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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Richland County

Honorable Brian M. Gibbons, Circuit Court Judge

HOLLY JO THOMPSON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2026-001271

APPENDIX

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

BRIAN HOLLIS GIBBS
Assistant Attorney General
PO Box 11549
Columbia, SC 29211-1549
(803) 734-3727

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

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1 elapsed since the attack?

2 A Well, we know that he was seen that Friday morning,
3 so the rest of that day Friday, Saturday, Sunday and
4 Monday when we found Mr. Solomon, and then Tuesday, which
5 was the day that we did the search warrant. So that many
6 days had elapsed.

7 Q In your experience as an investigator for whatever
8 crime, is it usual for people to get rid of the evidence
9 prior to the police finding it?

10 A Absolutely.

11 Q He asked you about you don't know what happened
12 between Friday and Monday when y'all found the body. Had
13 anyone called you to say they had bludgeoned some person
14 17 times in the head, would you have responded?

15 A Absolutely, we would have responded. We got no such
16 call.

17 Q He also asked you about going into the house the
18 afternoon and your observations. Did you go into the
19 house prior to crime scene doing their job?

20 A No.

21 Q So when you got in the house, had they already done
22 their job?

23 A Correct.

24 Q And had the body been moved?

25 A No, the body was still there when I went in the

1 house, yes.

2 Q But as far as the photographing and evidence
3 collection --

4 A All that -- most of that had been done, yes.

5 MS. CAMPBELL: I don't have anything further, Your
6 Honor.

7 MR. BANK: Nothing further.

8 THE COURT: Okay. Thank you, Investigator Johnson.

9 THE WITNESS: Thank you.

10 THE COURT: You may step down.

11 You may call your next witness.

12 MS. WALKER: Your Honor, at this time the State
13 rests.

14 THE COURT: Okay. Ladies and gentlemen, the State
15 has concluded its case. I have some matters of law which
16 I have to discuss with the parties. You are still not
17 allowed to discuss the case in any way, shape, or form.
18 Keep an open mind. We'll be back with you in just a few
19 moments. Thank you.

20 (Whereupon, the jury left the courtroom at 2:23
21 p.m.)

22 THE COURT: Okay. Motions?

23 MS. GOODE: Your Honor, at this time, Defense would
24 move the Court for a directed verdict. Taking the
25 evidence in the light most favorable to the State, I

1 believe that there has not been enough evidence -- they
2 failed to present enough evidence to convince a reasonable
3 juror of Ms. Thompson's guilt of murder beyond a
4 reasonable doubt.

5 Specifically, there's been no evidence presented for
6 the element of malice in this case. I would ask that Your
7 Honor direct a verdict in this case.

8 THE COURT: All right. Ms. Campbell.

9 MS. CAMPBELL: Your Honor, if you follow this
10 testimony alone, the types of injuries in this case are
11 more than adequate to prove malice.

12 In addition to that, the knife on -- the actual blade
13 of the knife was his blood. We feel like the crime scene
14 itself reeks of malice. He was left there to die and
15 bleed out in his own living room.

16 THE COURT: Okay. Your motion for a directed verdict
17 under Rule 19 is denied. I am to consider the existence
18 of the evidence and not the weight of the evidence. There
19 has been sufficient evidence shown by the State taken in
20 the light most favorable to the State considering the
21 existence of it and not the weight of it to meet the
22 elements of murder and therefore your motion for a
23 directed verdict is denied.

24 Okay.

25 MS. GOODE: We would just renew all objections and

1 motions.

2 THE COURT: Very well. Those are all noted for the
3 record. I'm ruling on them as the same for reasons as
4 I've stated before.

5 All right. Ms. Thompson, stand up. Raise your right
6 hand.

7 HOLLY JO THOMPSON, after being
8 duly sworn, testified as follows:

9 THE COURT: Okay. All right. Put your hand down.
10 What we have to do now is you and I have to have a
11 conversation, okay.

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Do you understand me, okay?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Have you understood me throughout this
16 trial when I speak?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: How far did you go in school?

19 THE DEFENDANT: I got my GED, sir.

20 THE COURT: Good. I remember you told me that
21 earlier in the week, I remember that now. And you're not
22 under the influence of any illegal alcohol or drugs; is
23 that correct?

24 THE DEFENDANT: No, sir.

25 THE COURT: Are you still on some mental health

1 medication?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Have you taken that correctly?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: As prescribed by a licensed medical
6 professional?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Does it help you or hurt your ability to
9 understand what's going on?

10 THE DEFENDANT: It helps.

11 THE COURT: Okay. Very well. And have you
12 understood your attorneys okay this week?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: What we have to talk about now is your
15 right to testify, okay. There's this script that I read
16 from. I want you to know if at any time you want to ask
17 me any questions, feel free to do so. Also, if you want
18 to stop and ask your attorneys any questions, I'll let you
19 do that, too.

20 You're not going to bother me or upset me. I want to
21 make sure and I want you to make sure you understand what
22 you're doing and that you had had enough time to discuss
23 with your attorneys, okay.

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Now, I don't need to know the substance

1 of the conversations, but have you and your attorneys
2 talked about your right to testify --

3 THE DEFENDANT: Yes, sir.

4 THE COURT: -- prior to right now?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: All right. Very good. At this time, I'm
7 going to explain to you some of your rights. If you do
8 not understand anything that I say, just let me know,
9 okay?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: If you want me to explain anything in
12 more detail, just let me know that, too, okay?

13 THE CLERK: Yes, sir.

14 THE COURT: Do you understand everything I've said so
15 far?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: We now have reached the stage of the
18 trial where you may present your own defense. You have
19 the right to claim the protections given to you by the 5th
20 amendment to the constitution of the United States. And
21 this amendment states in part that no person shall be
22 compelled in any criminal case to be a witness against
23 himself.

24 This means that you cannot be required to testify in
25 this case. You have the right to testify on your own

1 behalf; however, no one can make you testify. This is a
2 personal right and no one else can waive this right except
3 you.

4 If you decide to testify, you will be subject to the
5 same rules that govern other witnesses and you may be
6 examined or cross-examined on any relevant issue in the
7 case. In addition, if you have any convictions that
8 involve dishonesty or false statements or for crimes
9 punishable by imprisonment for more than one year and I
10 determine that the probative value of admitting this
11 evidence outweighs its prejudicial effect to you, the
12 solicitor will be able to introduce your record to attack
13 your credibility.

14 If you decide to testify, this decision on your part
15 must be made freely, voluntarily and intelligently with
16 the knowledge of the protections given to you by the 5th
17 amendment and the consequences of your decision to
18 testify.

19 If you decide not to testify, I will tell the jury
20 that they cannot give the fact that you did not testify
21 any consideration whatsoever, and that there is to be
22 absolutely no prejudice to you because you did not
23 testify.

24 It is left entirely up to you whether or not you
25 testify. You may talk about it with your attorneys, your

1 family or anyone else, but the final decision is yours and
2 yours alone.

3 Do you understand what I've explained to you?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Okay. Do you have any questions about
6 what I've explained to you?

7 THE DEFENDANT: No, sir.

8 THE COURT: Okay. And have you discussed this with
9 your lawyers as to whether or not you should testify?

10 THE DEFENDANT: We have discussed it.

11 THE COURT: And do you wish to talk any more with
12 them at this time?

13 (Pause.)

14 THE DEFENDANT: Very briefly just a moment, sir.

15 THE COURT: All right. I'm going to let y'all talk.
16 We're going to take a short little break, not long.

17 Just give a sign to one of the bailiffs or Ms. Pat
18 when y'all are ready and we'll come back in.

19 Now, listen, you're not limited on time, okay. So I
20 don't want you to feel like -- you said brief, that's why
21 I said brief. If you need to take longer than that,
22 that's okay, too. Just let me know when you're ready,
23 okay?

24 THE DEFENDANT: Thank you, sir.

25 THE COURT: You're welcome.

1 We'll be in recess until they're ready.

2 (WHEREUPON, a short break was taken.)

3 THE COURT: Okay. Ms. Thompson, you're still under
4 oath, do you understand that?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Did you have enough time to talk with
7 your attorney?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Do you need any more time to talk to
10 them?

11 THE DEFENDANT: No, sir.

12 THE COURT: Do you wish to testify or not?

13 MS. CAMPBELL: Yes, sir.

14 THE COURT: What's her criminal history?

15 MS. WALKER: Your Honor, in the last 10 years, as far
16 as things that we think are admissible, she has from 2008,
17 a breach of trust conviction that's over -- I guess it
18 would be over 2,000. It looks like it's a five-year
19 maximum. Then in 2010, she has a burglary, grand larceny,
20 but to be safe, we would just be offering the grand
21 larceny.

22 THE COURT: Okay.

23 MS. CAMPBELL: And then another breach of trust.
24 In 2013, a shoplifting and a second shoplifting. That
25 would be the extent of what we intend to offer.

1 THE COURT: So in 2013, there's a breach of trust and
2 two shopliftings.

3 MS. CAMPBELL: The second breach of trust, Your
4 Honor, I believe from 2010.

5 THE COURT: 2010.

6 MS. CAMPBELL: And the grand larceny and breach of
7 trust from 2010.

8 THE COURT: Okay.

9 MS. CAMPBELL: And the two shopliftings are from '13.

10 THE COURT: Okay.

11 MR. BANK: Just to make sure I'm clear, the grand
12 larceny, the breach of trust, 2010, and the shoplifting
13 2013?

14 MS. CAMPBELL: The first breach of trust is 2008, but
15 that's all within the last 10 years that we think is
16 admissible.

17 THE COURT: Okay.

18 MS. CAMPBELL: For impeachment.

19 THE COURT: Do you understand that?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Okay. Thank you very much.

22 Mr. Bank, are you standing up to say something?

23 MR. BANK: Yes, sir, just for -- kind of time keeping
24 for Ms. Thompson, I believe on our witness list we had
25 Moses Warren and Michael Richardson, they both obviously

1 have been called. Thus far, we haven't had any need to
2 call our investigator. Ms. Thompson indicated she wishes
3 to testify. And we would also be calling Mr. Tim Grambow.
4 He works for SLED.

5 THE COURT: Okay.

6 MR. BANK: He actually did the toxicology in this
7 case on Mr. Solomon. He is under State subpoena and he is
8 under our subpoena as well.

9 THE COURT: Okay.

10 MR. BANK: I've spoken with him twice now, I believe.
11 When I spoke with him earlier this week, he wasn't sure if
12 the State was going to call him. He told us if we needed
13 him to just try to give him a couple hours notice. I
14 guess my question is --

15 THE COURT: Cut to the case.

16 MR. BANK: I really have no idea how long her
17 testimony is going to be. Is it all right if we plan for
18 him being here first thing in the morning and then go into
19 closings and charge?

20 THE COURT: There's no reason he can't go today.

21 MS. CAMPBELL: Luckily, I talked to him a little
22 while ago, Your Honor, and he's available.

23 MR. BANK: That's fine.

24 MS. CAMPBELL: I'll get him here.

25 THE COURT: Let's just get him here. I mean, unless

1 -- I mean, is he a toxicologist?

2 MS. CAMPBELL: He's a toxicologist.

3 MR. BAILEY: It should not be long.

4 THE COURT: I'm not trying to rush anybody, but if
5 he's available and he's not working a crime scene or
6 something.

7 MS. CAMPBELL: I talked to him over lunch. He's
8 available.

9 THE COURT: Let's go ahead and get him up here. He
10 can wait for a little bit without too much distress.

11 MR. BANK: Okay. And the second brief issue I had is
12 Ms. Thompson is obviously in leg chains right now.

13 THE COURT: Yeah, I'm going to take those things off
14 her.

15 MR. BANK: We would ask that she be allowed to walk
16 up here. I might have her come up and stand --

17 THE COURT: That's fine.

18 You can take those off of her for the purposes of her
19 testimony.

20 She has appeared before the Court and been very
21 respectful and her behavior has been very appropriate for
22 courtroom demeanor this week. I'll allow those security
23 chains to come off of her for purposes of her testimony.

24 MS. CAMPBELL: Judge, we would ask is it okay if the
25 deputy sits closer to her?

1 THE COURT: Yes, we'll keep somebody close to her.

2 MS. CAMPBELL: Or just stay up near the wall.

3 THE COURT: She hasn't done anything crazy this week
4 that would lead me to believe she would do anything out of
5 order now, so I will allow that.

6 So we have somebody calling the SLED guy?

7 MS. CAMPBELL: Yes, Your Honor.

8 THE COURT: Okay. Great.

9 Okay, let's bring them in.

10 You rested on the record, right?

11 MS. WALKER: Yes, Your Honor.

12 THE COURT: All right. I'm trying to remember.

13 (Whereupon, the jury entered the courtroom at
14 2:45 p.m.)

15 THE BAILIFF: The jury is seated, Your Honor.

16 THE COURT: Thank you very much. Welcome back,
17 ladies and gentlemen. When we took a break, the State had
18 rested its case. The Defense now has an opportunity to
19 present a case if they want to. They do not have to
20 because as I told you before, the burden of proof lies
21 upon the State in this case. That burden of proof is
22 beyond a reasonable doubt. The Defense may if they choose
23 present a case, but they do not have to.

24 All right. Mr. Bank, do you wish to call any
25 witnesses?

1 MR. BANK: We do. The Defense calls Holly Jo
2 Thompson.

3 THE COURT: All right. Thank you, Ms. Thompson,
4 please come up, be sworn.

5 HOLLEY JO THOMPSON, after being
6 duly sworn, testified as follows:

7 THE CLERK: Thank you. Please have a seat in the
8 witness stand and state your name for the record.

9 THE WITNESS: My name is Holly Jo Thompson.

10 THE COURT: Okay. You've got to get a little closer
11 to that microphone, okay?

12 THE WITNESS: Better?

13 THE COURT: One of the witnesses earlier was really
14 loud and I turned it down a little. Let me -- I'm going
15 to turn you up a little bit, okay. Thank you, Ms.
16 Thompson.

17 I apologize for interrupting you, Mr. Bank.

18 DIRECT EXAMINATION

19 BY MR. BANK:

20 Q Ms. Thompson, can you introduce yourself to the jury,
21 tell them where you're from, where you were born?

22 A I'm Holly Thompson. I was born June 23rd, 1973 to
23 two parents. One was in the military and one was an unfit
24 mother. And I was --

25 Q I'm going to stop you. If you could have that

1 microphone moved a little closer to you.

2 A Better?

3 Q That's good. Are you nervous, Ms. Thompson?

4 A Yes, very.

5 Q All right. Go ahead. I didn't mean to interrupt
6 you.

7 A My grandfather got custody of me because my dad
8 couldn't keep me because of military. He was the only one
9 trying to take care of me, so he couldn't do that and my
10 grandparents got custody of me at that time.

11 At seven, my dad come back into my life and took
12 custody over. That's when a lot of --

13 Q I'm going to slow you down. Where were you living at
14 this time? You said you lived with your grandparents and
15 your father came back?

16 A I lived in Lyons, Indiana.

17 Q Lyons, Indiana?

18 A Yes, sir.

19 Q Okay. Ms. Thompson, I can already tell that you're
20 wanting to say a lot. Let me just try to ask you a simple
21 way. Would you say -- what type of stability or lack
22 thereof did you have in your childhood?

23 A With my grandparents, I had all the stability of any
24 child. I had a grandmother and a grandfather that I
25 looked to for guidance, for growth. And when I got with

1 my dad, it was totally different. There was no love
2 there, so to speak.

3 Q Ms. Thompson, how many places would you say you lived
4 during the course of your childhood? How many different
5 households?

6 A I have lived in probably over 20 different
7 households.

8 Q Now, Ms. Thompson, you've heard -- you've been
9 sitting here in trial every day?

10 A Yes, sir.

11 Q Since we started; is that right?

12 A Yes, sir.

13 Q There's been some conversation about drug use; is
14 that right?

15 A Yes, sir.

16 Q Have you done drugs in your past, Ms. Thompson?

17 A Yes, at 11 years old, 11 years old, I was a full
18 blooded alcoholic and a drug addict.

19 Q Eleven years old. Did that affect your youth or your
20 education in any way?

21 A It affected me in so many ways. I actually got in
22 trouble in school and at 17, I dropped out of school. I
23 joined the military and dropped out of school.

24 Q All right. So let's start with 17, 18 years old,
25 what did you do as a young adult?

1 A I was -- I went to school, but then I wanted to do
2 the military. And I was living with my grandparents at
3 the time, and they got -- they helped me going through the
4 process of the military. And I found out where my real
5 mother was, and I ran away from home, so to speak, to go
6 live with her in Kansas where she was with my high school
7 sweetheart. Things weren't good there. They were really
8 bad.

9 Q Now, how did you get down to South Carolina?

10 A When I joined the military at 17, they had sent me to
11 Fort Jackson to do my basic and my AIT training.

12 Q So you came to Columbia, South Carolina because of
13 Fort Jackson?

14 A Yes, sir.

15 Q Now, how long were you in the military at Fort
16 Jackson?

17 A I was only in the military six months.

18 Q And we don't need all the details. What was the
19 general reason that it was such a short period? What was
20 your discharge?

21 A It was a general discharge, uncharacterized medical.

22 Q Was it your plan for your military career to be that
23 short?

24 A No, sir, it wasn't.

25 Q Now, after that discharge, did you stay in South

1 Carolina?

2 A I went back to Kansas briefly to turn my uniforms in,
3 and then I come right back to Columbia.

4 Q Now, Ms. Thompson, did you ever end up -- when you
5 came back, did you settle into Columbia? Did you settle
6 into Columbia?

7 A Yes, I made Columbia my home. I met my children's
8 father.

9 Q What was his name?

10 A His name is John Brisby.

11 Q John Brisby?

12 A Uh-huh.

13 Q Did you have any kids?

14 A We had three.

15 Q Is he the only person that you had any children with?

16 A Yes.

17 Q What are the names of your children?

18 A I have John, I have Ernest, and I have Cheyenne.

19 Q How old are they?

20 A Twenty-three, 21 and 18.

21 Q Ms. Thompson, do you love your kids?

22 A I love them to death.

23 Q Now, did you stay in your relationship with John
24 forever?

25 A No. He and I only stayed together six-and-a-half

1 years.

2 Q When you left, did the kids come with you?

3 A No. I didn't have a place to go, actually. I was
4 from pillar to post, so to speak. So my kids had water,
5 they had lights, they had a roof over their head. They
6 had what they needed with their father.

7 Q And about what year was that when you left John?

8 A February of '98.

9 Q Ninety-eight. All right. Was the next kind of phase
10 of your life pretty much the phase of your life you're in
11 going into 2014?

12 A In 1998, I got back on drugs real bad, and I started
13 prostituting.

14 Q Was that the first time in your life that you had
15 ever prostituted?

16 A No. I had done it as a teenager as well.

17 Q What type of drugs were the most common that you
18 would use during this time?

19 A Crack cocaine, powder cocaine, marijuana and alcohol.

20 Q And what were the type of people you were hanging out
21 with in the late 90's, 2000's?

22 A Very different people than most people do, street
23 people, people with records, people like me, so to speak.

24 Q Now, Ms. Thompson, during this time, actually, going
25 into the mid to late 2000's, you actually have some

1 criminal convictions, don't you?

2 A Yes, sir, I do.

3 Q I believe it's a 2008 breach of trust conviction?

4 A Yes, sir.

5 Q And then in 2010, there's a grand larceny and another
6 breach of trust?

7 A Yes, sir.

8 Q And a couple of shopliftings in 2013?

9 A Yes, sir.

10 Q Ms. Thompson, are you proud of those convictions?

11 A No, I'm not.

12 Q Are you proud of that lifestyle?

13 A No.

14 Q Now, during this time, was there any man in
15 particular that you got to know real well?

16 A I got to know Mike Richardson and Moses Warren very
17 well.

18 Q Were they both here earlier today?

19 A Yes, sir, they were.

20 Q When's the last time that you physically have seen
21 Mike or Moses?

22 A It's been two years and a month since I've seen Mike
23 and it's been since May of 2014 that I've seen Moses.

24 Q What's significant about two years and one month?

25 A That's how long I've been locked up.

1 Q That's when you were arrested for what we've been
2 talking about all week?

3 A Yes, sir. Yes, sir.

4 Q Now, Ms. Thompson, I'm going to be very careful with
5 this question. I was raised in a house full of women, mom
6 and a whole a bunch of sisters. Do you look different
7 today than you looked during this time of your life going
8 into 2014?

9 A Yes, sir, I do. I weighed -- I weighed -- my
10 paperwork said 136 pounds when I was arrested to
11 218 pounds, which I weigh now, a total of 83 pounds in two
12 years and one month.

13 Q So you've gained some weight, Ms. Thompson?

14 A Yes, sir.

15 Q What do you think that's attributed to?

16 A Not doing drugs, eating, resting.

17 Q Living a healthy lifestyle, I should say?

18 A Yes, sir.

19 Q Now, Ms. Thompson, do you ever remember meeting a
20 James Solomon?

21 A Yes, sir.

22 Q And can you tell the jury how you met Mr. Solomon?

23 A I met -- I met James through Amy Norris.

24 Q And I don't want to interrupt you, but is Amy Norris,
25 is that the young lady that was here earlier today?

1 A Yes, sir.

2 Q And I'm sorry, continue. When did you meet?

3 A I met him in March or April of 2013. Amy and I had
4 been hanging out, and we had turned a trick, had sex for
5 drugs.

6 Q Ms. Thompson, is that what that means? Can you
7 explain what trick means?

8 A Trick is a term used for men who pick up women off
9 the streets and have sex with them, oral sex, vaginal sex,
10 anal sex, whatever kind of sex that they want and they pay
11 for it.

12 Q And how do they pay for it, Ms. Thompson?

13 A They pay money or they pay drugs.

14 Q I'm just getting some water. If you need any water,
15 please just let me know, okay?

16 A Yes, sir.

17 Q Now, you said something about March of 2013 is when
18 you believe --

19 A Yes, sir.

20 Q -- you met him; is that correct?

21 A Yes, sir.

22 Q So approximately how long had you known Mr. Solomon
23 between when you met him and between when this incident
24 happened?

25 A About nine months.

1 Q About nine months?

2 A Nine months to a year.

3 Q And can you tell me and tell the jury a little about
4 who Mr. Solomon was? What did he do for a living? What
5 was he like?

6 A Mr. James was a -- he built grills. And that's how I
7 knew him, as the Grill Man. I also called him Mr. James.
8 He was one of my clients, so to speak, that when he wanted
9 sex or wanted someone to get high with him, he would call
10 on me to come to his house and fulfill obligations.

11 Q Now, we've heard a few times, I think mostly family
12 members have used the nickname Boo Boo. Have you ever --
13 had you ever heard that nickname for him prior to your
14 arrest?

15 A No, sir.

16 Q What was Mr. Solomon's physical characteristics?

17 A He was kind of a big man, very strong, it seemed, you
18 know. He was -- he was a good guy. He really was.

19 Q Did you guys see each other regularly or did you just
20 meet that one time in March?

21 A No. I was going to his house sometimes two and three
22 times a week. He would get messages to me or call Mike,
23 tell Mike to send me to his house. Sometimes it would be
24 three times. Sometimes it would be twice a week.
25 Sometimes it would be once a week. You know, it just

1 depended on him.

2 Q Is that how he would typically do it, he would get a
3 message to you, you said?

4 A Yes, sir.

5 Q Now, Holly, do you remember the night we've been
6 talking about this week?

7 A Yes, sir, I do.

8 Q Do you remember if it was a Thursday, Friday,
9 Saturday?

10 A A Friday.

11 Q A Friday?

12 A Yes, sir.

13 Q Now, could you tell the jury how it came to be that
14 you saw Mr. Solomon?

15 A I was given a message that James wanted me to come to
16 his house.

17 Q What you just said was fairly typical?

18 A Yeah, so it was normal for me to go down, walk a
19 quarter mile and spend time with him.

20 Q Where were you walking from, Ms. Thompson?

21 A I was walking from 1533 Lower Richland Boulevard to
22 his address.

23 Q What address did you just say? Whose house was that?

24 A That's Mike's house.

25 Q Mike?

1 A Mike Richardson, yes.

2 Q Did you also stay there?

3 A Yes.

4 Q While you were going there or walking there, what
5 were you wearing that day? What did you have on you?

6 A I had on my gray New Balance tennis shoes. I had on
7 my Mudd jeans and I had on my tank top that had a built-in
8 bra in it and I had my bra underneath it and my McDonald's
9 jacket.

10 Q Have you seen a couple of those items out here?

11 A Yes, sir.

12 Q This was January, right?

13 A Yes, sir.

14 Q Do you remember the temperature? Not the exact
15 temperature.

16 A It was cold.

17 Q It was cold. Now, when you got to Mr. Solomon's
18 house, did you typically go through the front, the back?
19 Did he meet you outside? What would you do when you got
20 to his house?

21 A I went through the front door. He had a big dog in
22 the backyard and I wasn't messing with that dog, so I
23 always used the front door.

24 Q You always used the front door so you wouldn't mess
25 with that dog?

1 A Yes, sir.

2 Q And when you get there, is the door typically locked
3 or unlocked? Do you have to knock?

4 A It's locked and I have to knock.

5 Q Hue does the lock on that front door work, do you
6 remember?

7 A You can keep it -- it will open from the inside
8 without having to turn the lock, if my memory serves me
9 correctly. When you shut it, it will be locked if the
10 little lock knob hasn't been turned.

11 Q Are you saying that it would be locked on the
12 outside?

13 A Yeah.

14 Q But open on the inside?

15 A Yeah.

16 Q Now, once you got inside -- did he open the door for
17 you?

18 A Yes, sir.

19 Q And you went inside?

20 A Yes, sir.

21 Q Tell me what happened from there.

22 A I got in the house. It was very hot. He had on his
23 shorts and his t-shirt, which was mostly normal because he
24 kept his house so hot. I took my jacket off, took my
25 shoes off, talked to him for a minute. We got to

1 conversating a little bit. I ended up taking the rest of
2 my clothes off.

3 Q Ms. Thompson, do you remember what his demeanor was
4 that evening?

5 A He was a little funny acting. I hadn't never seen
6 him like that. I thought maybe he had been drinking or
7 something from the way he was acting.

8 Q Now, did y'all engage in any drug use or
9 prostitution?

10 A Yes, both.

11 Q Tell me about that.

12 A He had some crack, and he hit a piece. I hit a
13 piece. I had a stem. He didn't have one before I got
14 there, so he wanted to use mine, which I always took it
15 with me because I knew if he had crack, you know, he would
16 want to smoke it probably on mine, so I had my crack stem
17 --

18 Q And I'm sorry again, but there's some words that
19 you're using, I don't know if everybody is familiar with.
20 You said a crack stem?

21 A It's a metal or a glass pipe with Chore Boy scouring
22 pads that you put the crack on and you light it with a
23 lighter and you smoke it.

24 Q Is is something that's small or big?

25 A It can be either.

1 Q What was the size of the one you had?

2 A Mine was small.

3 Q Okay. All right. Now, I believe I cut you off,
4 Ms. Thompson. You said that y'all were using your stem?

5 A We were using my stem. James just didn't -- he just
6 didn't seem right. Something just wasn't clicking with
7 me, and I didn't understand what it was. And -- oh, Lord.

8 Q It's okay. Slow down, take a breath. Are you all
9 right, Ms. Thompson?

10 A Yeah. He -- he was smoking more dope than I was, but
11 we -- I got over that because crack is not a big deal to
12 me. I got it all the time, so it wasn't a real big deal
13 with me.

14 So he -- I went -- I got up and went to the bathroom,
15 and someone come to the door -- he opened the front door
16 for some reason when I went in the bathroom. And when I
17 come out, I sat back down on the couch.

18 He never said anything, who it was or whatever, and
19 he hit some more dope. I tried to give him an erection.
20 It wouldn't work, so we smoked more dope. We just kept
21 trying and trying and trying to smoke dope and to have
22 sexual relations, which never happened, and he got angry
23 about that.

24 Q He got angry about what?

25 A That he couldn't perform, that he couldn't get an

1 erection.

2 Q Now, tonight, this night isn't the first time that
3 y'all had some type of sexual relations before, right?

4 A No.

5 Q Had that ever been an issue or a problem before?

6 A Never.

7 Q And how was he acting, did that make him act in any
8 way?

9 A He was getting angry and -- I don't know, he just
10 wasn't James.

11 Q Do you know if anybody else ever came into the house
12 that evening while you were there?

13 A A dope dealer come by house, someone who sells crack
14 cocaine come to the house that night. And he had me go in
15 a little room, a small bedroom off the living room, so I
16 didn't see the drug dealer and the drug dealer didn't see
17 me.

18 Q Did that seem unusual that he would have you go to
19 the bedroom?

20 A Yeah, because he had never done that before.

21 Q Now, Ms. Thompson, did you stay there all night or
22 was there a point that you decided to leave?

23 A No, sir. James and I had -- after the dope dealer
24 came, James and I went to the back bedroom, tried oral sex
25 again, tried vaginal sex. It just wouldn't work. So I

1 went to the living room and started putting my clothes on.
2 I had my jeans on, had my tennis shoes on. And when I was
3 putting my tennis shoes on, James started talking about,
4 Bitch, give me my money back or give me my crack back.
5 I'm going to shoot you, all kinds of craziness. And he
6 just kept repeating it.

7 He had a knife that he was cutting the crack with
8 because crack is hard. You have to have a hard surface to
9 cut it, something like a knife to cut it with. And he
10 started swinging the knife. And when he swung it the
11 first time, he caught my hand, my right hand, where I was
12 trying to jump out of the way of it. Well, I come around
13 the table --

14 Q What room are you in?

15 A We're in the living room.

16 Q Okay.

17 A I come around the coffee table and the only thing I
18 see I can protect myself with is a glass vase, and the
19 vase is full of pee.

20 Q The vase is full of pee?

21 A Yes.

22 Q Explain to me where this vase is again.

23 A There's a little cabinet that sits at the end of the
24 bar in the kitchen.

25 Q All right. And you say that it was filled with pee?

1 A Yes, sir.

2 Q Do you know whose pee it was?

3 A James.

4 Q How do you know that it was his?

5 A He had told me earlier in the night that it --
6 because I asked him about the vase. It was a pretty vase.
7 And I couldn't figure out what was in it. He said that
8 was urine. I said, Why did you pee in your vase? He said
9 because he didn't want to go to the bathroom.

10 Q Now, is that typical?

11 A No.

12 Q You said that you grabbed the vase after he swung the
13 knife at you; is that right?

14 A Yes, sir.

15 Q And what happened after you grabbed the vase?

16 A I turned it upside down and urine went all over my
17 pant leg. I swung the vase at him, and he swung at me
18 again. The next thing I know, we're fighting with a vase
19 and a knife.

20 Q Now, Ms. Thompson, what I'm going to do --

21 MR. BANK: Your Honor, can I have her step down?

22 THE COURT: Sure.

23 BY MR. BANK:

24 Q I'm going to show you a chart and ask you if it's
25 familiar to you, okay?

1 A Okay.

2 MR. BANK: Just for the record, this is State's
3 Exhibit 185.

4 BY MR. BANK:

5 Q If you could come on this side, Ms. Thompson.

6 THE DEPUTY: Right there.

7 BY MR. BANK:

8 Q Does this drawing look familiar to you, Ms. Thompson?

9 A Yes, that is James's trailer.

10 Q James's trailer?

11 A Yes, sir.

12 Q I'm going to give you this, okay. I just want you to
13 point where I tell you -- where I'm -- I'm going to ask
14 you where something is and you point to where it is, all
15 right?

16 A Okay.

17 Q Where is the kitchen?

18 A The kitchen is here.

19 Q Where's the front door?

20 A Front door is here.

21 Q All right. And what room is that?

22 A That's the living room.

23 Q And where is the hallway we keep hearing about?

24 A This is the hallway.

25 Q All right. And the guest room?

1 A This room.

2 Q The bathroom?

3 A The bathroom.

4 Q And then the room that James sleeps in?

5 A (Indicating).

6 Q Excuse me, Mr. Solomon?

7 A Right there.

8 Q Is there a back door?

9 A Yes, it's here.

10 Q Where would that dog usually be?

11 A He was out here somewhere. I never seen him. I
12 didn't look at that dog. I was scared of him.

13 Q Now, can you point to where -- at the time you
14 grabbed the vase, I want you to one --

15 THE COURT: Okay. She's going to have to speak up
16 for me.

17 All right. Now, listen, Ms. Thompson, we all want to
18 be able to hear you, okay?

19 THE WITNESS: Okay.

20 THE COURT: Make sure you're projecting to where even
21 Mr. Dye there on the back row can hear you, okay?

22 THE WITNESS: Okay. I'm sorry, Your Honor.

23 THE COURT: I apologize for interrupting, Mr. Bank.

24 MR. BANK: That's okay.

25 BY MR. BANK:

1 Q At the time that you grabbed the vase, where was
2 Mr. Solomon?

3 A He was on -- coming around the end of the coffee
4 table that was sitting here.

5 Q All right. Where was the vase located?

6 A The vase was located here at the end of the bar.

7 Q All right.

8 A Right there.

9 Q When you picked up the vase, what was his reaction?

10 A He just kept saying, Bitch, I'm going to kill you.
11 Bitch, I'm going to shoot you. Give me my crack back.
12 And just craziness.

13 Q Now, did you have all your clothes at this point?

14 A No.

15 Q All right.

16 A I had my jeans and my shoes on, but I didn't have my
17 shirt, my bra or my jacket.

18 Q Where were those located?

19 A At the end of the couch that was here.

20 Q So at this point, what is your feeling?

21 A I'm scared.

22 Q What are you scared of, Ms. Thompson?

23 A I'm scared for my life.

24 Q At this point, has he made any contact with you with
25 the knife?

1 A Yes, he cut my hand in a couple of places.

2 Q Now, what happened? What did you after you grabbed
3 the vase?

4 A I went to try to get my clothes so I could get on
5 through and get my crack stem because I never left it
6 anywhere, and he dropped it in the floor. So when I bent
7 to pick it up, he swung and hit me in my left hand
8 bruising my left hand real bad.

9 Q Okay.

10 A Causing my knuckle to swell making it look like it
11 was broke.

12 Q What did you do?

13 A I swung vase back.

14 Q And where were you when this happened?

15 A We was right about here.

16 Q All right. Do you remember exactly how many times
17 that you hit him with the vase?

18 A No, sir, I don't.

19 Q Do you have an idea of how many times that you hit
20 him with the vase?

21 A Not -- I mean, I thought five or six, but it's...

22 Q Do you remember where you hit him with the vase on
23 his body?

24 A His face and his head.

25 Q When did you stop swinging the vase?

1 A We both fell. We lost momentum. He fell and I fell
2 on top of him.

3 Q What was going on with the vase at that point?

4 A The vase had broke.

5 Q All right. After that, what happened?

6 A I got up real quick, grabbed my clothes, went out the
7 front door. And his front porch door, the -- his glass
8 door, you had to lift it up to close it all the way. And
9 I couldn't get it lifted up and closed, so I just left it.
10 It probably came back open. But I went out the front.

11 Q Did you close the main door?

12 A Yes.

13 Q What was he doing as you were going out the front
14 door?

15 A He was getting up off the floor. He was on his hands
16 and knees getting up.

17 Q Was he saying anything?

18 A He was just, Give me my crack back. Bitch, I'm going
19 to kill you.

20 Q And at that point, that's when you ran out the front
21 door?

22 A Yes, sir.

23 Q Come have a seat back here.

24 A (The witness complied.)

25 Q Ms. Thompson, when you swung that vase, did you mean

1 to swing that vase to hit him?

2 A Yes, to protect myself.

3 Q Did you feel like you had any other option at that
4 point?

5 A No.

6 Q Did you feel that you did anything to cause his
7 aggression?

8 A No.

9 Q And when did you stop hitting him with the vase?

10 A When we both fell and the vase broke.

11 Q Now, we've heard some testimony that he's got some
12 injuries on the back of the head?

13 A Yes, sir.

14 Q Do you have any idea how those injuries got there if
15 you hit him in the face?

16 A It's possible I hit him in the back of the head with
17 that vase as well.

18 Q How was he coming -- was he coming at you at all?

19 A Yes, he did.

20 Q And how was his head situated when he was coming at
21 you?

22 A His head would be up. A couple times, he lowered his
23 head down, though, and that's when I hit him in the head.

24 Q Did you hit him anymore with anything after the vase
25 broke?

1 A No, sir. I was trying to get out of there.

2 Q Now, Ms. Thompson, did any of this fighting happen in
3 the bedroom?

4 A No.

5 Q Nothing in the back bedroom with any fighting?

6 A No, sir.

7 Q That's always been your position, hasn't it?

8 A Yes, sir.

9 Q Now, when you left, where did you go?

10 A I went back to Mike's house.

11 Q And how long were you there for?

12 A I got there before 12:00, and I didn't leave until
13 like 1:00 o'clock.

14 Q Why did you leave?

15 A Because of Mike, Mike Richardson, we had gotten into
16 an argument.

17 Q Was he upset about something?

18 A He was upset because I didn't have any crack, and I
19 didn't have any money for him. Mike Richardson was my
20 pimp, slash, boyfriend.

21 Q When you say you didn't get any money or crack, that
22 would be presumably from Mr. Solomon?

23 A Yes, sir.

24 Q Where did you go after Mike?

25 A I call Moses Warren on the phone, and he come and

1 picked me up.

2 Q And where did he pick you up?

3 A On Padgett Road.

4 Q Is that going towards Leesburg?

5 A Yes.

6 Q And when Moses picked you up, where did you and Moses
7 go?

8 A Back to Moses's house.

9 Q And what did you do at Moses's house?

10 A I took a shower and put my night clothes on and got
11 in the bed.

12 Q Now, either Mike or Moses, did you tell them that
13 anything had happened that night?

14 A The only thing I told either one of them was that I
15 had been in a fight. That's all I said.

16 Q No more details beyond that?

17 A No, sir.

18 Q At this point, did you think Mr. Solomon was dead or
19 alive?

20 A I didn't know.

21 Q Ms. Thompson, on that night, did you call 911?

22 A No, sir.

23 Q Tell me why -- tell the jury why you didn't call 911?

24 A Being a prostitute and a known crack addict, the
25 police don't look too kindly on either one. I have had

1 instances where I have called the police before, and they
2 get out to take my statement or whatever and they'll say
3 well, just let it go. They don't believe the story. They
4 don't want to hear it. It's just unfathomable to them
5 that a female could be a prostitute and a drug addict.

6 Q Now, Ms. Thompson, that's a Friday night this all
7 happened, right?

8 A Yes, sir.

9 Q The first time that you ever talked to a police
10 officer at all or the next time you ever see a police
11 officer is that Monday, right?

12 A Yes, sir.

13 Q Mr. Johnson?

14 A Yes.

15 Q Is that correct?

16 A Detective --

17 Q I'm sorry?

18 A Detective --

19 Q That's my fault?

20 A I'm sorry.

21 Q That leaves Saturday and Sunday?

22 A Uh-huh.

23 Q What were you doing Saturday and Sunday?

24 A I was at Moses's house Saturday until I left there,
25 and then I went back to Mike's house. And I stayed there

1 until that Sunday afternoon and my son and I and his
2 roommate's friend went to pick my clothes up from Moses's
3 house.

4 Q Did you ever go back to check on Mr. James?

5 A No.

6 Q Why not?

7 A After that ordeal that I went through on Friday night
8 with him, I had already decided that I wouldn't be going
9 to see him anymore because it was too much.

10 Q Did you still have any idea that he was dead?

11 A No, sir.

12 Q Now, that Monday we just mentioned, did Investigator
13 Johnson come speak with you?

14 A Yes.

15 Q Tell me about that.

16 A Mr. Johnson and Sergeant Robinson had come. They had
17 stopped by the house, and they was asking about a white
18 girl, you know, first name Amy. I told them, Yeah, I know
19 Amy Norris. Because she frequent the area. She, as well
20 was prostitute, but -- they had asked if we knew where she
21 lived because Mike and I was both talking to them. My son
22 come around the corner, and he was standing there. They
23 wanted to know if we knew where Amy was or anything about
24 Boo Boo. And I didn't know James as Boo Boo so that name
25 didn't ring a bell with me. And they never said his real

1 name or where the trailer was where all this had gone on
2 at.

3 Q All right. Now, later that day, did you kind of put
4 together what Mr. Johnson might be wanting to talk to you
5 about?

6 A Yes, sir.

7 Q What did you find out later that day or evening?

8 A On the news, it had showed the house, the trailer,
9 the front of the trailer, and I knew exactly what they was
10 talking about. It was the same night that -- he died the
11 same night that we got into this fight.

12 Q Now, when you were watching the news, that's Monday
13 night?

14 A Yes.

15 Q At that point, you finally figured it out, did you
16 call the police then?

17 A No, sir.

18 Q Why didn't you call the police then?

19 A Scared.

20 Q And what happens the next day?

21 A Tuesday, I clean up the house real well. Mike's
22 mother was at home, so I was helping her do some stuff in
23 her room. Mike was outside. He come in and he called for
24 me. I go outside, and Detective Johnson was there to
25 arrest me for the murder of James Solomon.

1 Q Now, did Mr. Johnson take you somewhere?

2 A Yes, he took me to headquarters.

3 Q Now, Investigator Johnson, did you give him a
4 statement?

5 A Yes, I did.

6 Q Did you sign that statement?

7 A Yes, I did.

8 Q Did you provide him with your DNA?

9 A Yes, I did.

10 Q And maybe your fingerprints, palm prints?

11 A Yes, sir.

12 Q Ms. Thompson, did you ever ask for a lawyer?

13 A No.

14 Q And is what you're saying today essentially what was
15 in that statement?

16 A Yes, sir.

17 Q The day that you were arrested?

18 A Yes, sir.

19 Q So this has been your recollection since day one?

20 A Yes, sir.

21 Q Have you taken any -- have any pictures taken of you
22 that day?

23 A Yes.

24 Q How many days after the incident is this at that
25 point for the pictures?

1 A Everything happened on Friday, so it will be
2 Saturday, Sunday, three days, three-and-a-half days.

3 Q Now, we're almost done. At least, I'm almost done,
4 all right. You've been in jail since this happened; is
5 that correct?

6 A Yes, sir.

7 Q And you can make phone calls at the jail, right?

8 A Yes, sir.

9 Q We just heard one of them. You were in the
10 courtroom?

11 A Yes, sir.

12 Q Have you made more phone calls than just that one
13 phone call?

14 A Oh, yes, sir.

15 Q Now, would you as well as calling this self-defense,
16 also characterize this as a fight, also?

17 A Yes, sir.

18 Q Are there any phone calls where you say that you
19 didn't kill or murder Mr. Solomon, that it couldn't have
20 been you? Were there phone calls like that?

21 A Yes, sir, there was.

22 Q And what do you mean when you're saying those things?

23 A Because when I left the house, he was getting up. He
24 was still cussing me out, still talking about I stole his
25 dope, his crack cocaine, and I had no reason to believe

1 that he had passed away from a fight that we got into.

2 Q Ms. Thompson, at the jail, you can also get visits;
3 can't you?

4 A Yes, sir.

5 Q Has Moses Warren ever come to visit you?

6 A Yes.

7 Q When is the last time he came to visit you?

8 A The last time he came was May of 2014.

9 Q So a few months after your arrest?

10 A Yes, sir.

11 Q Has Mike Richardson ever come to visit you?

12 A No, sir.

13 Q But you have talked to him on the phone?

14 A Yes, sir.

15 Q Now, Ms. Thompson, I want you to be real clear, okay.

16 On that Friday, did you go to Mr. Solomon's house with a
17 plan to fight or kill Mr. Solomon?

18 A No.

19 Q Did you hit him with that vase because you had to?

20 A Yes, sir, I did.

21 Q Ms. Thompson, did you murder Mr. Solomon?

22 A No.

23 MR. BANK: Beg the Court's indulgence.

24 (Pause.)

25 MR. BANK: No further questions. Please answer any

1 questions that the prosecutors may have for you.

2 THE COURT: All right. Thank you, Mr. Bank.

3 MS. CAMPBELL: Beg the Court's indulgence.

4 THE COURT: Yes, ma'am.

5 (Pause.)

6 CROSS-EXAMINATION

7 BY MS. CAMPBELL:

8 Q And just up front before we go back over things,
9 Ms. Thompson, you aren't telling this jury here today that
10 what you did -- you understand what you did to him caused
11 his death?

12 A Yes, I do.

13 Q So your attack or your fighting him that night caused
14 his death. There's no dispute there?

15 A I'm guessing so.

16 Q Well, was anybody else in the house?

17 A Not that I know of.

18 Q Did anybody else attack James Solomon that night?

19 A Not that -- I don't know. I can't answer that.

20 Q Are you the only one that was armed with a vase and
21 beat in his head?

22 A I was the only one that had a vase.

23 Q And you realize that that attack, as you've testified
24 a little while ago --

25 A Uh-huh.

1 Q -- caused his death?

2 A I didn't know that that is what caused his death.

3 Q Until later, is your testimony?

4 A Yes.

5 Q But you realize that now here in this courtroom?

6 A Could have been contributed to his death, yes.

7 Q Well, other than, as you blame James Solomon, who
8 else contributed to his death?

9 A I wouldn't know.

10 Q So you're -- this isn't a self-defense case. This is
11 a somebody-else-did-it case?

12 A I was in fear for my life.

13 Q So you killed him in self-defense, is that what
14 you're telling this jury?

15 A Yes.

16 Q No question there? That's your story?

17 A (There was no response).

18 Q You mentioned that you met Mr. Solomon through Amy?

19 A Yes.

20 Q And that you met him after you and Amy had gone to a
21 drug dealer's house and turned a trick?

22 A No, he come to Amy's house, but, yes.

23 Q But before that, you had done a threesome with
24 someone else or something to that effect? Do you remember
25 saying that to the police?

1 A No.

2 Q That's in your statement and some other things in
3 your statement?

4 A Amy, Bowleg and I had a threesome. That's what the
5 threesome was about. That's the one that was at Amy's
6 house.

7 Q And then you would meet with Mr. Solomon on a regular
8 basis?

9 A Yes.

10 Q Had he ever been violent with you before?

11 A No.

12 Q Had Mike Richardson ever been violent with you before
13 that night?

14 A Yes.

15 Q And, in fact, Mike Richardson would beat you up on a
16 lot of occasions?

17 A He has a couple of times.

18 Q Say, if you didn't show up with the money or the
19 drugs?

20 A He was my pimp.

21 Q But you also referred to him as your boyfriend?

22 A Yes.

23 Q Did you love him?

24 A I thought I did.

25 Q Did he love you?

1 A No.

2 Q You know that now, but at the time, did you think he
3 did?

4 A At the time, I thought he did, yes.

5 Q That's why in all these statements and your statement
6 to the police, you refer to him as your boyfriend?

7 A Yes.

8 Q In fact, you never told the police that he was your
9 pimp, not until here in this court today; did you?

10 A My attorneys knew about it.

11 Q I'm talking about just what you told the police?

12 A No, I never said anything to them.

13 Q In fact, you refer to him as your boyfriend?

14 A Yes.

15 Q I want to go back through what you said -- what were
16 you wearing that day?

17 A My jeans, my tank top, my tennis shoes and my jacket.

18 Q And that's the clothing that we have here in
19 evidence?

20 A Yes, ma'am.

21 Q And that's what you wore over there that day, right?

22 A Yes, ma'am.

23 Q And earlier that day, what had you been doing?

24 A Smoking crack.

25 Q How much crack had you smoked that day?

1 A I have no idea.

2 Q Had you done any other drugs?

3 A No.

4 Q Well, you said that your drugs of choice were usually
5 cocaine, crack, marijuana and what was the other one?

6 A Alcohol.

7 Q Had you done any marijuana that day?

8 A No.

9 Q Any cocaine?

10 A No.

11 Q You've done crack?

12 A Yes.

13 Q And you've done so much crack, you don't know how
14 much it was?

15 A It may have been a lot. It may have been a little.
16 I don't remember.

17 Q But you haven't done anything else?

18 A No.

19 Q And what effect does crack have on you?

20 A It makes me bold.

21 Q It makes you bold. And when you say bold, what do
22 you mean by that?

23 A To say things to -- like, for instance, Mike, I could
24 tell him how I really felt about the way he was treating
25 me.

1 Q You would stick up for yourself?

2 A Yeah.

3 Q It made you bold. And you had been smoking a lot of
4 it that day?

5 A I wouldn't say a lot.

6 Q Well, that's what you just said. So was it a lot or
7 not?

8 A No, what I said was I didn't know how much.

9 Q But you'd been smoking all day I believe was your
10 testimony?

11 A Yes.

12 Q And who gave you the actual message to go to --

13 A Mike did.

14 Q Mike did?

15 A Uh-huh.

16 Q And when you got there, you entered through the front
17 door?

18 A Yes, ma'am.

19 Q And once you got inside, you said it was hot?

20 A Yes.

21 Q Ninety degrees hot?

22 A Yes.

23 Q And so you first took off your shoes and your jacket?

24 A Yes.

25 Q What was he wearing?

1 A His t-shirt and shorts.

2 Q And then you smoked some crack?

3 A Uh-huh.

4 Q If I say anything wrong, correct me, okay?

5 A (Nods in the affirmative.)

6 THE COURT: You have to say yes or no, please.

7 THE WITNESS: Yes.

8 THE COURT: Thank you.

9 BY MS. CAMPBELL:

10 Q And after you smoked some crack, I believe you said
11 you tried your first sexual encounter?

12 A Yes, ma'am.

13 Q And this had never been a problem before?

14 A No, ma'am.

15 Q And you said he was acting funny that day?

16 A Yes, ma'am.

17 Q So you were alert enough and aware enough to see that
18 he was acting funny?

19 A Yes, ma'am.

20 Q Did that put you off a little bit?

21 A A little bit, but I really didn't -- I was just
22 trying to have a good time with James like we usually did,
23 but it just -- for some reason, that night was different.

24 Q Because you said he was acting different, like he had
25 been drinking a lot?

1 A Like he had drank or something, I don't know.

2 Q And you noticed it. And today is the first time you
3 ever mentioned that; is that correct? I'll get back to
4 your statement. And then after y'all tried to have sex --
5 where did you try to have sex the first time and what kind
6 of sex were you having?

7 A We tried oral sex the first time.

8 Q Where did that take place?

9 A In the living room.

10 Q And were you -- did you have your clothes on at this
11 point?

12 A No.

13 Q Your clothes were off?

14 A Yes.

15 Q Where did you put your clothes down?

16 A At the end of the couch.

17 Q At the end of which couch?

18 A The long couch against the window.

19 Q Against the window. Is that in front of the coffee
20 table or the other one?

21 A Yeah -- no. When you're -- oh, Lord. When you look
22 at the sketch you have of the trailer, it's the one right
23 there by the hall.

24 Q Nearest the hall?

25 A Yes.

1 Q Okay. And which end of the couch did you put your
2 clothes on?

3 A It would have been the end towards the hall.

4 Q And where was the crack pipe at this point?

5 A It was on the table.

6 Q On the coffee table.

7 A Yes, ma'am.

8 Q And where was the crack being cut?

9 A On the table.

10 Q Was it just being cut straight on the table?

11 A Yeah.

12 Q Like on the table top?

13 A Yeah.

14 Q Because that's what you have to do with crack, is cut
15 it?

16 A Yes.

17 Q And who was doing the cutting of crack?

18 A James was.

19 Q So when you first tried to perform oral sex on him,
20 where is he standing or sitting or lying down?

21 A He is sitting on the other end of the couch where
22 it's his seat.

23 Q That's his seat?

24 A Yes.

25 Q Do y'all always sit in the same place?

1 A Yes.

2 Q You on one end of the couch and him on the other?

3 A Yes, ma'am.

4 Q And the crack in between?

5 A Yes, ma'am.

6 Q At this point, does he have his clothes on?

7 A Yes.

8 Q So he's kept his clothes on at this point?

9 A Yes, ma'am.

10 Q So had you pulled down his shorts to have sex with
11 him or just opened up the front or what?

12 A Just opened the fly.

13 Q And at this point, nothing happens?

14 A No.

15 Q So at that point, does he become enraged?

16 A He becomes a little upset.

17 Q So what did y'all do?

18 A We hit another piece of crack, went to the bedroom
19 and tried to get it -- tried to have vaginal sex, and that
20 didn't work either.

21 Q And was this before or after -- and I'm mixed up on
22 this, before or after y'all call the dope boy to come
23 deliver --

24 A Just after the drug boy had came to the house.

25 Q So you smoked some, tried to have oral sex, the drug

1 boy came, you smoked some more?

2 A Yeah -- no -- yeah.

3 Q I don't mean to mix you up. You good?

4 A Yeah, I'm good.

5 Q So then you go back in the bedroom and try to have
6 vaginal sex?

7 A Yes.

8 Q At that point, what do you have on?

9 A I have nothing on.

10 Q What does he have on?

11 A He has on his shorts and his t-shirt.

12 Q So he has sex with you with his shorts and his
13 t-shirt on?

14 A He just pulls out his penis.

15 Q Okay. And then y'all attempt to have that and it
16 doesn't work?

17 A No, it doesn't work either.

18 Q At that point when you're in the bedroom, has anybody
19 been cut?

20 A No.

21 Q Have you been cut?

22 A No.

23 Q Has he been cut?

24 A No.

25 Q So how long were y'all in the bedroom, do you

1 remember?

2 A I couldn't tell you.

3 Q But when you left the bedroom, where did you go?

4 A I went to the end of the couch where my clothes was,
5 I put my underwear and my pants on.

6 Q So you're at which end of the couch again?

7 A The end near the --

8 Q Near the hallway or the other end?

9 A Yes, the end near the hallway.

10 Q So you're right there as you first walk into the
11 living room from the hallway?

12 A Yes.

13 Q And you're putting on your pants?

14 A I've done put my pants on.

15 Q No question, these jeans?

16 A Yes.

17 Q And then you put on your shoes?

18 A Yes.

19 Q Do you have socks?

20 A They were already on.

21 Q You left your socks on?

22 A Yeah. I don't take them off.

23 Q So you've got your shoes, your pants on and then
24 you're ready to put on the rest of your clothing?

25 A Yes, ma'am.

1 Q And when you came out of the bedroom, was he in front
2 of you or behind you?

3 A Behind me.

4 Q So he's behind you and you're stopped right there at
5 the couch. So he's coming up behind you?

6 A Uh-huh.

7 Q And what happens then --

8 A Well, I'm sitting down on the couch.

9 Q So you're now sitting down on the couch?

10 A I had done put my shoes on.

11 Q Uh-huh.

12 A So he comes around the edge of the coffee table and
13 picked -- he got the knife some time, I don't know exactly
14 when. But he swung it and when he did, he caught me in my
15 hand.

16 Q Where on your hand did you get cut the first time?

17 A I got cut right here on my little finger and on my --
18 right here.

19 Q And you got cut pretty good?

20 A It was bleeding.

21 Q It was bleeding pretty good, wasn't it?

22 A Yeah.

23 Q Right there on the couch?

24 A It wasn't -- I didn't put my hand on the couch.

25 Q I'm just not following. So he comes and he comes

1 around you?

2 A Uh-huh.

3 Q And he's on which side of the coffee table?

4 A The end towards the kitchen.

5 Q So just to be sure -- I want to make sure I'm right
6 about this. This is the living room. You're sitting
7 here?

8 A Yes.

9 Q And then he comes around and the coffee table is
10 right here?

11 A Uh-huh.

12 Q And then he's swinging at you?

13 A Yes, he swings the knife at me.

14 Q Are you standing or sitting down?

15 A I'm sitting down when he swings it.

16 Q He swings it at you?

17 A Uh-huh.

18 Q And at that point, you put up your left hand?

19 A I put up my right hand.

20 Q I'm sorry, your right hand, and it cuts it?

21 A Uh-huh.

22 Q Pretty good?

23 A Well, enough to bleed.

24 Q At this point, you still have on your jeans?

25 A Uh-huh.

1 Q And what happens next?

2 A After that, I come around the coffee table.

3 Q You come around?

4 A I come around and get the glass vase.

5 Q Where is the glass vase?

6 A It's sitting at the end of the bar in the kitchen.

7 Q The end of this bar?

8 A Yeah.

9 Q So you have to -- you've gone from sitting here, he's
10 come around the coffee table, confronted you right here?

11 A Yeah.

12 Q And you were able to go around him?

13 A No, he was on -- by that time, he was moving around
14 the coffee table.

15 Q So he's moving away from you at that point --

16 A Well --

17 Q To allow you passage?

18 A Trying to follow me around the coffee table.

19 Q So he goes this way to follow you around the coffee
20 table?

21 A He was on this end anyway. Yeah, he was right there.

22 Q So at that point, he's behind the coffee table -- in
23 between the coffee table and the couch?

24 A Yes, ma'am.

25 Q But not over here where you said he was?

1 A He came around the coffee table.

2 Q And then you go this way?

3 A Yeah, I go that way.

4 Q So you were able to go here to the end of the bar?

5 A Yes.

6 Q Where what is?

7 A The vase.

8 Q Is that the same place where that knife was?

9 A No, that knife was on the coffee table.

10 Q I'm talking about the other knife?

11 A What other knife?

12 Q On the white thing in the pictures where you said you
13 got -- that's a different place?

14 A (There was no response.)

15 Q You grabbed the vase?

16 A Yeah, I grabbed the vase.

17 Q This happens to be a vase that of all the things in
18 his house, you mentioned how nice it was that evening,
19 right?

