacked by an intruder, attacker and/or trespasser. This issue is well-settled under the Castle Doctrine. Thus, Defendant also should have been granted immunity under subsection (C) of the Act.

Respectfully Submitted



Joshua Koger, Jr.

FILED
BAMBERG COUNTY

2025 JAN 15 AM 10:30

STATE OF SOUTH CAROLINA
BAMBERG COUNTY)
JANNIE C. JOHNSON)
CLERK OF COURT)
IN THE GENERAL SESSIONS COURT)
BAMBERG COUNTY) SECOND JUDICIAL CIRCUIT
)
State of South Carolina,) 2024-GS-05-00042
)
v.) Order Denying Defendant's Motion
) to Reconsider pursuant to
) SC Code §16-11-440
Kurtino Weathersbee,)
Defendant.)

Defendant moved for a finding of immunity based upon the statute commonly referred to as the stand your ground defense. After a full hearing on this matter, defendant requested dismissal pursuant to §16-11-440(a) (Stand Your Ground statute) and the ruling in *State v. Dennis*, -- SC --, --SE2d --, Case no. 2019-001486 (App Ct. 2024). This court denied that motion by written order. All counsel were provided an email copy of the order upon mailing a second time for filing. Defense counsel moved for reconsideration based upon the order as delivered electronically.

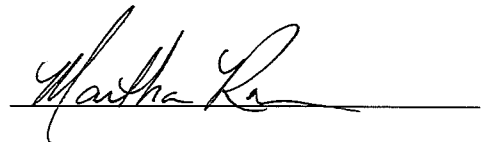
Defendant argues that the victim could not be an invitee as other persons at the home did not have authority to alter his status as a trespasser. Defendant also notes that he had not requirement to retreat pursuant to the Stand Your Ground statute as cited above.

Upon review of the motion, this court finds that further oral argument would not aid in its decision making and denies defendant's motion to reconsider.

IT IS SO ORDERED.

1-6, 2025

Aiken, SC

A handwritten signature in cursive script, appearing to read "Martha M. Rivers", is written over a horizontal line.

Hon. Martha M. Rivers
Resident Judge, Seat no. 2.
Second Judicial Circuit

STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSIONS
COUNTY OF BAMBERG	)	2024-GS-05-00042
	)	2024-GS-05-00043
	)	2024-GS-05-00044
	)	
	)	
	)	
THE STATE OF SOUTH CAROLINA,	)	
PLAINTIFF,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
KURTINO DAMON WEATHERSBEE,	)	
DEFENDANT.	)	
_____	)	

January 28-30, 2025
Bamberg, South Carolina

B E F O R E:

THE HONORABLE WALTON J. MCLEOD, IV, JUDGE.

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

DAVID MILLER, ESQ.
Attorney for the Plaintiff

JOSHUA KOGER, ESQ.
Attorney for the Defendant

PENNY M. JOHNSON
Court Reporter III

1 THE COURT: Okay. If we can get her stuff out and then
2 once --

3 MR. JOHNSON: So if it goes through till tomorrow and
4 somebody don't show up?

5 THE COURT: Once I've dismissed you, you're out. You
6 can go fishing right now if you want to.

7 Once the alternates get their stuff out of the jury
8 room, then we can give them the evidence and they can begin
9 their deliberations.

10 (WHEREUPON, the alternates exit the courtroom at 3:40
11 p.m.)

12 (WHEREUPON, the jury begins deliberations at 3:40 p.m.)

13 THE COURT: We'll be in holding pattern till further
14 notice.

15 (WHEREUPON, court was in recess awaiting a verdict.)

16 THE COURT: I've got a, I wouldn't call it a question,
17 but I've got a note from the jury. It reads, We are not
18 ready yet to make a decision. We need time to discuss a few
19 more things. Signed, Madam Forelady.

20 I don't know how to respond.

21 MR. MILLER: If you just want to write on there take
22 all the time that you need.

23 THE COURT: Everybody good if I write take all the time
24 you need? I'll just put my initials on it or Judge.

25 Typically, when I get a question, I go back and I read

1 them my response. Are y'all good if I just say my response
2 is take all the time you need?

3 MR. MILLER: Absolutely.

4 (WHEREUPON, the Judge leaves the courtroom to address
5 the jury.)

6 THE COURT: So I read my note and I walked off and they
7 were like whoa. So I gathered from them and I told them
8 they needed to write another note because I wasn't going to
9 have a conversation outside the presence of everybody. I
10 think they want to recess for the day and come back in the
11 morning. If the jury is telling me they want to come back
12 tomorrow, I suspect the attorneys want to accommodate that.