20 A Yeah, it was pretty because it had a -- when you look
21 at it, it throws light off of it, different -- it was like
22 a diamond-cut vase.

23 Q It was a heavy vase?

24 A Yes, it was.

25 Q And you just mentioned here today that at that point,

1 you actually earlier in the conversation, I guess, at some
2 point, you mentioned how pretty it was?

3 A Because I kept seeing the light reflect off of it.

4 Q And you thought it was so pretty with yellow urine
5 sitting in it?

6 A Well, at the time, I didn't know there was urine in
7 it.

8 Q Because that's how you knew it was urine in it,
9 right?

10 A He told me, yeah.

11 Q Had he ever done that before?

12 A Not with me, no.

13 Q Did he ever do it while you were there?

14 A No.

15 Q But that's your testimony here?

16 A Yes.

17 Q So at that point, you come around and you are in fear
18 of your life; is that correct?

19 A Yes, ma'am.

20 Q And you're cut at this point?

21 A Yes.

22 Q And he's screaming at you?

23 A Yes.

24 Q Saying he's going to kill you?

25 A Yes, ma'am.

1 Q That you've stolen his crack and he's going to kill
2 you?

3 A Yes, ma'am.

4 Q You even said he was going to shoot you at some
5 point?

6 A Yes, he did.

7 Q And at that point when you come around to the living
8 room and you've got the vase, he's back here, right?

9 A Yes. So were my clothes on the couch and the crack
10 stem is on the floor.

11 Q So -- but you're in fear for your life at this point,
12 right?

13 A Yes.

14 Q So at that point, you ran out the front door because
15 remember it unlocks from the inside?

16 A No, I didn't run out the front door.

17 Q What prevented you from going out the front door if
18 you're scared for your life at that moment?

19 A It was cold outside and I really didn't want to run
20 out there with no clothes on like that.

21 Q Better to die?

22 A (There was no response.)

23 Q And instead of going out the front door, you then
24 grab a vase -- and it's a good size vase, isn't it?

25 A It was probably about that tall.

1 Q Yeah, 10, 12 inches tall maybe?

2 A Something like that.

3 Q And it's full of urine, so it's pretty heavy. And is
4 he coming towards you at this point?

5 A Yes.

6 Q So he's coming towards you. And then are you backing
7 up? Because he's still got the knife, right, according to
8 you?

9 A Yeah, he does have the knife.

10 Q Okay. Are we good with that? And you've got the
11 vase?

12 A Yes.

13 Q And y'all are by your own testimony here today,
14 you've gone up here to get that, right, so he's coming
15 this way?

16 A Uh-huh.

17 Q But you don't have any kind of collision until you're
18 in the next room. How did that happen?

19 A We were fighting at the corner of the living room and
20 the hall.

21 Q So you went back to him?

22 A To get my clothes, yes.

23 Q But your clothes, according to you, are down here?

24 A No, the other end.

25 Q On this end?

1 A Yes.

2 Q So you went armed with a vase towards the man who's
3 yelling, I'm going to kill you, who has already cut you,
4 who you truly think is going to kill you and you attacked
5 him with a vase?

6 A Yes.

7 Q To get your clothes?

8 A Yes, ma'am.

9 Q But, more importantly, where was your crack pipe?

10 A It was in the floor by him.

11 Q And you weren't leaving without your crack pipe, were
12 you?

13 A No.

14 Q So you were running towards him, so is his back
15 towards the wall at this point? Is he retreating back
16 with you to get back to that hallway?

17 A I don't remember.

18 Q But you have a pretty good memory of this? It just
19 doesn't make sense maybe?

20 A (There was no response.)

21 Q According to your testimony, you then hit him in the
22 face, the urine spilled on you?

23 A Uh-huh.

24 Q And how many times did you hit him in the face?

25 A I don't know how many times I hit him.

1 Q Was he taller than you?

2 A Yes.

3 Q So you had to have your hand up in the air with this
4 vase?

5 A Yes.

6 Q And you were taking it and you were striking him?

7 A Yes.

8 Q In the face over and over?

9 A Yes, ma'am. I don't know how many times I hit him,
10 though.

11 Q In fact, you said you hit him until he fell down and
12 you fell on top of him; is that right?

13 A Yes, ma'am.

14 Q That's your testimony?

15 A Yes, ma'am.

16 Q But according your testimony -- or you didn't mention
17 this, you didn't continue to hit him once he was down, did
18 you?

19 A No, the vase had broke at that time.

20 Q So all 17 plus blows had to happen while y'all were
21 face-to-face upright; is that your testimony?

22 A I don't recall.

23 Q Well, you testified to it. You don't remember now?

24 A I don't know how many times I hit him.

25 Q And you were so strong and, I guess, agile that you

1 were able to get some of those blows, at least six of
2 them, to come around to the back of his head while he
3 stood up? Because he was facing you, that was your
4 testimony?

5 A Yes, ma'am.

6 Q When he went down, he was bleeding profusely, wasn't
7 he?

8 A I don't know. I can't even see in the dark.

9 Q How many times had you been cut at that point?

10 A I don't know.

11 Q Where all did you get cut? Let's make sure the jury
12 understands that. You got cut on your hand, was it the
13 right or the left?

14 A Both. I got cut on both hands, my arm, my elbow and
15 my leg.

16 Q So you were cut to the point it was bleeding on both
17 hands. Where on both hands?

18 A Here.

19 Q That's right.

20 A Another one here and one here.

21 Q On both hands?

22 A One in the elbow and one on the --

23 Q One on the elbow --

24 A -- leg by my knee.

25 Q That spot on your knee?

1 A Yeah.

2 Q He stabbed you in the knee?

3 A Somehow I got cut.

4 Q Maybe when you fell on the glass. And you went down
5 on top of him and he is bleeding profusely. You've gotten
6 all the discovery in this case. You've seen all the
7 photos, haven't you?

8 A Yes.

9 Q And that's when you got up and he's still yelling at
10 you, and you got up and you got your clothes on from the
11 end of the couch, right?

12 A I grabbed my clothes and I was putting them on as I
13 went out the door.

14 Q And you got your crack pipe. Where was it at that
15 point?

16 A It was in the floor and I picked it up.

17 Q Did you get the rest of the crack?

18 A No.

19 Q Where was it? What happened to it?

20 A He had no more, I guess, because he quit cutting.
21 And that's when he started going ballistic about I was
22 stealing his dope and this, that and the other.

23 Q And then you ran out the front door?

24 A Yes, ma'am.

25 Q Was the door shut?

1 A Yes.

2 Q So you had to open the front door?

3 A Yes, ma'am.

4 Q That front doorknob?

5 A Uh-huh.

6 Q You would have done that with your bare bleeding
7 hands?

8 A Yes, I used my right hand.

9 Q When you got up, was his blood just everywhere on
10 you?

11 A No.

12 Q Was it all over your jeans?

13 A No.

14 Q When you got out the door, did you put on your shirt?

15 A Yes.

16 Q Did his blood get on your shirt?

17 A No.

18 Q Because you didn't wash any of these items later to
19 get rid of any evidence, did you?

20 A I washed them to get the urine out of them.

21 Q So you did wash them?

22 A Yes. And Investigator Johnson knew I had washed the
23 clothes because when they asked about them, I told them
24 exactly where they could find them in the house.

25 Q I know you told them where they could find them, but

1 you're saying now you also told them you washed them?

2 A Yes.

3 Q But you were covered in blood -- or you weren't
4 covered in blood?

5 A No, I wasn't covered in blood.

6 Q But you were bleeding, at least?

7 A Yes.

8 Q On your elbow, on your arm, on your hands?

9 A Yes.

10 Q And then you ran the three-tenths of a mile back to
11 Mike's house?

12 A I fast walked. I can't run.

13 Q Okay. You fast walked. And when you got there, was
14 Mike awake?

15 A Yes.

16 Q And when you went in to see him, were you upset?

17 A Yes.

18 Q Were you crying?

19 A Yes.

20 Q Were you hysterical about having to --

21 A I wasn't hysterical, no.

22 Q You weren't hysterical?

23 A No.

24 Q You were upset and crying?

25 A Yes.

1 Q Did you tell Mike -- I know you don't like the
2 police, but did you tell Mike, oh, my God, he tried to
3 kill me?

4 A No, I didn't say anything to Mike. I just told him I
5 had gotten into a fight.

6 Q Why didn't you tell him? That's your boyfriend.

7 A Because I don't tell everything I know.

8 Q I know you don't. So then you and Mike got in a
9 fight?

10 A Yes.

11 Q Was he physical that night?

12 A No.

13 Q He was calm, cool and collected or what happened?

14 A He was too busy getting high with a friend of his
15 that was there.

16 Q I thought you testified earlier that he got upset you
17 didn't bring home the crack or the cash?

18 A He does, but the thing was he had his friend there
19 that night and his friend was supplying him all he needed.

20 Q Then why was he fighting with you if he had all he
21 needed?

22 A He was mad at me because I didn't have any money or
23 crack for later. That's how it was.

24 Q Do you know what happened to Mr. Solomon's wallet?

25 A No.

1 Q So you called Moses?

2 A Yes.

3 Q And when you called Moses, you said for him to come
4 pick you up, you were on the road?

5 A Uh-huh.

6 Q At that point, was it raining?

7 A Yes.

8 Q Was it cold?

9 A Yes.

10 Q You couldn't run out of the house without your shirt
11 on, but you could walk out in the middle of the night in
12 the cold weather when you weren't running from anybody?

13 A To get away from Mike, yes.

14 Q So if Mike isn't your boyfriend, then he's your pimp,
15 is that what your testimony is here today?

16 A He's both. He was both.

17 Q And as either your boyfriend or your pimp, isn't he
18 supposed to protect you?

19 A Supposed to.

20 Q So if you tell him you've been in a fight, doesn't he
21 followup and go who is it, I'll take care of it, I'll
22 protect you?

23 A No, because he knows that if I wanted him to know, I
24 would tell him.

25 Q Did you change your clothes before you met up with

1 Moses?

2 A No.

3 Q So you had on the same jacket?

4 A Yes, ma'am.

5 Q Same shirt?

6 A Yes.

7 Q And then when you went over to Moses's house that
8 night, you stayed there because you were scared of Mike?

9 A Yes.

10 Q But then the next morning, you went right back?

11 A It was actually the afternoon.

12 Q I'm sorry, the next afternoon you went right back?

13 A Yes.

14 Q Why didn't you tell Moses what happened? You weren't
15 scared of him, were you?

16 A No, I just told him I got into a fight. That was all
17 he needed to know.

18 Q Do you remember Moses telling you, oh, Mike beat you
19 up again?

20 A Yeah, I remember him saying something like that.

21 Q At that point, did you say, no, I almost lost my life
22 tonight?

23 A No, I didn't.

24 Q At this point, are you doing any more drugs?

25 A No.

1 Q The next day, you washed your clothes?

2 A Yeah, I washed them at Moses's before I left.

3 Q So did Moses see the cuts on you?

4 A He wasn't really paying attention to them.

5 Q Did he see the blue marks?

6 A Yeah, he seen the one on my hand. He asked about it.
7 I said, That's where I got hit.

8 Q The mark on your hand or the cuts on your hand?

9 A No, the bruise on my hand.

10 Q And are bruises normally red first and then blue days
11 later?

12 A I guess so. I don't know how -- I don't pay
13 attention.

14 Q And over the weekend, you didn't tell anybody what
15 happened?

16 A No, ma'am.

17 Q And then on Monday, the police come by?

18 A Yes, ma'am.

19 Q Did you know it was the police?

20 A When I seen Investigator Robinson, I knew it was the
21 police.

22 Q Did you know Investigator Johnson?

23 A No, not at that moment, I didn't.

24 Q But you knew it was the police?

25 A Yes.

1 Q Were you worried?

2 A No.

3 Q You didn't think maybe they're here about what
4 happened?

5 A No.

6 Q That never went through your mind?

7 A No, ma'am.

8 Q Because you hadn't told anybody, had you?

9 A No, ma'am.

10 Q When they came up and they said that they were
11 investigating a murder or an incident, you didn't ask what
12 are you investigating, what happened?

13 A No, I didn't ask him.

14 Q Because you knew?

15 A No, I didn't know, actually.

16 Q And then when they asked about your friend Amy, did
17 you give them the information they wanted?

18 A All I knew was her name and approximately where she
19 was because she was moving around a lot.

20 Q Did you wonder why they needed to talk to Amy?

21 A No, because I really didn't care about Amy.

22 Q You didn't want any information?

23 A I didn't want to know where she was.

24 Q And then they left?

25 A Yes.

1 Q And I think that's when you said you spent the next
2 day cleaning up the house?

3 A Yeah, Mike's house.

4 Q What were you cleaning up?

5 A Sweeping the floor, cleaning the kitchen.

6 Q Did Mr. Solomon have a phone?

7 A As far as I know, he did.

8 Q Do you know what happened to it?

9 A No, ma'am.

10 Q You wouldn't have been cleaning that up?

11 A No.

12 Q Or getting rid of a wallet?

13 A No.

14 Q Or washing your clothes?

15 A (There was no response.)

16 Q Then the next day, the police come back and you're
17 under arrest?

18 A Yes, ma'am.

19 Q And do you remember the first thing you said to them
20 when they -- when you came out the door and you saw they
21 were there to arrest you?

22 A I didn't kill that man.

23 Q Do you remember what else you said to them as you
24 came out the door?

25 A No, I don't.

1 Q I didn't kill that man. I was there, but I didn't do
2 it. Do you remember saying that?

3 A Vaguely.

4 Q But nobody else killed that man? But that was your
5 first story?

6 A Yes, ma'am.

7 Q And then they took you to headquarters and do you
8 remember them advising you of your rights?

9 A Yes, ma'am.

10 Q And you agreed to talk to them?

11 A Yes, ma'am.

12 Q And at that point, your story was a little different,
13 wasn't it?

14 A No.

15 Q Well, the story, I didn't kill him. I was there, but
16 I didn't do it is not right, is it?

17 A I might have said that. I don't recall.

18 Q So that's when you went to the second story. And you
19 told them some of what's in the statement, right?

20 A Yes, ma'am.

21 Q Where in this statement, did you ever tell them about
22 getting in a fight with Mike?

23 A I didn't tell them.

24 Q Where in this statement did you tell him about going
25 off with Moses?

1 A When Investigator Johnson asked me what I did after
2 that, I told him that I left with Moses.

3 Q Do you remember telling him, I went back to my house,
4 went to the bathroom and closed the door like nothing was
5 going on?

6 A Yes.

7 Q I washed my arm off and got the bleeding to stop on
8 my elbow and right wrist?

9 A Yes.

10 Q I got them cleaned up and the cuts on my hand?

11 A Yes.

12 Q I went in the bedroom and put my night clothes on
13 like nothing happened?

14 A Yes.

15 Q Do you remember telling them that you don't call the
16 police because I don't like to get people in trouble?

17 A Yes.

18 Q Would that people include you?

19 A People as in vague. It's vague.

20 Q Do you remember talking them about the knife?

21 A I don't recall, but I might have.

22 Q Well, you've been in court here all week in
23 preparation for your trial, right?

24 A Yeah.

25 Q Do you remember describing the knife that he cut you

1 with?

2 A I don't believe I do.

3 Q Do you remember telling him that he had two of them?

4 A Oh, yes.

5 Q That he had one with a white handle?

6 A Yes.

7 Q And one with a brown handle, they were small kitchen
8 knives?

9 A Yes.

10 Q That was the story back then?

11 A Yes.

12 Q Do you remember when he asked you about whether or
13 not you told Mike what had happened, you said you didn't
14 say nothing to nobody?

15 A Yes.

16 Q I kept my long sleeves on so my arms were hidden?

17 A Yes, ma'am.

18 Q How old was Mr. Solomon?

19 A If I'm not mistaken, it was said that he was 71,
20 which I didn't know that until being in court.

21 Q And you've been incarcerated you told this jury for
22 last two years.

23 A Yes, ma'am.

24 Q And you've made a number of phone calls?

25 A Yes, ma'am.

1 Q And you've talked to Moses and he's come to visit
2 you?

3 A Yes.

4 Q You talked to Mike?

5 A Yes.

6 Q You wrote them letters?

7 A Yes.

8 Q Do you remember on January 28th, the day I think you
9 got actually arrested in 2014, you found out Moses had
10 given a statement on you?

11 A Yes, ma'am.

12 Q You talked about that?

13 A I had heard that he did.

14 Q And then you said, Tell Moses he better get ready to
15 get his lights cut off. I'm writing the light people and
16 the water people while I'm here?

17 A Yes.

18 Q What did that mean?

19 A Because he had everything in my name, and I wasn't
20 living there.

21 Q So basically, because he gave a statement on you, you
22 were going to get --

23 A No, that had nothing to do with it.

24 Q Okay. Well, let's move on to another call. When you
25 called Mike less than a week later and told him to clean

1 the house because the cops know about the prostitution.

2 You complained Moses had written a statement on me?

3 A Yes.

4 Q Do you remember talking to Mike in March, on March
5 the 7th of 2014, told him, I'm fixing to put my foot in
6 your ass when I get home?

7 A I really don't recall that letter or that phone call.

8 Q Do you remember that same day -- I don't know if it
9 was the same phone call or a different phone call how you
10 told Mike on the phone that you shaved your hair off after
11 talking about the hair they found on the scene?

12 A Yeah, I did cut my hair because it was dead. It was
13 not blonde. It was not brown. It was black.

14 Q It wasn't because you had just been to the
15 preliminary hearing and heard about the --

16 A No, it wasn't.

17 Q Do you remember reconciling with Moses on April the
18 23rd, told him, I love you, I miss seeing my baby?

19 A Yes, I referred to him that way.

20 Q And do you remember earlier -- not this year, but
21 September of 2015 that you started using another inmate's
22 pin number so we would stay out of your business? So we
23 couldn't get your phone calls?

24 A I think I remember that.

25 MS. CAMPBELL: Beg the Court's indulgence?

1 MR. BANK: I think we have a matter to take up
2 outside the presence of the jury.

3 THE COURT: Okay.

4 Ladies and gentlemen, do not discuss the case. Keep
5 an open mind. We'll be back with you in just few moments.
6 Thank you.

7 (Whereupon, the jury left the courtroom at 4:04
8 p.m.)

9 MR. BANK: Judge, I think I found a new meaning of
10 giving us evidence at the last minute. I was just handed
11 eight pages of incident reports in the middle of
12 Ms. Campbell's cross. I haven't had any time to review
13 this or ask any of the officers any questions.

14 It appears -- maybe Ms. Campbell can explain to the
15 Court better than I can what exactly this is, but it
16 appears to be incident reports made by Ms. Thompson.

17 Is that what this is?

18 MS. WALKER: May I, Your Honor? When she testified
19 -- and it didn't occur to us until she went down this
20 path, because in her statement, she said, I don't call
21 police because I don't like to get people in trouble. On
22 direct examination she changed that to, I don't call
23 police because they don't believe prostitutes and so they
24 won't talk to you.

25 So what we did then is go through the sheriff's

1 department's database and see every time she made contact
2 with law enforcement. There's not a single time on there
3 where she's tried to talk to them as anything other than a
4 suspect or a witness. She has not gone forward and filed
5 a complaint as a victim. So that undermines her testimony
6 that she's been going to law enforcement before and
7 nothing has ever happened with the case.

8 THE COURT: So what do you want to ask?

9 MS. CAMPBELL: I just want to ask -- I was trying to
10 be courteous and show him the document to substantiate my
11 question. That's all I'm asking her is every single time
12 that you've gone to the police you've either been a
13 suspect or a witness in the case. You've never been the
14 victim.

15 MR. BANK: Judge, I don't know. They can ask the
16 question. I have no way to know what any of these
17 officers recalled talking to her. We have no way to
18 corroborate whether there's any reports that were called
19 in, but weren't not taken down. I think it's too last
20 minute to go into on cross if they're going to try to
21 impeach her with these. If they want to ask her the
22 question again, I understand, but --

23 MS. CAMPBELL: I know that you had subpoenaed in your
24 file the actual incident reports from Columbia Police
25 Department. I didn't know if you did the same for the

1 sheriff's department.

2 MR. BANK: I have and I've noticed and had to follow
3 up several times because I saw it wasn't complete with
4 some of the reports they have given us.

5 MS. CAMPBELL: That's information you have, but we
6 don't have.

7 MR. BANK: And not evidence that I was planning on
8 introducing as evidence.

9 THE COURT: Okay. You can ask the question. That's
10 admissible based upon her testimony.

11 Bring them back in.

12 Is the SLED guy here?

13 MS. CAMPBELL: He can't come today. There's an issue
14 with his child.

15 MR. BANK: Judge, I'm just going to politely ask to
16 preserve our objections.

17 THE COURT: Okay.

18 (Whereupon, the jury entered the courtroom at
19 4:07 p.m.)

20 THE COURT: Okay. I apologize for the short break.

21 THE BAILIFF: The jury is seated, Your Honor.

22 THE COURT: All right. Ms. Campbell.

23 MS. CAMPBELL: Just about through, Your Honor.

24 CONTINUED CROSS-EXAMINATION

25 BY MS. CAMPBELL:

1 Q In your statement, you said the reason you didn't
2 want to call the police was you didn't want to get anybody
3 in trouble?

4 A Yes.

5 Q But now in front of this jury, it's because when
6 you've called the police before, they just don't believe
7 you?

8 A Yes.

9 Q As far as what you wore over to Moses's house that
10 nigh, that was the same clothing?

11 A Yes.

12 Q So you were covered in urine when you got in the car
13 with him?

14 A Yes.

15 Q And then you wore those same clothes back the next
16 day?

17 A No, my clothes were at Moses's house and I was
18 supposed to be getting my clothes from Moses's house to
19 take back to Mike's house.

20 Q So you didn't have any clothes at Mike's house where
21 you lived?

22 A I had a few things.

23 Q But most of your clothes were at Moses's house?

24 A Yes, ma'am.

25 MS. CAMPBELL: I don't have anything further, Your

1 Honor.

2 THE COURT: Okay.

3 MR. BANK: Very briefly.

4 REDIRECT EXAMINATION

5 BY MR. BANK:

6 Q Ms. Thompson, one of the very first questions you
7 were asked on cross was this business about whether you
8 think you caused the injuries that eventually killed
9 Solomon. Do you remember that?

10 A Yes, sir.

11 Q Are you a doctor?

12 A No, sir, I'm not.

13 Q What's the highest level of education you've had?

14 A GED.

15 Q And when did you get that GED?

16 A 2008 at the Alvin S. Glenn Detention Center.

17 Q Now, you said something -- I believe the comment on
18 cross-examination was I don't tell everything I know. Do
19 you remember saying that?

20 A Yes, sir.

21 Q Are you telling everything you know about this night
22 to this jury?

23 A Yes, I am.

24 Q And you talked about your clothes being washed. Do
25 you remember that?

1 A Yes.

2 Q Ms. Campbell asked you about that. Did you wash your
3 clothes in an attempt to get rid of any evidence?

4 A No, it wasn't to get rid of any evidence. It was to
5 get rid of the smell.

6 Q At the time you washed clothes, did you know
7 Mr. Solomon was dead?

8 A No, I did not.

9 Q Now, you were asked the question about multiple
10 knives being used or something along that line that
11 Mr. Solomon had?

12 A Yes, sir.

13 Q When he was coming at you actually at the time of the
14 confrontation, did he have one or two knives?

15 A One.

16 Q But you -- where is the second knife that you were
17 speaking about?

18 A I don't know what he did with it because it seems as
19 if it was never found in the house.

20 Q Was that second knife used at any time during the
21 attack?

22 A No.

23 Q Now, we heard something about a jail call with Moses
24 -- or a jail call about Moses where you understood that
25 had given some kind of statement, maybe you were upset?

1 A Yes.

2 Q What -- at that time when you made that statement,
3 who was the only person you got any information about
4 regarding that statement?

5 A I don't even remember who I was talking to on the
6 phone.

7 Q But you had some knowledge that Moses had given a
8 statement, right?

9 A Yes.

10 Q Had somebody told you that Moses had given a
11 statement?

12 A It might have been Mike.

13 Q Okay.

14 A It might have been Mike.

15 Q Had anybody with law enforcement told you that?

16 A No.

17 Q Now, at your preliminary hearing -- do you remember
18 if your preliminary hearing for this case was a couple
19 days after you got arrested or a month or two after you
20 got arrested?

21 A If memory serves me correctly, it was a month or two
22 after I had been arrested.

23 Q Ms. Thompson, had you already given law enforcement
24 your DNA at that point?

25 A Yes, sir.

1 Q Did you find the prosecutor's questions kind of
2 confusing?

3 A Some, yes.

4 Q Do you feel like she was putting words in your mouth,
5 Ms. Thompson?

6 A Possibly trying.

7 MR. BANK: That's all the questions I have.

8 MS. CAMPBELL: Just one question.

9 THE COURT: Okay.

10 RECROSS-EXAMINATION

11 BY MS. CAMPBELL:

12 Q Is there anything you need to clear up with the jury
13 that I confused you on?

14 A No.

15 MS. CAMPBELL: Thank you. That's all.

16 THE COURT: Have a nice day. Have a seat.

17 All right. Ladies and gentlemen, we have --

18 One more witness; is that right?

19 MR. BANK: One.

20 THE COURT: And do you expect any reply?

21 MS. CAMPBELL: Short.

22 THE COURT: The next witness that we have that will
23 be called has an issue with a child, so he cannot be here
24 this afternoon. We contacted him around the lunch hour, I
25 expected to get to him today, and he has an issue with a

1 child, so we will start with him in the morning. And then
2 the State will be allowed to present some reply testimony
3 if they want to, but I expect you to have this case
4 tomorrow for deliberation and to begin it tomorrow. I was
5 a little bit worried about going into next week. I feel
6 very good about it now that we will not.

7 We're going to go ahead and break for the day just
8 because a witness cannot be here until tomorrow morning.
9 You still have not heard all the evidence in the case or
10 all the testimony or anything else. You're still not at a
11 point where you can deliberate or talk about the case. I
12 want you to keep an open mind. Do not discuss the case
13 with anybody. Do not do any research. Do not look
14 anything up. Come back tomorrow morning. I'm going to
15 bring you some breakfast in the morning, and we will take
16 good care of you tomorrow.

17 Thank you very much and have a good evening. 9:30
18 tomorrow morning.

19 (Whereupon, the jury left the courtroom at 4:15
20 p.m.)

21 THE COURT: Okay. Anything before we stop?

22 MS. CAMPBELL: Your Honor, I don't know if you wanted
23 to maybe talk about some charges.

24 THE COURT: Sure.

25 MS. CAMPBELL: We would ask for a voluntary

1 intoxication. I'll get it for you.

2 THE COURT: Okay.

3 MR. BAILEY: Your Honor, I'd like some time to just
4 submit our own charges in proper format if that's okay or
5 I can e-mail them.

6 THE COURT: If you want me to consider them, you
7 needs to get them to me.

8 MR. BAILEY: Okay. Could I have a moment to go
9 downstairs then, Your Honor?

10 THE COURT: Yes.

11 What else? Voluntary intoxication.

12 MS. CAMPBELL: We would have a couple malice charges.
13 I'll get them to you in the next few minutes.

14 THE COURT: Okay. The deadly weapon will be out,
15 Belton.

16 MS. CAMPBELL: Of course.

17 THE COURT: Do you want the new circumstantial
18 evidence charge?

19 MR. BANK: The Logan charge?

20 THE COURT: Yes.

21 MR. BANK: Yes, sir.

22 THE COURT: Okay. That's fine.

23 The voluntary intoxication, the one that says
24 voluntary intoxication is not a defense.

25 MS. CAMPBELL: Correct.

1 THE COURT: Okay. What else?

2 MS. CAMPBELL: I'm assuming you're wanting
3 self-defense?

4 MR. BANK: Absolutely, self-defense. I believe
5 Mr. Bailey is maybe going down to see if -- I think he's
6 more prepared to argue it right now than I am, but an
7 involuntary manslaughter charge on the basis of her
8 leaving while he is still alive and not informing police,
9 not calling police and that contributing recklessly to his
10 death.

11 THE COURT: Okay. What else?

12 MS. CAMPBELL: If he's going that route, we would
13 want proximate cause. But I don't know how -- well, we
14 can argue this tomorrow.

15 THE COURT: What else?

16 MR. BANK: I think those are going to be the major
17 ones we're going to ask for. I think there might be some
18 other ones that Mr. Bailey has put together.

19 THE COURT: All right. Sounds good. What's the
20 toxicologist guy going to say? He had drugs in his
21 system.

22 MS. CAMPBELL: He had drugs in his system.

23 THE COURT: I thought that was already in the record.
24 What are we bringing him in for?

25 MR. BANK: Well, with respect to him, he can give a

1 little bit greater detail of what that means, how long
2 they were in his system. At least, an idea of -- he's
3 going to be able to tell us that the levels that were
4 there indicate this wasn't kind of one hit that
5 Mr. Solomon had taken.

6 THE COURT: Okay.

7 MR. BANK: It appeared from his levels he had been
8 doing it all day.

9 THE COURT: Okay.

10 MR. BANK: It's from some relevant information that
11 hasn't been --

12 THE COURT: That's fine.

13 You expect some reply?

14 MS. CAMPBELL: Yes, Your Honor. We would be putting
15 her statement in.

16 THE COURT: Are we going to have to do a Denno
17 hearing?

18 MS. CAMPBELL: Uh-huh. We can do that right now.

19 THE COURT: Do it right now. Get it over with.

20 MS. CAMPBELL: Ready to take the stand?

21 THE COURT: Take the stand. You're still under oath.

22 KERRY JOHNSON, having been
23 previously sworn, testified as follows:

24 DIRECT EXAMINATION

25 BY MS. CAMPBELL:

1 Q Investigator Johnson, did you have an occasion to
2 place Holly Jo Thompson under arrest for the charge of
3 murder?

4 A I did.

5 Q And when did that take place?

6 A I'm sorry, you said how?

7 Q When?

8 A January 28th of 2014.

9 Q And where did that actually -- the arrest actually
10 take place?

11 A I arrested her at her home on Lower Richland
12 Boulevard, 1533 Lower Richland Boulevard.

13 Q And as you were making the arrest, did the Defendant
14 utter -- as you were placing her under arrest, did she
15 give you certain information?

16 A Yes, I told her she was under arrest for James
17 Solomon. And as I was putting handcuffs on her, she says,
18 I was there, but I didn't kill that man.

19 Q Later on, did you transport her -- or that day, did
20 you transport her to headquarters?

21 A I did. While we were in the driveway, I went over
22 her rights with her, and we talked about it on the way to
23 headquarters.

24 When we got to headquarters, we went to an office,
25 and she was read her rights again off of the same form,

1 and she was allowed -- handcuffed in the front so she
2 could sign it and she signed the waiver of rights form.

3 Q I'm going to show you --

4 MS. CAMPBELL: Let me mark this.

5 (Whereupon, State's Exhibit No. 262 was marked
6 for identification only.)

7 BY MS. CAMPBELL:

8 Q I'm going to show you what's been marked as State's
9 Exhibit 262 for purposes of this hearing. Is this a copy
10 of the interrogation of advice of rights you used?

11 A It is.

12 Q Are those the same rights you went over with her in
13 the car?

14 A Yes.

15 Q Once you got her down to Region I headquarters, did
16 you then go over the written form of that?

17 A I took her to headquarters on Two Notch, not Region
18 I.

19 Q I apologize, I messed that up.

20 A That's all right.

21 Q I'm sorry, the headquarters on Two Notch. Once
22 there, did you go over her rights with her?

23 A Yes. Read right off the form just like I did in the
24 car.

25 Q Are those rights reflected on State's Exhibit 262?

1 A Correct.

2 Q And once you went over her rights, did you then ask
3 her if she understood what her rights were?

4 A I did.

5 Q And did she indicate she understood?

6 A She did.

7 Q And did she acknowledge that by signing here?

8 A She did.

9 Q And were you the witness in this case?

10 A I was.

11 Q And this happened on what date?

12 A That was January 28th, 2014.

13 Q And this actually says 2013, but that should have
14 been 2014?

15 A Uh-huh.

16 Q And that happened approximately what time?

17 A Around 1:00 o'clock.

18 Q 1300 hours?

19 A 1300 hours military time.

20 Q But after advising her of her rights, did you then go
21 over her waiver of rights with her?

22 A Did I go over the --

23 Q Waiver part?

24 A Sure.

25 Q And did she acknowledge that she understood that as

1 well?

2 A She did.

3 Q And did you witness that?

4 A I did.

5 Q And during the time period when you were talking to
6 her in the car on the way there and for the entire time,
7 did she appear coherent?

8 A Absolutely.

9 Q Did she appear to understand what you were saying?

10 A Absolutely.

11 Q Did she agree to cooperate and talk with you?

12 A She did.

13 Q At any time, did anyone pressure her in any way?

14 A No.

15 Q Did you threaten her in any way?

16 A No.

17 Q And was she, in your opinion, cooperating with you
18 voluntarily and of her own free will?

19 A She was.

20 Q Once you advised her of her rights, did you then
21 start reducing her statement into writing?

22 A Yes, talked to her about what had happened and
23 eventually, we put on paper as we always do. I would type
24 out the questions. She would give me an answer. I would
25 type out the answer. And, of course, we would go over the

1 statement, ask her if there was anything that needed to be
2 changed, any additions, subtractions. She was fine with
3 it and she signed it.

4 Q Okay. And approximately how long was it that you
5 were taking her statement that day after advising her of
6 her rights there at headquarters?

7 A We were in there, I would say, an hour,
8 hour-and-a-half because the major came in there, also.

9 Q Major Smith?

10 A Correct.

11 Q Was she able to acknowledge what her rights were?

12 A Absolutely.

13 Q And did she cooperate with you the whole time?

14 A She did.

15 Q And, in fact, after doing this, did she get some
16 photographs taken?

17 A She did.

18 Q And in addition to that, did she consent to giving
19 you her DNA?

20 A She did.

21 (Whereupon, State's Exhibit No. 263 was marked
22 for identification.)

23 BY MS. CAMPBELL:

24 Q I'm showing you State's Exhibit 263, is this the
25 statement that was taken from her?

1 A It is.

2 Q And prior to her signing it, did she have an
3 opportunity to read over it or review it?

4 A She did.

5 Q Did you read it to her, did she read it herself or do
6 you recall?

7 A Both.

8 Q Once she went over this statement, was she allowed to
9 make any changes she wanted?

10 A She was.

11 Q Ultimately, did she sign this acknowledging this was
12 her statement?

13 A She did.

14 Q At any time, did she ever ask for a lawyer?

15 A No.

16 Q Did she ever tell you she didn't want to talk to you
17 anymore?

18 A She didn't, no.

19 Q Was she cooperative the whole time?

20 A She was.

21 Q And she wanted to get out her side of the story?

22 A She did.

23 MS. CAMPBELL: Your Honor, may I approach?

24 THE COURT: Yes, ma'am.

25 MS. CAMPBELL: You want to see these?

1 THE COURT: Thank you.

2 MS. CAMPBELL: That's all I have.

3 THE COURT: Cross?

4 CROSS-EXAMINATION

5 BY MR. BANK:

6 Q Did Ms. Thompson state whether she was on drugs or
7 had taken any drugs that day?

8 A That particular day, she did not. She did not appear
9 to be under any type of intoxication at the time I spoke
10 to her.

11 Q And she didn't say one way or the other whether she
12 had been on drugs that day, on the day you took the
13 statement?

14 A She did not.

15 Q Did y'all have to take some breaks because she was
16 upset during the statement?

17 A Not really. We ate right there in the room. I think
18 the Major brought us a hamburger while we were in there,
19 but we never -- we never had to take a break because she
20 was upset that I remember.

21 Q Do you remember her being upset at any point during
22 the interview?

23 A Oh, sure. When I first arrested her, she cried and
24 said that I was there, but I didn't kill the man. But
25 shortly after that, she stopped crying and just talked

1 like you and I are talking.

2 Q Did she cry at all at the police station?

3 A I beg your pardon?

4 Q Did she cry at all at the police station?

5 A I'm sure there was a time or two that she cried, but
6 there was nothing that was such a big interference to the
7 statement that we had to stop or -- that I recall.

8 MR. BANK: Thank you. No further questions.

9 THE COURT: Motion?

10 MR. BANK: No motion.

11 THE COURT: All right. I find that the statement was
12 given freely and voluntarily, knowingly and intelligently
13 after advice of her constitutional rights and that she
14 freely, voluntarily, knowingly and intelligently gave the
15 statement after understanding her constitutional rights
16 without any threat, force, coercion or pressure and the
17 statement admissible.

18 Thank you.

19 THE WITNESS: All right.

20 All right. Anything else you want to knock out
21 tonight?

22 MS. CAMPBELL: I can't think of any.

23 THE COURT: Okay. Give me the charges so we can be
24 rolling in the morning.

25 MR. BANK: Would it be all right if we e-mailed you

1 as long as we copy the solicitor.

2 THE COURT: E-mail the clerk.

3 MR. BANK: We'll do that. Thank you.

4 MS. CAMPBELL: We'll copy it all.

5 THE COURT REPORTER: Make sure you don't leave with
6 exhibits that are in, please.

7 THE COURT: Don't leave with exhibits.

8 MS. CAMPBELL: We need to take up the matter about
9 the exhibits that are missing. Your Honor, I'm getting
10 those printed off. I know we put in the complete set of
11 photographs from her, so I can figure out which ones are
12 missing. I guess they won't be on the same paper, but I
13 can't do anything about that.

14 MR. BANK: That's fine. Actually, we might have --
15 we probably have copies.

16 MS. CAMPBELL: You have copies?

17 (Whereupon, the proceedings were adjourned for
18 the day to be reconvened on Friday, February 19, 2016.)
19
20
21
22
23
24

25 Friday, February 19, 2016

1 THE COURT: Okay. Anything we need to take up
2 before we start back?

3 MS. CAMPBELL: Just a housekeeping matter. Your
4 Honor, yesterday during the Denno hearing, I marked
5 State's Exhibits 262 and 263 with copies of the advice of
6 rights and the statement. I have marked today and have
7 the originals.

8 THE COURT: Okay.

9 MS. CAMPBELL: I asked defense counsel if they have
10 any problem if I use those and they do not.

11 THE COURT: Okay.

12 MS. CAMPBELL: Additionally, Your Honor, last night,
13 we were going through the evidence, and we have all gone
14 through -- there was a group of pictures which I
15 introduced that showed some of Ms. Thompson's injuries.
16 When I introduced them, apparently, I thought it was
17 inclusive, including State's 162 through 166. The court
18 reporter went back and looked and those were never
19 referred to individually, so, obviously, those numbers
20 were skipped over when the numbering was done. So I think
21 162 through 166 were never entered or we withdraw them or
22 whatever terminology I need to use.

23 THE COURT: So they don't exist?

24 MS. CAMPBELL: They don't exist.

25 THE COURT: Okay.

1 Is that right?

2 MS. WALKER: That's right.

3 THE COURT: Okay. Great.

4 (Whereupon, State's Exhibit Nos. 162 through 166
5 were withdrawn.)

6 THE COURT: Okay. All right. Is our SLED guy here?
7 Okay. Thank you.

8 Are you ready to go?

9 MR. BAILEY: We are, Your Honor.

10 THE COURT: Okay. Great.

11 MR. BAILEY: If I can ask, are you Mr. Tim Grambow or
12 Dr. Tim Grambow.

13 THE WITNESS: Just Mr.

14 MR. BAILEY: I just wanted to make sure. I didn't
15 want to get in front of the jury and call you the wrong
16 thing.

17 THE COURT: Okay. Let's bring them.

18 (Whereupon, the jury entered the courtroom at
19 9:38 a.m.)

20 (Whereupon, State's Exhibit Nos. 264 through 271
21 were marked for identification only.)

22 THE BAILIFF: The jury is seated, Your Honor.

23 THE COURT: Okay. Welcome back. Thanks for being on
24 time.

25 You may call your next witness.

1 MR. BAILEY: Thank you very much, Your Honor. The
2 defense calls Mr. Tim Grambow to the stand.

3 THE COURT: All right. Come forward and be sworn,
4 Mr. Grambow.

5 TIM GRAMBOW, after being duly
6 sworn, testified as follows:

7 THE CLERK: Thank you. Have a seat in the witness
8 stand, please. State your name for the record.

9 THE WITNESS: My name is Tim Grambow.

10 THE CLERK: Thank you.

11 DIRECT EXAMINATION

12 BY MR. BAILEY:

13 Q How are you doing today, Mr. Grambow?

14 A Doing well. Thank you.

15 Q Thanks for being here today. I know I guess under
16 subpoena, you don't really have a choice, but we really
17 appreciate you being here.

18 Mr. Grambow, could you tell the jury what your
19 occupation is?

20 A I am a forensic toxicologist with the South Carolina
21 State Police.

22 Q And can you tell us a little bit about your training
23 and schooling that went into becoming a toxicologist?

24 A Well, I have a Bachelor of Science degree in
25 chemistry from Wake Forest University in North Carolina.

1 After receiving that degree, I pretty much very
2 briefly thereafter started working at SLED as a forensic
3 toxicologist. And with my working there, I began a
4 training program to begin certified through them as a
5 toxicologist in the analysis of biological samples,
6 whether they be blood, urine, tissue samples, anything
7 that comes from the body, and looking for the presence or
8 absence of alcohol or other drugs. The training program
9 there for me lasted over two years to become fully
10 certified.

11 Since then, I have gone through multiple outside
12 training courses, a number of different professional
13 societies. I've become Board certified through the
14 American -- or through the -- let's see. It's American
15 Board of Forensic Toxicology. So a lot of continuing
16 education, going to specialty schools and so on and so
17 forth to become Board certified and maintaining that.

18 Q How long have you worked for SLED, South Carolina Law
19 Enforcement?

20 A Fourteen years this month.

21 Q And Mr. Grambow, were you also the toxicologist on
22 the James Solomon case?

23 A I was.

24 MR. BAILEY: Your Honor, at this time, the Defense
25 would like to submit Tim Grambow as an expert in the field

1 of toxicology.

2 MS. CAMPBELL: No objection.

3 THE COURT: All right. Ladies and gentlemen, this
4 witness will be qualified as an expert in the field of
5 toxicology. He will be allowed to give opinion testimony
6 in that area. That doesn't mean that you must accept his
7 opinion, but it is evidence for you to use in any way you
8 see fit and give it the weight and the credibility that
9 you believe is appropriate as you are required to do with
10 each and every witness that appears before you.

11 BY MR. BAILEY:

12 Q Mr. Grambow, could you give the jury kind of just a
13 brief idea of what you do as a toxicologist at SLED, kind
14 of like if you run into somebody at a party, a short
15 answer?

16 A I usually try to dodge that question. But as a
17 forensic toxicologist, it is -- within our department, it
18 is our job to analyze biological samples, like I said, and
19 look for the presence or absence of drugs and interpret
20 those findings for various entities, whether it be police
21 agencies, courts or law, coroners, pathologists. We
22 analyze cases ranging from driving under the influence
23 cases to poisonings to criminal sexual conduct, what you
24 would think of like a date rape type case, as well as
25 death investigation cases, whether it's an unknown cause

1 of death or just a general investigation into the
2 circumstances of a death.

3 So with that, we're -- different agencies, submitting
4 agencies, whether it be the coroner or the highway patrol
5 or different police agencies can submit samples to SLED.
6 We inventory the samples. We begin some testing in order
7 to get the drugs and poisons understand out of the
8 biological samples. We analyze them, try to identify what
9 they are, what is pertinent. We try to identify how much
10 of a substance is there and then make an opinion as to
11 whether it was at a therapeutic level, below therapeutic,
12 toxic or a lethal level.

13 Q And Mr. Grambow, I believe we already established
14 that you did the toxicology examination on Mr. James
15 Solomon in this case; is that right?

16 A As far as I recollect, yes.

17 Q Do you remember when that was about or the date?

18 A Not off the top of my head. I could reference my
19 notes, but...

20 Q I mean, that's all right. It was definitively this
21 case, though?

22 A Yes.

23 Q Now, when you are -- when you're testing an
24 individual that's deceased, you do a lot of different
25 tests; is that right?

1 A Depending on the type of case it is, there are
2 certain policies and procedures that we follow, but yes,
3 we run multiple tests trying to identify various compounds
4 on the sample.

5 We usually don't -- sometimes we have some history
6 going into what we should be looking for, but most of the
7 time in the thousands of cases we run a year, we don't
8 know what we're looking for. So we try to narrow down our
9 search as much as possible, eliminate things so we're not
10 wasting time or money investigating, you know, chasing
11 ghosts. But if we can narrow down, say, a class of drugs,
12 then we'll go ahead and investigate further and find out
13 what drug was there and how much was there.

14 Q And in this case, you tested Mr. Solomon for certain
15 drugs; is that right?

16 A Yeah, we did our standard drug panel tests on him,
17 yes.

18 Q Can you give us kind of a brief explanation as to
19 what your standard drug panel is?

20 A Generally speaking, we're going to do an initial
21 alcohol test on a sample that comes in. It's a relatively
22 quick and easy test that gives us some additional
23 information.

24 After we run the alcohol test, which involves running
25 the sample multiple times to get a quantitative value and

1 to confirm which alcohol it is, whether it be rubbing
2 alcohol or methanol or ethanol, which is your common
3 drinking alcohol, we do that and identify it and determine
4 how much is there.

5 And then, we'll typically do what we call a
6 presumptive drug screen, where we will utilize kind of
7 a -- it's kind of a quicker test and what we're looking
8 for are specific classes of drugs and a few specific drugs
9 that are most commonly seen in various cases here in South
10 Carolina.

11 What we're doing is kind of casting a net and seeing
12 if we can find within a class of drugs a positive result.
13 And if we find that positive result, we're going to look
14 further at that class of drugs to identify which specific
15 drug within that class gave us a positive result. And
16 then identify it and determine how much is there.

17 If that class of drugs comes back negative initially,
18 then we're not going to pursue it any further because it
19 didn't have any toxicological value in the particular
20 sample.

21 Q In this case, did you find alcohol in Mr. Solomon's
22 system?

23 A I do recall -- I don't have a copy of the report in
24 front of me at the moment. If I had, I could -- or my
25 notes, I could refer specifically to that.

1 Q If I showed you a copy of your report, would it
2 refresh your memory?

3 A Yes, sir.

4 Q If you need more of it, let me know.

5 A No. That's fine.

6 Q Does this seem complete enough?

7 A No, that's fine. I have my copy back at my seat back
8 there.

9 Q Was alcohol found in Mr. Solomon's system?

10 A Yes, we found ethanol, which is drinking alcohol at a
11 value of .051.

12 Q And was cocaine found in Mr. Solomon's system?

13 A The initial presumptive screens did indicate that
14 there was a presence of cocaine metabolites. We further
15 tested and we determined that there was cocaine and
16 metabolite there in his system.

17 Q Okay. Can you explain to the jury what metabolites
18 are?

19 A Okay. So when you take a drug, whether it be a
20 prescription drug, illicit drug, it's a foreign substance
21 that's in your body. Your body is going to try to break
22 that drug down in order to clear it from your system. So
23 metabolite is just the product from your body breaking
24 down the drug.

25 In this case, cocaine is the substance we're talking

1 about and there are enzymes in your body that are going to
2 chemically change that drug into benzoylecgonine, which
3 makes it more easily able to be cleared from your body.

4 Q So -- and I'm not trying to put words in your mouth.
5 Is it safe to say that metabolites are kind of like the
6 leftover product after cocaine has been in your body?

7 A In this particular case, yes, that's what the
8 benzoylecgonine is indicative of cocaine use. Of course,
9 we know there was cocaine used because we did actually
10 find the actual cocaine as well.

11 Q Okay. So you found actual cocaine that had not been
12 processed as well?

13 A Correct.

14 Q So you found actual cocaine in Mr. Solomon's system,
15 but then you also found metabolites?

16 A Correct.

17 Q Would the metabolites be from an earlier use of
18 cocaine?

19 A Well, looking at the values that I have here, we have
20 0.15 milligrams per liter of cocaine. And then there is a
21 greater than one milligram per liter of benzoylecgonine.
22 Looking at the ratio of the two, it is very possible that
23 there were multiple doses of cocaine taken.

24 The cocaine lasts in your system a relatively short
25 time. The metabolite lasts a little longer. So as you

1 take a dose of cocaine and your body metabolizes the
2 cocaine into the benzoylecgonine, which is the metabolite,
3 the cocaine level is going to decrease and the
4 benzoylecgonine level is going to increase. And then
5 finally, your body is going to further break that down and
6 get rid of the benzoylecgonine. So that level will
7 eventually disappear. But that happens at a little bit
8 longer rate than it does for the cocaine itself.

9 So if you're taking cocaine over multiple uses, over
10 a couple of hours, let's say, then the cocaine level is
11 going to increase when you first take it and then it's
12 going to decrease as your body metabolizes it. And that
13 benzoylecgonine level is going to increase and then
14 decrease at a slower rate.

15 So then if you take a subsequent dose of cocaine,
16 it's going to -- the level is going to go up and decrease.
17 As it decreases, it's going to add to that already
18 existing benzoylecgonine level, in which case the overall
19 level of benzoylecgonine over the course of many uses can
20 increase until enough time has passed for your body to
21 eliminate it. In the meantime, the cocaine level can go
22 up and down as takes subsequence uses.

23 Q Thanks, Dr. Grambow. I'm sorry. I got a little lost
24 there because I'm not an expert.

25 Would the presence of metabolites and also actual

1 cocaine be consistent with Mr. Solomon using cocaine more
2 than once over the course of the day?

3 A Not just the presence of it, but actually looking at
4 the comparative levels of the two seems to indicate that
5 that's a good possibility.

6 Any time you're looking at drugs and levels,
7 especially in a death case, it's very difficult to
8 interpret exactly what the use pattern was strictly on the
9 body levels in the blood. Cocaine, in particular, is
10 notorious for not being an exact snapshot of what was
11 going on at the time when the person was alive because
12 your body starts breaking down. What the testing level
13 here is indicative of what was in his body at the time the
14 sample was taken. You know, at the autopsy or the blood
15 draw. The -- you know, which is in general reflective of
16 what was going on at the time when he was alive, but it's
17 not an exact replica of what was going on.

18 Q If you don't mind and I'm not trying to cut you off,
19 if we could stop you right there. You were talking about
20 it was reflective of what was going on with Mr. Solomon
21 while he was alive. I think that's what you said, right?

22 A Yes.

23 Q Mr. Solomon, would you say he was under the influence
24 of cocaine at the time of his death?

25 A He definitely had a measurable amount of cocaine in

1 his blood, which was circulating, which was getting to his
2 brain and therefore having an effect on him.

3 Q Okay. Was this a trace amount of cocaine?

4 A No, this was readily detectable. It was definitely
5 more than a trace amount.

6 Q Would we call this a substantial amount of cocaine in
7 his system?

8 A It was fair amount, yeah.

9 Q Mr. Grambow -- I keep wanting to call you,
10 Dr. Grambow. Mr. Grambow, is cocaine what we would call a
11 stimulant?

12 A Yes.

13 Q What's the short definition of a stimulant? I think
14 we all have an idea, but what's a short definition of a
15 drug that's a stimulant?

16 A In this case, cocaine is considered a stimulant
17 because the part of the brain -- one of the parts of the
18 brain that it affects, it affects the receptors that are
19 going to be responsive to adrenaline or norepinephrine.
20 So it's going to cause a lot of the same effects that an
21 adrenaline rush would. Therefore, it's going to -- it
22 could increase your heart rate, increase your blood
23 pressure. It can dilate your pupils, things that are
24 consistent with what you consider that adrenaline rush.
25 So it's going to be considered a stimulant as far as your

1 brain is concerned in the central nervous system.

2 Q Do some people have a tendency to behave aggressively
3 when they're under the influence of cocaine?

4 A Cocaine, just like many other drugs, is sometimes
5 associated with aggressive behavior. Now, whether or not
6 the cocaine itself specifically causes an aggressive
7 behavior is not readily -- you can't readily determine
8 that, especially on just a toxicology report.

9 What cocaine can do, along with several other drugs,
10 is it's going to -- you know, as it's affecting the brain,
11 it's going to affect -- it's going to lower your
12 inhibitions. It's going to affect your cognitive ability,
13 in which case your ability to assess danger, to assess a
14 dangerous situation, lower inhibitions. It's going to --
15 you know, instead of maybe running away from a dangerous
16 situation, you may approach a dangerous situation, things
17 along those lines.

18 So as you're already having a simulated adrenaline
19 rush, and then you're unable to process the information of
20 a dangerous situation, you -- especially if you have
21 proclivity for underlying aggressive behavior as it is,
22 and you're unable to -- under the influence of drugs,
23 you're unable to filter what you would normally be able to
24 do if you were soberer, so if you were in a social
25 situation, you know, your conscience may tell you hey, I

1 need to abstain from this. You know, this is not
2 acceptable behavior, but under the influence of drugs such
3 as cocaine, that filter may be off. And as you process
4 the information in the situation, you say, you know, I'm
5 going to -- you know, I don't have to get away from this
6 situation. I can go ahead and engage it, which can lead
7 to aggressive behavior. But the cocaine itself does not
8 necessarily directly cause aggressive behavior in every
9 case.

10 Q I got you. So in some cases, cocaine can lead to
11 aggressive behavior?

12 A It is possible.

13 Q And we are not holding you to absolute, just in some
14 cases, cocaine can lead you to aggressive behavior?

15 A There is documented studies that show that cocaine
16 has been linked in some instances to some aggressive
17 behaviors.

18 Q Can cocaine make people paranoid?

19 A That is one of the psychological side effects that
20 has been shown in some cases, some paranoia along with --
21 you know, several drugs also have that effect, just how it
22 affects the psychosis in the brain.

23 MR. BAILEY: The Court's indulgence just for a
24 minute.

25 (Pause.)

1 MR. BAILEY: No further questions. Please answer any
2 questions the State has. Thank you, sir.

3 MS. CAMPBELL: Thank you.

4 CROSS-EXAMINATION

5 BY MS. CAMPBELL:

6 Q Good morning.

7 A Good morning.

8 Q I just have a few questions. Basically, I believe
9 that in your report, it indicates who actually sent in the
10 blood and requested your findings?

11 A Yeah, the Richland County Coroner's Office.

12 Q The coroner's office?

13 A Yes, ma'am.

14 Q And then once you make your findings, then you
15 provide that to them?

16 A They get -- yes, they get the original copy of the
17 report.

18 Q And then, ultimately, law enforcement in some cases?

19 A Yes, ultimately, it's whoever they share the
20 information with at that point because the evidence is
21 technically theirs, and so the report is theirs. So they
22 can disseminate it as they feel needed, whether it be to
23 the pathologist or sheriff's department or whoever.

24 Q Are you aware in this case that your findings were
25 shared with the pathologist in this case before she made a

1 finding?

2 A I was aware of that, yes.

3 Q And the coroner and the pathologist are the ones that
4 determine cause of death, correct?

5 A Yes.

6 Q And that was done in this case?

7 A As far as I know.

8 Q And I show you a copy of the death certificate. Do
9 you realize what the cause of death was?

10 A It appears the victim bled to death in laymen's
11 terms.

12 Q That's what they put, exsanguination, I believe, is
13 the word?

14 A Yes.

15 Q Multiple blunt and sharp force injuries?

16 A Yes.

17 Q Now, I just have a couple of questions. You talked
18 about cocaine can be a stimulant?

19 A Yes.

20 Q Alcohol, however, is kind of the opposite?

21 A It's classified as CMS depressant.

22 Q A depressant?

23 A Yes.

24 Q And he asked you about behavior when cocaine is in
25 someone's system. In order to assess what drugs are in

1 someone's system, you have to be able to get a blood
2 sample at or around the time; is that correct?

3 A Yes, we can -- I mean, we can obviously test a
4 sample, any sample that's given to us, but as far as
5 interpretation goes to find out exactly what was going on
6 in a person's system at a particular time, obviously, you
7 would want the sample to be taken as close to that time
8 when we're trying to get the information from as possible.

9 Q You mentioned that cocaine works through the system
10 fairly quickly?

11 A Cocaine is metabolized relatively quickly in your
12 body, yes.

13 Q And when you say relatively quickly, is that within
14 hours or days or weeks?

15 A We measure the rate of metabolite -- metabolism by a
16 term we call a half life, which is if you tested
17 multiple -- if you gave a dose of cocaine and measure the
18 amount of it and how fast it is eliminated from your
19 system, the amount of time it takes for that amount of
20 cocaine to be cut in half is defined time as half life.
21 And we generally say that anywhere between five and seven
22 half lives is enough for an amount of a drug to be cleared
23 from your system where you're not going to detect it.

24 And the half life for cocaine, the range is between
25 half hour to an hour. So it's possible within a couple of

1 hours, you know, five to six hours after a use of cocaine
2 that you would not be able to detect it anymore.

3 Q So if someone is apprehended say four, five or six
4 days, you're not going to be able to tell what their
5 cocaine levels were five days earlier?

6 A Absolutely not.

7 Q And you mentioned that some behavior is -- you kind
8 of lose your inhibitions?

9 A Correct.

10 Q It lowers inhibitions I believe were your words?

11 A Yes.

12 Q And if someone described when they did cocaine it
13 made them bold, would that be consistent with what you're
14 talking about?

15 A That description would not surprise me in the least.
16 We see that with several different drugs, whether they be
17 seen as depressants or stimulants. You know, you hear
18 that often with alcohol, same thing, also classic for
19 lowering someone's inhibitions. I mean, anecdotally, you
20 hear someone say oh, I'm shy and I'm going to take that
21 drink and kind of get me over the edge, calm my nerves and
22 let me be a little bit more bold, if you will.

23 The same effect can happen with cocaine is that your
24 mental cognition is lower and you're able to kind of --
25 you kind of get over the hump of that nervousness, if you

1 will, so you can become more bold as well.

2 Q If someone has been smoking crack cocaine or any type
3 of cocaine all day, the more they smoke, the more it could
4 possibly make them less inhibited?

5 A It is possible.

6 MS. CAMPBELL: Beg the Court's indulgence.

7 (Pause.)

8 BY MS. CAMPBELL:

9 Q And you are able to -- when someone dies, you are
10 able to get their blood and test it later because at that
11 point, it's not metabolizing anymore?

12 A Generally speaking, the majority of drugs are
13 metabolized in your liver through enzymes, and so as you
14 take a drug and it's distributed -- you know, whether you
15 smoke it or, you know, take it orally, once it gets
16 distributed to your blood, the blood is going to circulate
17 as your hearts pumping. It's going to spread it around
18 your body and generally carry it to the brain where most
19 of the effects are going to be caused.

20 Now, when you're alive and your heart's pumping,
21 you're passing it around your system. It's going to also
22 -- you know, as it goes through your brain, it's going to
23 cycle around and pass through your liver. That's where
24 the majority of the enzymes that are going to cause drug
25 metabolism to occur. So every time the blood circulates

1 around and passes through the liver more and more is going
2 to be metabolized.

3 Now, as a person dies and your circulation stops, the
4 blood is no longer making these trips through the liver
5 and it's not going to be broken down more and more.

6 Now, there is potential for some -- you know, again,
7 you die and immediately your body starts to break down
8 somewhat to some degree. And the longer you're dead, the
9 more your body starts to break down, so there is some
10 variance in levels depending on where you take a sample
11 from. But generally, if the drug is broken down by liver
12 enzymes, it's going to pretty much primarily stop the
13 further break down of that drug through the enzymes.

14 Now, cocaine in this instance is also metabolized in
15 the blood, a little bit by enzymes in the blood. However,
16 being that you're not circulating, there's a limit to the
17 amount of metabolism that can occur just in that static
18 state as it is.

19 So generally speaking, yes, you -- pretty much, it's
20 a stop in time and it's snapshot of when the person died.
21 Now, like I said, as your body breaks down, things start
22 to get a little more fuzzy, if you will. That's why it's
23 just a general description of what was going on at the
24 time the person was alive. It's not an exact snapshot of
25 what was happening at the time the person was alive. But

1 it gives us a pretty good understanding of what was going
2 on.

3 MS. CAMPBELL: Thank you, sir. I don't have anything
4 further.

5 MR. BAILEY: Thank you, Your Honor. Just briefly.
6 Thank you.

7 REDIRECT EXAMINATION

8 BY MR. BAILEY:

9 Q Mr. Grambow, I think you just said, correct me if I'm
10 wrong, that this test for cocaine would have been a
11 snapshot of what was going on at the time when Mr. Solomon
12 died?

13 A It would not be a direct snapshot of what was going
14 on. It gives us a general indication of what was going
15 on, but the exact levels that are reported here being, you
16 know, after the time of death, there might be a slight
17 difference from what was going on at the exact time when
18 he was alive.

19 Q I'm sorry. I think you said a pretty good
20 understanding of what was going on at the time?

21 A Exactly. It's a pretty good understanding, but it's
22 not -- all these numbers are not going to be exactly the
23 same of what was going on at the exact time of death just
24 because as your body breaks down, your body chemistry
25 changes a little bit and some various things are going on.

1 It's going to give us a general indication.

2 Q And cocaine cannot be metabolized if somebody is
3 dead, right?

4 A Like I said, if the enzymes are present, it can
5 continue to be broken down. There are some enzymes in the
6 blood called esterases that break down cocaine further.
7 However, the amount of metabolism is not going to be
8 nearly as great as if you were actually still alive.

9 Q Okay. So it's not metabolized in the regular sort of
10 way as if you were alive?

11 A Not at the same rate, correct.

12 Q So technically, if the body is breaking it down -- so
13 technically, there could have even been more cocaine in
14 his blood stream at the time he died maybe?

15 A There could be a small amount more.

16 MR. BAILEY: Thank you. No further questions. Thank
17 you.

18 THE COURT: Okay. Thank you. Have a good day.

19 All right. You may call your next witness.

20 MR. BAILEY: The Defense rests.

21 THE COURT: All right. Ladies and gentlemen, the
22 Defense has rested its case. There's some matters of law
23 I need to discuss outside of your presence. You are still
24 not allowed to deliberate or discuss the case in any way,
25 shape or form. You will retire to your jury room, keep an

1 open mind and we'll be back with you in a few moments.

2 (Whereupon, the jury left the courtroom at 10:08
3 a.m.).

4 THE COURT: All right. Motions?

5 MR. BAILEY: Your Honor, just continue renewal of all
6 our previous motions, including our directed verdict
7 motions.

8 THE COURT: Okay. All right. Those motions are
9 denied based upon my previous reasoning as before and my
10 rulings upon them are the same.

11 All right. Does the State want to call reply?

12 MS. CAMPBELL: One witness.

13 THE COURT: Okay. Give me one second.

14 (Pause.)

15 All right. Let's bring them back in.

16 (Whereupon, the jury entered the courtroom at
17 10:09 a.m.)

18 THE COURT: All right. Ladies and gentlemen, sorry
19 about the quick break. Sometimes those have to happen.
20 In certain instances when the Defense puts up a case, the
21 State is allowed to call reply witnesses.

22 Ms. Campbell, do you have any?

23 MS. CAMPBELL: Yes, Your Honor.

24 THE COURT: Okay. You may call your witness.

25 MS. CAMPBELL: The State recalls Investigator Kerry

1 Johnson.

2 THE COURT: All right. Investigator, please come
3 forward and be sworn.

4 KERRY JOHNSON, after being duly
5 sworn, testified as follows:

6 THE CLERK: Thank you. Have a seat in the witness
7 stand, please.

8 THE WITNESS: Kerry Johnson.

9 DIRECT EXAMINATION

10 BY MS. CAMPBELL:

11 Q Investigator Johnson, I want to turn your attention
12 back to January the 28th, and that would be the day after
13 Mr. Solomon's body was found. I believe your testimony
14 was that you got a phone call from Major Smith about
15 evidence that was found in the case?

16 A Yes, January 27th, that's correct.

17 Q And when you got that phone call --

18 A I'm sorry, what was the question?

19 Q You got a -- when you were interviewing Amy Norris?

20 A Right, I'm sorry, January 28th, correct.

21 Q Twenty-eighth. You got a phone call from Major
22 Smith; is that correct?

23 A Correct.

24 Q At that point, you testified that you left Ms. Norris
25 and went to try to find Holly Jo Thompson; is that

1 correct?

2 A That's correct.

3 Q And tell the jury what happened when you found Holly
4 Jo Thompson.

5 A Where I was interviewing Ms. Norris was literally
6 just a few minutes driving time away from where Holly Jo
7 Thompson was living and where I had spoken to her the day
8 before, so me and another investigator went down there and
9 stayed outside and Holly eventually came out.

10 I got her over to the car. I grabbed her by the
11 wrist and explained to her that she was under arrest for
12 the murder of James Solomon. As I was putting the
13 handcuffs on her, she blurted out, I was there, but I
14 didn't kill the man.

15 So I handcuffed her and put her in the car. We have
16 our advice of rights forms that we use. I didn't want to
17 take the handcuffs off of her because -- for her safety
18 and mine, but I read to her at that time from the advice
19 of rights form what her rights were because I knew we were
20 going to be having a discussion between there and on the
21 ride back to headquarters.

22 Q And when you said you read her her rights, what are
23 those rights generally referred to as?

24 A You have the right to remain silent. Anything you
25 say can and will be used against you in a court of law.

1 You don't have to speak without having an attorney
2 present. You know, now that you're under arrest, if you
3 can't afford to hire an attorney, one will be appointed
4 for you before any questioning if you wish. More
5 importantly is the warning that at any time during the
6 questioning, she had the right to stop answering at any
7 time. She also had the right to stop answering until she
8 spoke to a lawyer.

9 She understood those rights. She stated she
10 understood those rights and she agreed to talk, so the
11 conversation began immediately as we drove out and on the
12 way to headquarters.

13 Q And the first thing I think you just testified to was
14 that she said what when you first placed the handcuffs on
15 her?

16 A She says, I was there, but I didn't kill the man.

17 Q And did she stick to that story for a period of time?

18 A Well, once I gave her the evidence that we had, which
19 is what led us, then she realized that we had good
20 evidence that -- because it was in the -- the palm print
21 that we had was on the vase that we knew that killed him.
22 So once she was confronted with that evidence, she began
23 to relay the story of what happened.

24 Q A different story?

25 A Yes, in fact, that she actually did kill him.

1 Q And this discussion occurred -- it started while you
2 were in the car when you were transporting her?

3 A Yes, it was approximately a 20-minute drive to
4 headquarters. Once we got there, we went into an office.
5 She was read those same rights again from the form, which
6 is what we normally do. She signed the form indicating
7 that she knew her rights still. She was actually read
8 those rights twice and each time she waived her right to
9 have an attorney. And she signed the form indicating that
10 she waived those rights.

11 Q I show you what's been marked State's Exhibit No.
12 262. Do you recognize that, sir?

13 A Yes, this is the advice of rights form. This is a
14 common form that we at the sheriff's department use and it
15 has those rights on there, each one.

16 Q And once she is read her rights and she signed off on
17 her rights, did you then proceed to take an actual written
18 statement from her?

19 A Yes, we talk about what happened. We do the
20 interview process. We discuss, and, ultimately, we type
21 out -- when we say written statement, it's what that
22 means, but we actually type it out, as you'll see here,
23 that way everybody's handwriting is easy to read is what I
24 say. We type out the question and whatever her answer is,
25 we type that out.

1 Many times when I'm taking a statement here, I'll say
2 is this what you want to put. They'll indicate yes. At
3 the end of the statement process, we go over it. We read
4 it verbatim -- and this is not just with Ms. Thompson,
5 this is anytime we take a statement, and we say, Is there
6 anything you would like to change? Is this okay? Yes.
7 Is there anything you would like to add? No. Is this
8 statement your statement, are these your words that I have
9 typed out? Yes.

10 Once we did that, we'll print it out. I'll have them
11 look over it again, which is what was done, and she signed
12 the statement indicating those were her words and that she
13 was okay with that statement.

14 Q I'm going to show you State's Exhibit No. 263. Do
15 you recognize that?

16 A Yes, this is the actual statement. As you can see,
17 it was notarized by Major Stan Smith, who at the end of
18 that interview was also in the interview room. That's the
19 original statement.

20 MS. CAMPBELL: Your Honor, at this time, I'd offer
21 State's Exhibits 262 and 263 into evidence.

22 MR. BANK: Without objection.

23 THE COURT: 262 and 263 without objection.

24 (Whereupon, State's Exhibit Nos. 262 and 263
25 were admitted into evidence.)

1 BY MS. CAMPBELL:

2 Q For the record, I'm going to hand you 262, which is
3 the advice of rights. Can you tell the jury the actual
4 rights you went through with her that day and what she
5 agreed?

6 A Yes. They're line by line. I'll read it exactly
7 like I read it. You can see here, it says Holly Jo
8 Thompson and the place where it was taken is RCSD, or
9 Richland County Sheriff's Department. My name Kerry
10 Johnson. January 28th. I put 2013 because it was still
11 January, and I mess up putting the right year sometime,
12 but it's supposed to be 2014. Time is military time,
13 which is 1300 hours or 1:00 o'clock.

14 And the questions were, Before we ask you any
15 questions, you must understand your rights. You have the
16 right to remain silent.

17 THE COURT: Investigator Johnson, when you read, you
18 read faster than you normally talk. Would you read just a
19 little bit slower?

20 THE WITNESS: Sure, my apologies. I'll start over.
21 Before we ask you any questions, you must understand your
22 rights. You have the right to remain silent. Anything
23 you say can be used against you in court.

24 You have the right to talk to a lawyer for advice
25 before we ask you any questions and to have a lawyer with

1 you during any questioning.

2 If you cannot afford a lawyer, one will be appointed
3 for you before any questioning, if you wish. If you
4 decide to answer questions now without a lawyer present,
5 you still have the right to stop answering at any time.
6 You'll also have the right to stop answering at any time
7 until you talk to a lawyer.

8 As you can see, she signed directly under there
9 indicating that she understood those rights, and I
10 witnessed there.

11 Then we have the waiver of rights right up
12 underneath, and it reads, I have read this statement of my
13 rights and I understand what my rights are. I'm willing
14 to talk and answer questions. I understand and know what
15 I am doing. No promises have been made to me and no
16 pressure or coercion of any kind has been used against me.

17 Of course, she again signed there that she did waive
18 her rights and I witnessed it.

19 In every case, we ask the person that we're talking
20 to do you understand what pressure or coercion means and
21 everybody does. And if they don't, we give a little
22 example of what pressure or coercion means.

23 Q And did she indicate to you verbally and then by
24 signing that she understood her rights and was willing to
25 waive them?

1 A She did.

2 Q In your opinion, was she wanting to talk to you that
3 day?

4 A Oh, yes.

5 Q At any time, did you deprive her of any creature
6 comforts to make her talk to you?

7 A Not at all.

8 Q Did you threaten her or hurt her in any way to make
9 her talk to you?

10 A No coercion, no pressure. We never had to get loud.
11 It was a normal conversation with her explaining what
12 happened and me asking questions. And Major Smith came in
13 and spoke with her briefly. It was -- it was -- for lack
14 of a better term, it was not any type of hostile
15 environment whatsoever.

16 Q At any time, did she indicate she wished to invoke
17 any of her rights or that she wanted to talk to a lawyer?

18 A Never, no.

19 Q Once she had been advised of her Miranda rights, did
20 you then proceed to reduce the story she wanted to tell
21 you -- or this story into a typewritten form?

22 A I did.

23 Q And can you publish to the jury or read to the jury
24 your questions and her answers that day?

25 A I will. And also at the top of this statement form

1 are the same rights again, so whenever she reads this
2 statement, those rights are literally reiterated right up
3 here at the top.

4 Also, Q means question. It's my name Investigator
5 Johnson. A means answer, and that was Holly Jo Thompson.

6 My first question was, How do you know James, A/K/A
7 the Grill Man that lives on Lower Richland Boulevard?

8 Her answer was, Through a girl named Amy. In March
9 or April of last year, I met Amy and I went with her to
10 her boyfriend's, Matt, house and we had a threesome with a
11 drug boy who gave us a lot of crack. And when the guy
12 left, Amy took me to James's house and that's the first
13 time I met him. We sat and got high with James. Ever
14 since then, it's been a trick thing with James. Sometimes
15 he will give me money for sex and sometimes he would give
16 me dope for sex. Sometimes he would give me money and
17 dope. I always knew James as -- I always knew him as
18 James or the Grill Man.

19 The next question was, How many times have you had
20 sex with James?

21 Her answer was, Over a hundred times. At least two
22 or three times a week.

23 Question: Why was he called the Grill Man?

24 Answer: He said that he takes barrels and builds
25 grills out of them and sells them.

1 Question: Where does James live?

2 I don't know the address, but I know it's a trailer
3 off the road down by the curve on Lower Richland
4 Boulevard.

5 Question: When were you at James -- when were you
6 last at James's house?

7 Her answer was, It was either Friday or Saturday
8 night, the 24th or the 25th, meaning January. She says, I
9 don't remember the night.

10 Question: Can you tell me what happened while you
11 were at James's house on Friday or Saturday night?

12 Her answer was, He called and got a message to me
13 that he wanted to come by -- wanted me to come by his
14 house. I don't remember who it was, but they said James
15 says come to the house. So I walked down to his house
16 around 7:00 or 7:30 p.m. and when I got there, he called
17 quote, the dope boy.

18 About 20 minutes, the dope boy showed up, and James
19 pulled 40 or \$50 out of his pocket and bought some crack.
20 We smoked three or four rocks in the living room and he
21 said quote, I want some of that pussy, so I gave him oral
22 sex trying to get him hard, but he couldn't get hard.

23 At about 9:30 or 10:00 p.m., he called the dope boy
24 again and when the dope boy got there, he bought \$40
25 worth. He would pull his money out of his pocket and tell

1 me to go to the first bedroom because he didn't want the
2 dope boy to see me.

3 When the dope boy left, he closed the front door and
4 told me to come out of the bedroom. We smoked a little
5 bit in the living room and he started getting mad because
6 his dick wouldn't get hard. We went to his bedroom and he
7 tried to stick it in, but it wouldn't get hard and he got
8 mad.

9 We went back in the living and he got my stem, which
10 I have in parentheses crack pipe, and he hit a piece. And
11 I have in parentheses smoked some crack. I asked her if
12 that's what she meant.

13 He started saying that I was stealing dope from him,
14 so I started putting my clothes on. I had my jeans on and
15 was putting my shoes on and he had a knife that he was
16 cutting crack with. When I went to reach for my shirt, he
17 swung the knife at me and cut me on my right forearm and
18 my right elbow. I jumped up and we started hollering at
19 each other.

20 He kept saying that I was stealing his dope, and I
21 told him that I wasn't. And I tried get him to put the
22 knife down. He was on the other side of the coffee table
23 trying to get at me, and that's when I picked up the glass
24 vase that was at the end of the kitchen counter on top of
25 the white cabinet. He had peed in it earlier and it was

1 full of pee.

2 He backed up after I grabbed it. He tried to get to
3 the couch to get my bra -- I'm sorry. I tried to get to
4 the couch to get my bra, shirt and jacket so I could
5 leave. And he is steady saying I'm stealing his dope. He
6 said I wasn't leaving until I gave him his crack back. I
7 picked my stem up off the floor near the fish tank and
8 flowers and when I stood up, he swung the knife at me
9 again, and I swung the vase at him and hit him in the
10 face.

11 He kept coming at me and pushing me into the wall in
12 the hallway, so I kept swinging. The next thing I know,
13 he was in the floor and the vase was broken. I was so
14 scared that I grabbed my stuff and left. I put my bra and
15 shirt on and went out the front door and closed the door
16 behind me.

17 I went back to my house and went in the bathroom and
18 closed the door like nothing was going on. I washed my
19 arm off and got the bleeding to stop on my elbow and right
20 wrist. I got them cleaned up and the cuts on my hand. I
21 went in the bedroom and put my night clothes on like
22 nothing happened. I didn't know I hurt him that bad.

23 Question: Did the vase break the first time you hit
24 him with it?

25 Her answer was, No. I have no idea how many times I

1 hit him with it.

2 Question: Was he bleeding when you left the house?

3 I think he was. I know his face was bleeding where I
4 hit him in the face with that thing. The hall was dark,
5 and I didn't have my glasses on.

6 Question: Where was he when you left the house?

7 He was on the floor in the hall cussing me out. He
8 was steady saying, Bitch, bring my crack back. Bitch, I'm
9 going to kill you when I get up.

10 My question then was, Why didn't you call the police?

11 Her answer was, I don't call the police because I
12 don't like to get people in trouble. I didn't know I hurt
13 him that bad.

14 Question: Where is the knife that he cut you with?

15 Her answer was, I don't know.

16 I asked her, What did it look like?

17 Her answer was, He had two of them. He had one with
18 a white handle and one with a brown handle. They were
19 small kitchen knives.

20 Question: Did you take anything from his house?

21 Her answer was, No.

22 Question: Do you remember seeing his cell phone or
23 his wallet?

24 Her answer was, No.

25 Question: What clothes were you wearing at the time

1 of the fight and where are they now?

2 I was wearing a pair of Mudd jeans, gray and blue or
3 gray and green New Balance tennis shoes, a black shirt
4 with a bra built in and my black McDonald's jacket. The
5 zipper has a little M on it. They are in the back bedroom
6 of my house in a clear container with the rest of my
7 clothes.

8 Question: Who do you live with at 1533 Lower
9 Richland Boulevard?

10 Her answer was, Mike and his mother, my boyfriend,
11 Michael Richardson.

12 Question: Did Mike or anybody else know what you
13 did?

14 Her answer was, No. I didn't say nothing to nobody.
15 I kept long sleeves on so my arms were hid.

16 Question: Other than the quote, dope boy, was
17 anybody else at the house with you and James that night?

18 Her answer was, No.

19 Then I asked her, Do you know who the dope boy is?

20 Her answer was, No, I've never seen him or his
21 vehicle. James made me go in the little bedroom before he
22 answered the door.

23 Question: There was blood on the bed in the back
24 bedroom on James's bed. How did that get there?

25 Her answer was, I don't know. The only time we was

1 in the back bedroom was when we were trying to have sex.

2 Question: When I talked to you at your house
3 yesterday, did you know what we were investigating?

4 Her answer was, You asked me if I knew Boo Boo up the
5 street, and I don't know him by that name. A girl named
6 Sharl came by the house and said the police was at Boo
7 Boo's house, but I never heard him called by that name
8 until yesterday. I didn't know until I seen on the news
9 that it was James that had gotten killed.

10 My question was, When you saw the news, did you
11 realize that it was you that killed James?

12 Her answer was, Yes.

13 Question: Why didn't you call the police when you
14 found out that he died?

15 Her answer was, Scared.

16 Question: Is there anything else that you would like
17 to add to this statement?

18 Her answer was, I didn't mean for this to happen. I
19 didn't want him dead. I just wanted him to stop trying to
20 hurt me.

21 Q And once you took that statement, she was given the
22 opportunity to review it?

23 A Correct.

24 Q And she could change anything she wanted?

25 A That's correct.

1 Q And that's the story she gave you?

2 A That is correct.

3 Q At any time, did she ever tell you she washed the
4 clothes?

5 A I don't recall that, no.

6 Q All right. And it was after that that you went back
7 and -- or investigators interviewed Mr. Richardson?

8 A Correct. Another investigator, I believe, got a
9 statement from Mr. Richardson.

10 Q Investigator Laurita, I believe?

11 A Correct.

12 Q And then based on that information, then they went
13 and found Moses?

14 A Correct.

15 Q So none of that came from Ms. Thompson?

16 A Right.

17 Q I'm going to show you some photographs 264, 265, 266,
18 267, 268, 269 and 270, are these crime scene photos from
19 this case?

20 A They are.

21 MS. CAMPBELL: And, Your Honor, at this time, we'd
22 offer those into evidence.

23 MR. BANK: Without objection.

24 THE COURT: Admitted without objection.

25 (Whereupon, State's Exhibit Nos. 264 through 270

1 were admitted into evidence.)

2 BY MS. CAMPBELL:

3 Q 264, what does that show, sir?

4 A That is the front door, the inside of the front door.
5 That's, obviously, some fingerprint dust there.

6 Q And in the course of the investigation, was there
7 ever any blood or any indication of anything on that front
8 door?

9 A There was a fingerprint lifted, yes.

10 Q Any blood?

11 A No, I'm sorry.

12 Q And, in fact, does this front door have kind of a
13 manual-type lock on it?

14 A It does.

15 Q The 268, she said she got the vase from where?

16 A She said the counter -- on the shelf at the end of
17 the counter.

18 Q And does that show a shelf at the end of the counter?

19 A I see a little shelf, yes.

20 Q And then in 269, is that looking across the living
21 room? Can you see where the front door is in that one?

22 A Yes, this photograph at the front looking -- I'm
23 sorry, kind of standing in the hallway looking towards the
24 front and you see the front door there with the light
25 shining in.

1 Q Because it's open in this picture, right?

2 A Correct.

3 Q And that was after y'all were in there?

4 A Correct.

5 Q And then 270, what is this a photograph of?

6 A This is a photograph of the master bedroom at the
7 back of the house.

8 Q And that's from what area?

9 A That's from the hallway area.

10 Q And here on the floor, you can see the droplets?

11 A Correct.

12 Q I'm going to show you what's been marked 271. Do you
13 recognize this?

14 A Yes. This is a picture of what Holly Jo Thompson
15 looked like on the day that I arrested her.

16 MS. CAMPBELL: Your Honor, at this time, we'd offer
17 271 into evidence.

18 MS. CAMPBELL: Without objection.

19 THE COURT: 271 without objection.

20 (Whereupon, State's Exhibit No. 271 was admitted
21 into evidence.)

22 BY MS. CAMPBELL:

23 Q And that's how she looked the day you arrested her?

24 A That's correct.

25 MS. CAMPBELL: Thank you. I don't have anything

1 further.

2 THE COURT: Cross?

3 MS. CAMPBELL: Thank you, Your Honor. May it please
4 the Court.

5 CROSS-EXAMINATION

6 BY MR. BANK:

7 Q Investigator Johnson?

8 A Yes, sir.

9 Q Now, you interviewed Holly, right?

10 A Beg your pardon?

11 Q You interviewed Holly?

12 A That's correct.

13 Q Both in the car after Miranda and at a room in the
14 sheriff's department?

15 A That's correct.

16 Q Right down on Two Notch; is that right?

17 A 5623 Two Notch Road where our sheriff's department
18 is.

19 Q And she was told apparently then twice, at least
20 twice that she could have a lawyer and that she didn't
21 have to talk; is that right?

22 A Well, when you read the rights, it actually kind of
23 reiterates several times that you don't have to talk
24 without a lawyer if you don't want to. And I actually
25 went over those rights with her twice.

1 Q So she was fully aware of what her rights were?

2 A Correct.

3 Q And that she could refuse to talk to you?

4 A Correct.

5 Q But she didn't refuse to talk to you?

6 A She did not.

7 Q She, in fact, cooperated with you; isn't that right,
8 sir?

9 A She answered questions, yes.

10 Q She didn't ask for a lawyer, did she?

11 A No.

12 Q And she's giving this statement to you within 24
13 hours of y'all's investigation; isn't that right?

14 A That would be right.

15 Q So y'all had all the information in this statement,
16 including this business about the urine 24 hours after you
17 guys started?

18 A That would be correct.

19 Q Now, this statement, this isn't a handwritten
20 statement, right? You explained that you typed this
21 statement up and let her read the statement; is that
22 right?

23 A That's correct.

24 Q Why don't you let folks write their own statements?

25 A Well, again, the handwriting can be a big issue, and

1 we want to make sure in fairness of the defendant that
2 exactly what needs to be put down is put down on the
3 statement, which is why we go over it several times.

4 Say, for example, if a defendant were to write out a
5 statement, something very easily could be left out. So we
6 -- as a habit, we type out the statements and we do it in
7 a question and answer form so it's very easy for both law
8 enforcement and the person being questioned to understand
9 exactly what is being asked.

10 At any time, especially the very last statement, is
11 there anything else, anything else that you want to add to
12 this statement, and that is an opportunity for them to go
13 over anything that we left out or anything they may have
14 forgotten about.

15 Q So part of the reason that you typed this statement,
16 your testimony is to make sure that nothing is left out?

17 A Well, we type it out and we ask the questions and
18 type their answers to make sure that the person's answer
19 is in the form they want it to be in, that they're
20 satisfied with, yes.

21 Q Was Holly at all emotional during your interaction
22 with her that day?

23 A When I first arrested her, she cried very briefly.
24 Once I explained the evidence to her, she was emotional.
25 She pretty much calmed down shortly after that. We

1 carried on a normal conversation on the way back to the
2 sheriff's department. Once we got in the interview room,
3 she became emotional a few times, but nothing that
4 interrupted the interview to the point to where I had to
5 stop and let her compose herself or anything like that.

6 Q Now, the Richland County Sheriff's Department has the
7 capable of recording interviews; don't they?

8 A No, we do not record audio or video.

9 Q Well, I guess what I mean by capable of is you could
10 record it if you wanted to; isn't that right?

11 A The sheriff's department does not have any equipment
12 in there to audio or video record any statements.

13 Q Well, sir, the sheriff's department has cameras in a
14 lot of their cars; is that right?

15 A As I mentioned, I did the interview in an office. I
16 was not in a vehicle.

17 Q The sheriff's department has video cameras that they
18 take into crime scenes, right?

19 A I did not have access to one, but yes, we do.

20 Q Y'all could have very well outside of any policy
21 preventing y'all from doing so could have put a camera in
22 the room while you interviewed her physically, couldn't
23 you have?

24 A It's possible to do so, but we did not do that. I do
25 not and we do not do that during our interviews.

1 Q You said something on direct about how Holly changed
2 her story once she heard the evidence. Do you remember
3 that testimony?

4 A Her first statement was I was there, but I didn't
5 kill the man. Obviously, when she was confronted with the
6 fact that her palm print was found on the vase, that is,
7 in essence, and, in fact, the murder weapon, then she did
8 go on and state that she hit him with the vase, which, in
9 fact, is a confession that her actions killed him.

10 Q But, sir, by your own testimony right there, she
11 never denied that she was there, right?

12 A No, she first said I was there, but then immediately
13 said but I didn't kill the man.

14 Q And when you say confronted by new evidence, is some
15 of that new evidence you informing her that Mr. Solomon
16 had, in fact, died?

17 A I didn't say new evidence. When I confronted her
18 with the evidence that I had that gave me probable cause
19 to place her under arrest, which I told her shortly after
20 she said what she did, is when she started the
21 conversation.

22 Q And did the evidence that you told her about include
23 the fact that Mr. Solomon had, indeed, died?

24 A Correct.

25 Q And it was at that point that she acknowledged that

1 the fight could have caused the death, right, sir?

2 A Correct.

3 MR. BANK: Beg the Court's indulgence.

4 BY MR. BANK:

5 Q Sir, you got this statement within 24 hours we've
6 established, right?

7 A Yeah.

8 Q Of being involved with the case?

9 A That's correct.

10 Q And from that day, from that very day, she has always
11 said that this was in self-defense; is that correct, sir?

12 A As I read from the statement, she indicated that she
13 was striking back at him because he was after her with a
14 knife, yes.

15 Q And that would be considered self-defense, sir?

16 A She also stated she was slashed on her arms, which is
17 why I asked her to show me her arms and I did not see any
18 injuries that matched what she was saying.

19 Q Sir, I asked you, but I don't know if I got the
20 answer. That would be considered self-defense; isn't that
21 right, sir?

22 A Sir, that's -- I cannot say with precision that is
23 considered to be self-defense.

24 MR. BANK: Thank you, sir. No further questions.

25 REDIRECT EXAMINATION

1 BY MR. CAMPBELL:

2 Q He said to you this, I asked you about the fact that
3 you were confronted -- that you gave her the information
4 he had died and that was the first time that she had heard
5 that and that's when story changed?

6 A That's correct.

7 Q But she told you she knew he died because she had
8 seen it on the news the night before?

9 A That's correct.

10 THE COURT: Thank you very much. You may step down.

11 THE WITNESS: Thank you.

12 THE COURT: Any further witnesses?

13 MS. CAMPBELL: No.

14 THE COURT: All right. Ladies and gentlemen, the
15 State has rested its reply case. I have matters of law
16 which I must take up outside of your presence. This will
17 be our morning break. This break is going to be a little
18 bit longer than the last one that you had. You're still
19 not allowed to deliberate or discuss the case. Keep an
20 open mind. We'll be back with you in a few minutes.
21 Thank you.

22 (Whereupon, the jury left the courtroom at 10:43
23 a.m.)

24 THE COURT: Okay. Let's go through the simple ones
25 first and then we'll circle around to the little bit more

1 complicated ones.

2 All right. Do y'all want the statement of the
3 Defendant in?

4 MS. CAMPBELL: It's up to them.

5 THE COURT: It's the one that says that you have to
6 determine that a statement was given freely, voluntarily,
7 knowingly and intelligently.

8 MR. BANK: That's fine, Your Honor, yes, sir.

9 THE COURT: I have that in. I have it in right after
10 expert witness.

11 All right. So I start off with the normal -- the
12 indictment charges murder blah, blah, blah, blah, blah.
13 It's simply the formal written instrument which contains
14 the charge made. I then go into duties of jury and trial
15 judge. You're the judge of facts. I'm the judge of the
16 law. You have to take the law as I give it to you.
17 You're the exclusive judge of the facts. I can't have any
18 comments on the facts.

19 I then go into presumption of innocence. I then go
20 into reasonable doubt. I charge firmly convinced. I then
21 go into direct and circumstantial evidence. I'm giving
22 the new circumstantial evidence. What's the name of that
23 case, Logan?

24 MR. BANK: Logan, yes, sir.

25 THE COURT: The Logan charge is in there. I go to

1 credibility of witnesses, just the normal one. I then do
2 the expert witness charge, and then I do the standard
3 criminal intent charge. Right before criminal intent, I
4 will do the statement of the Defendant, you know, freely
5 and voluntarily given right before intent. And then after
6 intent, I will do voluntary intoxication. Voluntary
7 intoxication is not a defense. It's not an excuse
8 regardless of the intent required for the crime. It does
9 not preclude your ability to act with malice and it is not
10 a defense to a crime. I then go into murder.

11 Hold on. I'm going to tell you how I merged the
12 stuff. I had it written on the ones he already did, so
13 give me just one second. We're going to skip -- for the
14 moment, we're going to skip over murder and all that good
15 stuff, the meat stuff. And then at the end, I do duty to
16 deliberate. You're the judge of the facts, has to be
17 unanimous. Then I go over the verdict form. Hold on just
18 one second.

19 Okay. All right. So looking at State's requested
20 charge for malice, malice -- the one that says depraved
21 heart and then the one that says in the Mouzon charge.

22 MS. CAMPBELL: Uh-huh.

23 THE COURT: And then the Milan, M-I-L-A-N, charge.

24 Hold on. Voluntary intoxication, I'm charging what
25 you gave.

1 MS. CAMPBELL: Okay.

2 THE COURT: The State vs. Johnson malice, that's in
3 the normal charge for wrongful intent to injury another.
4 The malice may be inferred by the conduct showing a total
5 disregard for human life. That's in the standard charge.

6 MS. CAMPBELL: Okay.

7 All right. Malice, depraved heart -- sorry, I've got
8 notes all over the place.

9 So I inserted malice, depraved heart at the end of
10 the normal malice charge. Okay. So I inserted malice,
11 depraved heart at the end of the normal malice charge,
12 okay.

13 MS. CAMPBELL: Okay.

14 THE COURT: I inserted Mouzon at the end of -- right
15 before I explain inferred malice.

16 MS. CAMPBELL: Okay.

17 THE COURT: And then on -- and then in the standard
18 charge, it says malice aforethought does not require that
19 malice exists for any particular time before the act is
20 committed, but malice must exist in the mind of the
21 defendant just before and at the time the act is
22 committed, okay.

23 Then -- so on the Milan charge, I took out the first
24 sentence because I think I already say that.

25 MS. CAMPBELL: I think you do.

1 THE COURT: But I'm charging the second sentence.

2 MS. CAMPBELL: Thank you.

3 THE COURT: The moment the fatal blow is given
4 sentence, the second and the third statement.

5 Okay. And then ordinary objects will be at the end
6 of the malice charge.

7 MS. CAMPBELL: Thank you.

8 Now, on to the self-defense charge. The State's
9 first submission on self-defense, I say all that.

10 MS. CAMPBELL: Okay.

11 THE COURT: Your --

12 MS. CAMPBELL: I just assumed you would have that.

13 THE COURT: Yeah, the Jackson charge that y'all
14 submitted, I believe that's in there in some way, shape or
15 form.

16 MS. CAMPBELL: Okay.

17 THE COURT: The self-defense, the Defendant has
18 raised a defense of self-defense. The State must prove
19 that it didn't happen beyond a reasonable doubt, element
20 number one, without fault. The way I think of these as
21 subcategories, so without fault has no subcategories. You
22 have to be without fault, okay.

23 Number two, imminent danger, the Defendant has to
24 believe imminent danger, death or serious bodily injury
25 that warranted a person of ordinary firmness and courage

1 to do the same thing basically. Consider all the facts
2 and circumstances. And then a subcategory of that is
3 right to act on appearances. So I think y'all asked for
4 that, that's in. The other self-defense, the main thrust
5 of the charge that you submitted, all of that's in
6 automatically.

7 Words accompanied by hostile acts may, depending on
8 the circumstances, establish self-defense, that's in.
9 Size and age and weight, that's it. Intoxication of the
10 victim, that's it. And then that's it for subcategories
11 on element two.

12 Number three, no other way to avoid danger, no other
13 way to avoid the danger or death than to act as the
14 Defendant did in a particular instance.

15 And then under lawful guest, it's the lawful guest
16 subcategory, which is fairly tricky. Number one, it says
17 a lawful guest does not have a duty to retreat if it's an
18 intruder, but you do have the duty to retreat if it is the
19 homeowner. So I say a guest has a duty to retreat where
20 possible if the attacker is the owner or occupier of the
21 property, so the duty to retreat still applies. And then
22 we don't even have to discuss whether or not she was a
23 lawful guest.

24 MS. CAMPBELL: Okay.

25 THE COURT: Now, also, degree of force, the degree of

1 force is in. A person cannot be required to make an exact
2 calculation as to the degree or amount of force which may
3 be needed. So the Defense has requested that, that's in.
4 The one that no one asked for is the continuing until the
5 threat of harm has ended.

6 MR. BANK: We want that, Your Honor. I'm sorry if we
7 didn't have that.

8 THE COURT: Okay. Well, that's directly
9 contradictory to your argument that she didn't mean to
10 kill him.

11 MR. BANK: I mean, our argument is that she didn't
12 know whether she killed him. Now, she used the force that
13 she felt was necessary, had no idea whether she had killed
14 him or not.

15 THE COURT: Okay. So then you're not requesting
16 involuntary manslaughter? I mean, you understand at this
17 point, those two are exclusive of each other. She
18 either -- it was either an intentional act or it was an
19 unintentional act.

20 MR. BAILEY: Your Honor, I've got a case here. I'll
21 give it to the State. I'll approach you first, if that's
22 all right. This is State v. Light from 2008, which says
23 that involuntary manslaughter and self-defense aren't
24 mutually exclusive.

25 THE COURT: I don't dispute that.

1 MR. BAILEY: Okay. So if there's --

2 THE COURT: That's not the issue. The issue is how
3 can she be justified in continuing to hit him until it
4 ends and it not be -- and be an unintentional act?

5 MR. BAILEY: I'm sorry, sir, can you repeat that one
6 more time?

7 THE COURT: Yes. One of the charges says you have
8 the right to continue -- the normal example is shooting
9 until the threat of harm has ended. In this case, it
10 would be beating with a vase. So if the Defendant is
11 justified in defending herself and in hitting him, then
12 she is also justified in continuing to hit him until it is
13 apparent that the danger of death or serious bodily injury
14 has completed ended. So that would be an intentional act.

15 Involuntary manslaughter is the unintentional killing
16 of another person.

17 MR. BAILEY: Your Honor, we would submit -- I think
18 you know what our case is, that she was intending to
19 defend herself and it was self-defense.

20 THE COURT: I understand that part of it.

21 MR. BAILEY: We believe that the State has gotten --
22 or they've tried to, I guess, frame testimony in
23 Ms. Campbell's extensive cross-examination that there was
24 reckless disregard and safety for others in leaving and
25 not calling the police. So we can see that, you know,

1 maybe a jury could possibly find her guilty of voluntary
2 manslaughter. But we believe -- you know, we stand firm
3 by our self-defense defense and we believe that when she
4 says that she wanted him to stop hurting her and that she
5 hit him, we think that she -- we think that hitting him
6 numerous times to stop the threat would fit under that,
7 Your Honor, and we would ask for that charge.

8 THE COURT: What's your position on that,
9 Ms. Campbell?

10 MS. CAMPBELL: Ms. Gregg has our position.

11 THE COURT: Oh, I'm sorry.

12 MS. CAMPBELL: She's smarter than me.

13 MS. GREGG: Your Honor, if I may, I believe that
14 their argument is she didn't intend to kill him, but our
15 supreme court has said in State v. Sampson that's not
16 dispositive. Especially under these facts that she didn't
17 intend to kill the victim in this case is unreasonable and
18 inconsistent with the physical evidence that the State has
19 presented --

20 THE COURT: I mean, the law says if there's any
21 evidence. It doesn't matter how good it is.

22 MS. GREGG: Your Honor, I would agree with that. I
23 think the focus of our argument is she would have to show
24 reckless disregard. She handled the vase in a reckless
25 disregard because the evidence firmly establishes she

1 struck him in the head repeatedly. I think you're exactly
2 right, that was an intentional act. And if the jury
3 accepts her story to be true, she would be entitled to an
4 acquittal of self-defense, but I don't believe that -- I
5 know that self-defense can be charged in addition to
6 involuntary manslaughter, but I think this is one of those
7 cases where it has to be excluded.

8 THE COURT: I'm listening.

9 MS. GREGG: And I kind of -- I think her argument
10 also is going toward excessive force in self-defense. I
11 mean that argument is tantamount to imperfect
12 self-defense, which our supreme has clarified recently
13 that the State has not accepted that as a defense in South
14 Carolina. Even applying that doctrine, that would only
15 entitle the Defendant to voluntary manslaughter.
16 Excessive force used is a mitigating factor to reduce a
17 charge from murder to voluntary manslaughter, so it
18 doesn't really have any application to involuntary.

19 THE COURT: Where is the evidence in the record that
20 she engaged in an unlawful activity not naturally tending
21 to cause death or great bodily harm?

22 MR. BAILEY: Your Honor, we think that whether or not
23 the death itself was intentional is a question for the
24 jury to decide.

25 THE COURT: That's a direct question. That needs a

1 direct answer.

2 MR. BAILEY: I'm sorry.

3 THE COURT: Where is the evidence in the record that
4 she engaged in an unlawful activity not naturally tending
5 to cause death or great bodily harm? Does that exist?

6 MR. BAILEY: The way the State framed it, we think
7 that she displayed -- on cross-examination, they talked
8 about reckless disregard for the safety of others, the way
9 she left the scene, left him bleeding, left him dying and
10 didn't call the police. They said that sort of thing
11 several times. We believe if it comes to evidence of
12 that -- you know, we think that that's evidence of
13 potentially there being negligent -- or criminally
14 negligent actions so the jury can see it that way.
15 Obviously, you know what our position is.

16 MS. GREGG: The State's position would be that
17 focusing on that conduct is focusing on the wrong conduct.
18 It's not her leaving that killed him. It was her
19 intentional conduct of repeatedly hitting him in the head
20 with the -- as she admitted in her testimony, she had the
21 vase.

22 I don't know which prong they're arguing under. I
23 know that their included lawful conduct, so --

24 THE COURT: Where is the evidence she engaged in a
25 lawful activity with reckless disregard for the safety of

1 others?

2 MS. GOODE: And, Your Honor, we would submit that she
3 was acting lawfully in self-defense and with reckless
4 disregard in leaving Mr. Solomon injured. And that would
5 be our position in trying to get the involuntary
6 manslaughter charge, that she was acting without malice,
7 engaging in self-defense when she struck Mr. Solomon and
8 that leaving him --

9 THE COURT: But the law says unintentional means that
10 the Defendant did not intend for anyone to be killed, I'll
11 give her that one, or seriously injured. So how is that
12 possible? I mean, where is the evidence that she didn't
13 mean for him to be seriously injured? She did. She said,
14 I just wanted it to stop.

15 MS. GOODE: Right.

16 THE COURT: I mean, I hit him -- her theory is I hit
17 him in self-defense. There's evidence in the record that
18 she hit him in self-defense, but she did it intentionally
19 to injure him to get him to stop. It's not an
20 unintentional act. It's not an accident. It's not
21 reckless. It's not careless. It's not negligent. She
22 said I picked up the vase because I had to defend myself
23 and I hit him because I was in fear of my life. I mean,
24 that's intentional as the day is long.

25 I don't understand where the evidence of -- I

1 understand that she says I didn't mean to kill him. Okay.
2 I'll give her that. That evidence is in the record. But
3 she intended to seriously injury him.

4 MR. BAILEY: She may not --

5 THE COURT: She testified to that.

6 MR. BAILEY: Right, but she may not have intended to
7 seriously injury him to the extent that he was seriously
8 injured.

9 THE COURT: But that's not what the law says. I
10 mean, it says -- what I would read to the jury is
11 unintentional means that the Defendant did not intend for
12 anyone to be seriously injured. Of course, she did. In
13 her theory, she's trying to save her life because she
14 thinks this man who's drunk and high is going to kill her.

15 I don't understand how that's not intentional all day
16 long. It's not like she slipped and fell and had the vase
17 and hit him in the head. I mean, I'll give her that she
18 didn't mean to kill him. I don't think that's dispositive
19 on the issue, but she intended -- I mean, she said I don't
20 know how many times I hit him in the head. I hit him in
21 the head until the threat stopped, until I could get away.

22 How is that unintentional? Tell me where the
23 evidence is to support that an unintentional act exists.

24 MS. GOODE: Your Honor, I would say that her
25 intention was not, again, for anyone to be killed or

1 seriously injured. Her intentions were to stop his
2 advances.

3 THE COURT: Where's the evidence in the record that
4 proves that she didn't intend for him to be seriously
5 injured.

6 MS. GOODE: I would say her testimony, Your Honor.

7 MR. BAILEY: Right, we would say it's a question of
8 fact the jury can still determine one way or the other.

9 MS. GOODE: Based on her --

10 THE COURT: That's called a nonanswer. I want to
11 know what she said that proves that.

12 MS. GOODE: That she indicated that her intention by
13 swinging the vase and hitting him was to make him stop
14 advancing towards her.

15 THE COURT: How is that unintentional?

16 MS. GOODE: I understand, yeah. The intent -- her
17 intent -- she did intentionally swing the vase, but her
18 intention was not for him to be killed or seriously
19 injured. The intention was for him to stop. The result
20 of that was a death, and I think that that's what gets us
21 to involuntary manslaughter.

22 MR. BAILEY: Additionally, the State has obviously
23 said she's running all over the apartment and chasing him
24 around or hitting him in the bedroom and that sort of
25 thing. If the jury takes some of that to heart, we

1 believe that that's evidence that would show that she
2 could have, you know, intentionally hit him past, you
3 know, a certain point that they may find to be reckless.

4 THE COURT: So what's the State's position on
5 involuntary?

6 MS. GREGG: Your Honor, we would request that you
7 deny to charge that to the jury. Even if her act was,
8 perhaps, intentional, they still must prove a state of
9 mind of criminal negligence, her using the vase with
10 reckless disregard. You know, under these facts, he had
11 how many blows to the head, over 10 blows to the head --

12 THE COURT: Seventeen.

13 MS. GREGG: Seventeen blows to the head. I think
14 she's trying to argue her action was intentional to get
15 him to stop, but excessive force was used. I don't think
16 that can be debated one way or the other. And, Your
17 Honor, that argument is, once again, imperfect
18 self-defense and that would only -- even if this
19 jurisdiction accepted that as an appropriate defense would
20 only entitle her to voluntary manslaughter. It has
21 nothing to do with the application of involuntary
22 manslaughter.

23 MR. BAILEY: Your Honor, just under State v. Light
24 again, if there's any evidence at all that can support it,
25 then, you know, we --

1 THE COURT: You haven't told me any.

2 MR. BAILEY: Well, Your Honor, I kind of got confused
3 as to whether we were talking about involuntary
4 manslaughter or keep hitting until the gun charge or --

5 THE COURT: Because I think they are mutually
6 exclusive of each other. I'm past that now. Tell me what
7 evidence says that she didn't intend to seriously injure
8 him.

9 MR. BAILEY: So you want -- I'm sorry. I'm just
10 trying to -- you want evidence that she did not intend to
11 seriously injure him?

12 THE COURT: Yes.

13 MR. BAILEY: We think that obviously she was acting
14 in perfectly legal self-defense --

15 THE COURT: I'm past that.

16 MR. BAILEY: Okay. We believe that the jury could
17 find that she went too far when she was initially acting
18 in self-defense, that she was recklessly acting and that
19 maybe she landed more blows than she should have, although
20 she was initially lawfully acting in self-defense.

21 We believe at that point, especially with -- the
22 State's whole case is that there's blood all over the
23 place. She had to have been chasing him around and
24 hitting him and beating him on the back of the head and
25 running all over the house and that kind of thing. The

1 jury can very well find that she did act in self-defense,
2 but at the same time her self-defense was excessive. If
3 it was excessive and it was reckless, then we believe that
4 that's involuntary manslaughter.

5 MS. GREGG: Your Honor, that is direct -- if I may?

6 THE COURT: You may.

7 MS. GREGG: The Supreme Court in 2014 -- I'm just
8 going to read some -- and I've got the case law right
9 here.

10 MR. BAILEY: Is this the shooting case?

11 MS. GREGG: No, it's actually a strangulation case.

12 The Supreme Court wrote Sams argued that he acted
13 lawfully in self-defense, that, perhaps, he acted
14 excessively and recklessly in doing so. Sams's argument
15 is tantamount to imperfect self-defense. Even under that
16 theory; however, a charge on involuntary manslaughter
17 would not be warranted. So they go through the fact that
18 they have not accepted imperfect self-defense. They say
19 it wouldn't be warranted. It would be a voluntary
20 manslaughter.

21 Even more recently, I believe, in State v. Scott,
22 2015, the Supreme Court, same argument that he acted in
23 self-defense, but with too much force, which means it
24 could be criminally negligent.

25 The State and the Supreme Court said Scott attempts

1 to argue that he was also entitled to an involuntary
2 manslaughter instruction because the jury could have
3 inferred that he acted recklessly in self-defense. We
4 recently rejected this argue in State v. Sams wherein the
5 defendant argued he acted lawfully in self-defense, but,
6 perhaps, acted excessively and recklessly. We found the
7 argument tantamount to imperfect self-defense, which South
8 Carolina has not adopted. Even if the jury accepted
9 Scott's version of the events as true, he would be
10 entitled to an acquittal because the killing would have
11 been justified under self-defense.

12 So there's no middle ground when you have these
13 excessive force cases at this time in South Carolina.
14 It's either one or the other in these cases.

15 THE COURT: All right. Anything else?

16 MR. BAILEY: No, Your Honor, we just ask for both
17 under State v. Light.

18 THE COURT: Okay. Involuntary is out, continuing
19 until the threat of harm has ended is in. The Defense can
20 point to no evidence in the record that she did not intend
21 to hit him in the head with a vase, which is obviously
22 attempting to cause serious bodily injury. She didn't say
23 I didn't intend to hit him. She said, I didn't intend to
24 kill him. She didn't say I didn't intend to kill him.
25 She said, I was there, but I didn't kill him. I didn't

1 mean for this to happen. I didn't want him dead. I just
2 wanted it to stop. Okay.

3 MS. GREGG: Thank you, Your Honor.

4 THE COURT: I'm going to say that she's justified in
5 defending herself and I'm going to say and in hitting the
6 victim. It says -- the charge says shooting or firing the
7 first shot and then continuing to shoot. I'm going to say
8 and in striking the victim. Then the Defendant is also
9 justified in continuing to strike until it is apparent
10 that the danger of death or serious bodily injury has
11 completed ended, okay.

12 Other than the previously stated objection, any
13 objection to the word strike as opposed to hit?

14 MR. BANK: No, sir.

15 THE COURT: Okay. Ms. Campbell?

16 MS. CAMPBELL: No.

17 THE COURT: Or Ms. Gregg, whoever is talking?

18 It's 11:00. Has Rule 21 gone into effect yet, the
19 new one?

20 MS. CAMPBELL: What's Rule 21?

21 THE COURT: The way you do closing arguments in
22 criminal cases.

23 MS. CAMPBELL: No. I heard that's getting ready to
24 pass.

25 THE COURT: I can't find that it's passed. I know

1 it's proposed, but I can't find that it's passed unless
2 somebody tells me something different.

3 Okay. So who's opening for the State?

4 MS. CAMPBELL: (Indicating).

5 THE COURT: All right. Who's closing?

6 MR. BANK: I am, Your Honor.

7 THE COURT: And then who's closing for the State?

8 MS. WALKER: (Indicating).

9 THE COURT: All right. Let's take about 15 minutes.
10 Everybody can get set up, get your thoughts together.
11 Don't forget we'll need gloves to be able to go back.

12 MS. WALKER: Yes, Your Honor. We have gloves.

13 THE COURT: We need gloves to go back and the TV to
14 be able to go back.

15 MS. WALKER: I think the only thing that's in
16 evidence is the jail phone call. Do you mind if we send a
17 clean computer back?

18 THE COURT: That's perfectly fine.

19 MS. WALKER: Sorry, Your Honor.

20 (WHEREUPON, a short break was taken.)

21 THE COURT: All right. Everybody ready?

22 MS. CAMPBELL: The State is ready.

23 MR. BANK: We're renewing all previous objections. I
24 don't think we did it after rebuttal and then our
25 objection with the involuntary charge.

1 THE COURT: All right. Those are noted for the
2 record. My rulings on them are the same.

3 MR. BANK: And directed verdict, Your Honor.

4 THE COURT: All right. Very well.

5 MS. CAMPBELL: Ready, Your Honor.

6 THE COURT: All right. Bring them in.

7 (Whereupon, the jury entered the courtroom at
8 11:35 a.m.)

9 THE BAILIFF: The jury is seated, Your Honor.

10 THE COURT: All right. Thank you very much. Welcome
11 back, ladies and gentlemen. We have been working
12 diligently to get up to this point of the trial. We are
13 at the point of the trial known as closing arguments. Let
14 me explain to you how this is going to work just so you
15 know because you're going to be seated for awhile.

16 The first thing that will happen is the State will be
17 allowed to open. We call that opening on the law. Once
18 that is over, the Defense will be allowed to give a
19 closing statement.

20 Once that is over, the State will then be allowed to
21 give a final closing argument to you. Once all of that is
22 over, I then have to tell you what the law is as it
23 pertains to this case, okay. I will be the least exciting
24 of all four things that you hear this morning. So I don't
25 ever -- some judges tell lawyers you've got this much time

1 or that much time, I don't do that. I don't limit them
2 because this is their case. They've all been working on
3 it for a very long time. This is an important case to all
4 sides and I don't want anybody to feel hampered by any
5 kind of time restriction, okay.

6 We may take a break in the middle of all of it,
7 depending on how things go. We may just stand up and
8 stretch, but I'll do my best to keep you as comfortable as
9 possible throughout this process.