13 What are your thoughts, Mr. Koger?

14 MR. KOGER: I mean, my schedule will allow me to come
15 back tomorrow morning.

16 THE COURT: Yeah. I mean, what we would do is have
17 pleas and motions court while they're deliberating. If they
18 come back with a verdict, we'll handle it then. I mean, do
19 I kind of want to keep working? Yeah. But I'm telling you,
20 they're ready to break for the day.

21 MR. MILLER: And it is close to 5:00.

22 THE COURT: So why don't I bring them back in here.
23 I'll have a dialogue with them on the record. I'm going to
24 tell them, obviously, they're not allowed to deliberate any
25 further. They can't communicate with one another or with

1 their families or their friends. Basically, they have to
2 suspend the case in their minds until they come back
3 tomorrow morning.

4 Are you okay with that, Mr. Koger?

5 MR. KOGER: May I confer with my client?

6 THE COURT: Oh, yes.

7 (Pause.)

8 MR. KOGER: Judge, we'll leave it in the Court's
9 discretion.

10 THE COURT: Mr. Miller?

11 MR. MILLER: I have no objection, Judge. If they come
12 back tomorrow before I can get here, then Ms. Staggs or Mr.
13 Sanderlin can take the verdict for us.

14 THE COURT: Sheriff, is that any issue for you from a
15 security standpoint?

16 SHERIFF BAMBERG: We're good, sir.

17 THE COURT: Let's bring the jury into the courtroom,
18 please.

19 (WHEREUPON, the jury enters the courtroom at 4:51 p.m.)

20 THE COURT: Madam Forelady, so I sent you a note. As I
21 started to walk off, I heard voices. I kind of gathered
22 that y'all are ready to recess for the day and come back in
23 the morning. Is that accurate?

24 THE FORELADY: Yes, sir.

25 THE COURT: Okay. You can do that.

1 I'll ask you to come back in here at 9:15 in the
2 morning so we can get you in the jury room at 9:30. You
3 won't be able to start your deliberations until I tell you
4 to do so in the morning. When you get in the jury room,
5 just keep talking about Gamecock football and I'll tell you
6 when to start back on the case.

7 THE FORELADY: Okay.

8 THE COURT: Tonight, do not do any independent research
9 about this case. Do not discuss it amongst yourselves once
10 you walk out of this courtroom. Don't discuss it with your
11 families and friends, anyone, anywhere. So your
12 deliberations are suspended until you get back here tomorrow
13 morning. You can get back to work then.

14 We'll see you in the morning. Have a good evening.
15 Come back refreshed tomorrow.

16 THE FORELADY: When we come in, we go to the jury room?

17 THE COURT: I think when you get in, they'll circle you
18 back to your jury room. So y'all may go in there one at a
19 time, two at a time, whatever order you get here.

20 Any other questions just about getting here in the
21 morning?

22 (There was no response.)

23 THE COURT: All right. If for some reason, you're
24 running late, please, call the clerk of court's office so we
25 can know where your whereabouts are.

1 Thank you.

2 (WHEREUPON, the jury exits the courtroom at 4:54 p.m.)

3 THE COURT: All right. Anything else for the record at
4 the moment?

5 MR. MILLER: Nothing from the State, Your Honor.

6 MR. KOGER: Nothing from the Defense.

7 THE COURT: All right. I'll see everybody in the
8 morning. Obviously, make sure we're here. We'll make sure
9 Mr. Weathersbee is taken care of and then we'll let them get
10 started.

11 MR. MILLER: Thank you, Your Honor.

12 (WHEREUPON, court was adjourned for the day to be
13 reconvened on Thursday, January 30, 2025.)

14 THURSDAY, JANUARY 30, 2025

15 (WHEREUPON, the jury began deliberations at 10:09 a.m.)

16 THE COURT: I'm told we have a verdict. Anything for
17 the record before we bring the jury in?

18 MR. MILLER: No, Your Honor.

19 MR. KOGER: No, Your Honor.

20 THE COURT: You never know what's going to happen with
21 the jury. I'm just going to ask everyone in the courtroom
22 to keep your composure regardless of what the verdict is.

23 Let's bring them in.

24 (WHEREUPON, the jury enters the courtroom at 10:35
25 a.m.)

1 THE COURT: Madam Forelady, I understand you have a
2 verdict; is that correct?

3 THE FORELADY: Yes.

4 THE COURT: Please pass up the verdict.

5 Madam Forelady, the verdict form doesn't have a
6 signature spot. I'm going to add a line and have you sign
7 right there, okay?