10 Now, this week, all 13 of you have done a great job
11 of paying attention to the witnesses and to the lawyers
12 and to me. This is the attorney's final opportunity to
13 make their closing arguments to you, so I ask that you
14 give them your undivided attention.

15 Now, when all the attorneys have finished and before
16 I read my charge to you, you will see a mass exodus of
17 people in the audience. That's normal because the lawyers
18 that are out there watching the case don't want to hear me
19 talk anyway. So when I give the charge, the door will be
20 locked at the back. You'll see a mass exodus of people.
21 That's perfectly normal. It happens in every case I try.

22 That will be the format from this point forward. If
23 we need to take a break, we will. We'll just have to see
24 how long things go.

25 Ms. Campbell, the floor is yours.

1 MS. CAMPBELL: Thank you, Your Honor. May it please
2 the Court?

3 THE COURT: Yes, ma'am.

4 Closing Statement by Ms. Campbell

5 MS. CAMPBELL: Good morning.

6 The first thing I want to do on behalf of the State
7 of South Carolina, on behalf of James Solomon's family,
8 his friends, is to thank you for your service in this
9 case. I know when you showed up on Tuesday morning, you
10 probably wondered I wonder what kind of case I might sit
11 on. Would it be a car wreck, some other type of case?
12 What it might be? And as you were chosen in this case, we
13 are here because of events that occurred over two years
14 ago. And over the last several days, we have talked about
15 things that no one should talk about in open court or in
16 society, really, personal things, very personal things.
17 Unfortunately, the nature of this case has made it such
18 that we have talked about things that normally shouldn't
19 be discussed.

20 So the first thing I want to do is to apologize if we
21 have offended you in any manner talking about and
22 referring to things, but as I think you have come to
23 understand over the last several days, it's very
24 important. A man died at Holly Jo Thompson's hands. As a
25 result of her actions, he is dead and we are here.

1 Now, I'm going to have the opportunity to talk to you
2 a little bit about the law of the case, and then the
3 Defense is going to get up and they're going to be able to
4 talk to you about their theory of the case. And then
5 finally, you're going to hear from Ms. Walker who's going
6 to talk to you about the facts a little bit.

7 As we go through things, if I say anything about the
8 law that is different from what the Judge ultimately
9 charges you, it's not intentional, put you take the law as
10 the Judge says. You are to take that law and apply it to
11 the facts as you find them.

12 In that same vein, if either side gets up here and
13 mischaracterizes the facts, the testimony, you remember
14 it. Because the roles in this courtroom are defined,
15 ladies and gentlemen, and it's for a reason.

16 The State's role is to present to you any admissible,
17 relevant evidence in this case about what happened back on
18 that weekend in January of 2014. The Defense's role is
19 equally obvious. It's to defend his client to the best of
20 his ability. The Judge's role is to determine what is
21 actually admissible, what you're allowed to hear, to rule
22 over the courtroom and to ultimately tell you what the law
23 is as you are to apply it to these facts.

24 The most important role, ladies and gentlemen, no one
25 will argue this, is yours. Each of you individually and

1 then once you go back to the jury room, the 12 of you
2 collectively must agree on the facts and the law and the
3 verdict. Your role is by far the most important role in
4 this courtroom.

5 Now, you have heard all the evidence that you can
6 consider in making that decision, and you must base your
7 decision on the evidence that's before you.

8 What is evidence? As the Judge has told you,
9 evidence is the sworn testimony from this stand and
10 ultimately all these exhibits will go back to you. You'll
11 have all photographs we've been showing you, all the
12 exhibits and the DNA chart, all of those will be back with
13 you to help you in your determination.

14 But what is not evidence, as the Judge has already
15 told you, it's not our arguments. What's not evidence are
16 questions. Fishing expeditions, wishful thinking,
17 speculation, that's not evidence. What is evidence is the
18 answers to the questions, the sworn testimony.

19 Again, I want to apologize if over the last several
20 days Ms. Walker, Ms. Gregg or I have offended you in any
21 way. The subject matter in this case has been, needless
22 to say, at times not the most pleasant. At times, we get
23 caught up in legal wrangling. Y'all get sent out of the
24 courtroom, brought back in, send out again unexpectedly.
25 Please don't hold that against the State, against the

1 citizens of Richland County.

2 Now, in criminal court, it's a little bit unique
3 because as you've seen over the last several days, you
4 haven't heard anything about any depositions. You haven't
5 seen any videotaped depositions or anything of that sort.
6 The reason for that is very simple, because the
7 constitution guarantees that the Defendant has a right to
8 confront each and every witness against her. You've heard
9 references to reports such as the autopsy by the
10 pathologist. You've heard references to statements that
11 have been given by some of the witnesses in the case. And
12 the only statement that's actually admissible before you,
13 and only in certain circumstances, is the Defendant's
14 statement as it ultimately was in this case. Those are
15 it.

16 The reason for that is because you, ladies and
17 gentlemen, are the sole judges of the credibility. And
18 therefore, even the pathologist, the DNA analyst, they
19 don't just submit reports. They don't just give
20 depositions. They are required by law to come before you.
21 It's part of the constitution. Her rights should be and
22 are protected in this courtroom on this day.

23 In that same manner, you heard and we went through a
24 series of questions about Miranda rights that were given
25 to the Defendant before she was taken -- a statement was

1 taken from her. And the reason for that, again, is to
2 protect her rights, to make sure she understood and gave a
3 voluntary statement, which even she, ultimately, when she
4 was up here said she gave that statement, and it was
5 voluntary.

6 That's the reason for that because in this state, in
7 this courthouse, in this courtroom, we protect everyone's
8 rights no matter who you are, where you came from. That's
9 her rights. That's the reason you've seen some of that go
10 on.

11 Now, you have one indictment before you. Very
12 simply, the State of South Carolina has charged and the
13 grand jury has true billed one indictment for murder
14 against Holly Jo Thompson for her acts on that weekend at
15 Mr. Solomon's house. The burden of proof is on the State
16 of South Carolina to prove Holly Jo Thompson's guilt
17 beyond a reasonable doubt. That is the highest level of
18 proof of any court. That is the burden as it should be
19 and that is what we must meet. And ladies and gentlemen,
20 I submit in this case, perhaps more than any other, that
21 is a level of proof the State welcomes. The evidence in
22 this case with these facts and these forensics is
23 overwhelming.

24 The physical evidence, ladies and gentlemen, I submit
25 does not lie. The burden is on us and I submit, ladies

1 and gentlemen, in this case with these facts and this
2 evidence, we haven't just proven her guilt beyond a
3 reasonable doubt, but beyond any doubt. But now, the
4 Judge is going to charge you when you're making your
5 decision, what does guilty beyond a reasonable doubt mean?
6 What's the definition of a reasonable doubt?

7 Perhaps the simplest way that's been defined before
8 is the kind of doubt that would make a reasonable man
9 hesitate to act. Listen to the Judge when he charges you.
10 You're going to hear those words over and over. Was it
11 reasonable? Were these reasonable acts? As we go through
12 what the law is as it's going to be, listen to that.

13 But the law has gone a little bit further and is
14 defined by our courts. What is reasonable doubt? Very
15 simply, ladies and gentlemen, proof beyond a reasonable
16 doubt is proof that leaves you firmly convinced of the
17 Defendant's guilt. There are very few things in this
18 world that we know with absolute certainty. And in
19 criminal cases, the law does not require proof that
20 overcomes every possible doubt. If based on your
21 consideration of the evidence, you are firmly convinced
22 that the Defendant is guilty of the crime charged, you
23 must find him, or in this case her, guilty. If on the
24 other hand, you think there is a real possibility she is not
25 guilty, then you must give her the benefit of the doubt

1 and find her not guilty. Again, proof beyond a reasonable
2 doubt is proof that leaves you firmly convinced of the
3 Defendant's guilt.

4 The law even recognizes that it's almost impossible
5 to prove everything beyond every possible doubt. We
6 aren't required to meet that burden. We just have to
7 present evidence that leaves you firmly convinced of what
8 happened in that weekend.

9 Now, the one charge before you, ladies and gentlemen,
10 is the charge of murder. And to be, perhaps, the most
11 heinous or, at least, one of the most heinous crimes that
12 be committed in our society, it has, perhaps, the shortest
13 definition here in South Carolina. You're not going to
14 hear about murder in the first degree or second degree.
15 It's just called murder. And very simply, ladies and
16 gentlemen, under code section 16-3-10 in our code of laws,
17 the definition is as follows: It is the unlawful killing
18 of another with malice aforethought either expressed or
19 implied.

20 Now, I want to talk to you a little bit about -- and
21 the Judge is going to charge you or tell you those terms
22 can mean and what you can use in determining whether or
23 not when Holly Jo Thompson chased down James Solomon and
24 beat him to death after stabbing him that she was acting
25 with malice.

1 What does the term malice mean? And the Judge will
2 charge you -- and I may have some of these out of order
3 where he charges you and tells you what they are. Malice
4 is defined as wrongful intent to injure another and
5 indicates a wicked or depraved spirit intent on doing
6 wrong.

7 The courts go further -- and when you think of the
8 word malice, sometimes when I'm thinking about it, it's
9 the base of the word malicious. Was Holly Jo Thompson
10 acting maliciously? It's kind of an easy way to think
11 about it. The law further defines that malice does not
12 necessarily impart ill will towards the individual
13 injured. It signifies, rather, a general malignant
14 recklessness of the lives and safety of others or a
15 condition of mind which shows a heart regardless of social
16 duty and fatally bent on mischief.

17 And I submit, ladies and gentlemen, was Holly Jo
18 Thompson having a condition of her mind which showed a
19 heart regardless of social duty and fatally bent on
20 mischief? And listen carefully when you listen to the
21 Judge -- and I'm going to talk about malice aforethought
22 in a minute. But when he talks to you, you will never
23 hear him talk about that we have to prove motive, although
24 I submit we have, if there is a motive. In this case,
25 what's missing afterwards? His phone, his money. Where

1 are the drugs? We don't have to prove a motive. We are
2 allowed to show a motive if there is one. But listen
3 carefully to the Judge, we don't have to prove any motive.

4 You will also listen to him as well and he will tell
5 you specifically not only do we not have to show any kind
6 of premeditation, but he is going to define for you malice
7 must be there at the very moment only just before and at
8 the moment the fatal blow is struck. No premeditation is
9 required. No motive is required to prove murder.

10 Malice may inferred from conduct showing a total
11 disregard for human life. Even if you take
12 Ms. Thompson's -- whatever her version is of what
13 happened, 17 blows, three to the front, however many to
14 the side, six to the back, a total disregard for human
15 life. He was 71 years old.

16 And the Judge will go further charging you about
17 malice. You may find malice if you find that the State
18 has proven beyond a reasonable doubt that the Defendant
19 was consciously and unlawfully involved in conduct that
20 constituted extremely high risk of death or serious injury
21 to others, that he or she was acting with such
22 recklessness or wantonness as to indicate the depravity of
23 mind in disregard for human life, beyond the reckless
24 disregard and safety of others, rising to the level where
25 he consciously disregarded an extremely high risk of

1 death. And I submit -- and I'll talk to you a little bit
2 about voluntary intoxication. It doesn't matter how high
3 she was, how drunk she was, how intoxicated she was, that
4 doesn't excuse her and allow her in her drug-induced rage
5 to kill someone.

6 In considering murder, the Judge will also tell you
7 -- usually, you think about murder with gunshots or a
8 knife, although there was a knife used in this case, but
9 the primary weapon in this case was a vase. It was heavy
10 vase, even as the Defendant described it. Ordinary
11 objects may become deadly weapons when the facts show they
12 have been used to inflict serious bodily harm or death.

13 Now, as far as the term malice aforethought, the
14 Judge will instruct you malice need not exist for any
15 appreciable period of time before the omission of the act
16 of killing occurs. Malice may be conceived at the very
17 moment the fatal blow is given. It is sufficient in law
18 if the combination of the evil intent and the act produce
19 the fatal result.

20 I submit, ladies and gentlemen, this wasn't something
21 where it was one blow. He was beaten repeatedly to the
22 back of the head as he is down on the ground. We know
23 that from the blood spatter. This wasn't where she threw
24 a vase across the room. She hunted him down that hallway
25 from that bedroom after stabbing him in there and beat him

1 to death.

2 Now, the Defense has gotten up here and they have
3 alleged that Ms. Thompson was acting in self-defense.
4 Again, the burden is on the State in self-defense, let me
5 be clear, to disprove it. The Judge will tell you -- and
6 generally, there are like four different elements of
7 self-defense, but in order for a killing to be excused on
8 the basis of self-defense, her actions must meet every
9 element. It doesn't matter if she meets one element but
10 not the other three. If we disprove just one element, she
11 is not entitled to an acquittal based on self-defense.
12 And that is the defense in this case.

13 It's not a whodunit. It's not an accident. This was
14 an intentional act of self-defense according to the
15 Defense. All we have to disprove is self-defense. We
16 don't have to disprove every element of self-defense. If
17 it fails on any element of self-defense, then she is not
18 entitled to an acquittal. The burden is on us to disprove
19 any or, as I submit in this case, all of those elements.
20 Because even in order to consider self-defense, that means
21 you have to number one -- and even her own version doesn't
22 work. I'll get back to that. You have to believe every
23 word she said.

24 Number one, to be entitled to an acquittal for
25 self-defense, the Defendant must be without fault in

1 bringing on the difficulty. She made choices. Her
2 lifestyle. I'm not here to judge. But she went there for
3 the purpose of getting drugs and money. She left there
4 with what she could carry.

5 Was she without fault? They're smoking crack
6 together. And it's kind of funny in this case because as
7 we're talking about self-defense, the real defense in this
8 case is the oldest one in the book, just blame the victim.
9 Who cares about him? He's just some old guy and he smokes
10 crack, remember? They brought the toxicologist after we
11 brought it out with our pathologist exactly what drugs
12 were in his system. We brought it out what was found at
13 the scene. Just trash the victim. I guess he just
14 doesn't deserve justice.

15 They couch it in self-defense. Is she without fault
16 in bringing this on? Going there? And according to her
17 own testimony -- and I'll take all of this, believing
18 everything she said, which I say is impossible. She's at
19 fault. She went there to ingest drugs and get money in
20 exchange for sex. She's not going there to have lunch.
21 She is involved in illegal activity. That relieves her of
22 being without fault. That alone. But we can go a lot
23 further.

24 Look at another element of self-defense. The second
25 element was that the Defendant was actually in imminent

1 danger of death or serious bodily injury or that she
2 actually believed she was in imminent danger or death or
3 serious bodily injury.

4 I beg you, look at her injuries. And what's ironic
5 is the injury she has is a bruise to the elbow and a
6 scratch that is more superficial than the ones I get when
7 gardening. She says he slashed her, cuts all over her
8 hands, a cut to her elbow. I submit, ladies and
9 gentlemen, the only one that was in danger was the man
10 whose blood is on the blade of the knife she says he cut
11 her with. It's not her blood. It's his. If anyone had a
12 right to act in self-defense, it would have been
13 Mr. Solomon. And all he did was try to get down that
14 hallway and get away.

15 There's not a drop of her blood at that scene.
16 They're going to say oh, you didn't test every single
17 drop. No, but we tested every single area. We tested her
18 clothes. We tested her shoes, which supposedly were on
19 her when she was in the middle of this whole thing when
20 she went down on the floor with him as he's bleeding. And
21 there's no dispute about how much he was bleeding.
22 There's only her blood, a drop of it, and someone else's.
23 She was actually in imminent danger. I submit if you want
24 to say she's without fault, she certainly wasn't in any
25 danger.

1 But let's go further with self-defense. And the
2 Judge will tell you she had the right to act on
3 appearances. She had the right -- you have the right to
4 consider the victim's size, his weight, his age. You have
5 the right to consider other things, such as even if there
6 were words accompanied with hostile acts, that can arise
7 to the level of being self-defense. Any credible evidence
8 of that, the Judge will instruct you that she can use
9 whatever degree of force necessary to defend herself. The
10 Judge will instruct you that you can consider whether or
11 not the victim was intoxicated. And I submit in that same
12 manner consider whether or not the Defendant was
13 intoxicated. The Judge will tell you that in considering
14 self-defense, the degree of force that she has the
15 absolute right and if she's acting in self-defense and
16 acting lawful, ladies and gentlemen, all of these things
17 do apply. Because she has an absolute right if she is in
18 fear of her life or in imminent danger of losing her life
19 or serious bodily injury, she should be able to act with
20 whatever degree of force necessary to stop that threat.

21 But none of that applies because the only one that
22 was in danger was the one that ended up dead with multiple
23 cuts all over his body and with 17 blows to his head, so
24 severe that it crushed his face in, his nose, and he bled
25 out as a result. And as much as they want to get up here

1 and talk about toxicology, that is not what caused his
2 death.

3 The third element of self-defense, the Defendant was
4 actually in imminent danger and the circumstances would
5 have warranted a person of ordinary firmness and courage
6 to strike the fatal blow to prevent death or serious
7 bodily injury. She has the right to keep striking blows
8 until that is subdued. I submit, ladies and gentlemen,
9 maybe after the fifth or sixth blow, he was down and out
10 for the count, if you were to take that she had the right
11 to act the way she did. Seventeen blows is not
12 self-defense, it's overkill.

13 If she believed she was in imminent danger or death,
14 it must be shown a reasonably prudent person of ordinary
15 firmness and courage would have the same belief. In
16 deciding whether the Defendant actually was or believed
17 she was in imminent danger, you should consider all facts
18 and circumstances surrounding a crime, including the
19 physical condition and characteristics of the Defendant
20 and the victim and his intoxication and all this.

21 And it's kind of ironic, isn't it, because you're
22 supposed to consider that the victim was intoxicated.
23 We've gone over that a lot. Well, who's been smoking
24 crack all day? According to her, he didn't even have his
25 own stem until she got there.

1 And finally, the Judge will instruct you this was
2 Mr. Solomon's home. She was a guest in his home. If it's
3 not your own home, then you have the duty to retreat, as
4 it's sometimes referred to, to avoid having to hurt or
5 kill someone for it to be self-defense. This is the
6 fourth element. The final element is the Defendant had no
7 other probable way to avoid the danger of death or serious
8 bodily injury than to act as the Defendant did in this
9 particular instance, no other probable way.

10 Let's just take what she said this last time on the
11 stand. If you want to believe she was without fault, if
12 you want to believe she was actually in danger, if you
13 want to believe all that, even from her own testimony when
14 she ran to grab that vase -- and you'll have the photos.
15 We put in more today to make sure it was clear where that
16 front door was. That's where she says she left. She
17 could have -- she was quote, unquote scared for her life,
18 and as she ran to get the vase, which she then had to pick
19 up and then go back over across the room to attack him, is
20 that the duty to retreat? Because that's what she had to
21 do, according to her own statement -- or this latest one.
22 The door was right behind her.

23 And I even asked her, Well, at that point, did you
24 run out? Were you scared for your life? She kind of
25 said, No, no, I couldn't leave. My clothes were still

1 there. Well, when it boiled down to it, and you saw her,
2 she wasn't leaving without her crack pipe.

3 And whether or not her self-defense claim is
4 credible, she then leaves there, doesn't go tell her pimp
5 or boyfriend or whatever you want to call him, doesn't go
6 tell her other friend that she called because she was
7 upset because the other boyfriend was roughing her up at
8 that point. There's not one thing -- in fact, when she's
9 with Moses, the man that she was so mad about giving the
10 statement. Remember on the phone call, she said she loved
11 him again. She didn't say I got attacked, somebody
12 attacked me, but, you know, I was in a fight. Those were
13 her words to her friends, even in her jail phone call,
14 which you heard. Yeah, we were in that fight. I mean, I
15 might have to do some time. Later, she knows and she
16 switched pins so we couldn't listen to her phone calls.

17 I submit, ladies and gentlemen, even if you want to
18 believe every word she said, her own story does not allow
19 her a defense of self-defense. By her own story, she was
20 not without fault, she was not in imminent danger, and she
21 certainly didn't retreat when she had the opportunity.

22 But let's go further because the Judge will instruct
23 you. One has the duty to avoid taking human life if it is
24 possible to do so, even to the extent of retreating from
25 his adversary, unless by doing so danger of being killed

1 or suffering, serious bodily harm is increased or is
2 reasonably apparently that such danger would be increased.

3 Now, the Judge will also instruct you in this case
4 there was no -- they were smoking crack. Voluntary
5 intoxication is not a defense to any crime. It's never an
6 excuse or a defense. A person who voluntarily renders
7 himself, or in this case herself, intoxicated is no less
8 responsible for his acts while in such a condition. If a
9 person drinks intoxicating liquors and becomes intoxicated
10 and if while in that condition commits an act that would
11 be a crime if committed by a sober person, the fact of
12 drunkenness or intoxication would not relieve the
13 intoxicated person from responsibility. The Judge will
14 instruct you the same as if you become high on drugs, high
15 on liquor, beer, it doesn't matter. Voluntary
16 intoxication of any sort does not preclude or relieve you
17 of responsibility for your actions, even if they make you
18 become bold. Voluntary intoxication does not preclude
19 one's ability to act with malice aforethought and is not a
20 defense to a crime.

21 Now, the Judge is also going to instruct you there
22 are two kinds of evidence that you can consider. There's
23 direct evidence, which is typically eyewitness testimony,
24 the kind of evidence that's perceived through the senses.
25 And then there's circumstantial evidence. Circumstantial

1 evidence can be the type of evidence -- the law says that
2 there are two types, direct evidence presumes the
3 existence of a fact and does not require deduction. The
4 DNA analyst, his testimony was direct evidence of whose
5 blood it was, things of that nature. Circumstantial
6 evidence is proof of a chain of facts and circumstances
7 indicating the existence of a fact. The law makes no
8 distinction between the weight or value to be given either
9 direct or circumstantial evidence, but to the extent the
10 State relies on circumstantial evidence --

11 THE COURT: Slow down. Slow down.

12 MS. CAMPBELL: Thank you.

13 The circumstances must be consistent with each other
14 and when taken together point conclusively to the guilt of
15 the accused beyond a reasonable doubt. If they merely
16 portray the Defendant's behavior as suspicious, the proof
17 has failed.

18 Ladies and gentlemen, luckily, in this case, you got
19 lots of both. You've got direct evidence and
20 circumstantial evidence. Where the droplets are in the
21 house is circumstantial evidence of where someone was
22 injured. The direct evidence is whose blood it was. Do
23 those corroborate each other? Do they fit together?

24 The law makes no distinction over which is better,
25 one or the other. You can consider both and you must.

1 And in this case, there's a combination of the two.

2 The Judge will also tell you in every case, we must
3 prove criminal intent. And ladies and gentlemen, I submit
4 this case reeks of criminal intent. And what is criminal
5 intent? Well, the law recognizes that we can't take a
6 person's brain and dissect it to figure out what they were
7 thinking at the time, whether or not they had intent in
8 their mind, but I submit, ladies and gentlemen, someone
9 pursues a person when they're down on the ground and beats
10 them to death with a vase, intent doesn't become much more
11 apparent than that.

12 Criminal intent is a mental state of conscious
13 wrongdoing. It's up to you to determine what the
14 Defendant intended to do. Criminal intent can rise from
15 action or a failure to act. It may arise from negligence,
16 recklessness or an indifference to duty or to consequences
17 that is considered by the law to be the equivalent of
18 criminal intent.

19 The final thing I want to talk to you about just
20 briefly is credibility. In this case, it boils down to
21 credibility. In this case, even her own version of events
22 doesn't relieve her of her responsibility.

23 The Judge will instruct you in considering
24 credibility, you can believe one against many, many
25 against one. You can believe part of what a witness says,

1 none of what a witness says, all of what a witness says.
2 It's totally up to you. That's why the constitution
3 guarantees that. Because you have the opportunity to
4 observe each and every person and to judge credibility, if
5 someone has something to gain or to lose. Those are
6 factors you can consider. You can consider whether a
7 person has a bias or a prejudice, whether their statements
8 are considered -- are the same as prior statements. Have
9 they changed their story? You can consider whether their
10 statements are consistent with the actual evidence itself.

11 Those are all factors, but most important, ladies and
12 gentlemen, the most important factor here in this
13 courtroom is common sense. Your common sense. In
14 reviewing the crime scene and reviewing the evidence and
15 reviewing the evolving story, who has a bias or a
16 prejudice?

17 All we ask is that you do what the Judge has asked
18 you to do and what you swore an oath to do. And it's not
19 fun for anybody to be in this courtroom. It's not fun to
20 be talking about the things we've been talking about. All
21 we ask is for you to hold her responsible for her
22 decisions and for her actions. James Solomon's life did
23 matter regardless. It mattered.

24 Thank you.

25 THE COURT: Thank you, Ms. Campbell.

1 Mr. Bank?

2 MR. BANK: Your Honor, may it please the Court?

3 THE COURT: Yes, sir.

4 Closing Arguments by Mr. Bank

5 MR. BANK: Now, four days ago, this trial started,
6 this past Tuesday, depending on how you count it, three or
7 four, but either way when it started, we started with a
8 story. Ms. Goode got up here and did a very good job of
9 telling you Holly's story. We then spent the next several
10 days up until this point trying to continue to get that
11 story. And here we are full circle coming back to Holly's
12 story.

13 Now, I think that there might be some defense
14 attorneys out there that might be cringing at the way
15 myself, Ms. Goode and Mr. Bailey have presented this case.
16 Sometimes there's feeling with defense attorneys that
17 you're supposed to sit on your hands a little bit. You're
18 not supposed to put in extra pictures. You're not
19 supposed to put up witnesses. And you sure as heck aren't
20 supposed to let your client testify. We've all heard that
21 before. But we haven't been scared of a single picture, a
22 single witness, a single part of this. We want everything
23 to be in front of you. We want to make sure that you get
24 the entire story.

25 So who are the people in the story? We have Holly,

1 obviously, and we have the Grill Man. We have Holly, who
2 is 40 years old, 135 pounds at this time. We've heard
3 that she's a person that has never had a stable home.
4 She's a person that's used drugs for many years. We heard
5 through Ms. Campbell cross of her that she's a victim of
6 violence.

7 Let me address that just for a second because it was
8 stated in opening, again in closing and I'm sure it will
9 happen again in the State's second closing this idea of
10 justice for the victim.

11 Ladies and gentlemen, if Mr. Solomon had been
12 successful in continuing to stab Holly and either injuring
13 her more or killing her, Mr. Solomon would be sitting that
14 the table.

15 Holly is somebody who is a prostitute. We've not
16 shied away from that or tried to hide that. She's a
17 person whose education goes as far as a GED that she got
18 in county jail, I think six or seven years ago. If you
19 remember the years differently. She's a person who has
20 lived a life that most of us can't really imagine.

21 And then we have Mr. Solomon. And let me take this
22 moment to say that I know that Mr. Solomon has a family.
23 That does not get past me. I don't doubt that there were
24 a lot of things discussed here this week that were new to
25 his family. Myself, my colleagues, we take no joy in

1 having to point those things out, but it is part of the
2 story. He is the Grill Man. He is a man with an appetite
3 for prostitutes and drugs. He is a welder. He's a large
4 man. He's a man that we have heard is private in his
5 house, maybe possessive. He's a man that night we know
6 was on alcohol and a substantial amount of cocaine. He
7 was a man that was unhinged, at least enough that night,
8 that he was urinating in a vase, an unhinged man in a
9 small trailer with knives scattered throughout the house
10 in almost every major room we talked about. A knife
11 that's out of place, are you kidding me? A knife on the
12 kitchen floor and a knife in the bedroom and a butcher
13 knife in the living room?

14 I think the State wanted these pictures in. In the
15 living room, is that knife out of place? Or this knife?
16 A larger picture of that knife.

17 So we have the two people in this story. Now, what
18 is the story? You've heard this story. You heard it in
19 opening, which isn't in evidence. You've heard it in bits
20 and pieces. Then you've heard it with Holly on the stand
21 answering questions, and then you gotten it in a
22 statement.

23 Holly gets a message to go see Mr. Solomon.
24 Mr. Solomon doesn't contact her directly. She's a
25 prostitute. She gets a message. She goes to see

1 Mr. Solomon, just like she's done however many times
2 before, a lot according to her. She walks there. She
3 gets to the house. He lets her in. And she immediately
4 notices that he's acting a little bit different than
5 usual. He's on drugs. It's 90 degrees in the house. He
6 cannot use a -- he cannot get an erection, which is making
7 him angry over the course of time. He's running out of
8 crack, and he's urinating in a vase, which she says she
9 has never seen him do before.

10 Moses, at some point, we saw him on the stand, says
11 he goes to this trailer to the Grill Man's house. He
12 doesn't know the Grill Man, but he gets directions to go
13 to the trailer. He says that he honks his horn or does
14 something to get the attention of the person inside and a
15 man comes outside and says Holly isn't there. Moses says,
16 Well, I have her clothes. He says, Well, you can leave
17 the clothes with me. Don't come inside, but I can take
18 the clothes. Moses says no and goes on.

19 That's a man, very private, very possessive. At some
20 point, Holly finally gets her cue to leave somewhere
21 between a man getting agitated about not being able to get
22 an erection, which is unusual for him, and a man who is
23 running out of his crack. He had to re-up. He attempted
24 twice during the course of those hours. He is getting
25 agitated. She takes her cue like she's done throughout

1 her life and says I'm leaving. She gets some of her
2 clothes on, her jeans, her shoes. And he realizes now,
3 not only is he out of crack, now his prostitute is
4 leaving. He gets upset. He gets angry. He already has a
5 knife, he's cutting the crack, and he swings it at her.

6 Now, I don't know what exactly Investigator Johnson
7 may have been trying to imply that she's scratching
8 herself four days later and that's what causes these. You
9 heard the pathologist. These are cuts and bruises that
10 are healing, not that are fresh. That are healing. We
11 have cuts and bruising on places Dr. Durso calls defensive
12 wound areas, her forearms, her hands. We hear Moses and
13 Mike both say that they, at least, see some type of marks
14 on her. So from Moses's perspective, he believes that
15 Mike was beating the shit out of her. She had been
16 grabbed. Once he takes that swing, she goes to grab a
17 vase.

18 Now, I'm learning just as you are very recently,
19 within the last few minutes what the State's theory is,
20 but let me tell you something right now, that a vase full
21 of urine is not a murder weapon. A vase full of urine is
22 an object used in desperation, necessity and self-defense.
23 I'll say that again. A vase, particularly one filled with
24 urine, when you have all of these other objects throughout
25 the house, all of these other knives, that, ladies and

1 gentlemen, is an object of necessity. You are grabbing
2 what you can.

3 She grabs the vase. He seems to back down. Read her
4 statement. She believes she can go get her clothes, the
5 rest of her clothes, which are right next to her crack
6 pipe. She goes to get those things. He swings again and
7 that's when she hits him with the vase.

8 And she hits him with the vase, she says, until both
9 her and him went down, which happened on the swing where
10 the vase broke. The vase breaks, they both go down. It's
11 at that point that she feels safe enough to be able to get
12 out of the house. Not run out of the house, we heard her
13 say she can't run, but to get out of the house. And as
14 she's slamming that door behind her, he is getting up
15 still yelling, Bitch, give me my crack.

16 Now, after that door was slammed shut behind her, we
17 don't know what happens for the next three minutes. We
18 don't know what happens for the next three days. At
19 least, neither side has been able to find anybody that can
20 tell us that. We do know that Holly did not call the
21 police when she ran away.

22 Well, folks, she didn't know he was dead or going to
23 die. She just left the house after prostituting there and
24 doing drugs there. Should she have called the police?
25 Yeah. Does that make sense? Maybe not to me or you, but

1 somebody with a life that we can't really fathom, it
2 starts to.

3 She sees Kerry Johnson that Monday, doesn't say
4 anything about it. But according to Investigator Johnson,
5 he didn't ask about it. He asked about Amy Norris.

6 Now, we heard Dr. Durso, the pathologist, get on the
7 stand and try to help us understand what's going on with
8 the body, what is going on with the blows, what can we
9 see. What you heard in trial, what you just heard a few
10 minutes ago, which I'm sure you'll hear a lot very
11 shortly, is this idea of 17 blows. And what the State is
12 trying to do is to put blows with swings. And there's
13 been no testimony that those are the same thing. Ladies
14 and gentlemen, those 17 blows include some cuts on the
15 back of his neck. They also, according to Dr. Durso,
16 could include him hitting his head against the wall or the
17 floor as he's going down. Not all of them, but some of
18 them.

19 That's also going to include multiple injuries from
20 single swings, including the last one where the vase
21 breaks. The 17 blows, as they want to characterize it,
22 does not mean 17 swings. A vase isn't going to make it 17
23 swings.

24 He's got cuts on his body. Are some of those from
25 the fight? Probably. Are some of those from his

1 lifestyle as a welder? Maybe so. Are some of those on
2 his hands and feet from him starting to get up and
3 stepping on glass pieces? Likely.

4 According to Dr. Durso, he could be alive up to an
5 hour, up to an hour. She couldn't tell us directly
6 whether he's conscious or unconscious. You heard Kerry
7 Johnson, people that are unconscious don't crawl. Folks,
8 we know that there it happened in the hallway. We know he
9 ends up at least four feet away. So even the State admits
10 that he's conscious for at least that much time.

11 We know that the heat in the house at 90 degrees sped
12 up the decomposition. We know that he had hits to the
13 front of the face, a broken nose and two other hits, which
14 aren't on any of their charts as I think Mr. Bailey
15 pointed out. They give you charts with the back injuries.
16 Poor Mr. Bailey had to get up here and have sticky notes
17 put on his face to show where the front injuries are.

18 We know from Dr. Durso's testimony that she says she
19 didn't have enough information to be able to say whether
20 this was self-defense or not. We know that Holly wasn't
21 strong enough and couldn't hit hard enough to actually
22 crack the skull, but these were cuts on his head. He died
23 from bleeding. We also know, as I've already stated, that
24 he had alcohol, and he had a significant amount of cocaine
25 and crack in his system.

1 And, folks, we heard a lot about forensics, blood,
2 prints. I don't know how much of that was totally
3 necessary. I still don't know why it was so necessary to
4 spend so much time on establishing Ms. Norris in
5 Charlotte. We've told y'all from day one, Ms. Goode has
6 told y'all from day one, Holly has told Investigator
7 Johnson from day one that she was there, and that all his
8 injuries were in self-defense. And if he died, she did
9 not know until later. There has never been a different
10 defense. There's never been a different story. So when
11 we hear that there is blood in the trailer and that the
12 ones that they did -- Ms. Campbell is correct, they didn't
13 test all the blood. They tested parts of it in all the
14 areas, but they can't test all the blood. What they did
15 test was Mr. Solomon's. We know that. We told you that
16 on Tuesday.

17 What's more important are the other things, the fact
18 that there's no evidence linking Holly to any other object
19 in that house besides the vase, no handprint or DNA or
20 anything on this blade handle. This blade handle which
21 Mr. Solomon could have had blood go on in a multitude of
22 different ways. Remember, the pathologist said these were
23 shallow superficial cuts to his body. They weren't stab
24 wounds into the body, deep anyway. Dr. Durso said they
25 were superficial.

1 We know that for some bizarre reason there is
2 absolutely no testing on any of these objects, including
3 the knife for crack, drugs or urine. Ladies and
4 gentlemen, that is such a weird fact. Holly says there is
5 urine in the vase. You want to prove her story wrong,
6 test it for urine. They knew that 24 hours in. We just
7 heard them say it. You don't make that up.

8 We know that there's a fingerprint on the inside of
9 one of the doors, I believe it's the front door, of a
10 Brandon Burden, who didn't come before you. All we know
11 about him is he's on probation for something. I don't
12 remember what it is, but he refused to talk to
13 Investigator Johnson, which isn't his fault. We have a
14 hair from someone we don't know, an unknown mixture of
15 Mr. Solomon and somebody else. We have one knife that is
16 tested.

17 How does that happen? When you have a story within
18 24 hours of Holly saying she that was attacked with a
19 knife, you have knives all over the place, three of them,
20 specifically in odd places, the bedroom floor, the kitchen
21 floor, the living room table and you take one of them,
22 what are you doing?

23 We know that the back door was found open, and then
24 we know that there was blood found on Holly's shoes and
25 that they tested it and it was, in fact, Holly's blood.

1 So what happened in those three days? What happened
2 in those three days? Well, as I've just suggested to you,
3 I've been trying to figure out the State's theory for
4 awhile. We heard part of it just a few minutes ago,
5 something along the lines of a fight starting in the
6 bedroom. Holly chasing Mr. Solomon down the hallway with
7 a knife or without a knife, with some form of weapon, I
8 guess, and then bludgeoning him to death for some reason.
9 But what's the motive and why the vase?

10 You know, we've heard this idea of this wallet thrown
11 around, which is just perplexing to me because they can't
12 put up one witness and haven't put up one witness to say
13 that the man even carries a wallet. You don't know if he
14 carries a wallet, if he had a wallet that day and if he
15 did have a wallet that day if it had any money in it. We
16 know that there was no wallet found with Holly. If they
17 thought that she robbed him, she would be charged.

18 Then we hear this business of maybe it was a cell
19 phone. She wanted a cell phone. He was missing his cell
20 phone. I still haven't put that together because they say
21 he's missing his cell phone, but they find two cell phones
22 in his bedroom. They're in evidence. They'll go back to
23 you. They find two cell phones in his bedroom and they
24 say he's missing a cell phone. And guess what testing
25 they did on those cell phones? You heard McDonald, I

1 didn't test those. I just tested Amy Norris's. Well,
2 thanks. I don't care about Amy Norris.

3 They put an expert to say that whatever happened
4 happened in the front room -- or excuse me, they put an
5 expert to say whatever happened started in the bedroom,
6 the master bedroom. But folks, why would Holly lie about
7 that? Why would she -- if she was covering up something,
8 why wouldn't she just add that part in her made up story?
9 It doesn't make any sense.

10 Now, let me ask you to picture something, as Holly
11 was shutting the door behind her, Mr. Solomon, the Grill
12 Man, is getting to his hands and knees. Glass pieces
13 around him cutting his hands and his feet. We see the
14 glass in his feet. It's in this area. We see the vase
15 and a lot of blood right here, right at the beginning of
16 the hallway by the living room. He getting to his hands
17 and knees. He's still conscious. We know that from
18 Investigator Johnson and from Holly's testimony. And he
19 begins walking backwards to the bedroom. This is the
20 guest bedroom right here. We're still seeing a good bit
21 of blood from smears because he's still bleeding profusely
22 out of his head, all over his hands and his arms, and he's
23 running into the hallway walls. He is going unconscious.

24 Now, what comes into play is the one thing that
25 nobody's mentioned in this whole case even though we've

1 seen 84 pictures of it. And I'm making up 84, but we've
2 seen a ton of pictures of it. Nobody's addressed it, not
3 a single witness. Not the State, nobody. Why is there a
4 bloody heavy sweater next to Mr. Solomon on the ground
5 when the police get there? Why is there a sweatshirt near
6 him when it's 90 degrees in the trailer?

7 It's because as he's making his way down the hallway
8 to his bedroom, maybe to get one of those two cell phones,
9 he grabs the sweater from the rest of his laundry and
10 starts to clog his head; one, to make him stay alive a
11 little longer, and two, and more importantly, to stop the
12 bleeding from going all over the place. And from there,
13 we start to see not so much of a spread in blood, we start
14 to see drops go into the bedroom. They made a big deal
15 about the drops. He's holding that sweater against his
16 head. He goes into the bedroom, more drops. He's looking
17 for something. There's drops on the bed. He drops the
18 knife.

19 He walks back out, still dropping. He makes his way
20 back down the hallway going towards the living room,
21 running into the walls as he's starting to not be able to
22 hold his head anymore. He makes it to the front door and
23 he's down. And we have a sweatshirt filled with blood a
24 foot away from him.

25 Now, can I tell you -- can I get up here and tell you

1 that that's what happened? No, I can't. But that's the
2 point, nobody can. We don't know what happened in those
3 next three minutes. We don't know what happened in those
4 next three days. And that, ladies and gentlemen, is
5 reasonable doubt. And remember, when you hear the State
6 suggesting whatever their theory of the crime scene may be
7 and when you guys are looking at the pictures of the
8 blood, that the State's own expert, Mr. Richards, and I --
9 forgive me, I don't remember his ranking, so I don't want
10 to miss it. Mr. Richards gets up here and he says, not my
11 words, he says to Ms. Gregg on cross-examination, well,
12 ma'am, the blood can fool you.

13 And as you can probably tell, as you've been told,
14 this is going to be the last time that myself or any of my
15 colleagues get a chance to talk to you. And I promise you
16 as soon as I go sit down, I'll think of 20 more things
17 that I didn't say that I wanted to say.

18 The government is going to get a chance to talk to
19 you again. The Judge, as he explained, is going to tell
20 you the law. And he is going to explain the options in
21 the case. We know what they are from what Ms. Campbell
22 says. She's guilty or not guilty of murder.

23 For murder, it can't be self-defense. It has to be
24 intentional, unjustified with malice. Ladies and
25 gentlemen, I don't think that they've established that.

1 We think that it's not guilty. We think this is
2 self-defense, and we've told you that time and time again.

3 As Ms. Campbell said, we have a certain amount of
4 elements that factor into self-defense. I don't know that
5 I'll take them in the same order or not, but you have to
6 fear for your life, the fear of substantial injury. Well,
7 the Grill Man had a knife. Didn't cause the argument, the
8 fight, didn't cause the circumstances. That's the second
9 one. I believe from what Ms. Campbell said, Holly didn't
10 do that because she was going over to prostitute and do
11 drugs. Well, ladies and gentlemen, the next step from
12 that then is that a prostitute can't ever act in
13 self-defense and we know that's not right. Was she at
14 fault for starting this? She was trying to leave.
15 Remember, he's upset because he's out of crack and his
16 prostitute is leaving.

17 Necessary force. In opening, the State said
18 something along the lines of -- and maybe Ms. Campbell
19 referenced it again, that they don't believe Holly had
20 enough injuries. Maybe if she had black eye, that would
21 have been good enough. Folks, it was a knife versus a
22 vase. I don't know what else you can do. And did you
23 have an opportunity to leave? It's the fourth element
24 they talked about. You have a duty to retreat, but only
25 if you can. They want to argue about her trying to get

1 her clothes while it is freezing temperatures outside,
2 winter temperatures, at least, go and get her crack pipe.
3 At that point, she had the vase and he had backed down.
4 Ladies and gentlemen, whether you get the clothes or crack
5 pipe or not, you're going to turn your back to a man with
6 a knife in a single wide when you can't run?

7 Folks, self-defense. What was she supposed to do?
8 What can she do besides tell the story? I understand she
9 could have called the police. We discussed that. She's
10 not happy with that decision, but does that then mean that
11 she's guilty of murder? And if not, what else can you do
12 besides tell the story?

13 Now, another important factor of self-defense, as in
14 all criminal cases, is this is the State's burden. I've
15 told you that when we set out to tell you a story.
16 Myself, Mr. Bailey, Ms. Goode. We set out to tell you all
17 a story, but that doesn't shift any burden to us. The
18 burden is on them to prove her guilty beyond a reasonable
19 doubt. The burden is on them to disprove self-defense.
20 You need to take that burden seriously. It is crucial to
21 our system of justice.

22 I'm about to wrap up, but let me suggest something to
23 you for when y'all go to deliberate. Y'all do it however
24 y'all want to, that's y'all's right. Let me give you a
25 suggestion that you might want to take. When you go back

1 in there, don't one by one raise your hand whether you
2 think it's guilty or not. Because even as adults, even if
3 we don't want to admit it, we're all faced with peer
4 pressure. I guarantee you votes one, two and three are
5 going to affect votes four, five and six. It's just going
6 to happen. Instead consider everybody writing down
7 without your name on it on a piece of paper of where
8 you're leaning if you want to. Fold it up, put it in the
9 middle of the table and see what the count is there, just
10 a suggestion.

11 Now, the government has asked you to find Holly
12 Thompson guilty of the most serious crime we have in this
13 state, murder. We've asked you from day one to find her
14 not guilty of murder. All I can do right now is ask you
15 to take this responsibility, this burden, this request of
16 ours with the utmost seriousness and concern that you are
17 all capable of.

18 Thank you.

19 THE COURT: All right. Thank you, Mr. Bank.

20 All right. Do y'all want to take a quick break,
21 stretch and keep going? Do you want to go and finish the
22 last one and the charge? Talk about it amongst
23 yourselves. It doesn't matter to me.

24 (Pause.)

25 THE FOREMAN: Keep going, Your Honor.

1 THE COURT: Okay. Anybody need to run and use the
2 restroom real fast? Of course, you can stand and stretch,
3 but do you need to use the restroom real fast and come
4 back?

5 THE JUROR: Yes.

6 THE COURT: Okay. Let's take about a five or so
7 minute break. Do not discuss the case in any way, shape,
8 or form. Anyone who needs to use the restroom, do so and
9 then we'll come right back in.

10 (Whereupon, the jury left the courtroom at 12:47
11 p.m.)

12 THE COURT: All right. Use the restroom if you need
13 to. Don't go too far.

14 (WHEREUPON, a short break was taken.)

15 THE COURT: Okay. Everybody ready? Let's bring them
16 in.

17 (Whereupon, the jury entered the courtroom at
18 12:57 p.m.)

19 THE BAILIFF: Jury is seated, Your Honor.

20 THE COURT: All right. Welcome back, ladies and
21 gentlemen.

22 Ms. Walker, the floor is yours.

23 MS. WALKER: Thank you, Your Honor, may it please the
24 Court?

25 THE COURT: Yes, ma'am.

1 Closing Statement by Ms. Walker

2 MS. WALKER: Good afternoon.

3 THE FOREMAN: Good afternoon.

4 MS. WALKER: Before I get started talking to you
5 about what's been discussed from this witness stand this
6 week, I do want to thank you for your time, your patience
7 and your attention.

8 As Ms. Campbell said, there was no way for any of you
9 to know what type of case you were going to be seated on
10 on Tuesday morning. You didn't know if it was going to be
11 a car wreck or a shoplifting. You certainly didn't know
12 that you would sit here for several days and hear about
13 the darkest depths of our society. You didn't know you
14 were going to hear about drugs and prostitution and
15 murder.

16 And as you were sitting here trying to figure out
17 what type of case you may be listening to this week, the
18 three of us are trying to determine what type of defense
19 would be used. What's the defense when you beat a
20 71-year-old half blind diabetic man to death? How do you
21 defend that? What's the defense when you leave your
22 bloody palm print on the scene, on the murder weapon?
23 What's the defense when absolutely every single piece of
24 physical evidence in this case refutes any version of
25 events you've put forth?

1 And on Tuesday afternoon as Ms. Goode gave her
2 opening statement, I realized what the defense was. You
3 trash the victim. You make him anything other than a man.
4 He was this superhuman man capable, in her words, of
5 bending steel with his bare hands. He was big. He was
6 burly, he was strong and he had it coming. These huge
7 cooker grills that he lifted onto trailers with his bare
8 hands. He was so strong. He was so enraged and fueled by
9 cocaine that he was capable of anything. He was a danger.
10 You try to feed into all of our darkest, deepest biases,
11 prejudices and stereotypes.

12 And it's almost a good defense. It almost works, but
13 it falls short because there is evidence in this case.
14 There is physical evidence that doesn't bend towards bias.
15 There is physical evidence that doesn't crack under the
16 pressure of prejudice and there is physical evidence that
17 does not care about stereotypes.

18 He had it coming. She had to do it. She had to stay
19 alive. She had to kill him. That was her testimony. And
20 I want to talk to you about her testimony, but before I
21 talk to you about her testimony, I want to talk to you
22 about the credible evidence in the case.

23 You heard from Odell Middleton. He was one of the
24 first witnesses to testify. He was a friend of
25 Mr. Solomon's. And I'm going to call him Mr. Solomon or

1 James Solomon. I'm not going to call him by his nickname.
2 I'm not going to call him the Grill Man because I want you
3 -- I want everybody in this courtroom to understand that
4 we are talking about an actual person.

5 He and Mr. Solomon went to Charlotte earlier that
6 week. They installed or delivered handicapped rails.
7 Took him back, dropped him off at home, paid him his
8 portion of the money. And then he got concerned because
9 he hadn't heard from his friend in a while, so he went by
10 his house and the back door was opened. And it was odd to
11 him. Remember, he said that he was knocking on the door,
12 and then as he went into the house, he was knocking on the
13 walls, and he said, Boo Boo, I'm coming in. Boo Boo, I'm
14 coming in, and he got no response. He went to the back
15 bedroom, saw the blood there, and he found his friend
16 lying dead in the floor. And he did what reasonable law
17 abiding citizens with nothing to hide do at that point in
18 time. He ran out and he called 911.

19 You heard from Annie Bell, that was Mr. Solomon's
20 aunt, that she saw him that Friday morning, that she had
21 taken him a suit, some shoes and that he was in the
22 backyard welding. He was a welder. He wasn't bending
23 metal with his bare hands. He was using his tools and his
24 trade to actually have a job and a source of income. She
25 said that he was fine at that time. The reason we called

1 her to the stand was because we needed to put some sort of
2 timeframe around his death. Friday morning, he was alive
3 and well.

4 When Deputy Collins Harper, the responding deputy in
5 this case, responded to the scene, there was a smell. It
6 was extremely hot in the trailer. The front door was
7 locked. They made entry into the back door, which was
8 opened.

9 And when you get back to the jury room, I want you to
10 look at the pictures. You'll see that screwdriver, the
11 screwdriver that Odell Middleton said was used to keep
12 that back door shut. You'll see it right there at the
13 foot of the door.

14 Remember, he said when he first got out to that
15 scene, he was confused because it was a natural death
16 called out, but once he got on the scene and he saw James
17 Solomon lying in a pool of his own blood, he realized that
18 this death was anything but natural.

19 He secured the crime scene. And that is a theme of
20 their case from the beginning of the case until Mr. Bank
21 just sat down. That crime scene was unsecured. Who knows
22 what happened? Did someone else come and I guess kill him
23 again? I don't know what the purpose of their questioning
24 about this unsecured crime scene is. But there is only
25 one person in this courtroom who is at all in any way

1 responsible for that crime scene being unsecured for three
2 days. That's her. She ran out. She didn't call 911.
3 There was no crime scene to secure because her plan was
4 working. No one knew there was a crime scene. So please
5 don't hold that against Mr. Solomon or the State in this
6 case. That's her fault.

7 You heard from Amanda Adams, the EMS worker. She got
8 there. She smelled the odor. The victim in this case,
9 Mr. Solomon, was there when she got there. There was
10 nothing that she could have done.

11 You heard from Investigator Bouknight. He said he
12 went in and he saw this knife. This knife with a bent
13 blade and handle. This knife that's on the bedroom floor.
14 This knife that has the victim's blood on it, not the
15 Defendant's. This knife that corroborates the rest of the
16 physical evidence in this case. Because as much as she
17 doesn't want to talk about it, as much as she wants to
18 ignore it, this attack started in the bedroom.

19 When you look at those pictures -- you'll have the
20 DNA chart back there with you. There's that cigarette
21 that he had, that had the victim's DNA on it. The
22 cigarette that was dropped right there on the floor in
23 that bedroom. And those drops of blood where it was
24 indicated where the struggle started on that bedsheet.
25 Not smears, not enough blood that would make you think he

1 was gushing blood from his head like he was in the hallway
2 or in the living room, but just drops of blood and that
3 trail of blood that takes you from the bedroom where he
4 was initially attacked by her down the hallway and to the
5 living room.

6 The crime scene investigators told you that there was
7 a sheet on the bed and that the sheet on the bed caught
8 their attention because it had drops of blood on it. And
9 when you get back there -- we'll send gloves back there
10 with you. Take this sheet out, spread it out, look at it,
11 drops of blood in the middle and on the bottom of this
12 bedsheet indicating to the blood expert in this case, the
13 only blood expert in this case, who's opinion is not
14 refused by anyone, that this is where this struggle
15 started. There is a bent knife right there at the bottom
16 of the bed to corroborate. Whose blood is this? It's
17 James Solomon's blood.

18 Investigator Bouknight was the one who lifted the
19 print off of the front door and he was able to turn that
20 over and match that to another individual. But he was
21 also the one, remember, that noticed -- there's a picture
22 of the knife we were just talking about the proximity to
23 the bed, where she started attacking him. The knife
24 didn't work. She was slashing so many times that she bent
25 it, so she got a vase from wherever the vase was that

1 night. Because I don't know if it was in the bedroom or
2 was in a different room in the house because we don't have
3 any credible testimony as to where anything in the house
4 was. What she's counting on is you have to take her word
5 for it because she finished the other participant off.

6 Do you remember the second bedroom that's right
7 there? How low these smears are where the victim in this
8 case was crawling away covered in his own blood? Remember
9 that throughout the crime scene investigation, all of the
10 blood in this case that's on the walls, that spatter that
11 he talked about was low.

12 You're going to have a picture of the radiator that
13 he was talking about back there with you, how that was at
14 a 90-degree angle. Remember, he said wherever he was, he
15 would have had to be -- his head would have had to have
16 been level to the radiator at this point. That radiator
17 is about this high off ground because he's on the ground
18 and she is not stopping. She is swinging this glass vase
19 over and over and over again. And yes, there are 17
20 blows. But I'm not telling you there were 17 swings.
21 Nobody in this courtroom through any credibility could
22 tell you that. I'm telling you that there were more than
23 17 swings. Think about all the times she had to swing and
24 miss as he fought for his life. She swung and she swung
25 and she swung until she beat a 71-year-old man to death.

1 There was Investigator Rainsford. He collected a lot
2 of the evidence in this case. But remember, he went and
3 he collected the clothing the Defendant said she was
4 wearing that night. And depending upon which version of
5 events you believe, she had -- at the time of that fatal
6 encounter, she had on jeans, socks and her shoes. And
7 he's stabbing her in the legs. Remember, she's pulling up
8 her jeans, she's showing you where he's stabbing her in
9 the legs. That's her testimony.

10 When you go back to that jury room, please take out
11 these jeans. Show me any cut, rip or hole anywhere in
12 these jeans because in order to get to her legs, in order
13 to cut her skin, he had to go through this denim. This
14 alone makes her story unbelievable.

15 Remember, he fell on top of her -- or she fell on top
16 of him. She had on these shoes. He's bleeding. If
17 that's true, those shoes should be covered in the victim's
18 blood if they are in this tight struggle and he's on top
19 of her with these pants and with these shoes on. She
20 didn't say anything about washing the shoes. She washed
21 the pants that miraculously have no cuts or holes in them,
22 despite the fact that she was stabbed through them. Her
23 own clothing refutes her version of events.

24 You have Kerri McClary. She was another crime scene
25 investigator. And she took photos not only of the victim

1 in this case, but she took photos of the Defendant as
2 well. Do you remember, there was this struggle, this
3 fight the two of them were engaged in. And Kerri McClary
4 documented the injuries to both parties.

5 Ladies and gentlemen, this isn't a fight. This is an
6 attack. His eye is swollen shut. His mouth is bleeding.
7 He was hit three times in the face, this big, strong,
8 burly, hulk of a 71-year-old man. But the problem is that
9 argument for them kind of cuts both ways, right, because
10 if he's that big and that strong and that intimidating of
11 a force, if he was trying to hurt her, if he wanted to do
12 her harm, she would have been more beat up than this. Her
13 story lacks credibility. This isn't a fight. This is an
14 attack.

15 This is what a defensive wound looks like. I'm not
16 sure what this is. Could it have happened when she broke
17 the glass as she was beating the man over the head? These
18 are the healing cuts on her legs. Does this look like a
19 fight to you, especially if one person is so much bigger
20 and stronger than the other person and they are engaged in
21 a fight? Does this look like a man who was attacking her?

22 And this open print -- printed off picture of his
23 hand, Exhibit No. 34. It's his right hand covered in
24 blood. Because as he's bleeding, as she's attacking him,
25 he's trying to stop the bleeding. He's not coming at her

1 with a knife. Had he been doing that, his hand would have
2 been closed and he wouldn't have had blood all over it.
3 Her story just won't fit the evidence in this case.

4 And they want this case to turn on whether or not it
5 was urine in a vase. I don't know where the vase was or
6 if there was urine in it or not, but I don't think that
7 when you hear the Judge's charge on the law, the murder
8 weapon is going to have to be filled with urine or not
9 filled with urine. I don't think that changes anything.
10 Listen to the law. I could be wrong. He may give you
11 some sort of urine charge I've never heard before. I
12 doubt it.