8 THE FORELADY: Okay.

9 THE COURT: Madam Clerk, if you will publish the
10 verdict.

11 THE CLERK: The State vs. Kurtino Weathersbee,
12 indictment number 2024-GS-05-00042, 2024-GS-05-00043 and
13 2024-GS-05-00044.

14 We, the jury, as to indictment 2024-GS-05-00042 for the
15 charge of murder of James McCreary unanimously find beyond a
16 reasonable doubt the Defendant, Kurtino Weathersbee, guilty.

17 We, the jury, as to indictment 2024-GS-05-00043 for the
18 charge of possession of a weapon during the commission of a
19 violent crime unanimously find beyond a reasonable doubt the
20 Defendant, Kurtino Weathersbee, guilty.

21 We, the jury, as to indictment 2024-GS-05-00044 for the
22 charge of possession of a firearm by a person convicted of a
23 violent felony unanimously find beyond a reasonable doubt
24 Defendant, Kurtino Weathersbee, guilty.

25 THE COURT: Anything from the parties before the jury

1 is discharged?

2 MR. KOGER: I would like to poll the jury.

3 THE COURT: Very well.

4 Please poll the jury, Madam Clerk.

5 THE CLERK: As I call your name, please, answer the
6 following questions.

7 Juror #94, Joel Lawton, is this your verdict? Do you
8 still agree?

9 JUROR #94: Yes.

10 THE CLERK: Do you still agree?

11 JUROR #94: Yes.

12 THE CLERK: Juror #138, Marcus Ransom. Is this your
13 verdict?

14 JUROR #138: Yes, ma'am.

15 THE CLERK: Do you still agree?

16 JUROR #138: Yes.

17 THE CLERK: Stewart Craig, #34. Is this your verdict?

18 JUROR #34: Yes, ma'am.

19 THE CLERK: Do you still agree?

20 JUROR #34: Yes, ma'am.

21 THE CLERK: Herschel Fields, #46.

22 JUROR #46: Yes, ma'am.

23 THE CLERK: Is this your verdict?

24 JUROR #46: Yes.

25 THE CLERK: Do you still agree?

1 JUROR #46: Yes.

2 THE CLERK: #159, Julie Sease. Is this your verdict?

3 JUROR #159: Yes, ma'am.

4 THE CLERK: Do you still agree?

5 JUROR #159: I do.

6 THE CLERK: Leslye Sapp, #156.

7 JUROR #156: Yes.

8 THE CLERK: Is this your verdict?

9 JUROR #156: Yes.

10 THE CLERK: Do you still agree?

11 JUROR #156: Yes.

12 THE CLERK: #142, April Rhoad.

13 JUROR #142: Yes.

14 THE CLERK: Is this your verdict?

15 JUROR #142: Yes, ma'am.

16 THE CLERK: Do you still agree?

17 JUROR #142: Yes, ma'am.

18 THE CLERK: Cynthia Towne, #179. Is this your verdict?

19 JUROR #179: Yes.

20 THE CLERK: Do you still agree?

21 JUROR #179: Yes.

22 THE CLERK: Michele Kinsey, #91.

23 JUROR #91: Yes, ma'am.

24 THE CLERK: Is this your verdict?

25 JUROR #91: Yes, ma'am.

1 THE CLERK: Do you still agree?

2 JUROR #91: Yes, ma'am.

3 THE CLERK: Patrick Collins, #28. Is this your
4 verdict?

5 JUROR #28: Yes.

6 THE CLERK: Do you still agree?

7 JUROR #28: Yes.

8 THE CLERK: Stephanie Jones, #83. Is this your
9 verdict?

10 JUROR #83: Yes.

11 THE CLERK: Do you still agree?

12 JUROR #83: Yes.

13 THE CLERK: Frances Beard, our Foreman. Is this your
14 verdict?

15 JUROR #6: Yes.

16 THE CLERK: Do you still agree?

17 JUROR #6: Yes.

18 THE COURT: Everyone's name been called?

19 (WHEREUPON, the jury indicated in the affirmative.)

20 THE COURT: The jury has been polled.

21 Anything else from either party before the jury is
22 discharged?

23 MR. MILLER: Nothing from the State, Your Honor.

24 MR. KOGER: Nothing from the Defense, Your Honor.

25 THE COURT: Ladies and gentlemen, any time you show up

1 for jury duty, you really don't know what is awaiting you.
2 We recognize this is time away from your jobs and your
3 families, so we appreciate your service. Serving on a jury
4 is true public service. We can't move cases in the civil or
5 criminal justice system without jurors like you who come
6 forward and do this type of work. You are free to go at
7 this time. Thank you for your service.