13 A murder weapon is whatever someone intent on killing
14 someone uses at the time. In this case, not only was it a
15 glass vase, it was also a bent knife.

16 Mr. Bank said he doesn't know why we spent so much
17 time trying to tell you where Amy Norris was in this case.
18 The reason we spent time trying to do that was because if
19 we didn't, they would have said Amy Morris was the one who
20 killed him. It is law enforcement's job to not only
21 include the guilty criminals, but to exclude people who
22 weren't involved. That's why we needed to show where Amy
23 Norris was.

24 You heard from Gray Amick, I'm sure you remember that
25 testimony, he's the DNA -- Dr. Amick, the DNA expert.

1 Victim's blood everywhere in that house.

2 And then you heard from Dr. Durso. She testified
3 5'10", Mr. Solomon was, which was interesting. And the
4 reason I asked her that question was because if he's
5 5'10" and she's shorter than that, then in order to have
6 those blows to the back and the top back of his head, he
7 had to be lower than she was when she was hitting him.
8 Because he's on the ground and she is still coming after
9 him with so much force. Not only -- I'm not just asking
10 you to take my word for it. I'm asking you to take Dr
11 Durso's testimony and combine it with the crime scene.
12 And you see how low the blood spatter is in this case.

13 But as Dr. Durso was testifying, it reminded me of
14 what Ms. Gregg said when she opened the case when she said
15 that we don't have James Solomon here to tell us what
16 happened to him. And as Dr. Durso was testifying, I
17 realized that while Mr. Solomon is not here to speak for
18 himself, his body is telling us exactly what happened to
19 him that night. His body was acting as sort of a silent
20 witness in this case to talk about these 17 blows he
21 suffered, the defensive wounds he suffered. His body is
22 telling the story of his attack and the injuries.

23 To the right chin, there was a superficial sharp
24 force injury. To the base of the neck, there were two
25 superficial sharp force injuries. To the right lower

1 chest, there were two superficial sharp force injuries.
2 Below the right elbow, there were two red abrasions. On
3 the right hand between the first and second digit, there
4 were superficial sharp force injuries to the dorsal aspect
5 of the hand and the dorsal aspect of the second digit. On
6 the right lower arm, there were three superficial sharp
7 force injuries. The anterior and lateral aspect of the
8 right shoulder, there are three superficial sharp force
9 injuries. On the anterior aspect of the left lower arm,
10 there was one vertically oriented superficial sharp force
11 injury and one obliquely oriented superficial sharp force
12 injury with several sharp lesions. There was a
13 superficial injury on his left wrist, four on his lower
14 left arm. She was cutting him everywhere. Dorsal aspect
15 of the left wrist, there's another superficial sharp force
16 injury, a lateral aspect of the left upper leg, five sharp
17 force injuries. And on his foot, there were two sharp
18 force injuries. And that's only what she did with the
19 knife.

20 Because once she got the vase to his face, above his
21 right eyebrow -- and before I get there. Mr. Bank said
22 that we refused to show you what happened to the front of
23 the victim in this case. He said we forced Mr. Bailey to
24 get up here and put stickers on his face. That's just not
25 true. Here's the chart where we showed you all the

1 injuries to his face. We weren't hiding that.

2 Those injuries that are on this diagram, on the face
3 above the right eyebrow is a Y-shaped laceration. In the
4 mid-forehead is another Y-shaped laceration. There's a
5 nasal fracture. There were, at least, six blows to the
6 head resulting in X-shaped lacerations. There were two
7 blows to the head resulting in lacerations of 3. -- three
8 by three centimeters and two by two centimeters. There
9 are three lacerations to his left lower scalp, and there
10 are three lacerations to his right lateral scalp, right
11 behind his right ear. And there were soft tissue
12 hemorrhages associated with these injuries once they
13 pulled the scalp back. Fight?

14 You heard from some of the Defendant's friends in
15 this case. Moses Warren. Moses Warren was not the boy --
16 not the primary boyfriend, but the other gentlemen she
17 spent time with. She had clothes at his house as well.
18 Moses Warren testified that she called him and that she
19 was walking and she was cold, so he went to go pick her
20 up. It was raining. They shared a cigarette. He got her
21 to the house. And for the first time ever, he testified
22 that she had bruises all over her body. Now, those
23 bruises aren't documented in any of the pictures, but now
24 he comes up with these bruises. When he initially was
25 talked to by law enforcement, he recognized in his

1 statement and he said there were cuts on her -- that her
2 hands were sore and red. If you beat someone to death
3 with a glass vase that breaks in your hand, I can
4 understand your hands being sore.

5 But his story changed. Remember on
6 cross-examination, she admitted that she said he wrote a
7 statement on me, tell him to get ready to have his lights
8 and his water cut off. Then they talk on the phone, she
9 goes to visit him -- or he goes to visit her at the jail
10 and they write letters back and forth and now all of a
11 sudden, she's bloody and bruised everywhere. They were
12 just friends, but he saw her naked when she took a shower
13 and then they shared a bed together, but they made sure to
14 sleep at opposite ends of the bed.

15 You heard from who we believe to be her boyfriend,
16 but who she later revealed to be her pimp. Both of them
17 said the same thing. She said I was in a fight. Not I
18 was attacked, not I had to fight for my life, not can you
19 believe what happened to me, that someone tried to kill
20 me. She didn't say any of those things. She said she was
21 in a fight, the same thing she said to her father.

22 And then you heard from Investigator Johnson. You
23 heard from him twice actually, in our initial case and
24 then when we put up our rely case. And Investigator
25 Johnson is lead investigator in this case. He started

1 initially because he heard that there was a woman named
2 Amy that she hung out with -- I'm sorry, that the victim
3 hung out with. He went to go to try to find Amy and in
4 speaking -- trying to find Amy, he spoke with Holly Jo
5 Thompson. Only later did he find out that the palm print
6 belonged to Holly Jo Thompson, so he went and placed her
7 under arrest. And initially, she said I was there, but I
8 didn't kill him. When confronted with the evidence in
9 this case, she is read her rights, checks off on all of
10 this, signs her rights acknowledging that she understands
11 them and then waives all those rights and agrees to speak
12 with law enforcement. And you'll have a copy of this
13 statement back there with you.

14 The name is Holly Jo Thompson.

15 How do you know James, A/K/A, the Grill Man that
16 lives on Lower Richland Boulevard?

17 Through a girl named Amy. In March of April of last
18 year, I met Amy and I went with her to her boyfriend,
19 Matt's house, and we had a threesome with drug boy, who I
20 think we later learned is Bowleg, and he gave us a lot of
21 crack. When the guy left, Amy took me to James's house
22 and that's the first time I met him. Ever since then,
23 it's been a trick thing with him, with James. Sometimes
24 he would give me money for sex and sometimes he would give
25 me money and dope. I always knew him as James or the

1 Grill Man.

2 How many times have you had sex with James?

3 Over a hundred times. At least, two or three times a
4 week.

5 Why was he called the Grill Man?

6 He said that he takes barrels and builds grills out
7 of them and sells them.

8 Where did James live?

9 I don't know the address, but I know it's a trailer
10 off the road down by the curve on Lower Richland
11 Boulevard.

12 When were you last at James's house?

13 It was either Friday or Saturday night, the 24th or
14 the 25th. I don't remember the night.

15 Can you tell me what happened while you were at
16 James's house on Friday or Saturday night?

17 He called or got a message to me that he wanted me to
18 come by his house.

19 Because at that point in time, she's not revealing
20 the nature of Michael's involvement with this. She's not
21 letting law enforcement know that he is her pimp and that
22 that was the nature of that business arrangement. So she
23 just says that he got a message to her.

24 I don't remember who it was, but he said James said
25 to come to the house. So I walked down to his house

1 around 7:00 or 7:30. When I got there, he called the dope
2 boy. Around 20 minutes, the dope boy showed up and James
3 pulled 40 or \$50 out of his pocket and bought some crack.

4 We smoked three or four rocks in the living room.

5 We smoked. Remember, on the stand, she said that he
6 was smoking it because he was hogging all the crack.

7 Initially, she said we smoked three or four rocks in the
8 living room.

9 He asked her for sex. And around 9:30 or 10:00, he
10 called the dope boy again and when the dope boy got there,
11 he bought another \$40 worth. He would pull his money out
12 of his pocket.

13 She was paying attention to where that money was
14 coming from. She knows exactly which pocket it was coming
15 out of.

16 And he told me to go to the first bedroom because he
17 didn't want the dope boy to see me. When the dope boy
18 left, he closed the front door and told me to come out of
19 the bedroom. We smoked a little in the bedroom and he
20 started getting mad that he couldn't get hard. He went to
21 his bedroom and he tried to stick it in, but it wouldn't
22 get hard and he got mad. He went back to the living room
23 and he got my stem and he started saying that I was
24 stealing dope from him. I started putting my clothes on.
25 I had my jeans on and was putting my shoes on and he had a

1 knife that he was cutting crack with.

2 So at this point, he has both her crack stem and the
3 knife because he's cutting the crack.

4 I had my jeans on and then when I went to reach for
5 my shirt, he swung the knife at me and cut my right
6 forearm and my right elbow. I jumped up and we started
7 hollering at each other. He kept saying I was stealing
8 his dope and I told him I wasn't and tried to get him to
9 put the knife down. He was on the other side of the
10 coffee table trying to get at me and that's when I picked
11 up the glass vase that was at the end of the kitchen
12 counter on top of the white cabinet. He had peed in it
13 earlier and it was full of pee.

14 Remember, she said she noticed that. And he told her
15 that when she first walked in the house because she had
16 noticed how pretty the vase was and she could see the
17 reflection off of some light that was in the house.

18 He backed up after I grabbed it. I tried to get to
19 the couch to get my bra, shirt and jacket so I could leave
20 and he stated that I was stealing his dope. He stated I
21 wasn't leaving until I gave him his crack back. I picked
22 my stem up off the floor near the fish tank.

23 The problem is she has the defendant [sic] in the
24 earlier part of this story on the other side of the room
25 where he was seated on the couch with her crack pipe.

1 Now, she puts him on the other side of the room -- or now
2 she puts the crack pipe on the other side of the room near
3 the fish tank.

4 When I stood up, he swung the knife at me again and I
5 swung the vase at him. He kept coming at me and pushed me
6 into the wall in the hallway, so I kept swinging. And the
7 next thing I know, he was on the floor and the vase was
8 broke. I was so scared that I grabbed my stuff and left.
9 I put my bra and shirt on and I went out the front door
10 and closed the door behind me.

11 She would have had to have gone out the front door
12 and closed and locked the door behind her. Because you
13 remember that front door is locked and law enforcement is
14 entering through the back door, where that screwdriver
15 that he kept to keep the back door closed had fallen to
16 the floor.

17 And the other thing, when she testified, remember,
18 she said that she was by the front door. She could have
19 retreated at that point in time, but it was too cold
20 outside and she still needed to get her crack pipe. At
21 this point in time, this man who was so unhinged, as Mr.
22 Bank called him, that he is urinating in vases, is going
23 to kill her, it's not that big of a deal to leave right
24 now because I still have to get my crack pipe. I guess
25 everyone has different priorities, but it seems at that

1 point in time, her number one priority should have been
2 and legally she was mandated to leave the home.

3 But what makes that part of the story even less
4 credible is that later on in the afternoon when she gets
5 into an argument with her boyfriend, when she was in no
6 way in fear for her life at that point in time, she
7 decides to leave and walk around in the middle of the
8 night in the dark and cold. She's willing to do it over
9 an argument, but she's not willing to do it when someone
10 is trying to kill her.

11 Does that make sense? Is that something any
12 reasonable person high or not would do? And whether or
13 not she's making good decisions is irrelevant because
14 voluntary intoxication is not an excuse under the law of
15 her terrible decisionmaking that night.

16 In this part, she says I was so scared that I grabbed
17 my stuff and left. I put my bra and shirt on, closes the
18 door behind her. I went back to my house and went in the
19 bathroom and closed the door like nothing happened. I
20 washed my arm off and got the bleeding to stop on my elbow
21 and right wrist. I got them cleaned up and the cuts on my
22 hand. I went in the bathroom and put my clothes on like
23 nothing happened. I didn't know I hurt him that day.

24 Because in this version of events, she sleeps at
25 Michael Richards's house that night. She doesn't talk

1 about going out into the cold, rainy night wandering the
2 streets waiting for Moses because even she understands
3 that that doesn't make sense if she wasn't so scared that
4 she did it before.

5 Did the vase break the first time you hit him with
6 it?

7 No, I have no idea how many times I hit him with it.
8 Was he bleeding when you left his house?

9 I think he was.

10 She thinks? Look at the crime scene photos. Could
11 anyone in that house have doubted that the man was
12 bleeding? But her answer was I think he was.

13 I know his face was bleeding where I hit him in the
14 face with the vase. The hall was dark and she didn't have
15 her glasses on.

16 Where was he when you left the house?

17 He was on the floor in the hall cussing me out. He
18 was steady saying, Bitch, bring me my crack back. Bitch,
19 I'm going to kill you when I get up.

20 And that's been a bone of contention because as Dr.
21 Durso said, she cannot determine whether the victim in
22 this case was unconscious or not. She thinks that because
23 of the number of blows, the 17 hits to the head, he would
24 have had a concussion, that he would have been
25 unconscious. For goodness sake, I hope he was.

1 That he's yelling at her and she didn't call the
2 police. And then she testified she didn't call the police
3 because she's a prostitute and no one believes
4 prostitutes. But when she gave a statement, she said I
5 don't call the police because I don't like to get people
6 in trouble. I didn't know I hurt him that bad.

7 She doesn't like to get people in trouble. She
8 doesn't like to get Holly Jo in trouble. But remember
9 when the police came looking for Amy Norris, she told them
10 exactly where to find Amy. She doesn't mind getting Amy
11 Norris in trouble. She doesn't mind putting the police on
12 Amy Norris's trail for the murder of James Solomon.
13 Holly Jo Thompson doesn't like to get Holly Jo Thompson in
14 trouble. I think that was evident when she testified here
15 yesterday. She doesn't ever tell everything she knows.
16 Do you remember that part of the testimony?

17 Before I finish with this, there's another part of
18 the testimony that stuck out to me. She had been
19 cross-examined by Ms. Campbell and Mr. Bank stood up and
20 he asked her, Did you find the prosecutor's questions to
21 be confusing? She said, Yes, sometimes. He said, Did she
22 try to put words in your mouth? She said, Yeah, I think
23 so.

24 The only question Ms. Campbell asked her after that
25 was what, if anything, do you want clean up or clear up

1 that I may have confused you on? Holly Jo Thompson said
2 nothing. She wasn't confused by her testimony or by the
3 questions that she was being asked. She was confused
4 because even she realized as she was telling the story
5 that it didn't make sense, that it didn't fit the
6 evidence. She had nothing more to add because at that
7 point, even she recognized that she needed to get off the
8 stand and get off the stand in a hurry before it got any
9 worse.

10 Ms. Campbell wasn't playing unfair with her. She
11 wasn't putting words in her mouth. She gave this
12 Defendant an opportunity to, at length, explain away or
13 clarify any statements she made and she didn't anything to
14 say to her.

15 How many times did you have sex with James? That was
16 over a hundred times, but on this time, the encounter was
17 fatal.

18 And they brought in the toxicologist to talk about
19 this drug-fueled rage, how he would have been aggressive,
20 going back to fitting their narrative that they started at
21 the beginning of this trial. He would have been
22 aggressive that night.

23 The problem for them is that anything they say about
24 the effects of cocaine on the system about James Solomon
25 applies to her, who admittedly had been smoking crack all

1 day, and who in her statement said they hit about four or
2 five crack rocks.

3 She admits that crack makes her bold. And on that
4 night, she was so bold, she was so brazen, she was so
5 aggressive. And just look at the pictures and figure out
6 who was being aggressive that night, that she beat a man
7 to death.

8 All we are asking you to do when you go into the jury
9 room -- and it is not my job to tell you how to
10 deliberate, so I'm not going to do that. I think that you
11 all are capable of figuring that out yourselves. The only
12 thing that we're asking you to do is to follow the
13 evidence in this case.

14 As Ms. Campbell said, this case comes down to
15 credibility. Who do you believe? Do you believe the
16 bloody palm print? Do you believe the 17 blows to the
17 head? Do you believe the numerous lacerations to the
18 body? Do you believe the bloody knife in the bedroom? Do
19 you believe this victim's blood that is scattered
20 throughout this home? Or do you believe one of the
21 version of events that Holly Jo Thompson has given you?

22 And if you believe her and if you believe that the
23 physical evidence matches her story and this is
24 self-defense, then it is your duty to let her go. It is
25 your duty to find her not guilty. But if on the other

1 hand, you believe the evidence in this case, the physical,
2 credible evidence that is incapable of lying or changing,
3 then tell them that in this courtroom in 2016, that he had
4 it coming, that he was the aggressor, that he was a big,
5 strong, superhuman metal-bending man in a rage defense is
6 offensive and it won't work.

7 Hold her accountable for what she did and find her
8 guilty of murder. Thank you.

9 THE COURT: All right. Thank you, Ms. Walker.

10 Charge by the Court

11 THE COURT: All right. Ladies and gentlemen, stand
12 up and stretch where you are.

13 Okay. We're almost done. You may sit back down.

14 All right. Ladies and gentlemen, it is now my duty
15 and responsibility to charge you on the law that applies
16 to this case. As I told you in the beginning, you're the
17 judge of the facts and I'm the judge of the law, so I will
18 now explain to you the law that applies to this case.

19 I'm going to do my best to make this as interesting
20 as possible, okay, and not be as monotone as sometimes I
21 can be, but this is 23 pages, so I'm going to go through
22 it with you as best I can and make sure you understand the
23 law that applies in this case.

24 The indictment, which I read to you at the beginning
25 of the week, charged the Defendant with murder. I remind

1 you that the fact that she was arrested, charged and
2 indicted in this case is not evidence of anything. It
3 cannot be considered by you as evidence of guilt nor does
4 it create any presumption or inference of guilt. The
5 indictment is simply the formal written instrument which
6 contains the charge made against the Defendant. It's the
7 formal document by which this case is brought into this
8 court.

9 During this trial, you and I have certain duties to
10 perform. As the trial judge, it is my responsibility to
11 preside over the trial of the case. I also have the duty
12 to rule on the admissibility of the evidence offered
13 during this trial. You are to consider only the competent
14 evidence before you. If there was anything ordered
15 stricken from the record, you must disregard that
16 testimony. You are to consider only the testimony which
17 has been presented from the witness stand, the exhibits
18 which have -- and the exhibits which have been made a part
19 of the record in this case.

20 You will have all these exhibits with you in your
21 jury room, okay. You will also have gloves if you want to
22 touch anything or look at anything. There was one audio
23 recording that was played throughout the trial. You will
24 have a computer back in your jury room solely for the
25 purposes of playing that audio recording if you want to

1 hear it, okay.

2 I also have the additional duty to charge you on the
3 law applicable to this case. I am the sole judge of the
4 law in this case. It is your duty as jurors to accept the
5 law and apply the law as I now give it to you. If you
6 have an idea as to what the law is or what the law ought
7 to be and it does not agree with what I now tell you the
8 law is, you are required to abandon your own idea because
9 you are sworn to accept the law and apply it as I give it
10 to you now.

11 You have become the sole and exclusive judge of the
12 facts in this case. I cannot state, comment on or make
13 any statement to you in any way, shape, or form about the
14 facts. You are the sole judge of the facts.

15 You are not to infer from anything that I have said
16 during the progress of this trial in ruling upon the
17 admissibility of evidence or otherwise or anything that I
18 say to you now that I have any opinion about the facts.

19 The law does not allow me to have an opinion about
20 the facts. That is a matter for you to determine. It is
21 your duty to determine the effect, the value, the weight
22 and the truth of the evidence presented during this trial.

23 Now, to this charge, the indictment has pled --
24 excuse me, the Defendant has pled not guilty. That plea
25 has put the burden of proof upon the State. A person

1 charged with committing a criminal offense in South
2 Carolina is never required to prove himself or herself
3 innocent.

4 I charge you that it is an important rule of law that
5 the defendant in a criminal trial no matter what the
6 seriousness of the charge may be will always be presumed
7 to be innocent of the crime for which the indictment was
8 issued unless guilt has been proven by evidence that
9 satisfies you of that guilt beyond a reasonable doubt.

10 This presumption of innocence does not end when you
11 begin your deliberations. It accompanies the Defendant
12 throughout the trial until you reach a verdict of guilt
13 based upon evidence that satisfies you of that guilt
14 beyond a reasonable doubt.

15 This presumption of innocence is like a robe of
16 righteousness placed about the shoulders of the Defendant
17 which remains with the Defendant until it has been
18 stripped from the Defendant by evidence that satisfies you
19 of the Defendant's guilt beyond a reasonable doubt.

20 This presumption of innocence is not a mere legal
21 theory. It's just not some phrase. It is a substantial
22 right to which every defendant is entitled unless you, the
23 jury, are satisfied from the evidence of the Defendant's
24 guilt beyond a reasonable doubt.

25 What is reasonable doubt? The State has the burden

1 of proving the Defendant guilty beyond a reasonable doubt.
2 Some of you may have served as jurors in civil cases where
3 you were told that it is necessary to prove that a fact is
4 more likely true than not true, such as by the greater
5 weight or the preponderance of the evidence.

6 In criminal cases, the State's proof must be more
7 powerful than that. It must be proof beyond a reasonable
8 doubt.

9 Proof beyond a reasonable doubt is proof that leaves
10 you firmly convinced of the Defendant's guilt. There are
11 very few things in this world that we know with absolute
12 certainty. In criminal cases, the law does not require
13 proof that overcomes every possible doubt.

14 If based upon your consideration of the evidence, you
15 are firmly convinced that the Defendant is guilty of the
16 crime charged, you must find the Defendant guilty. If on
17 the other hand, you think there is a real possibility that
18 the Defendant is not guilty, you must give the Defendant
19 the benefit of the doubt and find her not guilty.

20 There are two types of evidence which are generally
21 presented in a trial, direct and circumstantial evidence.
22 Direct evidence directly proves the existence of a fact
23 and does not require deduction. Circumstantial evidence
24 is proof of a chain of facts and circumstances that
25 indicates the existence of a fact.

1 Crimes may be proven by circumstantial evidence. The
2 law makes no distinction between the weight or the value
3 to be given to either direct or circumstantial. Evidence,
4 however -- or circumstantial evidence. However, to the
5 extent that the State relies on circumstantial evidence,
6 all of the circumstances must be consistent with each
7 other and when taken together point conclusively to the
8 guilt of the accused beyond a reasonable doubt.

9 If these circumstances merely portray the Defendant's
10 behavior as suspicious, the proof has failed. The State
11 has the burden of proofing the Defendant guilty beyond a
12 reasonable doubt. This burden rests with the State
13 regardless of whether the State relies on direct evidence,
14 circumstantial evidence or some combination of the two.

15 Now, you must determine the credibility of the
16 witnesses who have testified in this case. Credibility
17 simply means believability. Because it's your duty as
18 jurors to analyze and to evaluate the evidence and to
19 determine which evidence convinces you of its truth.

20 In determining the believability of the witnesses who
21 have testified, you may believe one witness over several,
22 several over one. You may believe a part of the testimony
23 of a witness and reject the remaining part of the
24 testimony of the same witness. You may believe the
25 testimony of a witness in its entirety. You may consider

1 whether any witness has exhibited to you any interest,
2 bias, prejudice or motive in this case. You may also
3 consider the appearance and demeanor of a witness while on
4 the witness stand.

5 The bottom line is this. You can believe everything
6 a witness says. You can believe none of what a witness
7 says. You can believe some of what a witness says.
8 That's a decision for you to make.

9 Expert witnesses. The Rules of Evidence ordinarily
10 do not permit witnesses to testify as to opinions or
11 conclusions. An exception to this rule is for witnesses
12 that we call experts. A witness who by education and
13 experience has become an expert in some art, science,
14 profession or calling may state an opinion as to relevant
15 and material matters in which the witness claims to be an
16 expert and may also state the reasons for that opinion.

17 You should consider any expert opinion received in
18 evidence in this case and like any other evidence give it
19 the weight and the credibility that you believe it
20 deserve.

21 If you decide that the opinion of an expert is not
22 based upon sufficient education and experience or if you
23 conclude that the reasons given in support of the opinion
24 are not sound or that the opinion is outweighed by other
25 evidence, you may disregard it entirely. An expert

1 witness's testimony is to be given no greater weight than
2 any other witness simply because they're an expert.
3 Further, you are not required to accept an expert's
4 opinion even if it is not contradicted.

5 Now, there is a statement that is alleged to have
6 been made by the Defendant that has been admitted into
7 evidence in this case. While I have determined that the
8 statement is admissible, I instruct you that you make the
9 ultimate decision on whether or not the Defendant made the
10 statement.

11 If the Defendant did make the statement, you must
12 determine whether the statement was made voluntarily and
13 of her own free will. This means that the statement was
14 not caused by pressure, force, fear, threats, coercion or
15 intimidation or by some hope or promise of leniency or
16 reward of any kind.

17 In determining whether the statement was voluntary,
18 you should consider both the characteristics of the
19 Defendant and the details of the questioning. Some
20 factors that you must consider are the age of the
21 Defendant, the Defendant's education or lack thereof, the
22 Defendant's mental ability or capacity, the Defendant's IQ
23 or intelligence, the Defendant's background and
24 environment, the place and the length of the detention,
25 the nature of the questioning and the advice or lack

1 thereof to the Defendant of her constitutional rights,
2 including but not limited to the right to remain silent,
3 that any statement could be used against her in court, the
4 right to have a lawyer, that if she cannot afford a
5 lawyer, a lawyer would be appointed to represent her
6 without any cost and that she could stop making a
7 statement at any time.

8 You must carefully consider all of the surrounding
9 circumstances before you give any weight to an alleged
10 statement.

11 Are you with me? You've just got your head down?

12 THE JUROR: Yeah, I'm listening.

13 THE COURT: Thank you.

14 The State has the burden of proving beyond a
15 reasonable doubt that the alleged statement was voluntary.
16 If you determine it was, you may give the statement any
17 further consideration that you deem proper. You must
18 decide what weight, if any, should be given to the
19 statement. If you determine the alleged statement was not
20 the free and voluntary statement of the Defendant, do not
21 consider it at all.

22 Now, the next thing I'm going to explain to you is
23 intent. In order to establish criminal liability,
24 criminal intent is required. For example, these are
25 examples, the mental state required to be proven by the

1 State for a particular crime might be purpose, intent,
2 knowledge, recklessness or criminal negligence.

3 Criminal intent must be proven by the State beyond a
4 reasonable doubt. Criminal intent is always a matter that
5 must be determined by you from the circumstances that
6 surround the situation.

7 There's no way to prove intent to a mathematical
8 certainty. There is no way medical science can dissect a
9 person's brain and determine what that person had in their
10 mind, so the law says that criminal intent may be inferred
11 from the circumstances shown to have existed.

12 This is how you make a determination of whether or
13 not the element that requires intent was present. It is
14 not necessary to establish intent by direct and positive
15 evidence, but intent may be established by inference in
16 the same way as any other fact by taking into
17 consideration the acts of the parties and all the facts
18 and circumstances of the case.

19 Criminal intent is a mental state, a conscious
20 wrongdoing. It is up to you to determine what the
21 Defendant intended to do based upon the circumstances
22 shown to have existed.

23 Criminal intent can arise from an act or a failure to
24 act. It may arise from negligence, recklessness or an
25 indifference to duty or to consequences that is considered

1 by the law to be the equivalent of criminal intent.

2 All right. Halfway there, okay.

3 The next thing I'm going to discuss with you is
4 voluntary intoxication. Voluntary intoxication is not an
5 excuse for or a defense to a crime regardless of whether
6 the crime is one involving general or specific intent.

7 This rule also extends to the voluntary ingestion of
8 drugs. A person who voluntarily ingests alcohol and/or
9 drugs and thereby becomes intoxicated is no less
10 responsible for his acts while in such condition.

11 If one voluntarily drinks intoxicating liquors, wine
12 or beer or ingest drugs and becomes intoxicated to
13 whatever degree and while in that condition commits an act
14 which would be a crime if it had been committed by a sober
15 person, the fact of intoxication would not relieve the
16 intoxicated person from responsibility. Voluntary
17 intoxication does not preclude one's ability to act with
18 malice aforethought and it's not a defense to a crime.

19 All right. The next thing that I'm going to explain
20 to you is the crime Ms. Thompson is charged with. The
21 crime is murder, and there are elements of the crime of
22 murder. And I'm going to explain each of those elements
23 to you.

24 The Defendant is charged with murder. The State must
25 prove beyond a reasonable doubt that the Defendant killed

1 another person with malice aforethought. Malice is
2 hatred, ill will or hostility towards another person. It
3 is the intentional doing of a wrongful act without just
4 cause or excuse and with an intent to inflict an injury or
5 under circumstances that the law will infer an evil
6 intent.

7 Malice aforethought does not require that malice
8 exists for any particular time before the act is
9 committed, but malice must exist in the mind of the
10 Defendant just before and at the time the act is
11 committed.

12 Malice may be conceived at the very moment the fatal
13 blow is given. It is sufficient in the law if the
14 combination of evil intent and act produced the fatal
15 result.

16 Malice aforethought may be expressed or inferred.
17 These terms expressed and inferred do not mean different
18 kinds of malice, but merely the manner in which malice was
19 shown to exist. That is either by direct evidence or
20 inference from the facts and circumstances which are
21 proved.

22 Expressed malice is shown when a person speaks words
23 which express hatred or ill will for another or when the
24 person prepared beforehand to do the act which was later
25 accomplished. For example, lying in wait for a person or

1 any other acts of preparation going to show that the deed
2 was in the Defendant's mind. Those would be expressed
3 malice. Malice does not necessarily impart ill will
4 towards the individual injured, but signifies rather a
5 general malignant recklessness of the lives and safety of
6 others or a condition of mind which shows a heart
7 regardless of social duty and fatally bent on mischief.

8 Now, malice may also be inferred from conduct that
9 shows a total disregard for human life. If facts are
10 proved beyond a reasonable doubt sufficient to raise an
11 inference of malice to your satisfaction, this inference
12 of malice would simply be an evidentiary fact to be
13 considered by you along with other evidence in the case
14 and you may give it the weight that you believe it
15 deserves.

16 You may also find malice if you find that the State
17 has proven beyond a reasonable doubt that the Defendant
18 was consciously and unlawfully involved in conduct that
19 constituted an extremely high risk of death or serious
20 injury to others and that she was acting with such
21 recklessness and wantonness as to indicate a depravity of
22 mind and disregard for human life, beyond a reckless
23 disregard for the safety of other, rising to the level
24 where she consciously disregarded the extremely high risk
25 of death that her conduct was creating.

1 Ordinary objects may become deadly weapons when the
2 facts show that they have been used to inflict serious
3 bodily harm or death.

4 Now, I'm also going to explain -- at this point, I'm
5 going to explain to you self-defense, okay. Self-defense
6 has -- I'm losing track of my own thought process.

7 Self-defense has three main elements that I'm going
8 to explain to you. Some of those elements have subparts,
9 okay. So I'm going to try to do my best to put them
10 together for you.

11 Now, the Defendant has raised the defense of
12 self-defense. Self-defense is a complete defense and if
13 it is established, you must find the Defendant not guilty.

14 The State has the burden of disproving self-defense
15 by proof beyond a reasonable doubt. If you have a
16 reasonable doubt of the Defendant's guilt after
17 considering all of the evidence, including self-defense,
18 then you must find the Defendant not guilty.

19 On the other hand, if you have no reasonable doubt of
20 the Defendant's guilt after considering all the evidence,
21 including the evidence of self-defense, then you must find
22 the Defendant guilty.

23 The following elements are all required to establish
24 self-defense. Number one, without fault.

25 First, the Defendant must be without fault in

1 bringing on the difficulty. If the Defendant's conduct
2 was the type which reasonably calculated to and did
3 provoke a deadly assault, the Defendant would be at fault
4 in bringing on the difficulty and would not be entitled to
5 an acquittal based upon self-defense.

6 Number two, imminent danger.

7 The second element of self-defense is that the
8 Defendant was actually in imminent danger of death or
9 serious bodily injury or that the Defendant actually
10 believed she was in imminent danger of death or serious
11 bodily injury.

12 If the Defendant was actually in imminent danger, it
13 must be shown that the circumstances would have warranted
14 a person of ordinary firmness and courage to strike the
15 fatal blow to prevent death or serious bodily injury. If
16 the Defendant believed she was in imminent danger of death
17 or serious bodily injury, it must be shown that a
18 reasonably prudent person of ordinary firmness and courage
19 would have had the same belief.

20 In deciding whether the Defendant actually was or
21 believed she was in imminent danger of death or serious
22 bodily injury, you should consider all of the facts and
23 circumstances surrounding the crime including the physical
24 condition and characteristics of the Defendant and the
25 victim.

1 Now, the Defendant does not have to show that she was
2 actually in danger. It is enough if she believed that she
3 was in imminent danger and a reasonably prudent person of
4 ordinary firmness and courage would have had the same
5 belief. The Defendant has the right to act on appearances
6 even though the Defendant's beliefs may have been
7 mistaken. It is for you to decide whether the Defendant's
8 fear of immediate danger of death or serious bodily injury
9 was reasonable and would have been felt by an ordinary
10 person in the same situation.

11 Words accompanied by hostile acts may depending on
12 the circumstances establish self-defense. The relative
13 sizes, ages and weights of the Defendant and the victim
14 may be considered in deciding the apparent or actual need
15 for force in self-defense and the amount of force needed.

16 Intoxication, the intoxication of the victim may be
17 considered in deciding whether the Defendant's fear of
18 death or bodily injury was reasonable.

19 Now, the third element of self-defense is this.
20 There is no other way to avoid the danger.

21 The final element of self-defense is that the
22 Defendant had no other probable way to avoid the danger of
23 death or serious bodily injury than to act as the
24 Defendant did in this particular instance. A guest in a
25 home has a duty to retreat where possible if the attacker

1 is the owner or occupier of the property.

2 Now, a person cannot be required to make an exact
3 calculation as to the degree or amount of force which may
4 be needed to avoid death or serious bodily harm.

5 Therefore in self-defense, the Defendant has a right to
6 use the force needed to avoid death or serious bodily
7 harm. The force used in self-defense does not have to be
8 limited to the degree or the amount of force used by the
9 victim. The Defendant has the right to use so much force
10 as appeared to be necessary for complete self-protection
11 in which a person of ordinary reason and firmness would
12 have believed to be needed to prevent death or serious
13 bodily harm.

14 If the Defendant is justified in defending herself
15 and in striking the victim, then the Defendant is also
16 justified in continuing to strike until it is apparent
17 that the danger of death or serious bodily injury has
18 completely ended.

19 All right. Let me talk to you about your
20 deliberations. The genius of this system is that it
21 allows 12 good men and women from 12 totally different
22 backgrounds, life experiences and perspectives to come
23 together, talk about it and reach a verdict. We call them
24 deliberations for a reason. They are to be deliberate.
25 You are to consider the evidence carefully and

1 deliberately and discuss it in a calm, thorough and
2 courteous manner. Remember, you are not a partisan or an
3 advocate for either side. You're a judge, you're a judge
4 of the facts. Your sole interest is to find the truth
5 from the evidence you have heard in this courtroom.

6 Listen to the views of all of your fellow jurors.
7 Consider other people's points and points of view and talk
8 through and discuss the evidence. Remember if you're
9 doing something deliberately, you're not in a big hurry.
10 And you should not be in a big hurry here. This case is
11 very important to both sides. This is their only day in
12 court to resolve this matter.

13 When you retire to your jury room, you should discuss
14 the case with each other to reach agreement if you can.
15 Your verdict must be unanimous.

16 Each of you must decide the case for yourself, but
17 only after you have impartially considered the evidence,
18 discussed it fully with each other and listened to the
19 views of your fellow jurors.

20 Do not be afraid to change your opinion if the
21 discussion persuades you that you should, but do not come
22 to a decision just because everyone else thinks it's
23 right. It's important that you attempt to reach a
24 unanimous verdict, but only if you can do so after having
25 made your own decision. Do not change an honest belief

1 about the weight or the effect of the evidence simply to
2 reach a verdict. In other words, do not change your
3 opinion solely for the sake of reaching a unanimous
4 verdict.

5 Okay. Now, I just told you and I'm going to tell you
6 again, your verdict must be unanimous, okay.

7 The second thing is this, there is no point at any
8 time in your deliberations where you need to tell me what
9 the count is. Okay. Your count is your count and you
10 need to keep to it yourselves.

11 Third, all of you must be in the room to deliberate,
12 okay. So if anybody needs to go out, make a phone call,
13 use the restroom, smoke, whatever needs to be, that's
14 fine, but you have to stop deliberating unless all 12 of
15 you are in the room together.

16 Okay. Now, you're going to have gloves back there,
17 these kind of medical-looking gloves, in case you want to
18 touch anything. Don't touch anything -- it would just be
19 a standard operating procedure in court not to touch
20 anything without any gloves on, okay, just for general
21 hygiene purposes if nothing more.

22 You'll have a computer back there for the purposes of
23 playing the audio. Now, that will not be back there
24 immediately. If you want that, just let one of the
25 bailiffs know and I'll get that back there for you and

1 show you how to play it.

2 Now, I'm about to send you back to your jury room.
3 You're still not allowed to deliberate. I have one more
4 legal matter that I have to check on with the lawyers. I
5 want to make sure that I said everything to you that I'm
6 supposed to say to you. And then the sign that you can
7 begin deliberating is when the exhibits come back. What
8 will happen is I'll have all the lawyers check all the
9 exhibits to make sure that all the right exhibits go back
10 and everything that was admitted into evidence will be
11 back there, but there's a lot, so we're going to double
12 check and make sure we have everything. Once the exhibits
13 come in your jury room, the alternate will come out and
14 then you may begin deliberations. Okay. So your sign
15 that you can start deliberating is when the exhibits come
16 in the jury room.

17 This is your verdict form. I tried to make it as
18 simple as possible. It says we, the jury, by unanimous
19 consent find the Defendant as to the charge of murder
20 guilty or not guilty and then a place for you to sign, Mr.
21 Foreman. There's no rhyme or reason to guilty being first
22 or not guilty being first. I have to put one first and
23 one second, so I switch it up every trial just because I
24 have to put one first and one second.

25 All right. You just sign that form and knock on the

1 door and then we'll come back in and take your verdict.

2 At this point, do not discuss the case. Your sign
3 that you can begin discussing the case is the exhibits
4 coming in and then the alternate coming out. Okay. Thank
5 you very much.

6 (Whereupon, the jury left the courtroom at 2:13
7 p.m.)

8 THE COURT: All right. Any exceptions to the charge
9 from the State?

10 MR. BAILEY: Your Honor, just -- I'm so sorry.

11 THE COURT: From the State?

12 MS. WALKER: No, sir.

13 THE COURT: Okay. From the Defense other than those
14 previously stated?

15 MR. BAILEY: No, sir, Your Honor, I appreciate your
16 patience on it. If I can just more clearly and concisely
17 express for the record, I'll be as brief as possible.

18 THE COURT: Express what?

19 MR. BAILEY: I'm sorry, just that we would still like
20 an involuntary charge. We object to the exclusion of the
21 involuntary manslaughter charge.

22 THE COURT: Okay.

23 MR. BAILEY: If I can briefly express it?

24 THE COURT: You've already argued that issue. Let's
25 not argue it anymore.

1 MR. BAILEY: Your Honor, in that case, I feel like
2 I've done my client a disservice by not properly arguing
3 at the time, if I can on the record now?

4 THE COURT: All right. That issue has been argued
5 and ruled upon.

6 MR. BAILEY: All right. Thank you, Your Honor.

7 THE COURT: All right. Make sure the clerk has your
8 phone numbers. Make sure the exhibits are right.

9 (Whereupon, the jury began deliberations at 2:51
10 p.m.)

11 (Whereupon, Court was in recess awaiting a
12 verdict.)

13 (Whereupon, Court's Exhibit No. 1 was marked for
14 identification only.)

15 THE COURT: We had a note earlier asking if they
16 could get fresh air before they started deliberating. I
17 marked that as a Court's Exhibit.

18 THE COURT: Okay. Bring them in.

19 (Whereupon, the jury returned to open court with
20 a verdict at 3:54 p.m.)

21 THE BAILIFF: The jury is seated, Your Honor.

22 THE COURT: All right. Thank you very much. Welcome
23 back, ladies and gentlemen. It's my understanding you
24 have a verdict; is that correct?

25 THE FOREMAN: Yes, Your Honor.

1 THE COURT: If you will fold it and hand it to
2 Mr. Tolbert.

3 Thank you.

4 All right. Madame Clerk, you may publish.

5 THE CLERK: The State of South Carolina in the County
6 of Richland in the Court of General Sessions on indictment
7 number 2014-GS-40-02072, in the matter of the State of
8 South Carolina versus Holly Jo Thompson, we, the jury, by
9 unanimous consent find the Defendant, Holly Jo Thompson,
10 as to the charge of murder on indictment number
11 2014-GS-40-02072 guilty. And it is signed by Justin
12 Estes, the foreperson, dated February 19th, 2016.

13 Mr. Foreman, is this your verdict and the verdict of
14 the entire jury?

15 THE FOREMAN: Yes, ma'am, it is.

16 THE COURT: All right. Anybody request polling?

17 MS. CAMPBELL: Not from the State, Your Honor.

18 MR. BANK: We do, Your Honor.

19 THE COURT: All right. Ladies and gentlemen, you're
20 going to be asked two questions. The first question is,
21 is this your verdict. The second question is, is this
22 still your verdict.

23 As your juror number and/or name is called, if you
24 will please answer out loud.

25 THE CLERK: No. 83, was this your verdict?

1 JUROR: Yes, ma'am.

2 THE CLERK: Is it still your verdict?

3 JUROR: Yes, ma'am.

4 THE CLERK: No. 136, was this your verdict?

5 JUROR: Yes, ma'am.

6 THE CLERK: Is it still your verdict?

7 JUROR: Yes, ma'am.

8 THE CLERK: No. 133, was this your verdict?

9 JUROR: Yes, ma'am.

10 THE CLERK: Is it still your verdict?

11 JUROR: Yes, ma'am.

12 THE CLERK: No. 8, was this your verdict?

13 JUROR: Yes.

14 THE CLERK: Is it still your verdict?

15 JUROR: Yes.

16 THE CLERK: No. 294, was this your verdict?

17 JUROR: Yes.

18 THE CLERK: Is it still your verdict?

19 JUROR: Yes.

20 THE CLERK: No. 130, was this your verdict?

21 JUROR: Yes, ma'am.

22 THE CLERK: Is it still your verdict?

23 JUROR: Yes, ma'am.

24 THE CLERK: No. 190, was this your verdict?

25 JUROR: Yes.

1 THE CLERK: Is it still your verdict?

2 JUROR: Yes.

3 THE CLERK: No. 237, was this your verdict?

4 JUROR: Yes, ma'am.

5 THE CLERK: Is it still your verdict?

6 JUROR: Yes, ma'am.

7 THE CLERK: No. 152, was this your verdict?

8 JUROR: Yes, ma'am.

9 THE CLERK: Is it still your verdict?

10 JUROR: Yes, ma'am.

11 THE CLERK: No. 79, was this your verdict?

12 JUROR: Yes, ma'am.

13 THE CLERK: Is it still your verdict?

14 JUROR: Yes, ma'am.

15 THE CLERK: No. 23, was this your verdict?

16 JUROR: Yes, ma'am.

17 THE CLERK: Is it still your verdict?

18 JUROR: Yes, ma'am.

19 THE CLERK: No. 189, was this your verdict?

20 JUROR: Yes, ma'am.

21 THE CLERK: Is it still your verdict?

22 JUROR: Yes, ma'am.

23 THE CLERK: The jury has been polled, Your Honor.

24 THE COURT: Ladies and gentlemen, let me say thank
25 you for your service this week. You all have been here to

1 the very end of the week. You have been diligent in your
2 work. You have been on time. You have been cordial and
3 respectful and we all on behalf of all the parties, I want
4 to say thank you for your service this week. We cannot do
5 what we do up here without good citizens like you being
6 willing to come up here and serve and take away from your
7 family and friends and jobs to do so. So on behalf of
8 both sides of this case and on behalf of the judges here
9 in the building, I want to say thank you very much for
10 your service.

11 Now, you are free to discuss this case with anyone
12 that you see fit. Sometimes attorneys like to reach out
13 to jurors and say hey, what did we do right, what did we
14 do wrong? If somebody wants to speak with you, you
15 certainly may. If you do not want to speak with them,
16 just tell them that you do not want to speak to them. No
17 one will bother or harass you. If they do, just call up
18 here at the clerk's office and we'll take care of that
19 promptly.

20 If you'll retire to the jury room. They'll get your
21 badges and you'll be free to go. Thank you very much.

22 Everyone remain seated.

23 (Whereupon, the jury left the courtroom at 3:58
24 p.m.)

25 THE COURT: All right. I'll be back in about five

1 minutes. Get prepared for sentencing.

2 MS. WALKER: Thank you, Your Honor.

3 (WHEREUPON, a short break was taken.)

4 THE COURT: All right. Bring the Defendant around
5 for sentencing.

6 All right. Who's speaking? Ms. Walker?

7 MS. WALKER: I'll start off, Your Honor. Your Honor,
8 the victim's daughter has been present in the courtroom
9 throughout the entirety of this trial. At the appropriate
10 time, she would like to address the Judge -- or address
11 you, Your Honor.

12 In 1999, if I can start with her prior record, this
13 Defendant was convicted of burglary in the second degree.
14 In 2001, she was convicted of attempted burglary in the
15 second degree. In 2002, she was convicted of breach of
16 trust greater than \$1,000. In 2004, she was convicted of
17 burglary in the third degree. In 2005, she was convicted
18 of grand larceny and another breach of trust. In 2010,
19 Your Honor, she was convicted of burglary in the second
20 degree and grand larceny. And then -- oh, as well as
21 another breach of trust. In 2013, she was convicted of
22 two counts of shoplifting.

23 After this arrest, Your Honor, at the Alvin S. Glenn
24 Detention Center, she was disciplined for beating another
25 inmate. At that point in time, Your Honor, she had an

1 inmate pinned down on the table and was punching her in
2 the head and the back until she was pulled off.

3 Your Honor, this Defendant's prior record, her
4 actions on this brutal beating, as well as her continued
5 violent behavior at the Alvin S. Glenn Detention Center
6 make her a threat to anyone she encounters. And we would
7 ask, Your Honor, for a sentence reflective of what she did
8 in this case as well as what she has continued to do at
9 the jail as well as her prior record.

10 THE COURT: Okay. Where's the daughter?

11 Yes, ma'am, what's your name?

12 MARY SOLOMON: Mary Solomon.

13 THE COURT: Thank you for being here. I know you've
14 been here all week. And I wasn't quite sure who you were,
15 but I did recognize your presence here in the courtroom
16 this week. I'll be more than happy to hear from you.

17 MARY SOLOMON: Honorable Judge, in the interest of
18 the court, I want to briefly state the effects of the
19 criminal acts of Holly Jo Thompson has had on James
20 Solomon, Sr.'s loved ones. I miss my daddy so much. He
21 was not perfect, but he was perfect to my heart.

22 I miss our talks. I miss him saying my name. One
23 thing I treasured so much was when he called -- when I
24 called him on the phone. He would answer, Hello. I would
25 say, Daddy, this is Mary. He would say in a very high

1 tone, Hey. You could tell he was smiling. It was so
2 endearing. I felt so special. Our talks were special as
3 well. He gave me all of who he was as my daddy at that
4 time. I miss him so much. I think of him every single
5 day.

6 The week my father was murdered, I went to New York
7 for a girl's weekend. During this visit, as girls do, we
8 talk about everything, including the love I share with my
9 daddy. When returning home on January 26th, 2014, my mind
10 and heart were at peace. However, on Monday,
11 January 27th, 2014 around 3:40 p.m., my life changed
12 forever. I received a text message from my brother,
13 urgent. Before I could reach him, my niece called. She
14 said, Auntie, have you talked with my dad? Her asking
15 this question, I knew something was wrong. I began to ask
16 what's wrong? She said, Terrance, my nephew, received a
17 phone call from a family member in South Carolina. They
18 were driving by granddaddy's house and noticed people
19 standing outside his home with yellow tape around the
20 house.

21 I am a very optimistic person, so I did not think the
22 worst right away. My father was a type one diabetic. He
23 gave himself insulin shots every day. My thought was he
24 may not have taken his medicine and had a diabetic attack.
25 Finally, I spoke with my sister-in-law, and she gave me

1 the news. My father had been murdered. What? Are you
2 sure it's my daddy? Who says it's him? She said her
3 father confirmed it was my daddy. Oh, my Lord, not my
4 dad. I would have never imagined someone murdering my
5 father.

6 James Solomon, Sr. loved people. His passion was
7 running a viable welding business for over 50 years.
8 During my father's homecoming, we heard so many wonderful
9 stories from old coworkers, friends, family and clients
10 regarding how he was called upon to use his skills as a
11 master welder.

12 Because of his experience, he had a trained eye to
13 read blue prints and construct cuts and designs. As a
14 child, I remember having a see-saw, a swing set, a cookout
15 grill, a basketball goal and a merry go round in my
16 backyard. He was a structural welder.

17 For his clients, he would create lawn equipment,
18 trailers and grills on wheels to name a few. Because my
19 father knew no stranger, everyone knew when summer or
20 springtime -- when spring or summertime season was
21 approaching to contact Boo Boo to order or repair their
22 grills on wheels.

23 Summer, fall or winter, all you had to do was pull up
24 to his home and go to the backyard. He would usually be
25 working or repairing or creating something new. He

1 consistently maintained a routine clientele and records
2 book of business. If you wanted the job done right, you
3 would call Boo Boo.

4 He was a very intricate part of the community
5 bringing joy to many by sharing his craft and passion.
6 When you lose someone you love, you experience an
7 unbearable hurt.

8 I'm in pain and never could imagine this experience
9 in your lifetime. When this -- when you discover your
10 loved one as the death certificate will read cause of
11 death multiple blunt and sharp force injuries primarily to
12 the back of the head and left to die alone like an animal.
13 My father was blind in his left eye. He enjoyed life and
14 wanted to live.

15 I know he did not deserve to leave the world this
16 way. The weekends, Friday and Saturday, were one of my
17 favorite of the week, Saturday, the ultimate day. But
18 because my father was beat to death on a Friday night and
19 left in his own blood for an additional three days, I now
20 experience a sadness knowing Friday evening is approaching
21 and between 12:00 midnight and early Saturday morning, my
22 father was being beaten and left alone to die.

23 How do I know this because the Defendant confessed
24 when she left him, he was alive.

25 Oh, my God. My dear father could still be here today

1 with us today if only the Defendant had called for help.
2 I am thankful for all the time I had with my father, but
3 we had so much more to share with each other, so many more
4 memories to make. Because of this horrible crime, my
5 father's life was ended too soon. My father was alive and
6 jubilant and a friendly person. He knew no stranger.
7 Because I knew he had a heart of knowing no stranger, I
8 would always tell him to be careful who he would let in
9 the house.

10 I cry now like I never cried before, sob for my dear
11 daddy like I never sobbed before.

12 We know our loved ones will leave one day. I know I
13 will die one day. But when I think about the fact that my
14 father was murdered, it takes my breath away. I arise
15 each day to do things that are expected of me, however
16 inside I am saddened to the core. I can't sleep at night.
17 I'm depressed, heartbroken, experiencing anxiety. At any
18 moment, I begin to break out this tears. I just can't
19 believe he left us this way. Life has been challenging,
20 confusing and unbearable at times.

21 You know, your life has changed when shows like 48
22 Hours or Cold Justice are comforting shows. Shows an
23 optimistic, free-spirited person will not usually watch.
24 These shows now help me to stay vigilant and to help
25 remind me we must have justice, that the person who is

1 responsible for my loved one's death is punished.

2 One day I was thinking to myself, trying to
3 understand that a person who commits murder could not love
4 himself. No way you could love yourself and be able to
5 bring harm to another in such a horrible manner. If it
6 was in my power, Your Honor, I would sentence the
7 Defendant to remain in prison for the rest of her life. I
8 ask that Your Honor consider rendering a sentence that
9 fits the crime.

10 I pray for God's mercy to be with us during the
11 sentence of the Defendant.

12 James Solomon, Sr. was a father of six, seven great
13 grandchildren and four great grandchildren, great
14 grandchildren. He was a brother, an uncle, a nephew and a
15 caregiver. He meant so much to so many people.

16 We can't believe we will never see our daddy, our
17 dear daddy James, Boo Boo again. Thank you.

18 THE COURT: Thank you, Ms. Solomon. Thank you for
19 being here this week, and we appreciate your continued
20 presence in this case. Thank you very much.

21 Mr. Bank.

22 MR. BANK: Thank you, Your Honor. May it please the
23 Court?

24 THE COURT: Yes, sir.

25 MR. BANK: I think you've heard a lot of

1 Ms. Thompson's background already. To summarize,
2 obviously, Ms. Thompson has had a very difficult long
3 life. She was not provided a lot of the stability that so
4 many of us in this courtroom were provided. She struggled
5 with alcohol, drugs. She struggled with life as a
6 prostitute. She's had mental health diagnoses of bipolar
7 disorder and PTSD.

8 Your Honor, I think it briefly came up in direct
9 examination that she had about a six-month short stint in
10 the military back in the early '90s. We didn't think it
11 was, one, appropriate at trial; or two, it would allow us
12 to go through it with the rules of evidence.

13 It's my understanding that there was a sexual assault
14 that took place and that's why she left the military. We
15 haven't been able to get any military records. I don't
16 know if there would be a record of something like that.

17 Your Honor, Ms. Thompson has been in an enormously
18 large amount of abusive relationships in her life, from
19 her father to her boyfriends to men that she just meets on
20 the street, abuse that has been physical, mental and
21 sexual, Your Honor.

22 Ms. Thompson does have a record. It appears to start
23 around 1999. If you remember her testimony, that's when
24 she left the relationship with the father of her children
25 --

1 THE COURT: Ninety-eight.

2 MR. BANK: Ninety-eight, I think.

3 THE COURT: Yeah, she knew a date in 1998 that she
4 kind of saw as a triggering event, I think.

5 MR. BANK: Right.

6 THE COURT: Not to put words in her mouth, but that's
7 what I remember.

8 MR. BANK: And that's where we see it started, mostly
9 property crimes, and they're pretty consistent from then
10 up until this date. However, as you can see from that,
11 there's no violence, or, at least, no violent convictions
12 until we have this arrest.

13 Anything as to the comment about a fight in jail, I
14 don't think there's been any charge or conviction that
15 came from that. Nonetheless, it was one fight in jail
16 over the course of two years. There's been no other
17 disciplinary records, at least, that they provided me.
18 They provided me what they have and that's the only thing
19 I saw over the course of two years in terms of discipline.
20 Taking into account her life, her lack of a violent
21 record, we believe that a 30-year sentence is appropriate
22 in this case.

23 THE COURT: All right. Ms. Thompson, you don't have
24 to say anything if you don't want to, but you have a right
25 to address me if you would like to.

1 THE DEFENDANT: No, sir.

2 THE COURT: Okay. Thank you very much.

3 All right. Anything further from the State?

4 MS. WALKER: No, Your Honor.

5 THE COURT: Okay. Anything else further from the
6 Defense?

7 MR. BANK: After sentencing, we would just like to
8 renew our motions and make a motion for a new trial at the
9 appropriate time.

10 MR. BAILEY: Thank you for your courtesy and kindness
11 you've shown our client during the course of the trial,
12 Your Honor, allowing her to take her ankle bracelet off
13 during her testimony.

14 THE COURT: You're welcome. She behaved very
15 appropriately through the trial. She was very respectful
16 to her attorneys. She was very respectful to court staff
17 and behaved. We've all sat through trials where people
18 didn't behave.

19 I know you don't know what that's like, Ms. Thompson,
20 but I do and so do some of the attorneys in the room, so
21 I appreciate your behavior and that's why I was willing to
22 do that at the time, Your Honor.