8 (WHEREUPON, Court's Exhibit Nos. 3 through 5 were
9 marked for identification only.)

10 (WHEREUPON, the jury was released at 10:43 a.m.)

11 THE COURT: Solicitor, how much time you need?

12 MR. KOGER: I'd like to put a motion on the record.

13 THE COURT: Certainly, okay.

14 MR. MILLER: Judge, just give me about three minutes.

15 THE COURT: Okay.

16 Mr. Koger, yes, sir.

17 MR. KOGER: Your Honor, at this time, I'd like to move
18 for a new trial. We feel that the verdict of the jury that
19 came through is not warranted in this particular matter.
20 Also, I'd like to renew the objections and what I placed on
21 the record previously in relation to the stand your ground
22 hearing and my objections to the ruling on that so that
23 would be appealable for Mr. Weathersbee.

24 THE COURT: Mr. Miller, any response to the motion for
25 a new trial?

1 MR. MILLER: No, Your Honor.

2 THE COURT: Mr. Koger, I find the evidence was
3 sufficient for the jury. That's why it was submitted in the
4 first place. You never know what decision they'll make in
5 these types of cases, but I find that there was accurate
6 direct and circumstantial evidence to come up with the
7 decision they made. So I will respectfully deny your motion
8 for a new trial.

9 The record will reflect that all your pretrial motions,
10 your pretrial hearings, your stand your ground as well as
11 any objections to matters you objected to during the trial
12 and your previous directed verdict motions are hereby
13 preserved.

14 MR. KOGER: Thank you.

15 THE COURT: Do you anticipate any additional victim
16 impact?

17 MR. MILLER: Your Honor, there won't be any additional
18 victim impact testimony from the victims. As the Court is
19 aware, they've been here throughout the trial. Mr.
20 McCreary's brother and sister as well as his girlfriend, who
21 left just prior to the verdict being announced.

22 Your Honor, obviously, for the purposes of sentencing,
23 the significant criminal history for the Defendant was his
24 prior convictions at trial in Richland County. He was
25 convicted of kidnapping, burglary first degree and armed

1 robbery in 2005 and was sentenced to 18 years by the
2 Honorable Judge Barber. Any other records that he has would
3 be insignificant compared to that.

4 And as the Court heard in the testimony, since his
5 release from the Department of Corrections -- he was
6 released in 2019 and he had only been out for, I guess,
7 about four years at the time of this incident. We have
8 prepared the new sentence sheet and I will show this to Mr.
9 Koger and pass this up to the Court.

10 THE COURT: Mr. Koger.

11 MR. KOGER: Your Honor, may it please the Court?

12 THE COURT: Yes, sir.

13 MR. KOGER: You heard from Mr. Weathersbee when he took
14 the stand during this week. You heard about his first stint
15 in the Department of Corrections and what led to him being
16 there during that particular time. You, also, heard after
17 he got out the things that he -- his attempts to become a
18 productive member of society. He wanted to provide a good
19 life for his youngest son, his relationship with Ms. Smith.
20 And, unfortunately, it took a different turn on August 7th,
21 2023.

22 Of course, we are aware of the offenses that he did his
23 time for back in his first stint in the Department of
24 Corrections. We would just ask you consider the minimum of
25 30 years in this particular case. That is significant time

1 since it's day-for-day, but it would, also, give him the
2 opportunity to -- he's 40 years of age, to be released from
3 prison at the age of 70. Hopefully, he will be able to
4 continue some kind of relationship with his son and that
5 will give him an opportunity to maybe build upon the
6 relationship if he were not given life in this particular
7 instance and to give him minimal time.

8 I think that a life sentence can be mitigated even when
9 the jury has spoken and they came up with a murder
10 conviction. It did happen at his home. That does not give
11 him a license to do what the jury decided that he did, but
12 he was not at a night club, he was not out on the street.
13 So we ask that you give him the minimum sentence in this
14 case.

15 Also, I know sometimes judges don't want to give them
16 less time if they had a prior stint in the Department of
17 Corrections, but 30 years will, also, serve that purpose,
18 too. The first time, he got 18 years, so this is a longer
19 sentence than he received the first time.

20 THE COURT: Does your client wish to say anything?

21 You don't have to.

22 THE DEFENDANT: No, sir.

23 THE COURT: His credit at this point, he's been in two
24 years, essentially?

25 MR. KOGER: He's been in 18 months, about 18 months, a

1 little over 18 months, August 7th, 2023.

2 THE COURT: 542 days.

3 MR. KOGER: Okay.

4 THE COURT: I don't think the State has any specific
5 input on sentencing, do they?

6 MR. MILLER: No, Your Honor. I was just checking --
7 did you say 543 days?

8 THE COURT: 542.

9 MR. MILLER: Yes, sir. Yes, sir.

10 THE COURT: It wasn't a long trial, wasn't particularly
11 complex. Regardless of the sentence, the reality is you end
12 up spending the majority of your life in prison. I know
13 that's not what you wanted. I know that's not what your son
14 would want. But that's where we are.

15 On the charge of murder, the sentence is 30 years in
16 the Department of Corrections. Possession of a weapon by a
17 person convicted of a violent felony and possession of a
18 weapon during the commission of a violent crime, those are
19 five years concurrent sentences. Credit for 542 days.

20 That is all.

21 MR. KOGER: Thank you.

22 MR. MILLER: Thank you, Your Honor.

23 (WHEREUPON, the proceedings were concluded.)
24
25

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

I, PENNY M. JOHNSON, Official Court Reporter for the
Second Judicial Circuit of the State of South Carolina, do
hereby certify that the foregoing is a true, accurate, and
complete Transcript of Record of the proceedings had and the
evidence introduced in the hearing of the captioned case,
relative to appeal, in the Court of General Sessions for
Bamberg County, South Carolina, on January 27th through the
29th of 2025.

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

August 12, 2025



Penny M. Johnson
Official Court Reporter

WITNESSES

State Law Enforcement Division

Kade H Steppe *KHS*

Law Enforcement Case #: 31-23-0076

DWM

ARREST WARRANT NUMBER

2023A0510100145

ACTION OF GRAND JURY

True Bill

William J. ...

Foreperson of Grand Jury
Date: February 20, 2024

VERDICT

Guilty

Frances Beards
Foreperson of Petit Jury
Date: 1/30/2025

DOCKET NO. 2024GS0500042

The State of South Carolina

County of Bamberg

COURT OF GENERAL SESSIONS

FEBRUARY TERM 2024

THE STATE
vs.

KURTINO DAMON WEATHERSBEE

CDR #: 0116

Indictment for

MURDER

§ 16-03-0010; 16-03-0020

BILL WEEKS, SOLICITOR

FILED IN COURT

JAN 30 2025

Bamberg Clerk of Court

FILED
BAMBERG COUNTY
JANNIE C. JOHNSON
CLERK OF COURT
BAMBERG, SC
2025 JAN 30 PM 1:01

STATE OF SOUTH CAROLINA)
)
COUNTY OF BAMBERG)
)

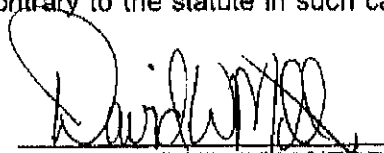
INDICTMENT FOR
MURDER

§ 16-03-0010; 16-03-0020

At a Court of General Sessions, convened on FEBRUARY 20, 2024, the Grand Jurors of Bamberg County present upon their oath:

That **KURTINO DAMON WEATHERSBEE** did in Bamberg County on or about August 7, 2023, unlawfully kill one James McCreary feloniously, wilfully and with malice aforethought, by means of a firearm and that the victim did die as a proximate result thereof. All 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.


BILL WEEKS, SOLICITOR

WITNESSES

State Law Enforcement Division

Kade H Steppe *KHS*

Law Enforcement Case #: 31-23-0076

DWM

ARREST WARRANT NUMBER

2023A0510100146

ACTION OF GRAND JURY

True Bill

William J. [Signature]

Foreperson of Grand Jury
Date: February 20, 2024

VERDICT

Gu. Hy

Thomas Beaul

Foreperson of Petit Jury
Date: 1/30/2025

DOCKET NO. 2024GS0500043

The State of South Carolina

County of Bamberg

COURT OF GENERAL SESSIONS

FEBRUARY TERM 2024

THE STATE

vs.

KURTINO DAMON WEATHERSBEE

CDR #: 0549

Indictment for

POSSESSION OF A WEAPON DURING
THE COMMISSION OF A VIOLENT
CRIME

§ 16-23-0490

BILL WEEKS, SOLICITOR

FILED IN COURT

JAN 30 2025

Bamberg Clerk of Court

FILED
BAMBERG COUNTY
JANIE C. JOHNSON
CLERK OF COURT
BAMBERG, SC
2025 JAN 30 PM 1:01

STATE OF SOUTH CAROLINA)
)
COUNTY OF BAMBERG)
)