23 THE DEFENDANT: Thank you, Your Honor.

24 THE COURT: You were very respectful throughout the
25 proceedings and behaved appropriately as people should in

1 court. So I took all that in consideration in doing that.
2 I certainly didn't want any prejudice to come to you from
3 the jurors potentially seeing you or making -- I don't
4 know what goes on in people's minds -- of course, you
5 admitted to them that you were in custody, so I don't
6 think anybody would have been shocked, but just to avoid
7 any potential harm that could have happened, I believe
8 that was fair and appropriate based upon your behavior
9 throughout the course of the trial.

10 Okay. Do you know how much credit she has?

11 MR. BANK: Approximately two years and one month. I
12 don't know the exact day.

13 MS. CAMPBELL: She has been in since she was arrested
14 on January 28th of 2014.

15 THE COURT: Is that right?

16 MR. BANK: Yes, sir.

17 THE COURT: January?

18 MS. CAMPBELL: January 28th is when she went into
19 jail.

20 Sentence of the Court

21 THE COURT: Okay. All right. Ms. Thompson, a
22 condition of the sentence is you have no contact with
23 Mr. Solomon's family. You're to receive credit for time
24 back to January 28th of 2014. I've written that date
25 specifically on your sentencing sheet, so there are no

1 issues in the Department of Corrections about you
2 receiving the proper amount of credit.

3 The sentence of the Court is that you be committed to
4 the State Department of Corrections for a term of 45
5 years.

6 Do you want to renew your motions?

7 MR. BANK: Yes, we're renewing all of our pretrial
8 and motions throughout the -- motions and objections
9 through the course of the trial and also move for a new
10 trial on the basis of a very, very short jury
11 deliberation. It was just a little over an hour with
12 approximately 300 exhibits. I find that to be an
13 incredibly short period for them to be able to fully
14 deliberate and consider the verdict. So we would renew
15 our motions and make a motion for a new trial.

16 THE COURT: Okay. Your motions are denied. The
17 previous motions are noted for the record and my ruling on
18 them is the same. This jury paid attention throughout the
19 entire week. They were very diligent. They were very
20 aware of what was going on. They were prompt. And both
21 sides did an excellent job of the presentation of the
22 evidence putting things together and there was more than
23 sufficient time for them to make the decision that they
24 did come to. Your motions for a new trial are denied.
25 Thank you very much.

1 MR. BANK: Thank you.

2 MS. WALKER: Thank you, Judge.

3 (Whereupon, the proceedings were concluded.)

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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 trial of the captioned case, relative to appeal, in Court of General Sessions for Richland County, South Carolina, on the 16th through 19th days of February, 2016.

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

April 12, 2016

Penny M. Johnson

Penny M. Johnson Court Reporter

My Commission Expires: 06/16/2018

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Richland County

Honorable Robert E. Hood, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

HOLLY JO THOMPSON,

APPELLANT

APPELLATE CASE NO 2016-000340

FINAL BRIEF OF APPELLANT

KATHRINE H. HUDGINS
Appellate Defender

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

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUES ON APPEAL

1. Did the trial judge err in refusing to instruct the jury on the law of involuntary manslaughter when there was evidence in the record that Appellant acted legally in self-defense by hitting the deceased in the head with a glass vase numerous times but then recklessly fled the scene without calling for help, leaving the deceased to bleed to death?
2. Did the trial judge err in not requiring the State to provide defense counsel with rap sheets of jurors with convictions, that were provided to the clerk of court and the judge, so that defense counsel could intelligently determine any issues in regard to the making of a Batson motion?
3. Did the trial judge abuse his discretion in refusing to allow defense counsel to re-cross the forensic pathologist but allowing the prosecution to re-cross the Appellant?

STATEMENT OF THE CASE

In April of 2014, the Richland County Grand Jury indicted Appellant Thompson for murder, indictment #2014-GS-40-02072. On February 16, 2015, Appellant proceeded to jury trial before the Honorable Robert E. Hood. Robert Bank, Alicia Goode and Rhodes Bailey represented Appellant at trial. Kathryn Luck Campbell, Meghan Walker and Laura Gregg prosecuted the case. The jury returned a verdict of guilty. Judge Hood sentenced Appellant to forty-five (45) years in prison. A timely notice of intent to appeal was filed on February 24, 2016. This appeal follows.

STATEMENT OF FACTS

On Monday, January 27, 2014, James Soloman was found dead in his trailer home. (R. p. 63, lines 13-25). A forensic pathologist testified that the cause of death was exsanguination due to multiple blunt and or sharp force injuries to the head. (R. p. 273, lines 17-25). When asked how long it would have taken for the deceased to have bled to death after receiving the injuries to the head, the forensic pathologist testified that it could have taken roughly anywhere from a few minutes to an hour. (R. p. 274, lines 2-20). Investigator Kerri McClary, a crime scene investigator with the Richland County Sherriff's Department, testified that she found what appeared to be a bloody print on a piece of glass found inside the home. (R. p. 124, lines 1-25). The latent print analyst, Tricia Odom, testified that the print found by Investigator McClary on the neck part of a glass vase was a palm print that matched Appellant. (R. p. 309, line 10 – p. 310, 311, lines 1-16). As a result of the palm print, Appellant was arrested and charged with murder. (R. p. 433, line 8 – p. 434, lines 1-4).

Appellant provided a written statement to police which was introduced in evidence at trial without objection. (R. p. 582, lines 10-25, R. pp. 729 – 733). Appellant stated that she knew the deceased by his nickname, the Grill Man. He was called the Grill Man because he was a welder and made large barrels into grills which he sold. (R. p. 586, lines 4-25). The Grill Man would give Appellant either money or drugs in exchange for sex. (R. p. 586, lines 14-17). On either Friday night, January 24th or Saturday night January 25th Appellant went to the Grill Man's trailer where they smoked crack and tried to have sex. (R. p. 587, line 12 – p. 588, lines 1-12). Appellant stated that the Grill Man because frustrated because he could not perform sexually and then began to accuse Appellant of stealing his crack. (R. p. 588, lines 4 – 21). Appellant stated that the Grill Man swung a knife at her, cutting her arm. (R. p. 588, lines 16-19). Appellant

picked up a glass vase that was full of the Grill Man's urine. (R. p. 588, line 22 – p. 589, line 1). As he swung the knife at her, she swung the vase at him hitting him in the face. (R. p. 589, lines 2-10). She told the police, "He kept coming at me and pushing me into the wall in the hallway, so I kept swinging. The next thing I know, he was in the floor and the vase was broken. I was so scared that I grabbed my stuff and left. I put my bra and shirt on and went out the front door and closed the door behind me." (App. p. 589, lines 11-16).

When asked if he was bleeding when she left Appellant told the police, "I think he was. I know his face was bleeding where I hit him in the face with that thing. The hall was dark and I didn't have my glasses on." (R. p. 590, lines 2-5). When asked where he was when she left she answered, "He was on the floor in the hall cussing me out. He was steady saying, Bitch, bring my crack back. Bitch, I'm going to kill you when I get up." (App. p. 639, lines 6-9). Appellant admitted that she did not call the police because she did not like to get people in trouble. (R. p. 590, lines 10-12). She also stated that she did not know she had hurt him that bad. (R. p. 590, lines 12-13).

ARGUMENTS

1. **The trial judge erred in refusing to instruct the jury on the law of involuntary manslaughter when there was evidence in the record that Appellant acted legally in self-defense by hitting the deceased in the head with a glass vase numerous times but then recklessly fled the scene without calling for help leaving the deceased to bleed to death.**

Prior to the judge instructing the jury on the law, Appellant requested that the judge charge the jury with the law of involuntary manslaughter. (R. p. 543, lines 4-10). Appellant asked the judge, “Absolutely self-defense. I believe Mr. Bailey is maybe going down to see if – I think he’s more prepared to argue it right now that I am, but an involuntary manslaughter charge on the basis of her leaving while he is still alive and not informing police, not calling police and that contributing recklessly to his death.” (R. p. 543, lines 4-10). Later the trial judge noted that neither the prosecution nor the defense requested a charge that a person is entitled to continue acting in self-defense until the threat of harm has ended. (R. p. 607, line 25 – p. 657, lines 1-5). Appellant requested that the judge instruct the jury about continuing to act in self-defense until the threat of harm has ended. (R. p. 608, lines 6-7). The trial judge then stated, “Okay. Well that’s directly contradictory to your argument that she didn’t mean to kill him.” (R. p. 608, lines 8-10). Counsel for Appellant explained, “I mean, our argument is that she didn’t know whether she killed him. Now, she used the force that she felt was necessary, had no idea whether she killed him or not.” (R. p. 608, lines 11-14). The trial judge then stated, “Okay. So then you’re not requesting involuntary manslaughter? I mean, you understand at this point, those two are exclusive of each other. She either – it was either an intentional act or it was an unintentional act.” (R. p. 608, lines 15-19).

Appellant cited State v. Light, 378 S.C. 641, 651, 664 S.E.2d 465, 470 (2008), in support of the proposition that involuntary manslaughter and self-defense are not mutually exclusive. (R.

p. 608, lines 20-24). Appellant explained, “And Your Honor, we would submit that she was acting lawfully in self-defense and with reckless disregard in leaving Mr. Soloman injured. And that would be our position in trying to get the involuntary manslaughter charge, that she was acting without malice, engaging in self-defense when she struck Mr. Soloman and that leaving him --” (R. p. 613, lines 2-8).

After hearing arguments from both sides the trial judge denied the request to charge the jury with the law of involuntary manslaughter. The judge ruled:

Okay. Involuntary is out, continuing until the threat of harm is in. The Defense can point to no evidence in the record that she did not intend to hit him in the head with a vase, which is obviously attempting to cause serious bodily injury. She didn't say I didn't intend to hit him. She said, I didn't intend to kill him. She didn't say I didn't intent to kill him. She said, I was there, but I didn't kill him. I didn't mean for this to happen. I didn't want him dead. I just wanted it to stop. Okay.

(R. p. 619, line 18 – p. 620, lines 1-2).

The judge instructed the jury on self-defense but not involuntary manslaughter. (R. pp. 700-703). Appellant objected to the exclusion of the involuntary manslaughter charge and asked to be heard again on the issue. (R. p. 707, lines 8-23). The judge replied, “You’ve already argued that issue. Let’s not argue it anymore.” Counsel for Appellant told the judge, “Your Honor, in that case, I feel like I’ve done my client a disservice by not properly arguing at the time, if I can on the record now?” (R. p. 708, lines 1-3). The judge again responded, “All right. That issue has been argued and ruled upon.” (R. p. 708, lines 4-5). The trial judge erred in failing to charge involuntary manslaughter. There is evidence in the record from which the jury could have found either self-defense or involuntary manslaughter. The jury was not given the opportunity to decide if Appellant committed involuntary manslaughter. The jury was erroneously only given a choice between murder and self-defense.

Involuntary manslaughter is defined as the unintentional killing of another without malice while engaged in either (1) the commission of some unlawful act not amounting to a felony and not naturally tending to cause death or great bodily harm, or (2) the doing of a lawful act with a reckless disregard for the safety of others. State v. Tucker, 324 S.C. 155, 478 S.E.2d 260 (1996). In determining whether the evidence requires a charge on a lesser included offense, the facts are viewed in a light most favorable to the defendant. State v. Byrd, 323 S.C. 319, 321, 474 S.E.2d 430, 431 (1996). A jury charge must be given if there is any evidence in the record to support the charge. State v. Tucker, *supra*.

In State v. Light, 378 S.C. 641, 650–51, 664 S.E.2d 465, 469–70 (2008)(footnote 7 omitted), the South Carolina Supreme Court wrote:

A past holding of this Court seems to indicate that, where a defendant is claiming self-defense, as petitioner is here, involuntary manslaughter may not be charged. In State v. Pickens, 320 S.C. 528, 466 S.E.2d 364 (1996), we held that where a defendant admits he intentionally shot his gun, but that he did so while acting lawfully but recklessly in defending himself, he is not entitled to a charge of involuntary manslaughter. However, a self-defense charge and an involuntary manslaughter charge are not mutually exclusive, as long as there is any evidence to support both charges. See State v. Crosby, 355 S.C. 47, 584 S.E.2d 110 (2003) (improper to hold that any evidence of an intentional shooting negates evidence from which any other inference may be drawn); Casey v. State, 305 S.C. 445, 409 S.E.2d 391 (1991) (error by trial court in not charging involuntary manslaughter, even though the trial court charged murder, voluntary manslaughter, accident, and self-defense); State v. Turbeville, 275 S.C. 534, 273 S.E.2d 764 (1981) (defendant charged with involuntary manslaughter was not entitled to self-defense charge because there was no testimony concerning self-defense in the trial record; indicating the charge would be appropriate if there was testimony concerning self-defense). When there is a factual issue as to whether the shooting was committed intentionally in self-defense or was committed unintentionally, then the defendant is entitled to both charges as there is “any evidence” to support each charge. When there is evidence of both, as in this case, we find the jury is entitled to resolve the question of how the shooting actually occurred.

In Light the Court found that there was evidence in the record that the defendant was lawfully armed in self-defense because he took the loaded gun from the decedent who was

threatening him with it, warranting the instruction on self-defense. The Court also found that there was evidence in the record that defendant recklessly handled the gun and/or that the two were struggling over the gun, either one of which warrant the instruction on involuntary manslaughter. See State v. Burris, 334 S.C. 256, 513 S.E.2d 104 (1999) (evidence petitioner recklessly handled the gun because, according to his testimony, it fired almost immediately after he took possession of it supported an involuntary manslaughter charge); Casey v. State, 305 S.C. 445, 409 S.E.2d 391 (1991) (evidence of a struggle between a defendant and a victim over a weapon is sufficient for submission of an involuntary manslaughter instruction to the jury).

Appellant's actions in the present case fall under the second definition of involuntary manslaughter. There is evidence in the record that the killing was unintentional because Appellant acted lawfully in self-defense in striking decedent with the vase after he threatened her with a knife but acted recklessly in fleeing the scene without calling for help, leaving the decedent to bleed to death. When asked why she did not call 911 appellant testified, "Being a prostitute and a known crack addict, the police don't look too kindly on either one. I have had instances where I have called the police before, and they get out to take my statement or whatever and they'll say, well, just let it go. They don't believe the story. They don't want to hear it. It's just unfathomable that a female could be a prostitute and a drug addict." (R. p. 490, line 23 – p. 491, lines 1-5). Appellant acted recklessly in failing to call for help after she struck the deceased in self-defense and knew that he was bleeding.

The present case is distinguished from State v. Sams, 410 S.C. 303, 317, 764 S.E.2d 511, 518 (2014), reh'g denied (Nov. 7, 2014), where the South Carolina Supreme Court held there was no evidence to support a charge on involuntary manslaughter. In Sams the Court wrote:

Even if Sams *initially* intended only to “restrain” Frazier, at some point, when he maintained a chokehold on him for well over ten minutes, past the point when the victim had stated he could not breathe and then became limp, Sams's prolonged and continued hold on the victim's neck, until a responding officer repeatedly ordered Sams to release his hold, was intentional and the type of conduct that is highly likely to result in serious injury or death. We believe there is undoubtedly a distinction to be made between restraining someone, which Sams arguably did when he pinned Frazier down by lying on top of him, versus maintaining a prolonged chokehold around someone's neck, which undeniably carries with it the risk of serious harm within moments. The medical evidence also indicates the severe nature of the altercation, as there were objective signs of strangulation present, including bruising to the victim's neck and hemorrhages in his eyes. *Cf. People v. Leach*, 405 Ill.App.3d 297, 345 Ill.Dec. 694, 939 N.E.2d 537, 549–51 (2010) (rejecting the defendant's assertion “that the evidence at best proved only the lesser offense of involuntary manslaughter in that he only acted recklessly in choking [his wife]”; the appellate court noted (1) it was “undisputed that [the] defendant knowingly placed his hands on [his wife's] neck and exerted sufficient force to first render her unconscious and eventually dead”; (2) that the time frame for the choking incident, some three minutes, “created a strong probability of death or great bodily harm” of which the defendant had to be aware; and (3) the probability of harm was further supported by the medical evidence, which indicated continued pressure can cause a loss of consciousness within ten to thirty seconds and death within three to six minutes, and there were objective signs of strangulation, including trauma to the neck and hemorrhages in both eyes).

410 S.C. at 311–12, 764 S.E.2d at 515–16.

In the present case, Appellant did not continue to strike until death as the defendants in Sams and Leach continued to knowingly choke until death. To the contrary, Appellant struck, albeit numerous times, until she could escape. The testimony at trial supports the fact that when Appellant left, while she knew he was bleeding, he was not dead yet and she did not intend to kill the deceased. Appellant told the police, “I didn’t mean for this to happen. I didn’t want him dead. I just wanted him to stop trying to hurt me.” (R. p. 592, lines 18-20). The jury could easily have rejected Appellant’s self-defense claim based on her reckless failure to call for help.

The present case is also distinguished from State v. Scott, 414 S.C. 482, 487, 779 S.E.2d 529, 531 (2015), reh'g denied (Dec. 16, 2015), where the South Carolina Supreme Court found

there was no evidence to support an involuntary manslaughter charge because there was no evidence the defendant acted recklessly. In Scott the Court wrote:

Here, Scott asserts that his conduct falls under the second definition of involuntary manslaughter, claiming the evidence demonstrates that he unintentionally killed Cynthia while executing a martial arts move, and therefore that he must have recklessly disregarded the safety of others. However, the only evidence presented at trial that supports Scott's version of the facts is Investigator Litchfield's testimony that Scott told him Cynthia charged at him with a "shiny [] silver" object, at which point he executed a "martial arts move, pushing her elbow up, [and] causing her to stab herself in the throat." Scott did not testify, nor did he offer any evidence that he was criminally negligent in executing the martial arts move. To the contrary, Investigator Litchfield testified that Scott's father had a black belt in martial arts, and that he trained Scott. Thus, the only testimony regarding Scott's martial arts background suggests that his actions were anything but reckless, and that he intentionally caused Cynthia's death.

414 S.C. at 487–88, 779 S.E.2d at 531–32.

Appellant does not argue that she recklessly struck the deceased with a vase as the defendant in Scott argued that he acted recklessly in executing a martial arts move. Instead, Appellant argues that she acted in self-defense in striking the deceased with the vase but acted recklessly in fleeing without calling for help, leaving the deceased to bleed to death. Unlike in Sams and Scott, there was evidence in the record that Appellant acted recklessly. The present case is more analogous to State v. Light, State v. Burris, Casey v. State, Tisdale v. State, 378 S.C. 122, 662 S.E.2d 410 (2008), where a struggle between the defendant and the victim led to the unintended death of the victim. While Appellant and the deceased did not struggle over the vase as the parties struggled over a gun in the above cases, they did struggle and Appellant's reckless flight then resulted in the unintended death of the victim. The jury should have been given the opportunity to decide between self-defense or involuntary manslaughter. The trial judge erred in refusing to charge involuntary manslaughter.

The Court discussed the standard of review in Sams, writing:

In criminal cases, appellate courts sit to review only errors of law. State v. Baccus, 367 S.C. 41, 625 S.E.2d 216 (2006); State v. Wilson, 345 S.C. 1, 545 S.E.2d 827 (2001). Thus, an appellate court is bound by a trial court's factual findings unless they are clearly erroneous. Wilson, 345 S.C. at 6, 545 S.E.2d at 829.

“The law to be charged to the jury is determined by the evidence presented at trial.” State v. Hill, 315 S.C. 260, 262, 433 S.E.2d 848, 849 (1993). The trial court is required to charge a jury on a lesser-included offense if there is evidence from which it could be inferred that the defendant committed the lesser, rather than the greater, offense. State v. Drafts, 288 S.C. 30, 340 S.E.2d 784 (1986); see also Dempsey v. State, 363 S.C. 365, 610 S.E.2d 812 (2005); State v. Gourdine, 322 S.C. 396, 472 S.E.2d 241 (1996).

“An appellate court will not reverse the trial [court]'s decision absent an abuse of discretion.” State v. Pittman, 373 S.C. 527, 570, 647 S.E.2d 144, 166 (2007). “An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support.” Id. at 570, 647 S.E.2d at 166–67. “The refusal to grant a requested jury charge that states a sound principle of law applicable to the case at hand is an error of law.” Id. at 570, 647 S.E.2d at 167.

In determining whether the evidence requires a charge on a lesser-included offense, the Supreme Court must view the facts in the light most favorable to the defendant. State v. Cole, 338 S.C. 97, 525 S.E.2d 511 (2000). The charge request is properly rejected when there is no evidence tending to show the defendant was guilty of the lesser offense. State v. Tucker, 324 S.C. 155, 478 S.E.2d 260 (1996); State v. Cooney, 320 S.C. 107, 463 S.E.2d 597 (1995); State v. Gadsden, 314 S.C. 229, 442 S.E.2d 594 (1994).

State v. Sams, 410 S.C. 303, 307–08, 764 S.E.2d 511, 513 (2014), reh'g denied (Nov. 7, 2014)

Viewing the evidence in the light most favorable to the Appellant, there was evidence in the record from which it could be inferred that the Appellant committed involuntary manslaughter. There is evidence in the record that Appellant acted lawfully in self-defense but recklessly in fleeing the scene without calling for help, leaving the victim to bleed to death. The refusal to grant the requested charge on involuntary manslaughter is an error of law requiring reversal.

2. **The trial judge erred in not requiring the State to provide defense counsel with rap sheets of jurors with convictions, which were provided to the clerk of court and the judge, so that defense counsel could intelligently determine any issues in regard to the making of a Batson motion.**

Prior to jury selection, Appellant asked the judge to order the prosecution to provide defense counsel with rap sheets of jurors with convictions. Counsel for Appellant stated:

The only thing that needs to be heard before jury selection is I think the typical situation that the Court is aware of or that a lot of judge here are aware of that the solicitor's office runs rap sheets of the entire jury potential panel. Those rap sheets are provided to the qualifying judge, to the clerk of court. They obviously retain a copy. We never received a copy.

We're asking for the Court to order them to have one or to give us one. We don't necessarily need the rap sheets of every single person, but if we could, at least, have the information of who has been convicted of crimes that don't exclude the jurors. It begins to be an issue in Batson issues when we don't know why they're excluding someone until later.

Again, in all fairness, it doesn't seem fair that everybody in the courtroom has a copy of this information except the defendant. So we just ask for that information to be provided for people who do, in fact, have some type of conviction.

(R. p. 19, lines 2-21). The prosecution responded, "State vs. Childs, Your Honor, State vs. Casey, I believe addresses this issue." (R. p. 19, lines 22-23). The judge asked, "I assume it says you don't have to give that over to them?" (R. p. 19, lines 24-25). The prosecution answered, "That would be correct, Your Honor." (R. p. 20, line 1). The judge then said, "Don't ever say fundamental fairness. It's not right in the bar examine, it's not right in here. You can look it up if you want to. Denied. Let's go to the Defendant's voir dire." (R. p. 20, lines 2-4). The trial judge erred.

In State v. Childs, 299 S.C. 471, 474, 385 S.E.2d 839, 841 (1989), one of the cases referenced by the prosecution as standing for the proposition that the State did not have to provide the defense with juror rap sheets, the defendant asked for all records of arrest, convictions, and prior jury service including information as to backgrounds, attitudes, or

characteristics of any member of the petit jury venire. The Court held in Childs that, pursuant to State v. Matthews, 296 S.C. 379, 373 S.E.2d 587 (1988) cert. denied 489 U.S. 1091, 109 S.Ct. 1559, 103 L.Ed.2d 861 (1989), the defendant was not entitled to information collected by the prosecution as to the prior jury service, backgrounds, attitudes, or characteristics of any member of the petit jury venire. In Matthews the Court noted that Rule 8 of the Criminal Practice Rules provides that, “reports, memoranda, or other internal prosecution documents made by the [solicitor] or other prosecution agents in connection with the investigation or prosecution of the case” are not subject to disclosure in finding that background information on the *venire*, if any, held by the solicitor qualified as “internal prosecution” matter connected with the prosecution of the case. Appellant in the present case did not seek this type of juror information. Instead, Appellant asked to receive a copy of rap sheets of jurors with convictions that the State provided to the clerk of court and judge.

As to criminal records checks or records of arrest, the Court in Childs wrote, “No right to discovery exists in a criminal case absent statute or court rule. State v. Matthews, supra; State v. Miller, 289 S.C. 316, 345 S.E.2d 489 (1986). Because there is no statute or court rule requiring a disclosure of this information, we hold that the trial judge did not abuse his discretion in denying appellant's request.” State v. Childs, 299 S.C. at 474, 385 S.E.2d at 841 (1989).

The present case is distinguished from Childs in two ways. First, the rap sheets were not maintained solely by the prosecution but instead were shared with the clerk of court and the judge. There is no indication that the prosecution in Childs shared the information with third parties. Importantly, Appellant in the present case asked for the juror rap sheets so she could

intelligently determine any issues in regard to a Batson¹ motion. The Childs case did not address the disclosure of juror rap sheets in the context of a Batson motion. To the extent that Childs stands for the proposition that defense counsel is never entitled to the disclosure of juror conviction and arrest records contained in a rap sheet, provided to the clerk of court and judge, this Court should modify that ruling in Childs and reverse here.

The present case is also distinguished from State v. Casey, 325 S.C. 447, 481 S.E.2d 169 (Ct.App. 1997), the other case cited by the prosecution. In Casey the defendant made a Batson motion based on the fact that the State used all of its peremptory strikes against male jurors. The prosecution asserted that three of the males were stricken because of prior convictions for DUI and none of the females seated had DUI convictions. The Court in Casey ruled:

Neither *Batson* nor its progeny requires that the proponent of a strike present evidentiary support for the strike. See State v. Kandies, 342 N.C. 419, 467 S.E.2d 67, 77 (1996) (“[T]he district attorney is an officer of the court, and, as such, is sworn to represent the State honestly and to the best of his ability. Absent evidence to the contrary, it is not unreasonable for the trial court to assume that the prosecutor is telling the truth with regard to the criminal records of prospective jurors.”). Accordingly, we conclude that the trial court did not err in refusing Casey's motion to have the State produce the jurors' criminal records.

State v. Casey, 325 S.C. 447, 456, 481 S.E.2d 169, 174 (Ct. App. 1997).

If Casey had been provided with the rap sheets upon which the State sought to strike potential jurors, Casey may not have challenged the jury selection at all. The rap sheets may have demonstrated a gender neutral reason for the strikes, DUI convictions for the males struck, and may have demonstrated that no similarly situated jurors were seated, no DUI convictions for the female jurors seated. The interests of judicial economy weigh heavily in favor of the State providing the defense with copies of rap sheets of potential jurors. Additionally, as the opponent of the strike carries the burden of proving that an allegedly neutral explanation is pretextual, in

¹ Batson v. Kentucky, 476 U.S. 79 (1986).

the interest of fundamental fairness and due process, the opponent should have access to the rap sheets that have already been provided to the court.

In State v. Kandies, 342 N.C. 419, 438, 467 S.E.2d 67, 77 (1996), a case cited in the Casey opinion, the North Carolina Supreme Court wrote:

Finally, once the prosecutor has articulated a nonracial explanation for each challenged peremptory strike, the burden shifts to the defendant to introduce evidence that the State's reasons are a pretext. Robinson, 330 N.C. at 16, 409 S.E.2d at 296. Thus, the ultimate burden of rebutting the State's representations and proving purposeful discrimination lies with the defendant. Defendant had sufficient opportunity to produce evidence that the prospective jurors in question did not have criminal records. He could have obtained a record check himself or secured a court order requiring production of these documents. There were resources available to defendant to rebut the State's explanations, and he chose not to utilize them.

In the present case the State ran rap sheets on the entire jury venire and provided those rap sheets to the clerk of court and the judge. Defense counsel, on the other hand, did not have that ability and asked that the State provide defense with a copy. Requesting a South Carolina Law Enforcement Division [SLED] background check for each member of the jury venire would be cost prohibitive for the defense. Again, if defense counsel had the ability to verify, by having a copy of the jurors' rap sheets, the State's reason for a particular strike and that no similarly situated jurors were seated, there is a reasonable likelihood that in many cases counsel would not have to make a Batson motion in the first place. Based on traditional concepts of fairness, reasonableness and judicial economy, the judge should have required the State to provide defense counsel an opportunity to view the rap sheets of the jury venire. To the extent that Casey stands for the proposition that defense counsel is never entitled to the disclosure of juror conviction and arrest records contained in a rap sheet, provided to the clerk of court and judge, this Court should modify that ruling in Casey and reverse here.

3. The trial judge abused his discretion in refusing to allow defense counsel to recross the forensic pathologist but allowing the prosecution to recross the Appellant.

After the redirect examination of the forensic pathologist, Dr. Amy Durso, the following exchange took place between the trial judge and defense counsel:

The Court: Thank you, Dr. Durso. You may step down.

Mr. Bailey: I'm sorry.

The Court: No re-cross. You may step down.

Mr. Bailey: I'm sorry, Your Honor.

The Court: How long is the next witness?

Mr. Bailey: I'm sorry, for the record, I would like to say the Defense would like to recross the witness.

The Court: Under Rule 611, no re-cross.

(R. p. 293, line 24 – p. 294, lines 1-7). Trial counsel did not move to proffer the proposed recross examination. In State v. China, 312 S.C. 335, 342, 440 S.E.2d 382, 385–86 (Ct. App. 1993), the South Carolina Court of appeals wrote:

During both *in camera* hearings and before the jury, the trial judge permitted redirect examination by the prosecution. The trial judge, however, did not permit recross by China. China did not make a proffer to the trial judge. This issue, therefore, is not preserved for appeal. State v. Anderson, 304 S.C. 551, 406 S.E.2d 152 (1991) (in the absence of a proffer of excluded testimony, a reviewing court is unable to determine whether the appellant was prejudiced).

Appellant submits, however, that this Court should find the issue preserved because any attempt to proffer the recross examination of the forensic pathologist would have been futile. See State v. Higgenbottom, 344 S.C. 11, 542 S.E.2d 718 (2001).

While Appellant was prohibited from recross examining the forensic pathologist, the State was allowed to recross examine the Appellant. (R. p. 540, lines 12-15).

Rule 611, SCRE, provides the mode and of interrogation and presentation stating:

- (a) **Control by Court.** The court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of the truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment.
- (b) **Scope of Cross-Examination.** A witness may be cross-examined on any matter relevant to any issue in the case, including credibility.
- (c) **Leading Questions.** Leading questions should not be used on the direct examination of a witness except as may be necessary to develop the witness' testimony. Ordinarily leading questions should be permitted on cross-examination. When a party calls a hostile witness, an adverse party, or a witness identified with an adverse party, interrogation may be by leading questions.
- (d) **Re-examination and Recall.** A witness may be re-examined as to the same matters to which he testified only in the discretion of the court, but without exception he may be re-examined as to any new matter brought out during cross-examination. After the examination of the witness has been concluded by all the parties to the action, that witness may be recalled only in the discretion of the court. This rule shall not limit the right of any party to recall a witness in rebuttal.

The right to and scope of recross examination is within the sound discretion of the trial court. Liberty Mutual Ins. Co. v. Gould, 266 S.C. 521, 224 S.E.2d 715 (1976). “[A] trial judge may impose reasonable limits on cross-examination based upon concerns about, among other things, harassment, prejudice, confusion of the issues, witness safety, or interrogation that is repetitive or only marginally relevant.” State v. Johnson, 338 S.C. 114, 124, 525 S.E.2d 519, 524 (2000). “Absent the introduction of any new matter on re-direct examination, the rule is that recross-examination is not required. Without something new, a party has the last word with his own witness.” United States v. Fleschner, 98 F.3d 155, 157 (4th Cir.1996).

“An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support.” State v. Black, 400 S.C. 10, 16, 732 S.E.2d 880, 884 (2012) (quoting State v. Jennings, 394 S.C. 473, 477–78, 716 S.E.2d 91, 93 (2011)). “A failure to exercise discretion amounts to an abuse of that discretion.” Samples v. Mitchell, 329 S.C. 105, 112, 495 S.E.2d 213, 216 (Ct.App.1997) (citations omitted).

Because the judge failed to state any grounds for the refusal to allow recross examination of the forensic pathologist, it is difficult to determine if he failed to exercise his discretion or if his decision was without evidentiary support. The fact that the trial judge allowed the State to recross the Appellant reflects that he was aware that recross examination was in his discretion. The record, however, does not provide valid reasons for prohibiting the defense from recross examining the pathologist but allowing the State to recross the Appellant. The disparate treatment without valid justification should constitute an abuse of discretion. In the context of a challenge to an excessive sentence, the South Carolina Supreme Court wrote, “It has long been settled that this Court has no jurisdiction on appeal to correct an allegedly excessive sentence, which is within the limits prescribed by law for the discretion of the trial judge and which is not proved to be the result of partiality, prejudice, oppression or corrupt motive. We deem it unnecessary to cite or refer to the many authorities for this well settled proposition.” Clark v. State, 259 S.C. 378, 382–83, 192 S.E.2d 209, 210–11 (1972). The disparate treatment in the present case gives the appearance of impartiality and should constitute an abuse of discretion.

CONCLUSION

Based on the above arguments, Appellant's conviction and sentence should be reversed and the case remanded for a new trial.



Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

This 23rd day of March, 2017.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the 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."

March 23, 2017



Kathrine H. Hudgins
Appellate Defender
S.C. Commission on Indigent Defense
Division of Appellate Defense
1330 Lady Street, Suite 401
Post Office Box 11589
Columbia, South Carolina 29211-1589

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Richland County

Honorable Robert E. Hood, Circuit Court Judge

THE STATE,

RESPONDENT,

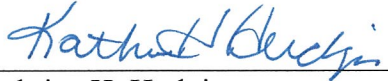
V.

HOLLY JO THOMPSON,

APPELLANT

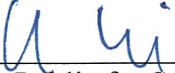
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Final Brief in the above referenced case has been served upon Sherrie Butterbaugh, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 23rd day of March, 2017.



Kathrine H. Hudgins
Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 23rd day of March, 2017.



(L.S)
Notary Public for South Carolina
My Commission Expires: May 12, 2025.

STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Richland County
Robert E. Hood, Circuit Court Judge

THE STATE,

Respondent,

v.

HOLLY JO THOMPSON,

Appellant.

Appellate Case No. 2016-000340

FINAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

J. ROBERT BOLCHOZ
Chief Deputy Attorney General

DONALD J. ZELENKA
Deputy Attorney General

SHERRIE BUTTERBAUGH
Assistant Attorney General
S.C. Bar No. 101477
P.O. Box 11549
Columbia, South Carolina 29211
(803) 734-6305

DANIEL E. JOHNSON
Solicitor, Fifth Judicial Circuit
P.O. Box 192
Columbia, South Carolina 29201
(803) 576-1800

ATTORNEYS FOR RESPONDENT

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APPELLANT'S STATEMENT OF ISSUES ON APPEAL

- I. Did the trial judge err in refusing to instruct the jury on the law of involuntary manslaughter when there was evidence in the record that Appellant acted legally in self-defense by hitting the deceased in the head with a glass vase numerous times but then recklessly fled the scene without calling for help, leaving the deceased to bleed to death?
- II. Did the trial judge err in not requiring the State to provide defense counsel with rap sheets of jurors with convictions, that were provided to the clerk of court and the judge, so that defense counsel could intelligently determine any issues in regard to the making of a *Batson* motion?
- III. Did the trial judge abuse his discretion in refusing to allow defense counsel to re-cross the forensic pathologist but allowing the prosecution to re-cross the Appellant?

RESPONDENT'S COUNTERSTATEMENT OF ISSUES ON APPEAL

- I. The trial court did not abuse its discretion in refusing to instruct the jury on involuntary manslaughter where the evidence presented at trial did not support the charge, including testimony that appellant hit the victim seventeen times in the head and caused numerous other wounds, and appellant's own admission that she intentionally and voluntarily swung the vase at the victim to hit him and severely injure him, and where appellant's argument regarding her subsequent recklessness is tantamount to imperfect self-defense, which is not the law in South Carolina. Further, any error by the trial court during its instructions was harmless beyond a reasonable doubt.
- II. The trial court did not abuse its discretion in denying a request to require the State to turn over the jury panel's criminal histories as precedent does not entitle appellant to the records, and appellant cannot demonstrate prejudice or any actual harm from the court's ruling.
- III. Appellant's argument that the trial court abused its discretion in refusing to allow recross examination of a State's witness is not preserved as she did not proffer the excluded testimony which precludes review on appeal; regardless, on the merits, the court did not err in exercising its discretion where appellant was not entitled to recross as no new information was raised during redirect examination. Further, any error by the trial court was harmless beyond a reasonable doubt.

STATEMENT OF THE CASE

A Richland County Grand Jury indicted appellant, Holly Jo Thompson, for murder. (R.pp.726-27). Appellant proceeded to a jury trial on February 16, 2016 and was represented by Robert Bank, Esquire, Alicia Goode, Esquire, and Rhodes Bailey, Esquire. (R.p.1). Luck Campbell, Esquire, Meghan Walker, Esquire, and Laura Gregg, Esquire, of the Fifth Circuit Solicitor's Office represented the State. (R.p.1).

On February 19, 2016, the jury found appellant guilty of murder. (R.p.709, lines 5-11). The Honorable Robert E. Hood sentenced appellant to forty-five years' imprisonment. (R.p.724, lines 3-5).

This appeal follows.

STATEMENT OF FACTS

A man worried about his friend walked into an unexpected and bloody scene. At trial, Odell Middleton (Middleton) testified he found the body of James Solomon (Solomon) inside the victim's mobile home in Hopkins on January 27, 2014.¹ (R.p.48, line 24-p.49, line 2; p.52, line 13-p.55, line 5). Middleton saw the victim on the floor, blood around his head, and broken glass near the body. (R.p.54, line 23-p.55, line 5; p.56, lines 17-18). Further, Middleton testified he noticed signs of a possible struggle, including two rugs in the hallway which were "tangled up and kicked up." (R.p.55, lines 18-25). Middleton ran out of his friend's home and called 911. (R.p.55, line 7).

The first deputy to arrive on the scene noticed blood in multiple rooms and around the victim's head. (R.p. 63, lines 1-3; p.63, lines 11-21; p.67, lines 8-15). Deputy Collins Harper (Harper) also testified he saw blood spatter on the sheets in a back bedroom, as well as blood and a small knife on the floor. (R.p.72, line 25-p.73, line 18; p.74, line 24-p.75, line 9). Harper further stated he saw a rug "bunched up" in the hallway and shards of glass nearby. (R.p.65, lines 3-10; p.67, line 20-p.68, line 9).

Multiple investigators testified about the amount of blood found inside Solomon's home. Kerri McClary (McClary) processed the scene and testified about the blood patterns, including pooling near the victim's head, drops on the floors, and spatter on both walls of the hallway. (R.p.87, lines 11-16; p.100, lines 1-18). McClary stated the spatter indicated someone hit the victim with some force to cause the blood to land on the walls. (R.p.101, lines 15-23). Further, spatter and blood flow found low to the floor and headed away from the bedroom indicated the victim was likely trying to get away from his attacker at some point while being hit. (R.p.120,

¹ The victim was found three days after his death. (R.pp.728-27).

lines 15-23; p.122, lines 4-11). A second investigator testified blood was smeared on the door frame leading from the bedroom to the hallway, as if the victim leaned or fell against it.

(R.p.214, line 20-p.215, line 1). A third investigator testified the first thing he noticed was all the blood in the hallway between the bedroom and the living room. (R.p.441, lines 15-21).

Further, he stated from the amount of blood in the hallway and into the living room where the victim was found, "it was easy for [him] to deduce that he had crawled from one area to another." (R.p.444, lines 15-21).

Finally, an expert in bloodstain pattern analysis testified the attack started in the victim's bedroom and ended on the living room floor, where James Solomon (Solomon) died. (R.p.234, lines 22-24; p.236, lines 14-17; p.239, line 2-4). Stan Richards (Richards) stated the small drops of blood found in the bedroom indicated a minor injury likely began the attack. (R.p.239, line 8-p.240, line 15). However, as the victim moved into the hallway, the volume of blood increased and could be seen "all the way down on both sides of the wall and on the floor." (R.p.240, lines 16-25). Richards testified the patterns of blood spatter and blood flow indicated Solomon was continually hit as he was in motion. (R.p.241, line 1-p.242, line 12). Further, Richards stated a significant pattern of blood near the end of the hallway indicated the victim "was probably stationary for a little while in order for that much blood to be . . . flowing down the side down to the floor." (R.p.242, line 21-p.243, line 5). However, it was likely Solomon was hit again at that location, while stationary and possibly close to the floor, as Richards testified about spatter on the mobile home's HVAC unit which was below waist level. (R.p.244, line 12-p.245, line 24). Richards stated the victim eventually moved from the hallway to the living room, as evidenced by the smears of blood in the doorway, and later died in the living room. (R.p.243, lines 13-18; p.244, lines 8-11).

The pathologist who performed the autopsy testified the seventy-one year old victim suffered seventeen blows to the head, including eleven to the back of his head, several to his face, and one that broke his nose. (R.p.259, lines 17-19; p.260, lines 2-8; p.261, line 21-p.262, line 8; p.262, line 25-p.263, line 10; p.264, lines 7-14; p.293, lines 9-12). Doctor Amy Durso (Durso) also stated Solomon had multiple shallow cuts on his body that could have come from a knife or something as sharp, such as a piece of broken glass. (R.p.263, lines 10-24; p.269, lines 7-18; p.287, lines 19-22). Durso described some of the cuts as defensive wounds to the victim's right hand and forearm as he tried to protect himself from the attack. (R.p.269, line 23-p.270, line 2; p.270, lines 10-16; p.270, line 23-p.272, line 22). Durso testified it would have taken anywhere from a few minutes to an hour for Solomon to bleed out and die; however, Durso stated the victim was likely unconscious prior to his death due to the large number of blows to his head. (R.p.274, lines 2-14; p.276, lines 19-25; p.286, lines 15-23).

Evidence collected from the victim's home helped investigators narrow down their list of suspects. Crime scene technicians swabbed the bloodstains from the knife blade found in the bedroom, the blood from the bedroom, hallway, and living room, and collected the sheets from the bedroom. (R.p.139, lines 3-24; p.215, line 24-p.216, line 3; p.220, lines 2-11). The DNA from the blood matched the victim—from the knife, the sheets, the bedroom floor and door, the hallway walls and floor, and the living room. (R.p.321, lines 4-12; p.332, line 18-p.333, line 7; p.334, lines 17-23; p.335, line 23-p.336, line 19; p.337, lines 4-8; p.347, lines 17-24). Further, a technician collected the broken glass at the scene and noticed a possible palm print in the dried blood. (R.p.123, line 24-p.124, line 6). The print matched appellant. (R.p.309, lines 15-18; p.310, lines 9-20; p.311, lines 3-13).

Appellant never denied she was at the victim's home on the night of his death, but told

the deputy who arrested her that she did not kill him. (R.p.579, lines 3-14). However, appellant changed her story after learning what evidence investigators had against her, such as the palm print, and told investigators she killed the victim in self-defense. (R.p.580, lines 17-25; p.588, line 13-p.589, line 16).

At trial, appellant testified she was a prostitute and James Solomon (Solomon) was one of her clients who paid for sex with money or drugs. (R.p.472, line 22-p.473, line 13; p.474, lines 3-10). Appellant stated she and the victim smoked crack cocaine together on the night of his death and tried to have sex in the living room, but when Solomon could not perform, he got angry. (R.p.477, line 21-p.478, line 13; p.479, line 18-p.480, line 1). Appellant testified they tried to have sex again later in the bedroom; however, the victim still could not perform so appellant went to the living room to get dressed and the victim followed her. (R.p.480, line 21-p.481, line 6). Appellant testified Solomon had a small knife that he swung at her and cut her right hand, so she grabbed a glass vase to defend herself. (R.p.481, lines 7-19). Appellant stated the victim swung the knife at her again as she tried to grab her crack pipe and clothes to leave so she hit him with the vase. (R.p.482, lines 15-19; p.486, lines 2-13). Appellant testified she and the victim fell to the floor and the vase broke, and she thought she hit him five or six times. (R.p.486, line 19-p.487, line 4). Appellant testified she got up and the victim remained on the floor, threatening her, as she ran out the front door. (R.p.487, lines 5-22). Appellant admitted she did not call 911 or otherwise call for help, not even when she later learned James Solomon had died. (R.p.490, lines 18-22; p.493, lines 15-17).

ARGUMENTS

I.

The trial court did not abuse its discretion in refusing to instruct the jury on involuntary manslaughter where the evidence presented at trial did not support the charge, including testimony that appellant hit the victim seventeen times in the head and caused numerous other wounds, and appellant's own admission that she intentionally and voluntarily swung the vase at the victim to hit him and severely injure him, and where appellant's argument regarding her subsequent recklessness is tantamount to imperfect self-defense, which is not the law in South Carolina. Further, any error by the trial court during its instructions was harmless beyond a reasonable doubt.

How the Issue Was Raised

Prior to jury instructions, defense counsel requested a charge on self-defense, as well as one on involuntary manslaughter based on appellant "leaving while [the victim] is still alive and not informing police, not calling police and that contributing recklessly to his death." (R.p.543, lines 4-10). Later, the trial court noted that neither side had requested a charge that a person was entitled to continue to act in self-defense until the threat of harm has ended. (R.p.607, line 25-p.608, line 5). Defense counsel indicated he wanted that charge, to which the court replied, "Okay. Well, that's directly contradictory to your argument that she didn't mean to kill him." (R.p.608, lines 6-10). Counsel stated that their theory was that appellant "didn't know whether she killed him. Now, she used the force that she felt was necessary, had no idea whether she had killed him or not." (R.p.608, lines 11-14). The court again replied that counsel's position contradicted a charge of involuntary manslaughter, stating, "I mean, you understand at this point, those two are exclusive of each other. She either – it was either an intentional act or it was an unintentional act." (R.p.608, lines 15-19).

Defense counsel argued self-defense and involuntary manslaughter were not necessarily

mutually exclusive, to which the court agreed. (R.p.608, lines 20-25). However, the trial court stated:

[H]er theory is I hit him in self-defense. There's evidence in the record that [appellant] hit [the victim] in self-defense, but she did it intentionally to injure him to get him to stop. It's not an unintentional act. It's not an accident. It's not reckless. It's not careless. It's not negligent. She said I picked up the vase because I had to defend myself and I hit him because I was in fear of my life. I mean, that's intentional as the day is long.

(R.p.613, lines 16-24). Defense counsel argued appellant acted recklessly in leaving the victim injured and bleeding and she did not intend to kill him, which entitled her to an involuntary manslaughter charge. (R.p.612, lines 6-15; p.613, lines 2-8; p.614, lines 6-8; p.614, line 24-p.615, line 2). The State countered that the defense's argument regarding recklessness focused on the wrong conduct and the assertion that appellant acted in self-defense, but excessively, amounted to imperfect self-defense which our Supreme Court had rejected. (R.p.611, lines 9-18; p.612, lines 16-21; p.617, line 16-p.618, line 20).

The trial court denied the request to charge the jury on involuntary manslaughter, but ruled he would instruct the jury that a person was entitled to continue to act in self-defense until the threat of harm had ended. (R.p.619, line 18-p.620, line 11).

The trial court subsequently instructed the jury at length on the law of the case, including the elements of self-defense. (R.p.687, line 14-p.703, line 18). When discussing the degree of force a person was entitled to use to defend herself, the court noted, "If the defendant is justified in defending herself and in striking the victim, then the defendant is also justified in continuing to strike until it is apparent that the danger of death or serious bodily injury has completely ended." (R.p.703, lines 14-18).

Following instructions, defense counsel again objected to the exclusion of the involuntary

manslaughter charge and asked to be heard on the issue. (R.p.707, line 19-p.708, line 3). The trial court responded that the issue had been argued and ruled upon and declined to allow counsel to address the issue again. (R.p.708, lines 4-5). The jury subsequently found appellant guilty of murder. (R.p.709, lines 5-11).

Standard of Review

"An appellate court will not reverse the trial court's decision regarding jury instructions unless the trial court abused its discretion." *Clark v. Cantrell*, 339 S.C. 369, 389, 529 S.E.2d 528, 539 (2000). In reviewing jury charges for error, appellate courts must consider the trial court's charge as a whole and in light of the evidence and issues presented at trial. *State v. Logan*, 405 S.C. 83, 90, 747 S.E.2d 444, 448 (2013) (citation omitted). The refusal to grant a requested jury charge that states a sound principle of law applicable to the case at hand is an error of law. *Clark*, 339 S.C. at 390, 529 S.E.2d at 539. To warrant reversal, the failure to give a requested charge must be both erroneous and prejudicial. *State v. Taylor*, 356 S.C. 227, 231, 589 S.E.2d 1, 3 (2003).

Analysis

A trial court should grant a requested instruction if there is any evidence presented at trial to support the charge. *State v. Burriss*, 334 S.C. 256, 262, 513 S.E.2d 104, 108 (1999). Involuntary manslaughter is defined as the unintentional killing of another without malice but while engaged in (1) an unlawful activity not naturally tending to cause death or great bodily harm; or (2) a lawful activity with reckless disregard for the safety of others. *Id.* at 264-65, 513 S.E.2d at 109. In determining whether to charge the lesser included offense of manslaughter, the court must view the evidence in the light most favorable to the defendant. *State v. Knoten*, 347 S.C. 296, 302, 555 S.E.2d 391, 394 (2001). Importantly, our Supreme Court has emphasized that

the charge request is properly rejected when there is no evidence tending to show the defendant was guilty of the lesser included offense. *State v. Cole*, 338 S.C. 97, 101, 525 S.E.2d 511, 513 (2000) (citation omitted); *Burriss*, 334 S.C. at 265, 513 S.E.2d at 109.

The essence of involuntary manslaughter is the unintentional nature of the killing. See *Douglas v. State*, 332 S.C. 67, 74, 504 S.E.2d 307, 310 (1998) (holding involuntary manslaughter charge not warranted where defendant admitted he *intentionally fired a gun* into a crowd in self-defense despite testimony that the defendant had been rushed by a group of people during a fight) (emphasis added); *State v. Pickens*, 320 S.C. 528, 531-32, 466 S.E.2d 364, 366-67 (1996) (holding where a defendant admitted he *intentionally shot his gun*, but stated he did so while acting lawfully but recklessly in defending himself, he was not entitled to an involuntary manslaughter charge) (emphasis added); *State v. Morris*, 307 S.C. 480, 483-84, 415 S.E.2d 819, 821-22 (Ct. App. 1991) (noting that under involuntary manslaughter, *the act must be unintentional* and defendant intentionally shot his gun though he claimed self-defense) (emphasis added). Only where there is a factual issue as to whether the killing was committed intentionally in self-defense or was committed unintentionally is there evidence sufficient to support both a self-defense and an involuntary manslaughter charge—i.e. where a gun unintentionally fires during a struggle over the weapon and the accidental discharge results in an unintentional killing. See e.g., *State v. Light*, 378 S.C. 641, 650-51, 664 S.E.2d 465, 469-70 (2008) (holding the defendant, who was convicted of murder, was entitled to a jury charge on involuntary manslaughter where he negligently handled the weapon prior to the shooting, and he and the victim struggled over the gun); *State v. Crosby*, 355 S.C. 47, 52-53, 584 S.E.2d 110, 112-13 (2003) (holding the trial court erred in refusing to charge involuntary manslaughter where there was evidence the defendant did not intentionally discharge the weapon given the defendant

claimed he was trying to break up a fight between three women and the victim charged at him prior to the shooting with his hands behind his back); *Burriss*, 334, S.C. at 263-65, 513 S.E.2d at 108-09 (concluding the defendant was entitled to an involuntary manslaughter charge where there was evidence he was acting lawfully in self-defense given he pulled his weapon after being attacked and fired twice into the ground, and the defendant accidentally fired the deadly shot when one of the attackers moved threatening toward him). If such a factual issue does not exist, self-defense and involuntary manslaughter are mutually exclusive and a defendant is not entitled to both charges.

Further, our Supreme Court has twice rejected arguments similar to the one appellant is making that she acted lawfully in self-defense, but recklessly or excessively. Specifically, the Court held the argument was tantamount to imperfect self-defense, which was not the law in South Carolina, and, even if it were, only entitled a defendant to the lesser included charge of voluntary manslaughter. *State v. Scott*, 414 S.C. 482, 488, 779 S.E.2d 529, 532 (2015); *State v. Sams*, 410 S.C. 303, 314-16, 764 S.E.2d 511, 517 (2014). In *Sams*, the defendant "locked his arm around [the victim's] neck while lying on top of him" and refused to let go, even after being ordered to by a police officer. *Sams*, 410 S.C. at 306-07, 764 S.E.2d at 512-13. When Sams finally released the victim, the victim was unresponsive, and the officer noticed he was not breathing and "had a blue cast to his skin." *Id.* at 307, 764 S.E.2d at 513. The pathologist testified the victim had visible bruises and scratches on his neck, bruises to the underlying muscles, and hemorrhages in the lining of his eye, all of which indicated the victim died from being strangled. *Id.* The Court noted the defendant's theory at trial was essentially self-defense—Sams testified he did not mean to kill the victim and was trying to protect himself by restraining the victim during a fight. *Id.* at 309, 764 S.E.2d at 514. Further, the Court found

Sams's denial of an intent to kill was not sufficient to support an instruction on involuntary manslaughter where the evidence showed he "maintained a chokehold on [the victim] for well over ten minutes" and the "prolonged and continued hold on the victim's neck, until a responding officer repeatedly ordered [Sams] to release his hold, was intentional and the type of conduct that is highly likely to result in serious injury or death." *Id.* at 311-12, 764 S.E.2d at 515. The Court noted the medical evidence presented at trial indicated "the severe nature of the altercation, as there were objective signs of strangulation present." *Id.* at 312, 764 S.E.2d at 515-16.

Finally, the Court held Sams's argument that he acted lawfully in self-defense, but excessively and recklessly was tantamount to imperfect self-defense which was not the law South Carolina. *Id.* at 315, 764 S.E.2d at 517. While not adopting the doctrine, the Court went on to state imperfect self-defense was a factor in mitigation that might reduce murder to voluntary manslaughter but had no application to involuntary manslaughter. *See id.* at 315-16, 764 S.E.2d at 517-18 (citing with approval cases from multiple jurisdictions that held the use of excessive force rendered an action taken in self-defense unlawful so that the action could not be a lawful act done in an unlawful manner as required for involuntary manslaughter, but could entitle a defendant to an instruction on voluntary manslaughter).

Using the analysis developed in *Sams*, the Court in *Scott* again rejected the argument that the defendant was entitled to an involuntary manslaughter charge because the jury could have inferred that he acted recklessly in self-defense. *Scott*, 414 S.C. at 488, 779 S.E.2d at 532. *Scott* argued the evidence demonstrated he unintentionally killed the victim while executing a martial arts move, and therefore he must have recklessly disregarded the safety of others. *Id.* at 487, 779 S.E.2d at 531. The Court noted the only evidence of self-defense was the defendant's previous statement to an investigator that the victim charged him with a shiny, silver object and he

executed a martial arts move, which pushed her elbow up and caused her to stab herself in the throat. *Id.* The Court acknowledged the evidence supported a self-defense instruction, which Scott received, but held Scott presented no evidence he acted recklessly and he was not entitled to an involuntary manslaughter charge. *Id.* at 488-89, 779 S.E.2d at 532.

Appellant Acted Intentionally

The trial court did not abuse its discretion in rejecting appellant's request to charge the jury on involuntary manslaughter as the record demonstrates there is no evidence to support the instruction. *Cole*, 338 S.C. at 101, 525 S.E.2d at 513 (holding a charge request is properly rejected when there is no evidence tending to show the defendant was guilty of the lesser included offense); *Burriss*, 334 S.C. at 262, 513 S.E.2d at 108 (holding a trial court should grant a requested instruction only if there is any evidence presented at trial to support the charge).

Appellant admitted to investigators after her arrest and again before the jury that she intentionally used the vase to hit and harm the victim. (R.pp.481-82; pp.486-88; pp.497-98; p.580; p.592); *see also Douglas*, 332 S.C. at 74, 504 S.E.2d at 310 (holding involuntary manslaughter charge not warranted where defendant admitted he intentionally fired a gun into a crowd in self-defense); *Pickens*, 320 S.C. at 531-31, 466 S.E.2d at 366-67 (holding where a defendant admitted he intentionally shot his gun, but stated he did so while defending himself, he was not entitled to an involuntary manslaughter charge); *Morris*, 307 S.C. at 483-84, 415 S.E.2d at 821-22 (noting that under involuntary manslaughter, the act must be unintentional even when claiming self-defense). Specifically, in a statement to investigators describing the incident, appellant admitted her actions led to James Solomon's death and she continually and intentionally hit him with the vase because she "just wanted him to stop trying to hurt me." (R.p.581, lines 16-25; p.592, lines 10-20). During direct examination at trial, this exchange

occurred between appellant and defense counsel:

DEFENSE COUNSEL: Ms. Thompson, when you swung that vase, did you mean to swing that vase to hit [the victim]?