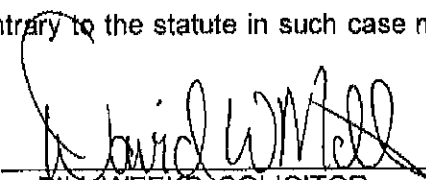
INDICTMENT FOR
POSSESSION OF A WEAPON DURING THE
COMMISSION OF A VIOLENT CRIME

§ 16-23-0490

At a Court of General Sessions, convened on FEBRUARY 20, 2024, the Grand Jurors of Bamberg County present upon their oath:

That **KURTINO DAMON WEATHERSBEE** did in Bamberg County on or about August 7, 2023, possess or visibly display a firearm or visibly display a knife during the commission or attempted commission of a violent crime, to wit: MURDER, all in violation of Section 16-23-490, Code of Laws of South Carolina (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


BILL WEEKS, SOLICITOR

WITNESSES

State Law Enforcement Division

Kade H Steppe *KHS*

Law Enforcement Case #: 31-23-0076

DWM

ARREST WARRANT NUMBER

2023A0510100147

ACTION OF GRAND JURY

True Bill

Walter Jones

Foreperson of Grand Jury
Date: February 20, 2024

VERDICT

Guilty

Frances Beard

Foreperson of Petit Jury
Date: 1/30/2025

DOCKET NO. 2024GS0500044

The State of South Carolina
County of Bamberg

COURT OF GENERAL SESSIONS

FEBRUARY TERM 2024

THE STATE
vs.

KURTINO DAMON WEATHERSBEE

CDR #: 3434

Indictment for

POSSESSION OF FIREARM BY
PERSON CONVICTED OF VIOLENT
FELONY

§ 16-23-0500(A)

BILL WEEKS, SOLICITOR

FILED IN COURT

JAN 30 2025

Bamberg Clerk of Court

FILED
BAMBERG COUNTY
JANNIE C. JOHNSON
CLERK OF COURT
BAMBERG, SC
2025 JAN 30 PM 1:01

STATE OF SOUTH CAROLINA)
)
COUNTY OF BAMBERG)
)

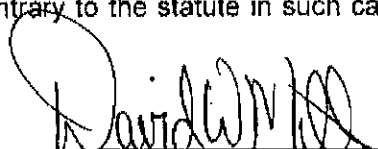
INDICTMENT FOR
POSSESSION OF FIREARM BY PERSON
CONVICTED OF VIOLENT FELONY

§ 16-23-0500(A)

At a Court of General Sessions, convened on FEBRUARY 20, 2024, the Grand Jurors of Bamberg County present upon their oath:

That **KURTINO DAMON WEATHERSBEE** did in Bamberg County on or about August 7, 2023, knowingly and unlawfully possess 9 MM HANDGUN after having been previously convicted of BURGLARY 1ST DEGREE, violating section §16-23-500 of the South Carolina Code of Laws (1976), as amended, which prohibits such possession by a person convicted of a violent felony.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



BILL WEEKS, SOLICITOR

STATE OF SOUTH CAROLINA

SENTENCE ORDER

IN THE COURT OF GENERAL SESSIONS

COUNTY OF BAMBERG

STATE vs.

KURTINO DAMON WEATHERSBEE

AKA:

SSN: XXX-XX-XXXXRACE: BlackSEX: MaleDOB: XXXXXXINDICTMENT/CASE#: 2024 -GS- 05 -00042AW#: 2023A0510100145Date of Offense: 08/07/2023S.C. Code §: 16-3-10CDR Code #: 0116Range of Offense: 30 years - LifeIn disposition of the above indictment comes now the Defendant who was CONVICTED OF ☒ or ☐ PLEADSTO: MurderRange of Offense Pled 16-3-10In violation of § 16-3-10 of the S.C. Code of Laws, bearing CDR Code # 0116☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ MANDATORY GPS ☐ § 17-25-45
(CSC w/minor 1st or CSC w/minor 3rd)The charge is: ☐ As Indicted ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☐ w/o Rec/Negotiations ☐ Negotiated ☐ RecommendationDavid Miller69553

Solicitor

SC Bar #

Attorney for Defendant

SC Bar #

The Defendant is committed to the ☒ SCDC ☐ County Detention Center ☐ Home Incarceration Program for a determinate term of 30 days/months/years/Time Served ☐ YOA NTE years and/or shall pay a fineof \$; provided that upon the service of days/months/years/Time Served and or paymentof \$ plus costs and assessments as applicable; balance is suspended with probation for months/years

and subject to SCDPPPS standard conditions of probation, which are incorporated by reference.

The sentence shall run ☒ 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 SCDC.5420 days/months☐ To include time spent on monitored house arrest prior to trial and sentencing

SPECIAL CONDITIONS:

- ☐ PTUP
- ☐ No Contact with Victim ☐ Domestic Violence Intervention Program
- ☐ Sex Offender Registry pursuant to S.C. Code § 23-3-430
- ☐ Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.
- ☐ Other:

- ☐ Hold for Inpatient Treatment
- ☐ SAC/MHC if necessary

JAN 30 2025

Bamberg Clerk of Court

☐ RESTITUTION See Separate Order (20% per S.C. Code §24-21-490(B))

§14-1-206 (Assessments 107.5%)

§14-1-211 (A)(1) Conv. Surcharge)

§14-1-211 (A)(2)(DUI Surcharge)

§56-5-1995 (DUI Assessment)

§56-1-286 (DUI Breath Test)

§14-1-212 (Law Enforcement Funding)

§14-1-213 (Drug Court Surcharge)

§34-11-70(b)and(c), and 34-11-90(c)and(d) (Admin Fraud Check Court Costs)

§50-21-114 (BUI Breath Test Fee)

§56-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

- ☐ Appointed PD or appointed other counsel. Proviso requires \$500 to be paid to Clerk during probation and shall be collected before any other fees.

- ☐ § 17-3-45(B) Unpaid Application Fee to be paid to the Public Defender Fund

Fine/Costs and Assessments are to be paid to the

Clerk of Court within days/months

Restitution \$

FINE: \$

\$

\$100

\$100

\$12

\$25

\$25

\$150

\$41

\$50

\$40/ea

TBD

\$500

\$40

TOTAL

Penny Johnson
Clerk of Court/Deputy ClerkPenny Johnson
Court Reporter2765
Judge Code1/30/2025
Sentence DateWebster
Presiding JudgeSCCA217B
01/27/2025

STATE OF SOUTH CAROLINA

SENTENCE ORDER

IN THE COURT OF GENERAL SESSIONS

COUNTY OF BAMBERG

STATE

vs.

KURTINO DAMON WEATHERSBEE

AKA:

SSN: [REDACTED]

RACE: BlackSEX: Male

DOB: [REDACTED]

INDICTMENT/CASE#: 2024 -GS- 05 - 00043AW#: 2023A0510100146Date of Offense: 08/07/2023S.C. Code §: 16-23-490CDR Code #: 0549Range of Offense: 0-5 yearsIn disposition of the above indictment comes now the Defendant who was CONVICTED OF ☒ or ☐ PLEADSTO: Possession of a Weapon During Commission of a Violent Crime

Range of Offense Pled

In violation of § 16-23-490 of the S.C. Code of Laws, bearing CDR Code # 0549☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ MANDATORY GPS ☐ § 17-25-45
(CSC w/minor 1st or CSC w/minor 3rd)The charge is: ☐ As Indicted ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☐ w/o Rec/Negotiations ☐ Negotiated ☐ RecommendationDavid Miller 69553

Solicitor

SC Bar #

Attorney for Defendant

SC Bar #

The Defendant is committed to the ☒ **SCDC** ☐ County Detention Center ☐ Home Incarceration Program
for a determinate term of 3 days/months/years/Time Served ☐ YOA NTE years and/or shall pay a fine
of \$; provided that upon the service of days/months/years/Time Served and or paymentof \$ plus costs and assessments as applicable* ; balance is suspended with probation for months/years

and subject to SCDPPPS standard conditions of probation, which are incorporated by reference.

The sentence shall run ☒ 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 SCDC.542days/months☐ To include time spent on monitored house arrest prior to trial and sentencing.

SPECIAL CONDITIONS:

FILED IN COURT

- ☐ PTUP
- ☐ No Contact with Victim ☐ Domestic Violence Intervention Program
- ☐ Sex Offender Registry pursuant to S.C. Code § 23-3-430
- ☐ Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.
- ☐ Other:

☐ Hold for Inpatient Treatment JAN 30 2025
☐ SAC/MHC if necessary

Bamberg Clerk of Court

☐ **RESTITUTION See Separate Order (20% per S.C. Code §24-21-490(B))**

§14-1-206 (Assessments 107.5%)

§14-1-211 (A)(1) Conv. Surcharge)

§14-1-211 (A)(2)(DUI Surcharge)

§56-5-1995 (DUI Assessment)

§56-1-286 (DUI Breath Test)

§14-1-212 (Law Enforcement Funding)

§14-1-213 (Drug Court Surcharge)

§34-11-70(b)and(c), and 34-11-90(c)and(d) (Admin Fraud Check Court Costs)

§50-21-114 (BUI Breath Test Fee)