APPELLANT: Yes, to protect myself.

(R.p.487, line 25-p.488, line 2). Appellant further admitted she only stopped swinging the vase after she and the victim fell to the floor and the vase broke. (R.pp.486-87). Next, during cross-examination, appellant said she was not disputing that her intentional actions caused the victim's death and reiterated that she killed the victim in self-defense, and admitted she was the only one who hit him with the vase. (R.p.497, line 8-p.498, line 17).

The evidence presented at trial shows the killing was committed intentionally and there was no evidence presented that appellant acted unintentionally to support a jury instruction on involuntary manslaughter. *See Burriss*, 334 S.C. at 264-65, 513 S.E.2d at 109 (stating that involuntary manslaughter is defined as the unintentional killing of another without malice but while engaged in (1) an unlawful activity not naturally tending to cause death or great bodily harm; or (2) a lawful activity with reckless disregard for the safety of others). The evidence, including appellant's own statements, conclusively demonstrated appellant intentionally and voluntarily wielded the vase to harm the victim, and there was nothing unintentional about her actions.

While self-defense and involuntary manslaughter are not mutually exclusive, as the trial court correctly noted, the facts of this case did not entitle appellant to an instruction on involuntary manslaughter. (R.p.608). Even under appellant's version of events, the evidence only entitled her to a self-defense charge, which she received. (R.pp.687-703). Appellant claimed she swung the vase to protect herself after the victim swung a knife at her. (R.pp.481-82; pp.486-88). There was no struggle over the vase, no struggle over the knife, and appellant's

actions were not unintentional or accidental. *See e.g., Light*, 378 S.C. at 650-51, 664 S.E.2d at 469-70 (holding an involuntary manslaughter charge was warranted where the defendant stated the gun "went off" immediately after he and the victim struggled over it); *Crosby*, 355 S.C. at 52-53, 584 S.E.2d at 112-13 (holding the defendant's statement that he "didn't even know he pulled the trigger" was sufficient to warrant an involuntary manslaughter charge); *Burriss*, 334, S.C. at 263-65, 513 S.E.2d at 108-09 (holding the defendant was entitled to an involuntary manslaughter charge where the gun "went off" and the defendant claimed "[i]t was an accident"). Accordingly, appellant was not entitled to an involuntary manslaughter charge as the evidence firmly established she intentionally swung the vase repeatedly at the victim's head, face, and body, and the trial court did not err in refusing the request.

Imperfect Self-Defense Not Applicable

Further, appellant's argument that she was entitled to an involuntary manslaughter charge because the jury could have determined she acted recklessly while in self-defense by failing to call police for help is without merit. Our Supreme Court has twice rejected similar arguments, holding they are tantamount to imperfect self-defense which South Carolina has not recognized and has no application to involuntary manslaughter.² *Scott*, 414 S.C. at 488, 779 S.E.2d at 532; *Sams*, 410 S.C. at, 314-16, 764 S.E.2d at, 517. As in *Sams*, appellant's actions were "intentional and the type of conduct that is highly likely to result in serious injury or death" where the medical evidence presented at trial objectively indicated the severe nature of appellant's attack, including the pathologist's testimony that the victim suffered seventeen blows to the head and face, multiple shallow cuts on various parts of his body, and defensive wounds on his right hand

² The Court held the most a defendant would be entitled to receive, even if South Carolina recognized imperfect self-defense, was an instruction on voluntary manslaughter, which appellant never requested at trial. *Scott*, 414 S.C. at 488, 779 S.E.2d at 532; *Sams*, 414 S.C. 315-16, 764 S.E.2d at 517-18.

and forearm. (R.pp.259-64; pp.269-72; p.293); *see also Sams*, 414 S.C. at 311-12, 764 S.E.2d at 515-16 (finding the defendant's denial of an intent to kill was not sufficient to support an instruction on involuntary manslaughter where the evidence showed the "prolonged and continued hold on the victim's neck" was intentional and "the type of conduct that is highly likely to result in serious injury or death" and noting the medical evidence presented at trial indicated "the severe nature of the altercation, as there were objective signs of strangulation present"). Corroborating evidence of the prolonged attack and the force appellant used to hit the victim included testimony about the amount of blood found in multiple rooms, such as spatter on both walls of the hallway, smears on the door frames, as well as the patterns that indicated the victim was continually hit as he was in motion. (R.pp.63; p.67; pp.72-73; pp.75-76; p.87; pp.100-01; pp.214-15; pp.240-44; p.441; p.444).

Appellant's argument that she acted recklessly in leaving the victim to bleed to death without calling for help focuses on the wrong conduct. As the solicitor correctly noted at trial, "It's not her leaving that killed him. It was her intentional conduct of repeatedly hitting him in the head with the – as she admitted in her testimony, she had the vase." (R.p.612, lines 16-21). In an effort to mitigate the number of blows to the victim's head, appellant requested and received the charge informing the jury that a person who was justified in defending herself and striking the victim was also justified in "continuing to strike until it is apparent that the danger of death or serious bodily injury has completely ended." (R.p.703). However, there was no evidence presented that appellant acted with reckless disregard for the safety of others where her action of intentionally arming herself with a vase, repeatedly and continually hitting the victim seventeen times in the head, and testifying she only stopped swinging the vase when she and the victim fell to the floor demonstrate a clear intent to seriously injure or kill the victim. (R.p.293;

pp.486-88); *see also* S.C. Code Ann. § 16-3-60 (stating that a person charged with involuntary manslaughter may be convicted only upon a showing of criminal negligence, "defined as the reckless disregard of the safety of others"). Accordingly, the record demonstrates appellant was entitled to an instruction on self-defense, which she received, and she was not entitled to an involuntary manslaughter charge.

Therefore, the trial court did not err in refusing to charge involuntary manslaughter as the evidence presented at trial did not support the instruction.

Harmless Error

Even if this Court were to find an abuse of discretion, any error in the jury instructions was harmless beyond a reasonable doubt. *See State v. Belcher*, 385 S.C. 597, 611, 685 S.E.2d 802, 809 (2009) ("Errors, including erroneous jury instructions, are subject to harmless error analysis."); *see also State v. Middleton*, 407 S.C. 312, 317, 755 S.E.2d 432, 435 (2014) (holding harmless error analysis is appropriate for the failure to charge a lesser included offense). When considering whether an error with respect to a jury instruction was harmless, an appellate court must determine that the error complained of did not contribute to the verdict. *Middleton*, 312 S.C. at 317, 755 S.E.2d at 435 (citation omitted). Such an analysis is a fact-intensive inquiry. *Id.* (citing *State v. Jefferies*, 316 S.C. 13, 22, 446 S.E.2d 427, 432 (1994)).

Here, a fact intensive inquiry shows the trial court's decision not to charge involuntary manslaughter did not contribute to the verdict. The evidence presented by the State showed appellant followed James Solomon from a bedroom and into the hallway, continually and repeatedly hitting him with a glass vase as he tried to get away from her. (R.p.120; p.122; pp.214-15; pp.239-42; p.444). The force of the blows was severe enough to leave spatter and patterns on both walls of the hallway and pooling on the floors, and multiple investigators

testified that the amount of blood at the scene was one of the first things they noticed when they arrived. (R.p.67; p.72; pp.75-76; pp.100-01; p.441). The pathologist testified the seventy-one year old victim suffered seventeen blows to the head and likely tried to stop the attack as he had some cuts on his hand and forearm that she described as defensive wounds. (R.pp.260-64; pp.270-72; p.293). James Solomon was found in a pool of blood in his living room on January 27, 2014—three days after he died. (R.p.63, lines 13-19; pp.243-44; pp.726-27).

Further, a palm print found in the dried blood on the glass from the broken vase was later matched to appellant and, despite appellant's statement that the victim cut her finger with a knife, DNA from the blood found at the scene matched only the victim—from the knife, the bedroom floor and door, the hallway walls and floor, and the living room. (R.pp.310-11; p.321; pp.332-37; p.347).

Appellant's version of events in her statement to investigators and to the jury was she acted in self-defense. In her statement, appellant never denied she was at the victim's home on the night of his death, and told the deputy who arrested her she killed the victim in self-defense. (R.p.580; pp.588-89). Again at trial, appellant stated she and the victim smoked crack cocaine together and tried to have sex, but when he could not perform, he became angry and eventually swung a knife at her. (R.pp.477-81). Appellant admitted she hit the victim with a glass vase repeatedly and only stopped after she and the victim fell to the floor. (R.p.482; pp.486-87). Appellant also admitted she did not call 911 or otherwise call for help, not even when she later learned James Solomon had died. (R.p.490; p.493; p.590; p.592).

The jury obviously did not believe appellant's version of events as they heard appellant's testimony, were properly charged on self-defense, and found her guilty of murder beyond a reasonable doubt. (R.pp.687-703; p.709). Given the evidence in this particular case, it is clear

the failure to charge involuntary manslaughter was harmless. *Middleton*, 312 S.C. at 317, 755 S.E.2d at 435 (holding failure to charge a lesser included offense was harmless after a fact specific inquiry).

Therefore, while respondent submits the trial court's ruling was not error, any alleged error was harmless beyond a reasonable doubt.

II.

The trial court did not abuse its discretion in denying a request to require the State to turn over the jury panel's criminal histories as precedent does not entitle appellant to the records, and appellant cannot demonstrate prejudice or any actual harm from the court's ruling.

How the Issue Was Raised

Prior to jury selection, defense counsel asked the trial court to order the State to give juror rap sheets and criminal histories to the defense, as the State had provided copies to both the court and the clerk. (R.p.19, lines 1-14). Counsel stated "it doesn't seem fair that everybody in the courtroom has a copy of this information except the defendant" and further argued it could be an issue in a *Batson*³ situation in which counsel did not know why the State was "excluding someone until later." (R.p.19, lines 14-21). The State countered that case law established it was not required to give that information to the defense. (R.p.19, line 22-p.20, line 1).

The court denied defense counsel's motion and continued with *voir dire*. (R.p.20, lines 2-5).

During *voir dire*, the trial court specifically asked the jury panel if anyone had been accused or convicted of a crime, and whether they or a family member or close friend had been the victim of a violent crime, and gave them the opportunity to explain the circumstances to the court. (R.p.21, line 8-p.27, line 24). Neither defense counsel nor the State objected once the jury was seated and, importantly, appellant never raised a *Batson* challenge to the State's decision to strike any person. (R.p.29, lines 16-24).

Standard of Review

The conduct of a criminal trial is left largely to the discretion of the trial court, and the

³ *Batson v. Kentucky*, 476 U.S. 79 (1986).

appellate courts will not interfere unless the rights of a defendant were prejudiced. *State v. Bridges*, 278 S.C. 447, 448, 298 S.E.2d 212, 212 (1982). Accordingly, this Court reviews errors of law only and is bound by the trial court's factual findings unless they were clearly erroneous. *State v. Baccus*, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006).

Analysis

A defendant is not entitled to the prosecution's copies of jurors' criminal histories in this jurisdiction. Rule 5(a)(1) of the South Carolina Rules of Criminal Procedure sets out the information subject to disclosure by the State and does not include juror criminal records run by the prosecution in preparation for jury selection. *See* Rule 5(a)(1), SCRCrimP (describing the information subject to disclosure including statements by the defendant, a defendant's prior record, certain documents and tangible objects, and reports or examinations and tests); *see also* *State v. Matthews*, 296 S.C. 379, 384, 373 S.E.2d 587, 591 (1988) (pre-Rule 5 case finding "[b]ackground information on the *venire*, if any, held by the solicitor here qualified as 'internal prosecution' matter connected with the prosecution of the case. As such it was not subject to disclosure.").

A defendant is not "entitled to criminal records checks or records of arrest" compiled by the prosecution as "[n]o right to discovery exists absent statute or court rule" and there is no such statute or court rule requiring disclosure of this information. *State v. Childs*, 299 S.C. 471, 474, 385 S.E.2d 839, 841 (1989). Interpreting *Childs*, this Court specifically addressed the holding in the context of a *Batson* challenge and found no error where the trial court refused to order the State to disclose and put into the record the criminal records information upon which the solicitor made his strikes. *State v. Casey*, 325 S.C. 447, 455, 481 S.E.2d 169, 174 (Ct. App. 1997). After noting the general rule established in *Childs*, this Court wrote:

Neither *Batson* nor its progeny requires that the proponent of a strike present evidentiary support for the strike. *See State v. Kandies*, 342 N.C. 419, 467 S.E.2d 67, 77 (1996) ("[T]he district attorney is an officer of the court, and, as such, is sworn to represent the State honestly and to the best of his ability. Absent evidence to the contrary, it is not unreasonable for the trial court to assume that the prosecutor is telling the truth with regard to the criminal records of prospective jurors."). Accordingly, we conclude the trial court did not err in refusing Casey's motion to have the State produce the jurors' criminal records.

Casey, 325 S.C. at 456, 481 S.E.2d at 174. The decisions in *Childs* and *Casey* continue to hold true.

Almost without exception, courts in other jurisdictions have declined to find reversible error where a trial court denied the defense access to jurors' criminal histories. *See* Jeffrey F. Ghent, Annot., *Right of Defense in Criminal Prosecution to Disclosure of Prosecution Information Regarding Prospective Jurors*, 86 A.L.R.3d 571 (1978 & Supp. 2014) (collecting cases on this issue). Courts have found that absent a statute or rule mandating disclosure, no such obligation exists. *See Wansley v. State*, 352 S.E.2d 368, 369 (Ga. 1987) ("In this state the prosecution is not required to reveal or produce investigatory work routinely performed in criminal cases unless it is subject to discovery under [statute] or under *Brady v. Maryland*, 373 U.S. 83 (1963) (exculpatory evidence)."); *Albarran v. State*, 96 So.3d 131, 157-58 (Ala. Crim. App. 2011) ("arrest and conviction records of potential jurors do not qualify as the type of discoverable evidence" that falls within the scope of *Brady*); *State v. Weiland*, 540 So. 2d 1288, 1290 (La. Ct. App. 1989) (finding a defendant is not entitled to the rap sheets of prospective jurors).

Further, even courts that discussed the fairness of the prosecution using information not readily accessible to the defense found no error where the appellant could not show prejudice or where the injury, if any, was speculative. *See Artiga-Morales v. State*, 335 P.3d 179, 181-82

(Nev. 2014) (finding no basis to reverse a conviction based on the trial court's refusal to compel the disclosure of jurors' criminal histories where a defendant failed to connect his argument to the facts of his case); *State v. Goodale*, 740 A.2d 1026, 1031 (N.H. 1999) (opining that fairness may warrant the disclosure of criminal records of jurors utilized by the State in jury selection, but affirming a conviction as the defendant failed to demonstrate he was prejudiced by the trial court's ruling). Courts have found criminal histories are obtainable by questions to the individual jurors and a thorough *voir dire* is generally sufficient to uncover relevant information. *See Couser v. State*, 383 A.2d 389, 398 (Md. 1978) (holding it could not be assumed that failure to disclose the State's juror dossier resulted in a biased jury because an adequate *voir dire* will determine whether a prospective juror is prejudiced and unable to render a fair and impartial verdict); *Tagala v. State*, 812 P.2d 604, 613 (Alaska Ct. App. 1991) (finding it was difficult to determine how the defense was harmed by the fact that it did not have access to the jurors' criminal history records and noting nothing prevented the defense from asking the jurors about their records during *voir dire*).

Appellant Not Entitled to the State's Copies of Jurors' Criminal History Records

The trial court did not abuse its discretion in refusing to compel the State to turn over to appellant the criminal histories of the jury panel. Appellant was not entitled to the records as such information is not subject to disclosure in this jurisdiction. Rule 5(a)(1), SCRCrimP, does not establish a right to the information and appellant points to no other statute or court rule which would require such disclosure. *See* Rule 5(a)(1), SCRCrimP (describing the information subject to disclosure including statements by the defendant, a defendant's prior record, and other documents); *see also Childs*, 299 S.C. at 473-74, 385 S.E.2d at 841 ("Because there is no statute or rule requiring a disclosure of . . . [juror arrest, conviction, and prior jury service records], the

trial judge did not abuse his discretion in denying" a request for such information).

Further, appellant's attempt to distinguish her case from *Childs* in unavailing as the record indicates the State turned the criminal histories over to the trial court and to the clerk to aid the court in qualifying a jury. (R.p.18, lines 7-21). Such action helps ensure a fair and impartial jury.

Accordingly, the trial court did not err in refusing to require the State to turn over the jurors' criminal history records as there is no established right to such information.

Appellant Cannot Demonstrate Prejudice

Further, appellant cannot demonstrate the trial court's ruling prejudiced her defense. While appellant cites to the general concepts of fundamental fairness, reasonableness, and judicial economy as reasons the court erred, she points to no specific prejudice or injury and does not connect the theoretical argument to the facts of her case. Appellant does not argue, much less establish, that any of the jurors were not fair and impartial.

First, potential jurors were asked if they had been accused or convicted of a crime, or if they had been the victim of a crime. The trial court then gave each person the opportunity to explain the circumstances and each was specifically asked if that would affect his or her ability to be fair and impartial. (R.pp.21-27). As a result, the jurors' criminal histories were obtainable by questions to the individual jurors during *voir dire* and readily available to all parties. See *Couser*, 383 A.2d at 398 (holding an adequate *voir dire* is generally sufficient to determine whether a prospective juror is prejudiced and unable to render a fair and impartial verdict). Further, there is no indication from the record that defense counsel did not obtain prior to trial his own copy of the jurors' criminal histories, as he was permitted to do.

Second, prior to exercising their strikes, the trial court gave each party the opportunity to

put forth any additional questions and both defense counsel and the State indicated they had no further questions, and jury selection continued. (R.p.28, lines 11-14). Nothing prevented appellant from requesting the court to ask jurors additional questions about their criminal records, had she chosen to do so.

Finally, defense counsel never objected once the jury was seated and, importantly, never raised a *Batson* challenge to the State's decision to strike any person. (R.p.29). Consequently, appellant's current argument that access to the criminal histories would aid in making challenges is speculative and not connected to the facts of her case. This Court has already settled the question regarding access to jurors' criminal histories in the context of *Batson* challenges and found no right to such information gathered by the prosecution exists, and noting *Batson* does not require a solicitor to put forth record evidence to support his or her strikes. *See Casey*, 325 S.C. at 455-56, 481 S.E.2d at 174 (citing with approval case law from North Carolina which states, "Absent evidence to the contrary, it is not unreasonable for the trial court to assume that the prosecutor is telling the truth with regard to the criminal records of prospective jurors.") (citation omitted). Without a showing of how appellant was prejudiced by the trial court's ruling, her argument fails.

Therefore, the trial court did not err in refusing to order the State to disclose its copies of jurors' criminal histories as appellant has failed to demonstrate she was entitled to the information and she has further failed to show how the ruling prejudiced her defense.

III.

Appellant's argument that the trial court abused its discretion in refusing to allow recross examination of a State's witness is not preserved as she did not proffer the excluded testimony which precludes review on appeal; regardless, on the merits, the court did not err in exercising its discretion where appellant was not entitled to recross as no new information was raised during redirect examination. Further, any error by the trial court was harmless beyond a reasonable doubt.

How the Issue Was Raised

Following cross-examination of the pathologist, the State asked questions on redirect examination to reiterate the number of injuries to the victim's head, the cuts on his hands, and the general types of injuries the victim suffered—which was testimony the pathologist had testified to previously. (R.p.292, line 5-p.293, line 23). Defense counsel attempted to begin recross-examination; however, the trial court interrupted and stated no recross would be allowed under Rule 611, SCRE. (R.p.293, line 24-p.294, line 10). Subsequently, defense counsel again objected on the record and asked why the court would not allow recross, and the court again cited to Rule 611 which granted it the discretion to control reexamination of witnesses, but told counsel, "If you want to find me some law that says you're entitled to recross, I'll be happy to revisit my opinion and make [the pathologist] come back up here. Until then, find something that says I'm wrong." (R.p.298, line 8-p.299, line 8).

Defense counsel did not proffer the proposed recross-examination, and did not revisit the issue.

During redirect examination of appellant, defense counsel elicited information that had not been raised before the jury previously, such as appellant's level of education, and then asked her to reiterate points from her previous testimony. (R.p.537, line 6-p.539, line 25). However, at the end of redirect, counsel asked appellant:

DEFENSE COUNSEL: Did you find the prosecutor's questions kind of confusing?

APPELLANT: Some, yes.

DEFENSE COUNSEL: Do you feel like she was putting words in your mouth, Ms. Thompson?

APPELLANT: Possibly trying.

DEFENSE COUNSEL: That's all the questions I have.

(R.p.540, lines 1-7). The solicitor stated she had only one question, which the trial court allowed, and she asked appellant:

THE STATE: Is there anything you need to clear up with the jury that I confused you on?

APPELLANT: No.

THE STATE: Thank you. That's all.

(R.p.540, lines 8-15). The trial continued with another defense witness, a State's witness in rebuttal, and jury instructions.

Standard of Review

The conduct of a criminal trial is left largely to the discretion of the trial court, which will not be reversed absent a prejudicial abuse of discretion. *Bridges*, 278 S.C. at 448, 298 S.E.2d at 212. Accordingly, the appellate courts sit to review errors of law only and are bound by the trial court's factual findings unless they are clearly erroneous. *Baccus*, 367 S.C. at 48, 625 S.E.2d at 220.

Analysis

Appellant's Argument is Not Preserved

To begin, it appears this issue is not preserved. Defense counsel twice objected to the trial court's ruling not allowing him to recross the pathologist; however, he never proffered the

excluded testimony, which generally precludes review on appeal. *See State v. Santiago*, 370 S.C. 153, 163, 634 S.E.2d 23, 29 (Ct. App. 2006) (citing *State v. Roper*, 274 S.C. 14, 20, 260 S.E.2d 705, 708 (1979)) (finding a proffer of testimony is required to preserve the issue of whether testimony was properly excluded by the trial court, and an appellate court will not consider error alleged in the exclusion of testimony unless the record on appeal fairly shows what the excluded testimony would have been). Where no proffer is made, the appellate court is unable to determine whether an appellant was prejudiced by the trial court's refusal to admit testimony into evidence. *TNS Mills, Inc. v. S.C. Dep't of Revenue*, 331 S.C. 611, 628, 503 S.E.2d 471, 480 (1998).

Appellant attempts to excuse the failure to preserve the issue by arguing it would have been futile to ask the trial court to proffer the pathologist's excluded testimony. *See e.g., State v. Pace*, 316 S.C. 71, 74, 447 S.E.2d 186, 187 (1994) (holding counsel's failure to object did not waive the issue where the trial court's remarks were such that any objection would have been futile). Respondent acknowledges the court indicated it wanted to move on to the next witness following defense counsel's first objection. (R.pp.293-94). Yet when counsel objected a second time, the court indicated it was willing to revisit the issue and recall the pathologist if counsel could find case law to support his position that he was entitled to recross. (R.pp.298-99). This suggests it would not have been futile to ask the trial court to proffer the pathologist's excluded testimony. However, counsel never revisited the issue and never attempted to proffer the excluded testimony. There is no indication from the record what the excluded testimony would have been as the points elicited during redirect examination were limited to those previously raised during the pathologist's testimony. (R.pp.292-93); *see also Santiago*, 370 S.C. at 163, 634 S.E.2d at 29 (finding an appellate court will not consider error alleged in the exclusion of

testimony unless there has been a proffer or the record on appeal fairly shows what the excluded testimony would have been). Accordingly, counsel had the opportunity to preserve the issue but failed to do so, it would not have been futile to ask to proffer the pathologist's testimony, and the issue is not preserved for this Court's review.

Appellant Was Not Entitled to Recross Examination

Even if the Court were to find appellant's argument is preserved, respondent submits the argument fails on the merits because the trial court did not abuse its discretion in not allowing appellant to recross examine the pathologist as no new matter was introduced during redirect examination by the State.

The right to a meaningful cross-examination of an adverse witness is included in the defendant's right to confront her accusers. *State v. Aleksey*, 343 S.C. 20, 33, 538 S.E.2d 248, 255 (2000). However, trial courts retain wide discretion to impose reasonable limits on examination of witnesses based upon a variety of concerns, including confusion of the issues or interrogation that is repetitive or only marginally relevant. *Id.* at 33-34, 538 S.E.2d at 255 (quoting *Delaware v. Van Arsdall*, 475 U.S. 673, 679 (1986)). Further, "[t]he right to, and scope of, recross-examination is within the sound discretion of the trial court." *Liberty Mut. Ins. Co. v. Gould*, 266 S.C. 521, 533, 224 S.E.2d 715, 720 (1976). "Absent the introduction of any new matter on re-direct examination, the rule is that recross-examination is not required. Without something new, a party has the last word with his own witness." *United States v. Fleschner*, 98 F.3d 155, 157 (4th Cir. 1996).

The trial court's discretion derives, in part, from Rule 611 of the South Carolina Rules of Evidence. The rule generally provides that the court "shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence." Rule 611(a), SCRE. As to

the re-examination of witnesses, the rule provides, "A witness may be re-examined as to the same matters to which he testified only in the discretion of the court, but without exception he may be re-examined as to any new matter brought out during cross-examination." Rule 611(d), SCRE.

The record shows the information elicited during redirect examination of the pathologist was limited to points brought up during previous testimony, including the number of injuries to the victim's head, the cuts on his hands, and the general types of injuries he suffered. (R.pp.292-93). No new information was raised during redirect, and recross by appellant was unnecessary. The trial court properly exercised its discretion in ruling recross examination was not required and allowing the State to have the last word with its own witness. *See* Rule 611(d), SCRE (providing, in part, that a witness may be re-examined as to the same matters to which she testified only in the discretion of the trial court); *Aleksey*, 343 S.C. at 33-34, 538 S.E.2d at 255 (holding trial courts have wide discretion to impose reasonable limits on examination of witnesses); *see also Fleschner*, 98 F.3d at 157 (finding without the introduction of any new matter on redirect examination, recross is not required as a party is entitled to the last word with its own witness).

As to appellant's testimony, the record shows defense counsel actually elicited new information during appellant's redirect examination regarding her level of education, and further suggested the State had deliberately attempted to confuse her with its questions during cross-examination. (R.pp.537-40). The State was entitled to rebut the new line of questioning regarding the attempt to confuse appellant, and the trial court properly exercised its discretion in allowing the solicitor to ask a question on recross examination. (R.p.540); *see also* Rule 611(a), SCRE (providing that a trial court "shall exercise reasonable control over the mode and order of

interrogating witnesses and presenting evidence"); *Liberty Mut. Ins. Co.*, 266 S.C. at 533, 224 S.E.2d at 720 ("[t]he right to, and scope of, recross-examination is within the sound discretion of the trial court")

Therefore, while respondent submits this issue is not preserved, on the merits, the trial court did not abuse its discretion in ruling appellant was not entitled to recross examine a State's witness as no new information was raised during redirect examination and a party is entitled to the last word with its own witness.

Harmless Error

Even if the Court were to find an abuse of discretion, any error in denying the request was harmless beyond a reasonable doubt. Whether an error is harmless depends on the circumstances of the particular case. *State v. Mitchell*, 286 S.C. 572, 573, 336 S.E.2d 150, 151 (1985). No definite rule of law governs the finding of harmless error; rather, the error's materiality and prejudicial character must be determined from its relationship to the entire case. *Id.*; see also *State v. Mizzell*, 349 S.C. 326, 333, 563 S.E.2d 315, 318-19 (2002) (listing the factors of a harmless error analysis, including the importance of the witness's testimony, whether the testimony was cumulative, the extent of cross-examination, and the overall strength of the State's case) (citation omitted).

Defense counsel had thoroughly cross-examined the pathologist about the victim's injuries, how long it would have taken for him to die, the difficulty in determining which blow came first, and asked her about possible injuries suffered by appellant and what could have caused them. (R.pp.278-92). Counsel asked the pathologist to point out for the jury the placement of the victim's injuries by placing stickers on his face and used pictures taken of appellant shortly after her arrest to discuss her possible injuries. (R.pp.280-84; pp.289-91).

After such a thorough cross examination and because no new information was raised during redirect examination, there is no indication how the refusal to allow recross examination prejudiced appellant.

Further, as noted, the State presented a strong case against appellant to convict her of murder. The jury heard evidence from witnesses that appellant followed the victim from a bedroom and into the hallway, continually and repeatedly hitting him with a glass vase as he tried to get away from her. (R.p.120; p.122; pp.214-15; pp.239-42; p.444). The force of the blows was severe enough to leave spatter and patterns on both walls of the hallway and pooling on the floors. (R.p.67; p.72; pp.75-76; pp.100-01; p.441). The pathologist testified the victim suffered seventeen blows to the head and likely tried to stop the attack as he had some cuts on his hand and forearm that she described as defensive wounds. (R.pp.260-64; pp.270-72; p.293). Finally, the jury heard appellant's version of events, was properly charge on self-defense, and ultimately did not believe her as she was found guilty of murder beyond a reasonable doubt. (R.pp.687-703; p.709).

Therefore, while respondent submits the trial court's ruling was not error, any alleged error was harmless beyond a reasonable doubt.

STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Richland County
Robert E. Hood, Circuit Court Judge

THE STATE,

Respondent,

v.

HOLLY JO THOMPSON,

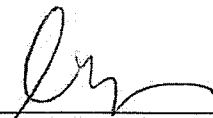
Appellant.

Appellate Case No. 2016-000340

CERTIFICATE OF COMPLIANCE

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the April 15, 2014, Order of the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

This 29th day of March, 2017.



SHERRIE BUTTERBAUGH
Assistant Attorney General

ATTORNEY FOR RESPONDENT

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Holly Jo Thompson, Appellant.

Appellate Case No. 2016-000340

Appeal From Richland County
Robert E. Hood, Circuit Court Judge

Unpublished Opinion No. 2018-UP-258
Submitted March 1, 2018 – Filed June 13, 2018

AFFIRMED

Appellate Defender Kathrine Haggard Hudgins, of
Columbia, for Appellant.

Attorney General Alan McCrory Wilson, Assistant
Attorney General Sherrie Butterbaugh, and Solicitor
Daniel Edward Johnson, all of Columbia, for
Respondent.

PER CURIAM: Holly Jo Thompson appeals her conviction for murder, arguing the circuit court should have (1) instructed the jury on the law of involuntary manslaughter, (2) required the State to provide her with rap sheets of jurors with

criminal convictions, and (3) allowed her to conduct a re-cross examination of a witness for the State. We affirm pursuant to Rule 220(b)(2), SCACR, and the following authorities:

As to Issue 1: *State v. Stanko*, 402 S.C. 252, 264, 741 S.E.2d 708, 714 (2013) ("[An appellate court] will not reverse a [circuit court's] decision regarding a jury instruction absent an abuse of discretion."); *State v. Burris*, 334 S.C. 256, 262, 513 S.E.2d 104, 108 (1999) ("It is well-settled the law to be charged is determined from the evidence presented at trial, and if any evidence exists to support a charge, it should be given."); *State v. Light*, 378 S.C. 641, 651, 664 S.E.2d 465, 470 (2008) (finding a defendant in a murder trial may be entitled to both a charge on self-defense and one on involuntary manslaughter if there is a factual issue as to whether the act leading to the victim's death was committed intentionally in self-defense or was committed unintentionally); *State v. Gibson*, 390 S.C. 347, 357, 701 S.E.2d 766, 771 (Ct. App. 2010) ("[T]he essence of involuntary manslaughter is the involuntary nature of the killing.").

As to Issue 2: Rule 5(a)(2), SCRCrimP (providing that except as permitted in Rule 5(a)(1), SCRCrimP, a criminal defendant is not entitled to "the discovery or inspection of reports, memoranda, or other internal prosecution documents made by the attorney for the prosecution or other prosecution agents in connection with the investigation or prosecution of the case"); *State v. Childs*, 299 S.C. 471, 474, 385 S.E.2d 839, 841 (1989) ("No right to discovery exists in a criminal case absent statute or court rule."); *id.* (affirming the circuit court's refusal of the appellant's request for background information compiled by the State regarding prospective jurors in his case "[b]ecause there is no statute or court rule requiring a disclosure of this information"); *State v. Casey*, 325 S.C. 447, 456, 481 S.E.2d 169, 174 (Ct. App. 1997) ("Neither *Batson* nor its progeny requires that the proponent of a [peremptory] strike present evidentiary support for the strike.").

As to Issue 3: Rule 611(a), SCRE ("The court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of the truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment."); Rule 611(d), SCRE ("A witness may be re-examined as to the same matters to which he testified only in the discretion of the court, but without exception he may be re-examined as to any new matter brought out during cross-examination."); *Liberty Mut. Ins. Co. v. Gould*, 266 S.C. 521, 533, 224 S.E.2d 715, 720 (1976) ("The right to, and scope of, recross-examination is within the sound discretion of the trial court.").

AFFIRMED.¹

HUFF, GEATHERS, and MCDONALD, JJ., concur.

RECEIVED

JUN 13 2018

APPELLATE DEFENSE

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

FORM 5

STATE OF SOUTH CAROLINA)
 County of Richland)
Holly Jo Thompson 299956)
 Full name and prison number (if any) of Applicant)

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

2018CP400

APPLICATION FOR

POST-CONVICTION RELIEF

2018 AUG 29 PM 1:40
 JEANNETTE W. MCBRIDE
 C.C.P. & G.S.
 RICHLAND COUNTY
 FILED

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Leath Correctional Institution
2809 Airport Road Greenwood SC 29649
2. Name and location of Court which imposed sentence Richland County Court
of General Sessions 1701 Main Street. Columbia SC 29201
3. Name(s) of co-defendant(s) (if any) none
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2014-GS-40-02072
 - (b) _____

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) February 19-2014
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ✓
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Affirmed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. June 13-2018
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective Assistance of Counsel
- (b) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Attorney refused to call character witnesses and did not honor my request for a mental health evaluation.
- (b) _____
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. _____
- ii. _____
- iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) Ineffective Assistance of Counsel - I did not have an opportunity until now to bring this issue up.
- (b) _____
- (c) _____
17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? yes
- (b) your trial, if any? yes
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
- _____
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- i. Stephen Kreyston Richland County Public Defender Office
1701 Main Street Columbia SC 29201
- Robert L. Bobby Bank Richland County Public Defender Office
1701 Main Street Columbia SC 29201
- ii. Alicia Goode Richland County Public Defender Office
1701 Main Street Columbia SC 29201
- Rhoads Bailey Richland County Public Defender Office
1701 Main Street Columbia SC 29201
- iii. Kathrine H. Hudgins (Appellate Defender)
Division of Appellate Defense 1330 Lady Street Suite 401
Columbia SC 29201
- (b) the proceedings at which each such attorney represented you:
- i. _____
- ii. _____
- iii. _____

19. State clearly the relief you seek in filing this application:

Sentence Reduction

New Trial

20. Are you now under sentence from any other court that you have not challenged?

NO

STATE OF SOUTH CAROLINA)

County of _____)

VERIFICATION

I, Holly Jo Thompson, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Holly Jo Thompson

SWORN to and subscribed before me this 15
day of August, 2018.

Sandra S. Dodgen (L.S.)
Notary Public

My Commission Expires: 10-30-2019

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Holly Jo Thompson, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Holly Jo Thompson
Applicant

SWORN or affirmed to and subscribed before me this

15 day of August, 2018.

Sandra S. Dodder
Notary Public

My Commission Expires: 10-30-2019

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	IN THE FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	
Holly Jo Thompson, #299956,	)	Case No.: 2018-CP-40-4637
	)	
Applicant,	)	
	)	RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

Respondent, making its Return to the Application for Post-Conviction Relief (PCR) filed by Holly Jo Thompson (Applicant) on August 29, 2016, would respectfully show this Court:

I. Procedural History

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. In April 2014, the Richland County Grand Jury indicted Applicant for murder (2014-GS-40-2072). Alicia Goode, Robert Bank, and J. Rhodes Bailey, Esquires, represented Applicant. Assistant Solicitors Luck Campbell, Meghan Walker, and Laura Gregg, Esquires, prosecuted the case on behalf of the State. On February 16-19, 2016, Applicant proceeded to trial before the Honorable Robert E. Hood and a jury. The jury found Applicant guilty as indicted. Judge Hood sentenced Applicant to imprisonment for forty-five years.

Applicant filed a timely notice of appeal. Katherine Haggard Hudgins, Esquire (Appellate Counsel), of the South Carolina Office of Indigent Defense - Appellate Defense Division perfected the appeal. Appellate Counsel raised three issues: (1) whether the trial court erred in refusing to instruction the jury on voluntary manslaughter; (2) whether the State was required to provide Applicant with juror rap sheets; and (3) whether the trial court should have allowed recross

examination of a State's witness. The South Carolina Court of Appeals affirmed Applicant's conviction on June 13, 2018. State v. Thompson, Op. No. 2018-UP-258 (S.C. Ct. App. filed June 13, 2018). The remittitur was returned to the circuit court on June 29, 2018.

Attached to this Return and incorporated by reference are the records of the Richland County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, the trial transcript, Applicant's appellate records, and the application. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II. Summary of Facts Adduced at Trial

A man worried about his friend walked into an unexpected and bloody scene. At trial, Odell Middleton (Middleton) testified he found the body of James Solomon (Solomon) inside the victim's mobile home in Hopkins on January 27, 2014.¹ (R.p.48, line 24-p.49, line 2; p.52, line 13-p.55, line 5). Middleton saw the victim on the floor, blood around his head, and broken glass near the body. (R.p.54, line 23-p.55, line 5; p.56, lines 17-18). Further, Middleton testified he noticed signs of a possible struggle, including two rugs in the hallway which were "tangled up and kicked up." (R.p.55, lines 18-25). Middleton ran out of his friend's home and called 911. (R.p.55, line 7).

Evidence collected from the victim's home helped investigators narrow down their list of suspects. Crime scene technicians swabbed the bloodstains from the knife blade found in the bedroom, the blood from the bedroom, hallway, and living room, and collected the sheets from the bedroom. (R.p.139, lines 3-24; p.215, line 24-p.216, line 3; p.220, lines 2-11). The DNA from the blood matched the victim—from the knife, the sheets, the bedroom floor and door, the hallway

¹ The victim was found three days after his death. (R.pp.728-27).

walls and floor, and the living room. (R.p.321, lines 4-12; p.332, line 18-p.333, line 7; p.334, lines 17-23; p.335, line 23-p.336, line 19; p.337, lines 4-8; p.347, lines 17-24). Further, a technician collected the broken glass at the scene and noticed a possible palm print in the dried blood. (R.p.123, line 24-p.124, line 6). The print matched Applicant. (R.p.309, lines 15-18; p.310, lines 9-20; p.311, lines 3-13).

Applicant never denied she was at the victim's home on the night of his death, but told the deputy who arrested her that she did not kill him. (R.p.579, lines 3-14). However, Applicant changed her story after learning what evidence investigators had against her, such as the palm print, and told investigators she killed the victim in self-defense. (R.p.580, lines 17-25; p.588, line 13-p.589, line 16).

At trial, Applicant testified she was a prostitute and James Solomon (Solomon) was one of her clients who paid for sex with money or drugs. (R.p.472, line 22-p.473, line 13; p.474, lines 3-10). Applicant stated she and the victim smoked crack cocaine together on the night of his death and tried to have sex in the living room, but when Solomon could not perform, he got angry. (R.p.477, line 21-p.478, line 13; p.479, line 18-p.480, line 1). Applicant testified they tried to have sex again later in the bedroom; however, the victim still could not perform so Applicant went to the living room to get dressed and the victim followed her. (R.p.480, line 21-p.481, line 6). Applicant testified Solomon had a small knife that he swung at her and cut her right hand, so she grabbed a glass vase to defend herself. (R.p.481, lines 7-19). Applicant stated the victim swung the knife at her again as she tried to grab her crack pipe and clothes to leave so she hit him with the vase. (R.p.482, lines 15-19; p.486, lines 2-13). Applicant testified she and the victim fell to the floor and the vase broke, and she thought she hit him five or six times. (R.p.486, line 19-p.487, line 4). Applicant testified she got up and the victim remained on the floor, threatening her, as she ran out the front door. (R.p.487, lines 5-22). Applicant admitted she did not call 911 or otherwise

call for help, not even when she later learned James Solomon had died. (R.p.490, lines 18-22; p.493, lines 15-17).

III. Allegations

In her application for post-conviction relief, Applicant alleges she is being held in custody unlawfully for the following reasons:

1. “Ineffective Assistance of Counsel,” in that:
 - a. Attorney refused to call character witnesses;
 - b. Attorney did not honor Applicant’s request for a mental health evaluation.

IV. Response to Allegations of Ineffective Assistance of Counsel

Respondent submits Applicant’s allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in her application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove “counsel’s conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result.” Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland v. Washington, 466 U.S. 668. First, Applicant must prove counsel’s performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney’s performance by its “reasonableness under prevailing professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have rendered adequate assistance

and made all significant decisions in the exercise of reasonable professional judgment.” Id. (citing Strickland, 466 U.S. at 690). Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel’s deficient performance must have prejudiced Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Id. at 117-18, 386 S.E.2d at 625.

Respondent submits Applicant can satisfy neither requirement of the Strickland test. However, the allegations of ineffective assistance of counsel probably raise questions of fact the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

V. Amendment to be Plead in Advance of Evidentiary Hearing

Applicant must specify any claims she intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRCF. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only person authorized to file amendments to this application. See Rule 11, SCRCF. Pro se filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRCF.

VI. All Other Allegations

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this Return is hereby denied.

VII. Request for Evidentiary Hearing

WHEREFORE, Respondent requests that an evidentiary hearing be held on the claims of ineffective assistance of trial counsel.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

LINDSEY A. MCCALLISTER
Assistant Attorney General

By: 

ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

1/10, 2019

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
	)	
	)	2018-CP-40-4637
	)	
HOLLY JO THOMPSON, #299956	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Jonathan D Waller
Waller Law Group, LLC
1116 Blanding Street
Suite 2B
Columbia, South Carolina 29201

DATED this the 10th day of January, 2019.


Carmen A. Nord, Legal Assistant
For Respondent

1 STATE OF SOUTH CAROLINA

2 COURT OF COMMON PLEAS

3 COUNTY OF RICHLAND

4 -----x

5 HOLLY JO THOMPSON,)

6 Applicant,)

7 vs.)

8 STATE OF SOUTH CAROLINA,)

9 Defendant.)

Transcript of Record
2018-CP-40-04637

10 -----x

11 October 29, 2019

12 POST-CONVICTION RELIEF HEARING

13 B E F O R E:

14 The Honorable Brian M. Gibbons, Presiding Judge

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

16 Jonathan Waller, Esq.
Attorney for the Applicant

17 Samuel Key, Esq.
Attorney for the Defendant

24 Court Reporter: Bonnie Kelly (retired)

25 Transcribed by: Bobbi Fisher, RPR

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I N D E X

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E X H I B I T S

(None)

P R O C E E D I N G S

(Whereupon, the following proceedings started at 9:54 a.m.)

THE COURT: Mr. Key, you can call the case.

MR. KEY: May it please the Court. This is Holly Jo Thompson versus the State of South Carolina, Case No. 2018-CP-40-4637. Ms. Thompson filed this PCR application on August 29th, 2016. She is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court.

In April of 2014, the Richland County grand jury indicted Ms. Thompson for murder. She was represented at trial by Alicia Goode, Robert Bank, and J. Rhodes Bailey. And the assistant solicitor is Luck Campbell, Megan Walker, and Laura Gregg, who prosecuted the case.

On February 16th through 19th, 2016, she proceeded to a jury trial before the Honorable Robert E. Hood. The jury convicted Applicant as indicted, and the judge sentenced her to serve 45 years in prison.

She filed a timely notice of appeal and was represented on appeal by appellate defender Kathrine Hudgins. There were three issues raised on her direct appeal. First, whether the trial court erred in refusing to instruct the jury on voluntary manslaughter; second, whether the State was required to provide Applicant with juror RAP sheets; and, third, whether the trial court should have allowed recross of a

1 State's witnesses.

2 The Court of Appeals affirmed her conviction on June
3 13th, 2018, and the case was remitted back to the circuit
4 court on June 29th, 2018.

5 In her PCR application, she has alleged ineffective
6 assistance of counsel in that her attorney refused to call
7 character witnesses and her attorney did not honor her request
8 for a mental health evaluation.

9 Ms. Thompson is present today and represented by
10 Mr. Jonathan Waller.

11 THE COURT: All right, Mr. Waller. Are you ready to
12 proceed?

13 MR. WALLER: I am, Your Honor.

14 THE COURT: All right. Do you want to give me, like, a
15 brief opening statement or kind of tell me what your client
16 seeks and why and then call a witness?

17 MR. WALLER: Sure. And just to clarify, I think one
18 thing Mr. Key said, the allegation -- one of the concerns on
19 appeal was that a charge of involuntary manslaughter, not
20 voluntary.

21 THE COURT: Okay.

22 MR. WALLER: Judge, Ms. Thompson proceeded to trial, and,
23 Judge, this was a pure self-defense case. There was no
24 question that she struck the blow that killed the victim in
25 this case. Judge, she -- her and her attorneys obviously met

1 and they were alleging that they didn't properly investigate
2 and prepare to sustain that charge of self-defense.

3 I have spoken with Mr. Key on the -- you know, on several
4 times -- several occasions about the case and the allegations.
5 I don't think that's any sort of surprise to him. And we are
6 ready to proceed at this time.

7 THE COURT: All right. You may call your witness.

8 MR. WALLER: Thank you, Your Honor. We call Holly Jo
9 Thompson.

10 THE COURT: All right, ma'am.

11 HOLLY JO THOMPSON,
12 the Applicant, after having been duly sworn, was examined and
13 testified to as follows:

14 THE CLERK: Please have a state and state your full name
15 for the record.

16 THE DEFENDANT: Holly Jo Thompson.

17 COURT REPORTER: Can you spell your first name?

18 THE DEFENDANT: H-o-l-l-y J-o.

19 THE COURT: All right.

20 MR. WALLER: Thank you, Your Honor. May it please the
21 Court.

22 THE COURT: Yes, sir.

23 DIRECT EXAMINATION

24 BY MR. WALLER:

25 Q Good morning, Ms. Thompson. How are you today?

1 **A** I'm nervous.

2 **Q** You're a little nervous. Okay.

3 This is not the first time you have testified in court,
4 is it?

5 **A** No, sir.

6 **Q** Okay. All right. Ms. Thompson, I want to take you back
7 to when you were first arrested. Do you recall that?

8 **A** Yes, sir.

9 **Q** It was a couple of days after this incident took place.
10 Three or four days.

11 **A** Yes, sir.

12 **Q** When you were arrested, did you get a lawyer?

13 **A** Yes, I did.

14 **Q** Okay. When -- about how long after you were arrested did
15 you get a lawyer?

16 **A** I'm not really sure. Maybe a week or two.

17 **Q** Okay. And when you were first arrested, do you recall
18 what you were charged with?

19 **A** Murder.

20 **Q** Okay. So it's been the murder charge by itself the whole
21 time?

22 **A** Yes, sir.

23 **Q** Okay. Who was the lawyer that you -- were you appointed
24 a lawyer or did you hire one?

25 **A** I was appointed a lawyer.

1 Q Okay. Who was appointed to represent you?

2 A The first lawyer was Stephen Krzyston.

3 Q Okay. And how long did Mr. Krzyston represent you?

4 A Not very long.

5 Q Okay. Who came after Mr. Krzyston?

6 A Mr. Robert Bank.

7 Q Okay. And while Mr. Krzyston was representing you, had
8 you met with him before?

9 A I met with him, like, twice, I think.

10 Q Do you recall what y'all talked about?

11 A Mainly what happened that night, the night I was accused
12 of killing this man.

13 Q Okay. Do you know if you had been -- if he, as your
14 lawyer, had been provided with any discovery or anything at
15 that time?

16 A I don't know.

17 Q Had you seen any paperwork or anything?

18 A I think there was some paperwork.

19 Q Okay. Was it complete or do you know?

20 A I don't know.

21 Q Okay. At some point, Mr. Krzyston switched out with
22 Mr. Bank; is that right?

23 A Yes, sir.

24 Q Okay. And they both were public defenders at the time;
25 is that right?

1 **A** Yes.

2 **Q** All right. When Mr. Bank started representing you, what
3 did y'all talk about with him when you first met?

4 **A** Basically we talked about what happened that night, how
5 things went down. Just basics of the case.

6 **Q** Okay.

7 **A** Different aspects of the case.

8 **Q** Okay. There was some DNA testing done in your case.

9 **A** Yes, sir.

10 **Q** There was some fingerprints or a handprint analysis done?

11 **A** Yes, sir.

12 **Q** Would you have had all this stuff at the beginning at the
13 discovery? Did you have that stuff then or did that take some
14 time?

15 **A** That took some time to come, if I'm not mistaken.

16 **Q** Okay. There were some jail telephone calls as well; is
17 that right?

18 **A** Yes, sir.

19 **Q** Those, obviously, didn't come through at the beginning.

20 **A** No.

21 **Q** When you and Mr. Bank started meeting about your case,
22 what information did you give him?

23 **A** I mean, basically, I could only tell him my side of what
24 happened that night, but, you know, it was -- he would ask
25 questions and I would ask them to my best ability, the

1 questions. It's been five and a half years since all this
2 began, so, you know, it's -- but, I mean, he would ask me
3 questions, and I truthfully answered him. That's...

4 Q Okay. And so just so the judge understands -- and he has
5 a copy of the transcript and several other documents, but just
6 so he understands, briefly, you and your attorney's theory of
7 the case was that you had been attacked and you were defending
8 yourself.

9 A Yes, sir.

10 Q And you struck the victim in the head with a vase.

11 A Yes, sir.

12 Q And that's what ultimately led to his death. And you and
13 your attorneys allege that you were defending yourself. The
14 State, obviously, thought differently. But that's kind of the
15 long and short of the case; is that right?

16 A Basically it was exactly that. I was defending myself
17 from a man swinging a knife at me.

18 Q Right.

19 A And, you know, my story never changed. And it still has
20 never changed.

21 Q Okay. When you and Mr. Bank -- did you get some other
22 attorneys as the case moved along?

23 A Yes, sir. Alicia Goode and Rhodes Bailey became involved
24 in my case. So I had three lawyers at that point.

25 Q Was that as it got closer to trial, do you know or --

1 **A** Yes, sir.

2 **Q** -- was that the whole time?

3 **A** No, it was closer -- I think it was closer to trial.

4 **Q** Okay. So it was you and Mr. Bank for the long run -- for
5 part of it; is that right?

6 **A** Yes, sir.

7 **Q** Okay. What -- you gave Mr. Banks the information. You
8 told him what happened that night. Did you give him any
9 witnesses or anybody you wanted him to speak with?

10 **A** There was Moses Warren, who was my boyfriend at the time,
11 I guess you could say.

12 COURT REPORTER: Warren Moses?

13 THE DEFENDANT: Moses.

14 **A** There was Mike, who I lived with.

15 BY MR. WALLER:

16 **Q** And they both testified; is that correct?

17 **A** Yes, sir.

18 **Q** They testified for the State.

19 **A** Yes, sir.

20 **Q** Okay. Anybody else that you asked Mr. Bank to talk to or
21 any more information you could give him?

22 **A** There was Amy Norris. I'm not quite sure if there was
23 anyone else.

24 **Q** Okay. And one question I have -- and you may or may not
25 know the answer to this -- there was some time between when

1 the victim died and when he was found. Your testimony during
2 the trial was that you ran out the front door and that -- when
3 he was -- it came out that, when he was discovered, the back
4 door was open.

5 **A** Yes, sir.

6 **Q** Did you have -- did you talk to Mr. Bank about that, the
7 differences?

8 **A** Yes. Yes.

9 **Q** What did y'all talk about?

10 **A** The thing with James's back door -- James was the man I'm
11 accused of murdering -- James had a very large, very mean dog
12 in his backyard.

13 **Q** Okay.

14 **A** Okay? I don't do dogs like that. I don't like dogs like
15 that. So that back door should not have been open unless
16 someone else was in that house that night.

17 **Q** Okay. Or at some point between --

18 **A** Between Friday night and Monday when he was found, that
19 door shouldn't have been open.

20 **Q** When you were at the house, I mean, did you have anything
21 to do with the back door?

22 **A** No.

23 **Q** Did you and Mr. Bank talk about any of this?

24 **A** Yes, we did.

25 **Q** Did you give him any information or did you have any

1 information about what happened from the time you left to the
2 time --

3 **A** No.

4 **Q** Okay. You didn't give him any or you didn't have any?

5 **A** I didn't have any.

6 **Q** Okay. Obviously, we came to y'all's theory that you were
7 acting in self-defense.

8 **A** Yes, sir.

9 **Q** What did you and Mr. Bank talk about, about how y'all
10 were going to prepare to use that in your defense at the
11 trial?

12 **A** He could only really go by my word that I was fighting
13 with the man. They had taken pictures of places where I had
14 been cut or scratched with the knife that James was swinging
15 at me. And so I told him about that.

16 **Q** Okay. The individuals that you gave him names, do you
17 know if he talked to any of them or attempted to talk to any
18 of them?

19 **A** I think he did talk to them.

20 **Q** Okay. When y'all -- when Ms. Goode and Mr. Bailey got
21 involved, what did the four of y'all talk in preparation for
22 your trial?

23 **A** We talked about the whole case.

24 **Q** Okay.

25 **A** From -- I gave them my side, from the time this whole

1 thing started, February -- January 28th of -- 24th of 2015 all
2 the way up to my trial, which was in '16. They had questions.
3 I had answers that, if I had the answer, I would give it to
4 them. If I didn't have the answer, I'd tell them I don't
5 know.

6 **Q** Okay.

7 **A** We talked about every aspect of the case.

8 **Q** Did y'all -- what did y'all talk about regarding the
9 State's evidence that there was blood and other evidence
10 throughout the house, not just in the hallway where he
11 ultimately passed away?

12 **A** They asked me about that, but as far as the bedroom, we
13 weren't in there. The knife that was found in the bedroom
14 that was bent was the same knife that was in the living room.

15 We talked about the screwdriver in the floor. It was not
16 there at the back door.

17 **Q** Okay.

18 **A** We talked about the knives in the kitchen that were there
19 that were not supposed -- that weren't there when I was there.
20 And then the one piece of evidence the State had against me,
21 which was the vase neck of -- the neck of the vase, which had
22 my -- which had a bloody palm print on it, which is my palm
23 print.

24 My shoes were tested with my blood on them. I don't
25 remember if they found my blood anywhere else in the living

1 room or not. It's been a while since I have gone through
2 everything so I don't really remember.

3 Q Okay. You gave statements to law enforcement or
4 technically, a couple of statements to law enforcement, all in
5 the same day; is that right?

6 A Yes, sir.

7 Q Okay. Did y'all talk about your statements and the
8 circumstances under which they were given?

9 A Yes.

10 Q Okay. Did y'all talk about -- the State alleged that the
11 victim had been stabbed in addition -- stabbed once in
12 addition to being hit with the vase.

13 A Yes, sir.

14 Q Did y'all talk about that? That wasn't part of your
15 statement, was it?

16 A No.

17 Q Okay. Did you have any information you could offer your
18 attorneys about him being stabbed?

19 A No.

20 Q Okay. When you're getting ready to go to trial, what did
21 you understand about the procedures of trial, how it would go,
22 whose responsibility is for what? What did y'all talk about?

23 A I mean, we -- there was one thing I just thought about it
24 in talking that we had talked about, and that was James's feet
25 was cut up on the bottom and -- when they did the autopsy.

1 And I asked the question, Well, if his feet were cut up, why
2 didn't he call 9-1-1? Because he had to have been up after I
3 left for his feet to be cut with glass.

4 Q Okay. So you raised the question of, if the bottom of
5 his feet were cut, obviously, he was standing on some glass
6 or --

7 A Yes, sir.

8 Q -- somehow glass would get on the bottom of his feet.
9 Did you raise that to Mr. Bank and your other attorneys?

10 A Yes, sir.

11 Q Were you able to get an answer or --

12 A We couldn't figure it out because of the State's
13 paperwork and -- I don't know.

14 Q Okay. Once the trial started, do you -- when you got
15 there, did you understand what the State would have to prove
16 in order for you to be found guilty?