§56-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

☐ Appointed PD or appointed other counsel. Provisio requires \$800 to be paid to Clerk during probation and shall be collected before any other fees.☐ § 17-3-45(B) Unpaid Application Fee to be paid to the Public Defender Fund

Restitution \$

FINE: \$

\$

\$100

\$100

\$12

\$25

\$25

\$150

\$41

\$50

\$40/ea

TBD

\$500

\$40

TOTAL

James Z. Dwight
Clerk of Court/Deputy ClerkPenney Johnson
Court Reporter2765
Judge Code1/30/2025
Sentence DateWah
Presiding JudgeSCCA217B
01/27/2025

STATE OF SOUTH CAROLINA

SENTENCE ORDER

IN THE COURT OF GENERAL SESSIONS

COUNTY OF BAMBERG

STATE vs.

KURTINO DAMON WEATHERSBEE

AKA: _____ SSN _____

RACE: Black SEX: Male DOB: _____

In disposition of the above indictment comes now the _____

INDICTMENT/CASE#: 2024 -GS- 05 - 00044AW#: 2023A0510100147Date of Offense: 08/07/2023S.C. Code §: 16-23-500(A)CDR Code #: 3434Range of Offense: 0-5 yearsCONVICTED OF ☒ or ☐ PLEADSTO: Possession of Weapon by Person Convicted of Violent Felony

Range of Offense Pled _____

In violation of § 16-23-500(A) of the S.C. Code of Laws, bearing CDR Code # 3434☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ MANDATORY GPSThe charge is: ☐ As indicted ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☐ w/o Rec/Negotiations ☐ Negotiated ☐ Recommendation

Solicitor

SC Bar #

Attorney for Defendant

SC Bar #

The Defendant is committed to the ☒ **SCDC** ☐ County Detention Center ☐ Home Incarceration Program
 for a determinate term of _____ days/months/years/Time Served ☐ YOA NTE _____ years and/or shall pay a fine
 of \$ _____; provided that upon the service of _____ days/months/years/Time Served and or payment

of \$ _____ plus costs and assessments as applicable* ; balance is suspended with probation for _____ months/years

and subject to SCDPPPS standard conditions of probation, which are incorporated by reference.

The sentence shall run ☒ 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 SCDC.542 days/months ☐ To include time spent on monitored house arrest prior to trial and sentencing.

SPECIAL CONDITIONS:

- ☐ PTUP _____
☐ No Contact with Victim ☐ Domestic Violence Intervention Program ☐ Hold for Inpatient Treatment
☐ Sex Offender Registry pursuant to S.C. Code § 23-3-430 ☐ SAC/MHC if necessary
☐ Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.
☐ Other: _____

☐ RESTITUTION See Separate Order (20% per S.C. Code §24-21-490(B))

§14-1-206 (Assessments 107.5%)

§14-1-211 (A)(1) Conv. Surcharge)

§14-1-211 (A)(2)(DUI Surcharge)

§56-5-1995 (DUI Assessment)

§56-1-286 (DUI Breath Test)

§14-1-212 (Law Enforcement Funding)

§14-1-213 (Drug Court Surcharge)

§34-11-70(b)and(c), and 34-11-90(c)and(d) (Admin Fraud Check Court Costs)

§50-21-114 (BUI Breath Test Fee)

§56-5-2942(J) (Vehicle Assessment)

3% to County (If paid in installments)

☐ Appointed PD or appointed other counsel. Proviso requires \$500 to be paid to Clerk during probation and shall be collected before any other fees.☐ §17-3-45(B) Unpaid Application Fee to be paid to the Public Defender Fund

Restitution \$

FINE: \$

\$

\$100 \$ 100.00

\$100 \$

\$12 \$

\$25 \$

\$25 \$ 25.00

\$150 \$

\$41 \$

\$50 \$

\$40/ea \$

TBD \$ 3.75

\$500 \$

\$40 \$

TOTAL

128.75

Clerk of Court/Deputy Clerk

Court Reporter

Judge Code

Sentence Date

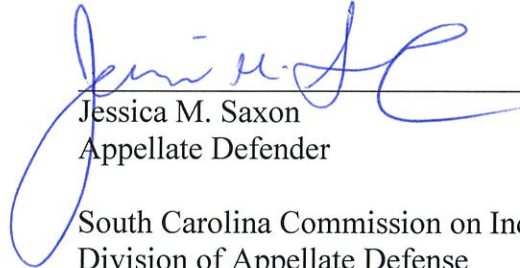
Presiding Judge

SCCA217B
01/27/2025

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



Jessica M. Saxon
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR APPELLANT

This 2ND day of September, 2026.

RECEIVED

Sep 02 2026

SC Court of Appeals