17 A Yes, sir.

18 Q Okay. Did y'all talk about your constitutional rights in
19 asking for a trial?

20 A Yes.

21 Q Had you talked about your right to testify or not to
22 testify?

23 A Yes.

24 Q How did it come to be that you testified?

25 A Well, I think it was mostly on my part because I didn't

1 want to be looked at as a murderer.

2 Q Okay.

3 A I'm not the best person in the world, but, you know,
4 being hit with murder charges is a big deal.

5 Q Sure. Okay.

6 A So...

7 Q Okay.

8 A I wanted my side heard.

9 Q Okay. Great. Did you have an understanding of what the
10 State would have to prove in order to disprove your
11 self-defense claim? Did y'all talk about the way a
12 self-defense claim works?

13 A We may have. I don't remember.

14 Q Okay. You mentioned in your application that you had
15 requested some character witnesses to be called or one of the
16 things you're saying that went wrong was no character
17 witnesses were called on your behalf. Who were you talking
18 about specifically?

19 A Dorothy Williams, I had known her for -- I have known her
20 for 28 years now. She helped raise my kids. She knew me
21 quite well.

22 Q Would she have had any direct knowledge about the
23 incident or anything like that?

24 A No, sir.

25 Q You also asked about a mental -- or you mentioned a

1 mental health evaluation.

2 **A** Yes, sir.

3 **Q** What -- why do you think that would have helped you?

4 **A** I had been diagnosed with several mental illnesses. And
5 they don't seem to have me on the right medicines or treating
6 me right for them. And at the time this happened, I was not
7 on my medication, for one. And, two, you know, no one has
8 ever really got my medicines right. So I self-medicate with
9 street drugs.

10 **Q** Okay. And that was a factor in the incident; right?

11 **A** Yes, there was.

12 **Q** There was crack cocaine use.

13 **A** Yes, because James and I were both smoking crack, and it
14 was a trick thing, to be honest with you.

15 **Q** Okay. All right. Did you -- in discussing self-defense
16 with your attorneys, did y'all discuss seeking immunity from
17 the charges?

18 **A** No, sir.

19 **Q** Is that something that ever came up at all?

20 **A** No, sir, not that I remember.

21 **Q** Would you have known that existed to ask them about?

22 **A** No.

23 **Q** Ms. Thompson, I think I have asked you all the questions
24 I have for you. Is there anything you think I have left out
25 that Judge Gibbons needs to be aware of, Mr. Bank or Ms. Goode

1 or Mr. Bailey's representation of you?

2 **A** No, sir, I think that's it.

3 **Q** Please answer any questions Mr. Key has.

4 **A** Yes, sir.

5 THE COURT: All right. Mr. Key, your witness.

6 CROSS-EXAMINATION

7 BY MR. KEY:

8 **Q** Ms. Thompson, did you ask your attorneys to look into
9 Dorothy Williams as a character witness?

10 **A** Not specifically. After I mentioned -- I don't remember
11 saying anything else about it because I was too busy trying to
12 recall and replay what happened that night because I just
13 didn't understand how I could -- how this happened.

14 **Q** So did you ever give the name of Dorothy Williams to your
15 attorneys?

16 **A** I may have. I'm not sure.

17 **Q** You may have. Okay.

18 She had nothing to do with the case.

19 **A** No, sir.

20 **Q** That would have been just for a character witness.

21 **A** Yes, sir.

22 **Q** Okay. Did you ever ask your attorneys for a mental
23 health evaluation?

24 **A** Yes, I did.

25 **Q** Okay. And what was their response?

1 **A** I remember we talked about it, but I don't remember
2 discussing it after that.

3 **Q** Okay. But you did bring that to their attention.

4 **A** Yes.

5 **Q** Okay. Now, you stated you and your attorneys did not
6 talk about an immunity hearing.

7 **A** No, sir, not that I remember.

8 **Q** Okay. And you -- but you told them your version of
9 events that happened that night?

10 **A** Yes, sir.

11 **Q** And you testified at trial --

12 **A** Yes, sir.

13 **Q** -- to those version of events?

14 **A** Yes, sir.

15 **Q** Okay. At any point, did the victim ask you to leave?
16 Did you testify that he --

17 **A** No, he never asked me to leave.

18 **Q** Okay. Did he get angry?

19 **A** Yes, he was angry. He thought I stole his crack and he
20 got mad and started swinging a knife, cussing me out, calling
21 me everything but a child of God, and beyond that, we fought.

22 **Q** And you testified to this at trial.

23 **A** Yes, sir, I did.

24 **Q** You said the DNA testing and fingerprint evidence came
25 later. Did you and your attorneys go over that evidence

1 before trial?

2 **A** Yes, sir. Yes, we did.

3 **Q** Okay. And you asked your attorneys to investigate into
4 Moses Warren?

5 **A** Michael (indiscernible) -- no. They were -- they
6 testified in my case.

7 **Q** Okay. They did testify.

8 **A** Yes. They testified for the prosecutor.

9 **Q** Okay. And your attorneys had a chance to cross-examine
10 them?

11 **A** Yes, sir.

12 **Q** Okay. And then Amy Norris, did she testify at trial?

13 **A** Yes.

14 **Q** And you were aware that the State alleged that the victim
15 had stab wounds also?

16 **A** Yes, sir.

17 **Q** Okay. And you spoke with your attorneys about that?

18 **A** Yes, sir.

19 **Q** But y'all really couldn't come up with anything against
20 that.

21 **A** The only thing we could come up with, someone else was in
22 that house after I left that Friday night.

23 **Q** Okay. So y'all did come up with that.

24 **A** (Indiscernible) what I (indiscernible).

25 **Q** Right. Right. And you told your attorneys that?

1 **A** Yes. Someone else had to have been in that house
2 because, like I said, that back door was open, that
3 screwdriver that was for that back door was in the floor. I
4 didn't mess with that man's backyard and I didn't mess with
5 that man's back door.

6 **Q** Okay. And it was your testimony that you did not stab
7 him.

8 **A** Exactly.

9 **Q** Okay. And you testified to that at trial?

10 **A** Yes, sir.

11 MR. KEY: No further questions, Your Honor.

12 THE COURT: All right. Redirect?

13 MR. WALLER: Just very briefly.

14 REDIRECT EXAMINATION

15 BY MR. WALLER:

16 **Q** Ms. Thompson, you never denied to hitting the victim --

17 **A** No, sir.

18 **Q** -- with a vase, did you?

19 **A** No, sir, I never did.

20 **Q** Your testimony was just that you didn't know that you
21 killed him. When you left the house, he was still alive.

22 **A** Yeah. Richland County Sheriff's Department was saying
23 that I hit him so much that it killed him due to blunt force
24 trauma to the head, but, as I said, there's no way that could
25 have happened if he was up walking around with his feet cut up

1 with glass.

2 Q Right.

3 A I don't understand how I was accused of murder with that.
4 I just don't understand it.

5 Q Thank you. Nothing further.

6 THE COURT: All right. Thank you, ma'am. You may step
7 down.

8 All right. You can call your next witness.

9 MR. WALLER: Thank you, Your Honor. The applicant would
10 call Robert Bank.

11 THE COURT: All right.

12 ROBERT BANK,

13 the witness, after having been duly sworn, was examined and
14 testified to as follows:

15 DIRECT EXAMINATION

16 BY MR. WALLER:

17 Q Good morning, Mr. Bank.

18 A Good morning.

19 Q Mr. Bank, how did you come to represent Holly Thompson?

20 A I worked at the Richland County Public Defender's Office.
21 Stephen Krzyston, as she said, was originally appointed to
22 this case. About a year before trial, Mr. Krzyston went on
23 administrative leave, so the case got transferred to me and
24 then I represented her for the next 11 months or so until
25 trial.

1 **Q** Okay. If you could, just so the judge has an
2 understanding, can you give him the brief allegations in the
3 case from your perspective?

4 **A** Sure. Well, Ms. Thompson was an acquaintance of the
5 decedent in the case. He would have her over -- and this
6 wasn't the first time, but he would have her over for engaging
7 in drug use and prostitution and drinking. He lived in a
8 trailer down the street from a house that she resided at with
9 another boyfriend.

10 There was a meeting that she went to the home. He became
11 very agitated, accusing Ms. Thompson of stealing her crack
12 cocaine -- or, excuse me, of stealing his crack cocaine,
13 retrieved a weapon and attacked Ms. Thompson, and she defended
14 herself by grabbing a glass vase and hitting him multiple
15 times with it. My memory is that the cause of death was
16 actually loss of blood.

17 According to Ms. Thompson, he was still alive when she
18 ran out the front door back to her residence. The autopsy
19 pathologist generally agreed that he would have still been
20 alive for some period of time. We theorize that he may have
21 been able to actually walk around because he did have cuts on
22 the bottom of his feet.

23 Ms. Thompson was located and interviewed by the police
24 several days later. It took them a couple of days to find the
25 body. She pretty immediately gave a statement essentially

1 giving the scenario of what I have just said.

2 Q Okay. And you said that this wasn't a first-time thing.
3 I think her testimony was actually she had been there over a
4 hundred times.

5 A Yeah. That wouldn't surprise me.

6 Q The vase in question also was filled with urine; is that
7 right?

8 A That's right. So part of the story and what we talked
9 about a lot in trial was the decedent was kind of so out of
10 his wits that day and so angry that day and so high on drugs
11 that day imperatively that he would actually pee -- urinate in
12 the vase in his living room so he didn't have to go to the
13 restroom and leave the living room unattended to with
14 Ms. Thompson sitting there.

15 There was a toxicology report that confirmed that. He
16 was a rather large and strong man for his age as well.

17 Q He was just over 70; is that right?

18 A That's right.

19 Q He was a welder who made grills out of 55-gallon drums;
20 is that right?

21 A Right. His nickname was "The Grill Man."

22 Q You testified a second ago that Ms. Thompson gave a
23 statement that pretty much is along the lines of what you
24 testified to. Obviously, y'all's defense was self-defense.

25 A That's correct.

1 Q What did you and Ms. Thompson talk about and what did
2 y'all do to prepare -- prepare that self-defense?

3 A Well, I think I agree with a lot of what Ms. Thompson
4 said. I mean, we met a lot at the jail. We talked a lot
5 about what she remembered that night. I always felt that she
6 was, you know, honest. If she knew an answer, she'd answer
7 it. If she didn't know the answer, then there were some that
8 not anybody would know. She didn't say she didn't know the
9 answer.

10 We had Mr. Bailey and Ms. Goode come in probably no more
11 than two months before trial, kind of leading up to it. The
12 two of them also would meet with us. We would talk about the
13 State's evidence. We worked to get that on her testimony,
14 preparing her for direct and cross-examination.

15 Q Okay. When Ms. Goode and Mr. Bailey came, you know, into
16 the case, were y'all still formulating your defense or had it
17 already been -- were you just fine-tuning it at that point or
18 when -- what was the involvement in the preparation, I guess?

19 A We had committed to self-defense pretty early on in the
20 case. Mr. Krzyston had committed to self-defense during his
21 time of representing her, and I agreed with that approach.

22 By the time Mr. Bailey and Ms. Goode got involved, I
23 think they were just kind of helping us with the typical kind
24 of work that comes along with preparing a case right before
25 the trial, taking in the State's last-minute discovery, trying

1 to make sure every witness we wanted to talk to was talked to
2 and preparing for various legal motions or cross-examinations
3 that might come up.

4 Q Okay. Did you and Ms. Thompson or you and the other
5 attorneys and Ms. Thompson ever discuss potentially seeking
6 immunity under the Protections of Persons and Property Act?

7 A I don't recall having specific discussion with
8 Ms. Thompson about that. I reviewed my notes before I came in
9 today, and I didn't see anything in my notes about that
10 either.

11 Q Okay. Did you do any research or look into whether it
12 would have been appropriate to ask for that in this case?

13 A I don't remember anything specifically other than just my
14 general knowledge of the 30(b) (ph) statute in South Carolina.
15 My first concern would probably be whether it was a place that
16 she had to right to be, but I think it would have been. This
17 was a place that she was invited into not only this night but
18 regularly. So I think it's definitely something that could
19 have been explored.

20 Q Now, wouldn't you -- your understanding is that wouldn't
21 have precluded you from claiming self-defense at trial?

22 A It absolutely would not have.

23 Q All right. What was your understanding of -- or what was
24 your explanation that she received as far as the victim being
25 stabbed in addition to being hit with the vase?

1 **A** If my memory serves me correctly -- and I reviewed some
2 of the testimony in the transcript before coming up here but
3 not that specifically. I think that some of his wounds or
4 stab wounds may have happened from shards of the vase rather
5 than an actual knife going into the decedent.

6 **Q** Because there wasn't much, you know, actual testimony.
7 It was just kind of referred to in different areas. Is that
8 your recollection?

9 **A** Yes, sir.

10 **Q** Okay. Mostly an argument?

11 **A** Yes, sir.

12 **Q** The State introduced an expert in blood spatter?

13 **A** Yes, sir.

14 **Q** Did y'all have any advanced notice that that was going to
15 happen or when did you -- when were you aware that a blood
16 spatter expert was going to be testifying?

17 **A** Very last minute. Maybe not the day before but in the
18 week or two leading up to it, Ms. Campbell let us know that
19 she planned to use some type of expert in blood spatter. We
20 immediately, you know, we have never been given a report on
21 that. She said, "Well, there is no report." You can, you
22 know, have a conversation and call him and I'll put you in
23 contact with him, but this is how we handle all cases. We
24 just might have a law enforcement officer we were going to use
25 anyway to comment on the blood spatter.

1 Q Okay. And what -- to your recollection, what did they
2 use that expert to try to show?

3 A I think that they tried to probably -- not probably but,
4 if my memory serves me correctly, they were trying to -- their
5 best to put Peggy [verbatim] behind the decedent. They were
6 basically trying to combat our self-defense argument by saying
7 that Ms. Thompson was actually swinging the vase at the back
8 of him when he was turned around. And I think, to the best of
9 my recollection, they used that expert to try to basically put
10 people in certain places in the scene to make it -- enhance
11 that defense to our defense.

12 Q They also tried to kind of extend the location of where
13 the altercation took place from the hallway to other rooms in
14 the house; is that right?

15 A I believe that's right. I believe that was in an effort
16 to try to show that there were inconsistencies with the
17 physical evidence and what Ms. Thompson said, basically to
18 take away the credibility of her recollection.

19 Q Did you and Ms. Thompson ever have any conversations
20 about asking for a continuance based on the late notice of
21 that expert?

22 A I don't believe I talked to Ms. Thompson about that.
23 Myself and Ms. Goode and Mr. Bailey, I believe, spoke about it
24 when it first came to our attention, and we came to the
25 conclusion that we thought that we would be prepared to deal

1 with it. I mean, we have talked a lot in hindsight how it may
2 have been more effective to ask for a continuance or have
3 gotten our own expert.

4 Q Okay. When did you get the jail phone calls in this
5 case?

6 A I don't recall. That typically is last minute in terms
7 of Ms. Campbell's practices.

8 Q Do you recall how many there were?

9 A I don't.

10 Q Okay. Is it something that -- would you have had time to
11 review all of them before the trial started?

12 A That's oftentimes a problem. And I don't remember
13 exactly how many calls there were, but that can oftentimes be
14 a problem. Yes, sir, it can.

15 Q I guess what I'm asking, was it a situation where you got
16 100 hours of phone calls the day before trial where it's
17 physically impossible, or was that the case?

18 A I don't remember it being that impossible.
19 Ms. (Indiscernible) got a little angry with me, but if you
20 call her as a witness, she usually does pretty good by going
21 through those jail calls.

22 Q Okay. All right.

23 MR. WALLER: Beg the Court's indulgence.

24 THE COURT: Yeah.

25 (Pause in the proceedings.)

1 BY MR. WALLER:

2 Q Mr. Bank, obviously, the jury ultimately did not believe
3 Ms. Thompson's theory of self-defense. Is there anything that
4 you don't believe you had adequate time to prepare for the
5 trial because of some of the late discovery being provided?

6 A I think the blood spatter is a good example of something
7 that I didn't have extra time to absolutely look at those.

8 Q Okay. Is there anything that Ms. Thompson was able to
9 provide you any information or witnesses that you were not
10 able to call on?

11 A No, I don't believe so. I believe we talked to both
12 Mrs. and Mr. Richardson. We had to hire an investigator.

13 Q Okay. Thank you, Mr. Bank. I have no further questions.

14 THE COURT: Mr. Key?

15 CROSS-EXAMINATION

16 BY MR. KEY:

17 Q Mr. Bank, you said you represented Ms. Thompson for
18 around 11 months prior to trial?

19 A I believe that's accurate, yes.

20 Q And then two months -- around two months before trial,
21 Ms. Goode and Mr. Bailey came to help with trial preparation?

22 A Yes, sir.

23 Q Okay. Do you recall how many times you met with
24 Ms. Thompson?

25 A I do have my notes but at least 10 or 15 times.

1 Q Do you feel like you met with her enough to prepare the
2 case for trial?

3 A Yes, sir. That wasn't an issue.

4 Q And did you show her all of the discovery of her case?

5 A As far as I know, yes, sir.

6 Q The blood spatter expert, did you handle that witness?

7 A I don't believe I did.

8 Q Okay. But you handled the closing argument in this case?

9 A Yes, sir.

10 Q Were you able to argue in closing that the blood spatter
11 expert actually helped Ms. Thompson's defense?

12 A I believe we were able to use some things from that
13 testimony to our benefit, just as the State was, yes, sir.

14 Q Okay. Would that be that he testified that the blood can
15 be misleading?

16 A I don't remember that specifically but --

17 Q But if it's in the record?

18 A Yes, sir. I don't dispute anything in the record.

19 Q Okay. Now, you testified on direct that y'all's theory
20 was he got these cuts from the glass vase.

21 A I believe that's correct.

22 Q Okay. And, again, you were able to argue that, in
23 closing arguments, that the cuts were from the glass vase?

24 A Yes, sir.

25 Q Okay. And also on the bottom of the -- the cuts on the

1 bottom of his feet?

2 **A** Yes, sir.

3 **Q** So you were able to argue that he was still alive when
4 Holly left?

5 **A** Yes, sir.

6 **Q** And those cuts were from him walking on the glass?

7 **A** Yes, sir.

8 **Q** Did Ms. Thompson ask you to look into a Dorothy Williams?

9 **A** I believe that's Dot. That was not a family friend -- a
10 family member of hers. We spoke kind of -- she was my contact
11 person within her family just to let them know what was going
12 on with the case, so I reached out to her multiple times.

13 **Q** Okay. So did you speak with Ms. Williams?

14 **A** Yes, sir.

15 **Q** Okay. Did you ever plan on calling her as a witness at
16 trial?

17 **A** No, sir.

18 **Q** Was there a reason for that?

19 **A** Well, she didn't have any relevant information regarding
20 the actual facts of the case. I don't believe she would have
21 fed into any of the good character evidence rules. There was
22 a lot of -- some things in Ms. Thompson's past we were
23 probably also trying to make sure we didn't open any doors to.

24 **Q** Okay. Did Ms. Thompson ever ask for you to have her
25 evaluated for mental competency?

1 **A** She may have -- I think it's definitely something we
2 would have discussed but after talking about explaining what
3 choices of those evaluations are, we decided against it.

4 **Q** Okay. But you did have that conversation with
5 Ms. Thompson?

6 **A** I believe in some form, yes, sir.

7 **Q** Was there anything in your conversations that led you, as
8 her attorney, to believe that she was not competent to stand
9 trial?

10 **A** No, sir.

11 **Q** Okay. And you were aware of the Protections of Persons
12 and Property Act --

13 **A** Yes, sir.

14 **Q** -- for immunity at the time?

15 **A** Yes, sir.

16 **Q** But you didn't pursue it.

17 **A** That's correct.

18 **Q** Was there any reason for not pursuing that?

19 **A** Sitting here today, I don't specifically remember
20 anything regarding her case other than kind of typical pros
21 and cons you do in any case. But, no, I don't remember
22 anything specific in this case in terms of why we didn't do
23 that.

24 **Q** Okay. But your theory of the case was self-defense?

25 **A** Yes, sir.

1 Q Okay. And was self-defense charged in Ms. Thompson's
2 case?

3 A Yes, sir.

4 Q Okay. What is -- were there any other lesser included
5 offenses charged?

6 A We asked for involuntary and did not receive it. As
7 y'all stated earlier, that was an issue on appeal that was
8 denied. Neither us nor the State has for involuntary
9 manslaughter charge.

10 Q Okay. Y'all wanted involuntary but not voluntary.

11 A That's correct.

12 Q Was there a reason for that?

13 A Probably a little bit of too much aggressiveness on the
14 part of trial counsel.

15 Q And you said possibly because of aggressiveness. What
16 would that aggressiveness have been?

17 A Sure. Them not giving the jury a middle ground to find
18 her guilty of voluntary manslaughter and probably making a
19 decision to either have them all or nothing, guilty or not
20 guilty verdict.

21 Q Okay. And Ms. Thompson testified at trial?

22 A Yes, sir.

23 Q Okay. And you stated you met with her and prepared her
24 for her testimony at trial.

25 A Multiple times, yes, sir.

1 Q Okay. Did she ever indicate to you that she did not want
2 to testify at trial?

3 A We definitely had conversations about the
4 (indiscernible), but I don't believe she ever significantly
5 wavered from her wish to testify, and I agreed with it. We
6 were (indiscernible).

7 Q And her story, from her statements to the police to her
8 testimony at trial, were consistent?

9 A Yes, sir.

10 Q Okay. On direct, you testified that the State's theory
11 of the blood spatter expert was to show the scene of the
12 bedroom and the living room but also the State was trying to
13 show that Ms. Thompson was hitting him with the vase in the
14 back of the head?

15 A I believe that was part of their effort through that
16 witness, yes, sir. The autopsy also -- the coroner's report
17 also indicated there were hits on the back of the head as
18 well.

19 Q Did the coroner's report show that he had injuries to the
20 front of his face?

21 A Yes, sir.

22 Q Okay. And do you recall how y'all presented that issue
23 or that evidence to the jury?

24 A In terms of argument or in terms of...

25 We basically pointed it out in cross-examination of the

1 State's witnesses and argued it at the closing.

2 Q Okay. Did you ever call and talk to the blood spatter
3 expert?

4 A I believe we did call and talk to him one time, yes, sir.

5 Q And you were aware of that -- the State was going to
6 present that before trial?

7 A Yes, sir.

8 Q And you spoke with your co-counsel and y'all came to a
9 decision that you could handle it at trial at that time?

10 A Yes, sir.

11 Q But in hindsight, maybe you should have --

12 A Yes, sir.

13 Q Okay. But at the time, y'all were in agreement to go
14 forward?

15 A Yes, sir.

16 Q Okay. And were y'all able to speak with Moses and
17 Michael, the State's witnesses who testified at trial?

18 A Yes, sir.

19 Q So you were able to find them and speak with them in
20 preparation?

21 A Yes, sir.

22 Q Okay. But they were State's witnesses so you wouldn't
23 have approached them through cross-examination?

24 A Yes, sir. We had them both under subpoena too.

25 Q Okay. So y'all had them under subpoena and the State?

1 **A** Yes, sir.

2 MR. KEY: Okay. No further questions, Your Honor.

3 THE COURT: All right. Redirect?

4 MR. WALLER: Nothing.

5 THE COURT: All right. Thank you, sir. You may step
6 down.

7 You can call your next witness.

8 MR. WALLER: Thank you, Your Honor. The applicant would
9 call Alicia Goode.

10 THE COURT: Bonnie, are you okay? Do you need to take a
11 break?

12 COURT REPORTER: I'm good.

13 THE COURT: Okay.

14 ALICIA GOODE,
15 the witness, after having been duly sworn, was examined and
16 testified to as follows:

17 THE COURT: Thank you. Have a seat.

18 DIRECT EXAMINATION

19 BY MR. WALLER:

20 **Q** Good morning, Ms. Goode. How are you today?

21 **A** Great. How are you?

22 **Q** Doing well. Thank you for asking.

23 Ms. Goode, how did you get involved with Ms. Thompson's
24 case?

25 **A** I believe it was after Mr. Bank was assigned to her case,

1 and it would have been probably a couple of months before
2 trial. We kind of got this team together.

3 Q So you were brought in to help with the trial?

4 A Yes.

5 Q What was your role? Did you have any specific witnesses
6 you were going to take on or were you just there -- kind of a
7 team effort there?

8 A So I guess technically I would have been second chair, so
9 I gave the opening statement to the jury. I did more of the
10 crime scene witnesses, I believe.

11 Q Okay. And Mr. Bank testified earlier about the blood
12 spatter expert. When were you first made aware that the State
13 intended to introduce that type of evidence?

14 A I believe it was -- it wasn't the week before trial. I
15 mean, it was very -- it was very close to trial.

16 Q Okay. Was there any physical evidence, I guess, from
17 that, that was new to y'all or was it just interpreting the
18 pictures?

19 A It was -- if I'm remembering correctly -- I think it's
20 been about three and a half years or more now since trial. If
21 I remember correctly, the State's expert was Stan Richards
22 with the sheriff's department, if I'm remembering correctly.
23 There have been several other cases since then where he's been
24 involved, but I don't think he actually went to the scene, or
25 if he did, it was after -- if he was reviewing pictures taken

1 by the crime scene department and was giving recommendations
2 based on those.

3 Q And he's testifying to whether something is just kind of
4 a straight-out drop or if it's slung off or things like that,
5 trying to show where movement, where people are or were
6 standing.

7 A Correct. Directionality, I guess, of the spray spatter.

8 Q How about the jail phone calls? Did you listen to those
9 or were you tasked with listening to those?

10 A Honestly, I can't remember.

11 Q Okay. Do you remember when y'all got them?

12 A No, I don't.

13 MR. WALLER: Beg the Court's indulgence.

14 THE COURT: Yes, sir.

15 (Pause in the proceedings.)

16 BY MR. WALLER:

17 Q Ms. Goode, were you -- obviously, self-defense was the
18 theory from the beginning. Were you involved in making
19 preparations in using that as your defense?

20 A Yes.

21 Q What specifically did y'all talk about and what did y'all
22 try to be able to get into evidence?

23 A Really just working, I guess, with Holly more in telling
24 her story, and that's what I did, you know, with the opening
25 statement, just -- and then highlighting, you know, kind of

1 her state of mind, the victim's, you know, background that we
2 were allowed to get into, his -- you know, his physical
3 stature, you know, that kind of stuff. And mainly her -- you
4 know, working with her to feel comfortable testifying.

5 Q Her testimony was going to be a big part of --

6 A Yes.

7 Q -- the biggest part of your defense.

8 A Yes.

9 Q Thank you, Ms. Goode. I have nothing further.

10 A Okay.

11 THE COURT: All right. Mr. Key?

12 CROSS-EXAMINATION

13 BY MR. KEY:

14 Q Ms. Goode, you testified that you handled the opening
15 argument and most of the crime scene experts -- or crime scene
16 investigators.

17 A Yes, opening statement and the crime scene.

18 Q Okay. And about a week before trial, the State notified
19 the defense that they were going to call a blood spatter
20 expert.

21 A If I'm remembering correctly, it was very shortly before
22 trial that we were given that information.

23 Q Did you speak to co-counsel about the late disclosure of
24 this expert witness?

25 A I'm sure we did. I can't -- I can't recall if that was

1 something that we really talked about a lot.

2 Q Did y'all -- do you recall if y'all talked about, like,
3 asking for a continuance on that basis?

4 A I don't believe we did.

5 Q Okay. In the pictures that the blood spatter expert was
6 testifying about, you had those pictures in your discovery?

7 A Yes, we did.

8 Q Okay. And you -- did you review those pictures with
9 Ms. Thompson?

10 A I don't know if I specifically did. I don't know if
11 Mr. Bank had gone through the pictures.

12 Q In your opening argument, you pictured or you -- you
13 presented that the victim was much larger than Ms. Thompson.

14 A Yes, he was.

15 Q Okay. And you sort of highlighted that throughout your
16 opening argument, that he was a big, strong man despite his
17 age?

18 A Right.

19 Q Okay. Do you recall if the judge gave a charge on
20 self- -- the self-defense charge pertaining to the discrepancy
21 in size between the victim and the defendant?

22 A I think it's standard charging when it comes to
23 self-defense, but I can't remember if that was specifically
24 done in this case.

25 Q But if it's in the record --

1 **A** If it's in the record, yeah.

2 **Q** Did you cross-examine the blood spatter expert?

3 **A** I did.

4 **Q** You did. Okay. Do you recall if that expert gave
5 anything useful to the defense in his cross-examination?

6 **A** I -- I don't really remember. I think what -- really I
7 think the purpose of his testimony for the State was they had
8 Ms. Thompson's statement from law enforcement that she gave to
9 them when they interviewed her, and she was very adamant that
10 they had not been in the bedroom or that the altercation had
11 not begun in the bedroom, that everything had happened kind of
12 out in the living room, and that there was some blood in
13 the -- you know, in the back part of the trailer. And so I
14 think the purpose of that testimony was to kind of discredit
15 her -- her statement.

16 **Q** Okay. But --

17 **A** So I don't -- I don't remember there being anything
18 specific that would have been helpful for the defense.

19 **Q** And you reviewed the pictures that the blood expert was
20 talking about?

21 **A** Yeah, I would have reviewed those.

22 **Q** Okay. Beside the victim, do you recall if there was a --
23 some sort of blood-covered towel?

24 **A** I think that sounds right. Maybe in the hallway or on,
25 like, the dryer or something. Yeah, I think that sounds

1 right.

2 Q Did that support the defense's theory that he was still
3 alive when she left and had got up and walked around?

4 A Yeah, I believe that was something that -- yeah, now that
5 I remember that, yeah, I think that was something that we may
6 have --

7 Q And was Ms. Thompson's blood or DNA discovered anywhere
8 inside the trailer inside the bedroom?

9 A I can't remember. I'm sorry. I can't remember.

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

11 THE COURT: All right. Any redirect?

12 MR. WALLER: Nothing further, Your Honor.

13 THE COURT: All right. Thank you, ma'am. You may step
14 down.

15 All right.

16 MR. WALLER: The applicant would call Rhodes Bailey.

17 THE COURT: Sir, place your left hand on the Bible and
18 raise your right.

19 RHODES BAILEY,
20 the witness, after having been duly sworn, was examined and
21 testified to as follows:

22 THE COURT: Thank you. Have a seat there.

23 DIRECT EXAMINATION

24 BY MR. WALLER:

25 Q Good morning, Mr. Bailey. How are you today?

1 **A** Good morning. Thank you for asking. How are you? Good.

2 **Q** Mr. Bailey, how -- what was your role in representing
3 Ms. Thompson?

4 **A** Well, I was the third seat. I was kind of the
5 supervisor. I mean, this was -- I was, at the time -- was
6 this three years ago? Early 2016? I was -- I had left the
7 public defender's office and just come back a few months
8 before that, and I was there to kind of help out Bobby who,
9 although an excellent lawyer, was still pretty new at that
10 time. And I want to say it was his first murder trial, but I
11 was there just to kind of help out.

12 **Q** Were you involved in, like, the planning of the defense
13 or were you there just to kind of help in preparation and make
14 sure everything went smoothly?

15 **A** More the latter. I came in a little bit later, maybe a
16 month or two beforehand.

17 **Q** Okay. Did y'all ever have any conversations about
18 seeking immunity in this case?

19 **A** I don't think we did. I have done a lot of immunity
20 hearings since then, but I don't -- I don't remember us -- I
21 don't remember us seeking immunity at an immunity hearing in
22 this particular case.

23 **Q** Okay. All right. What -- you said you came in to kind
24 of supervise, to help make sure everything went smoothly.
25 What did you do kind of on a day-to-day basis for preparing

1 this case?

2 **A** Well, I handled the cross-examination of Dr. Durso, which
3 was actually pretty time-consuming because so much of it dealt
4 with the injuries, were they self-defense injuries or not.

5 And so that was a lot of my -- a lot of that was my focus, and
6 then a couple of witnesses. But Ms. Goode was probably in the
7 second seat, and then -- so, you know, we had discussions as a
8 group, you know, frequently. General strategy and planning.

9 **Q** Okay. Did you do any independent research or any
10 independent investigation, you know, on your own that was just
11 you doing or were you working as a team?

12 **A** Not unless it was dealing with Dr. Durso and autopsy
13 stuff.

14 **Q** Dr. Durso is a pathologist?

15 **A** That's correct, yes.

16 MR. WALLER: Beg the Court's indulgence.

17 THE COURT: Yes, sir.

18 BY MR. WALLER:

19 **Q** Thank you, Mr. Bailey. I have nothing further.

20 THE COURT: Anything?

21 MR. KEY: Nothing from the State, Your Honor.

22 THE COURT: Thank you, sir, you can step down.

23 Applicant can call his next witness.

24 MR. WALLER: Nothing further from the applicant.

25 THE COURT: Applicant rests.

1 All right. Anything in reply from the State?

2 MR. KEY: Nothing from the State.

3 THE COURT: All right. Let's hear argument. Yes, sir.

4 MR. WALLER: Judge, just briefly before I make this
5 argument, out of an abundance of caution, I need to make a
6 motion to amend the pleadings to conform with the evidence,
7 particularly about the immunity, not seeking immunity. Judge,
8 there wasn't any objection. I don't think it prejudices the
9 State. So I think just out of an abundance of caution make
10 that -- because it wasn't specified in the application.

11 THE COURT: The motion is granted.

12 CLOSING ARGUMENT

13 MR. WALLER: Thank you, Your Honor.

14 Judge, briefly for argument, I'll just ask that you
15 consider everything you heard here today, consider portions of
16 the transcript as well as everything else contained in your
17 packet, including some of the appellate documents. I think
18 they're enlightening. Just reading, they give a good overview
19 of the case so you don't have to read the entire 700-page
20 transcript. Just ask that you consider our arguments here
21 today and grant Ms. Thompson the relief she's seeking.

22 THE COURT: Thank you, sir.

23 Anything in reply from the State argument-wise?

24 CLOSING ARGUMENT

25 MR. KEY: Very briefly, Your Honor. The State would also

1 ask that you consider the record before the Court. As to the
2 immunity allegation, Mr. Bank testified he was aware, he knew
3 of the option to pursue immunity. That would not hinder
4 Ms. Thompson's self-defense claim but just looking at it, he
5 did not think that was -- or it did not come out to him that
6 that was something he should have done. Maybe in hindsight,
7 he testified that maybe he should have pursued an immunity
8 hearing, but at the time, I believe it was clear from
9 Ms. Thompson's testimony and the attorney's testimony that
10 they were very involved in prepping this case for trial. At
11 the time, he did not see that issue as something to pursue and
12 they pursued a self-defense at trial.

13 THE COURT: All right. Thank you.

14 Let me take this matter under advisement. Ms. Thompson,
15 what's going to happen, so you can understand the timeline of
16 what's going to happen, you know I have got a big ol' box of
17 stuff to go through. Okay? I'm going to give you the
18 deference, you know, because this has been somewhat of a short
19 hearing, but that ain't the end of the story. I have got to
20 look through everything and read everything to make sure that
21 I make this very important decision for you. Okay? And so
22 I'm going to take this all back to my chambers in Chester
23 County and look through everything and make a decision
24 hopefully within the next couple of weeks. I don't want to
25 sit on it too long.

1 Once I make my decision, my law clerk will email your
2 attorney as well as the State's attorney and let me know what
3 that decision is. And then whichever side wins -- if you win,
4 your lawyer will prepare an order for my signature. If the
5 State is successful, they'll prepare an order for my signature
6 and then you'll go from there. Okay?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: All right. Good luck to you. That concludes
9 this hearing.

10 MR. WALLER: Thank you, Your Honor.

11 (The above hearing concluded.)

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1 CERTIFICATE OF TRANSCRIBER

2 CASE/NO.: State vs. Holly Jo Thompson

3 2018-CP-40-4637

4 DATE OF PROCEEDING: October 29, 2019

5 COURT REPORTER: Bonnie Kelly (Retired)

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I, Bobbi J. Fisher, do hereby certify that the foregoing transcript is a true and correct record of the recorded proceedings; that said proceedings were transcribed to the best of my ability from the audio recording and supporting information, and that I am neither counsel for, related to, nor employed by any of the parties to this case, and I have no interest, financial or otherwise, in its outcome.

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Bobbi J. Fisher, RPR

NCRA Registered Professional Reporter (RPR)

Prepared: April 13, 2021

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Holly Jo Thompson, #299956,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Case No.: 2018-CP-40-4637

ORDER OF DISMISSAL

JEANETTE V. MCNOLDS
C.C.R., G.S., & F.C.

2021 JUL 28 AM 10:35

RICHLAND COUNTY
FILED

This matter comes before the Court by way of Applicant Holly Jo Thompson's application for post-conviction relief (PCR) filed August 29, 2016. A hearing convened at the Richland County Courthouse on October 29, 2019, at which time Applicant was present in court and represented by Jonathan Waller, Esquire. Assistant Attorney General Samuel L. Key represented the State. At the hearing, Applicant testified on his own behalf. Applicant additionally presented testimony from Robert L. Bank, Jr., Alicia D. Goode, and J. Rhodes Bailey, Esquires.

Following a thorough review of the record in its entirety, and the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant has failed to meet his requisite burden of proof, denies relief, and dismisses this application with prejudice.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections. In April 2014, the Richland County Grand Jury indicted Applicant for murder (2014-GS-40-2072). Alicia Goode, Robert Bank, and J. Rhodes Bailey, Esquires, represented Applicant. Assistant Solicitors Luck Campbell, Meghan Walker, and Laura Gregg of the Fifth Circuit Solicitor's Office prosecuted the case. On February 16-19, 2016, Applicant proceeded to trial before the



Honorable Robert E. Hood and a jury. The jury found Applicant guilty as indicted. Judge Hood sentenced Applicant to imprisonment for forty-five years.

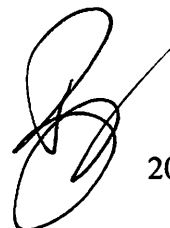
Applicant filed a timely notice of appeal. Appellate Defender Katherine H. Hudgins of the South Carolina Office of Indigent Defense perfected the appeal. Appellate Counsel raised three issues: (1) whether the trial court erred in refusing to instruction the jury on voluntary manslaughter; (2) whether the State was required to provide Applicant with juror rap sheets; and (3) whether the trial court should have allowed re-cross examination of a State's witness. The South Carolina Court of Appeals affirmed Applicant's conviction on June 13, 2018. *State v. Thompson*, Op. No. 2018-UP-258 (S.C. Ct. App. filed June 13, 2018). The remittitur was returned to the circuit court on June 29, 2018. Applicant thereafter commenced this PCR action on August 26, 2016.

FACTS

On January 27, 2014,¹ Odell Middleton (Middleton) found the body of James Solomon ("victim") inside the victim's mobile home in Hopkins. At trial, Middleton testified he was worried about his friend when he walked into the unexpected and bloody scene. (R. at 48; 52; 55). Middleton described seeing the victim on the floor, blood around his head, and broken glass near the body. (R. at 54-56). Middleton additionally testified he noticed signs of a possible struggle, including two rugs in the hallway, which were "tangled up and kicked up." (R. at 55). Middleton ran out of his friend's home and called 911. (R. at 55).

Evidence collected from the victim's home helped investigators narrow down their list of suspects. Crime scene technicians swabbed the bloodstains from the knife blade found in the bedroom, the blood from the bedroom, hallway, and living room, and collected the sheets from

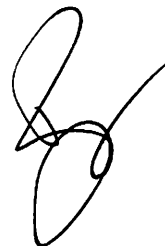
¹ The victim was found three days after his death. (R. at 728-27).



the bedroom. (R. at 139; 215-16; 220). The DNA from the blood collected from these locations matched the victim. (R. at 321; 332-37; 347). Additionally, a technician collecting broken glass at the scene and noticed a possible palm print in the dried blood. (R. at 123-24). The print ultimately matched Applicant. (R. at 309-11).

Applicant never denied she was at the victim's home on the night of his death, but told the deputy who arrested her that she did not kill him. (R. at 579). However, Applicant changed her story after learning the evidence investigators had against her, including the palm print, and subsequently told investigators she killed the victim in self-defense. (R at 580; 588-89).

At trial, Applicant testified she was a prostitute and the victim was one of her clients who paid for sex with money or drugs. (R. at 472-74). Applicant stated she and the victim smoked crack cocaine together on the night of his death and tried to have sex in the living room, but when the victim could not perform, he got angry. (R. at 477-80). Applicant testified they tried to have sex again later in the bedroom; however, the victim still could not perform so Applicant went to the living room to get dressed and the victim followed her. (R. at 480-81). Applicant testified the victim had a small knife that he swung at her, cutting her right hand. Applicant claims she grabbed a glass vase to defend herself. (R. at 481). Applicant stated the victim swung the knife at her again as she tried to grab her crack pipe and clothes to leave, so she hit him with the vase. (R. at 482; 486). Applicant testified she and the victim fell to the floor, the vase broke, and she thought she hit him five or six times. (R. at 486-87). Applicant then claimed she got up and the victim remained on the floor, threatening her, as she ran out the front door. (R. at 487). Applicant admitted she did not call 911 or otherwise call for help, not even when she later learned the victim had died. (R. at 490; 493).

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ISSUES RAISED

In her application for post-conviction relief, Applicant alleges she is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel;
 - a. Attorney refused to call character witnesses;
 - b. Attorney did not honor Applicant's request for a mental health evaluation.

At the evidentiary hearing, PCR counsel for Applicant proceeded on the allegations raised in the original application. Additionally, at the closing of the hearing, PCR counsel moved to amend the pleadings to conform to the evidence to include an allegation of ineffective assistance of counsel for failure to seek immunity. The Court granted PCR Counsels motion. (PCR Tr. 46).

SUMMARY OF RELEVANT TESTIMONY

Applicant's testimony

At the evidentiary hearing, Applicant testified she was originally appointed an attorney who represented her for a brief period before trial counsel Robert Bank ("Bank") took over her case. (PCR Tr. 7). Applicant testified that during their first meeting she and Bank discussed what happened the night of the incident and different aspects of the case. (PCR Tr. 8). Applicant stated that she did not have the DNA testing, handprint analysis and jail phone calls as part of discovery towards the beginning of the case. (PCR Tr. 8). Applicant indicated she gave Bank her side of the story and that the theory of the case was that the victim had attacked Applicant and she was defending herself when she struck the victim in the head with a vase, ultimately killing him. (PCR Tr. 9). Applicant testified that her story has never changed. (PCR Tr. 9). Applicant testified Alicia Goode ("Goode") and Rhodes Bailey ("Bailey") were brought on to assist with her case closer to trial. (PCR Tr. 9-10). Applicant stated she told Bank about two potential witnesses



including her boyfriend and the man she lived with at the time for possible testimony. Applicant stated that both the men instead testified for the State. (PCR Tr. 10).

Applicant testified she told Bank about the back door of the victim's home being found open, and stated she did not leave the home that way. (PCR Tr. 12). She testified she and Bank discussed how they would prepare the theory of self-defense for trial, including showing photos of where she had been cut or scratched by the victim's knife. (PCR Tr. 12). Applicant testified that she discussed every aspect of the whole case with Bank, Goode, and Bailey in preparation for trial, giving her attorneys her side of the story. (PCR Tr. 12-13). Applicant testified she reviewed the State's evidence of the blood throughout the house with her attorneys, and as a group, they discussed various pieces of the evidence and their location in the home. (PCR Tr. 13). Applicant testified she provided statements to law enforcement, and she and her attorneys discussed the statements and how they were given. (PCR Tr. 14). Applicant indicated her attorneys explained the procedures of trial, what the State would have to prove for her to be found guilty, Applicant's constitutional rights, and her right to testify. (PCR Tr. 15). Applicant stated she wanted to testify at trial because she didn't want to be looked at as a murderer. (PCR Tr. 16). Applicant testified she asked for her attorneys to call Dorothy Williams as a character witness on her behalf, who she had known for twenty-eight years. (PCR Tr. 16). Applicant acknowledged that Ms. Williams did not have any direct knowledge of the incident. (PCR Tr. 16).

Applicant testified she believed a mental health evaluation would have helped her as she was diagnosed with "several mental illnesses" and she was not on medication at the time the incident occurred, so she self-medicated with street drugs, which she stated was a factor in the

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incident. (PCR Tr. 17). Applicant did not remember having a discussion with her attorneys about seeking immunity from the charges. (PCR Tr. 17).

On cross-examination, Applicant admitted she did not specifically ask her attorneys to look into Dorothy Williams as a character witness, and testified she could not remember if she gave her attorneys Ms. Williams' name. (PCR Tr. 18). Applicant acknowledged that Ms. Williams had nothing to do with the case. Applicant stated she asked her attorneys for a mental health evaluation and they discussed it, but she did not remember discussing it further. (PCR Tr. 19). Applicant testified she told her attorneys her version of events, and testified to her version of the events at trial. (PCR Tr. 19). Applicant acknowledged she and her attorneys reviewed the DNA testing and fingerprint evidence before trial, and that her attorneys had the opportunity to cross-examine her boyfriend, roommate, and witness Amy Norris at trial. (PCR Tr. 20). Applicant testified she did not have an argument against the evidence that the victim had been stabbed other than someone else must have been in the home after she left. (PCR Tr. 21). Applicant stated she did not stab the victim and she testified as such at trial. (PCR Tr. 21).

On re-direct, Applicant acknowledged she never denied hitting the victim with a vase. Applicant alleged she just did not know she had killed the victim because when she left the home he was still alive. (PCR Tr. 21). Applicant testified she did not understand how the victim could have died due to blunt force trauma to the head and simultaneously have cuts on his feet from glass. (PCR Tr. 22).

Counsel Bank's testimony

Counsel Bank testified he represented Applicant for approximately eleven months until her trial. (PCR Tr. 23). Bank testified his perspective of the allegations was that Applicant lived down the street from the victim and the two were acquainted, occasionally engaging in drug use,



prostitution, and drinking. (PCR Tr. 23). Bank testified Applicant and the victim were at the victim's home the evening of the incident when the victim became agitated with Applicant and accused her of stealing his crack cocaine before attacking her. Applicant defended herself by grabbing a vase and hitting the victim multiple times. (PCR Tr. 23). Bank confirmed that Applicant told him the victim was still alive when she ran out of the residence, and testified the autopsy pathologies agreed the victim would have been alive for some period of time after the incident. (PCR Tr. 23). Bank testified they believed the victim was able to walk, explaining the cuts on the bottom of his feet. (PCR Tr. 23). Bank indicated Applicant was located and interviewed by law enforcement several days later and gave a statement detailing the same scenario. (PCR Tr. 24). Bank confirmed their defense was a theory of self-defense and testified the toxicology report confirmed the victim was a large and strong man for his age. (PCR Tr. 24). Bank confirmed Applicant's testimony that he and his co-counsels prepared Applicant for the self-defense theory and stated he felt Applicant had been honest in answering their questions during preparation. (PCR Tr. 25). Bank testified that Goode and Bailey came in two months prior to trial and assisted with reviewing the State's evidence and preparing Applicant for direct and cross-examination. (PCR Tr. 25).

Bank indicated Goode and Bailey assisted with obtaining last-minute discovery, ensuring witnesses they wanted to speak to were contacted, and preparing various motions or cross-examinations that may arise. (PCR Tr. 26). Bank testified he did not recall having a discussion with Applicant about seeking immunity under the Protections of Persons and Property Act. (PCR Tr. 26). Further, Bank did not recall doing research into whether that would have been appropriate in this case and testified it would have not precluded Applicant from raising self-defense at trial. (PCR Tr. 26). Bank testified they became aware the State was introducing a

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blood splatter expert in the week leading up to trial and requested the report from the Solicitor, who told the defense team there was no report. (PCR Tr. 27). Bank stated he believed the State tried to use the expert to combat the self-defense argument by establishing that Applicant hit the victim from behind and show inconsistencies with the physical evidence. (PCR Tr. 28). Bank testified when the issue first came to their attention, he discussed asking for a continuance with Goode and Bailey but the team concluded they would be prepared to deal with expert. (PCR Tr. 28). Bank admitted the defense team discussed, in hindsight, how it may have been more effective to ask for a continuance or obtain their own expert. (PCR Tr. 29). Bank indicated he did not remember having issues reviewing the jail phone calls prior to trial, and acknowledged the blood splatter was something he did not have extra time to absolutely review. (PCR Tr. 29-30).

On cross-examination, Bank testified he met with Applicant at least ten to fifteen times prior to trial and felt he met with her enough to prepare the case for trial. (PCR Tr. 31). Bank indicated he did not handle the blood splatter expert, but used some of the expert testimony to the benefit of Applicant during closing arguments. (PCR Tr. 31). Bank indicated he was also able to argue the victim's cuts were from the glass vase during closing arguments and that the victim was alive when Applicant left. (PCR Tr. 32). Bank testified he spoke to Dorothy Williams who was a family friend multiple times to update the family on the status of the case, but never planned to call her as a witness at trial. (PCR Tr. 32). Bank stated that Ms. Williams had no relevant information regarding the facts, and would not have fed into the good character evidence rules. (PCR Tr. 32). Bank additionally testified there were issues in Applicant's past the defense was trying to make sure they did not open the door to by introducing Ms. Williams' testimony. (PCR Tr. 32). Bank testified Applicant might have requested a mental evaluation, and

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if so, the team would have discussed it. However, after explaining the choices of evaluations they decided against it. (PCR Tr. 33). Bank stated he had no reason to believe Applicant was not competent to stand trial. (PCR Tr. 33).

Bank testified he was aware of the Protections of Persons and Property Act at the time but chose not to pursue it, though he could not specifically recall why. (PCR Tr. 33). Bank testified they requested the lesser-included offense of involuntary manslaughter and did not receive it. (PCR Tr. 34). Bank confirmed he prepared Applicant multiple times for her testimony at trial, and he believed Applicant's trial testimony was consistent with the statements she gave to police. (PCR Tr. 35). Bank additionally testified the coroner's report indicated the victim was struck in the face and back of the head. Bank indicated the defense pointed this out while cross-examining the State's witnesses and in closing arguments. (PCR Tr.35-36).

Counsel Goode's testimony

Counsel Goode testified she was brought on to Applicant's case a few months before trial, and acted as second chair, giving the opening statement to the jury and examining crime scene witnesses. (PCR Tr. 37-38). Goode testified the blood splatter expert reviewed photos taken by the crime scene department and gave recommendations based on the images. (PCR Tr. 38-39). Goode testified she did not recall listening to the jail phone calls. (PCR Tr. 39). Goode testified she worked with Applicant in telling her story and presenting self-defense in the opening statements by highlighting Applicant's state of mind, the victim's state of mind, and the victim's physical stature. (PCR Tr. 39-40). Goode confirmed that Applicant's testimony was the biggest part of the defense. (PCR Tr. 40).

On cross-examination, Goode testified the photos the blood splatter expert testified about were included in discovery, and she reviewed the photos prior to trial. (PCR Tr. 41-42). Goode



acknowledged she highlighted the victim as a larger, strong man during opening statements. (PCR Tr. 41). Goode did not recall anything specific in the expert's testimony that was helpful for the defense during his cross-examination. (PCR Tr. 42). Goode confirmed their theory was the victim was alive when Applicant left and he was able to walk around. (PCR Tr. 43).

Counsel Bailey's testimony

Counsel Bailey testified he was the third seat and supervisor for the trial who primarily assisted the others with preparation. (PCR Tr. 44). Bailey testified he handled the cross-examination of Dr. Durso to parse out determining whether the injuries were the product of self-defense, as well as a few other witnesses (PCR Tr. 45). Bailey indicated he did not conduct any independent research or investigation outside his preparation for the pathologist's testimony. (PCR Tr. 45).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court also had before it the records of the Richland County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, the application, Respondent's return, the trial transcript, and the transcript from the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing and to closely pass upon their credibility. This Court finds the combined record of the trial transcript and the testimony and evidence presented at the evidentiary hearing establishes Applicant received effective assistance of counsel, and this application should be denied. Set forth below are the relevant findings of facts and conclusions of law as required by section 17-27-80 of the South Carolina Code.

INEFFECTIVE ASSISTANCE OF COUNSEL



Applicant raises allegations that her trial counselors were ineffective in their representation. In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; *Butler v. State*, 286 S.C. 441, 344 S.E.2d 813 (1985). Applicant, like all other defendants, has a right to the assistance of effective counsel as provided by the Sixth Amendment to the United States Constitution. U.S. Const. amend. VI; *Strickland v. Washington*, 466 U.S. 668 (1984); *Lomax v. State*, 379 S.C. 93, 665 S.E.2d 164 (2008). Applicant has the burden of proving the allegations in his PCR action, and when alleging counsel was constitutionally ineffective, she must prove that “counsel’s conduct so undermined the proper functioning of the adversarial process that it cannot be relied upon as having produced a just result.” *Strickland*, 466 U.S. at 686. In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in *Strickland*, 466 U.S. 668.

First, Applicant must prove counsel’s performance was deficient. *Id.*; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney’s performance by its “reasonableness under prevailing professional norms.” *Cherry*, 300 S.C. at 117, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” *Id.* (citing *Strickland*, 466 U.S. at 690). Petitioner must overcome this presumption to receive relief. *Cherry*, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel’s deficient performance must have prejudiced Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Id.* The standards do not establish mechanical rules; the



ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. *Strickland*, 466 U.S. 668.

Moreover, *Strickland* does not require a finding of ineffectiveness merely for deviation from a rigid rule of representation. Rather, *Strickland* requires the applicant to prove "counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." *Id.* at 697. The function of the PCR court is to determine if "in light of all the circumstances, the identified acts or omissions were outside the wide range of professional competent assistance" required of a criminal defense attorney." *Id.* at 690. Although courts may not indulge "post hoc rationalization" for counsel's decision-making that contradicts the available evidence of counsel's actions, *Wiggins v. Smith*, 539 U.S. 510, 526-527 (2003), neither may they insist counsel confirm every aspect of the strategic basis for actions. There is a "strong presumption" counsel's attention to certain issues to the exclusion of others reflects tactics rather than "sheer neglect." *Yarborough v. Gentry*, 540 U. S. 1, 8 (2003).

With respect to prejudice, an applicant must demonstrate "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S. at 694. It is not enough "to show that the errors had some conceivable effect on the outcome of the proceeding." *Id.* at 693. Counsel's errors must be "so serious as to deprive the defendant of a fair trial, a trial whose result is reliable." *Id.* at 687. *Harrington*, 562 U.S. 86.



“Surmounting *Strickland*’s high bar is never an easy task.” *Padilla v. Kentucky*, 559 U.S. 356, 371 (2010). An ineffective assistance of counsel claim can function as a way to escape rules of waiver and forfeiture and raise issues not presented at trial, and so the *Strickland* standard must be applied with scrupulous care, lest “intrusive post-trial inquiry” threaten the integrity of the very adversarial process the right to counsel is meant to serve. *Strickland*, 466 U.S. at 689–690. Even under *de novo* review, the standard for judging counsel’s representation is a most deferential one. Unlike a later reviewing court, the attorney observed the relevant proceedings, knew of materials outside the record, and interacted with the client, opposing counsel, and the judge. It is “all too tempting” to “second-guess counsel’s assistance after conviction or adverse sentence.” *Id.* at 689; *see also Bell v. Cone*, 535 U. S. 685, 702 (2002); *Lockhart v. Fretwell*, 506 U. S. 364, 372 (1993). The question is whether an attorney’s representation amounted to incompetence under “prevailing professional norms,” not whether it deviated from best practices or most common custom. *Strickland*, 466 U.S at 690.

In assessing prejudice under *Strickland*, the question is not whether a court can be certain counsel’s performance had no effect on the outcome or whether it is possible a reasonable doubt might have been established if counsel acted differently. *Wong v. Belmontes*, 558 U.S. 15 (2009); *Strickland*, 466 U.S. at 693. Instead, *Strickland* asks whether it is “reasonably likely” the result would have been different. *Id.* at 696. This does not require a showing that counsel’s actions “more likely than not altered the outcome,” but the difference between *Strickland*’s prejudice standard and a more-probable-than-not standard is slight and matters “only in the rarest case.” *Id.* at 693, 697. The likelihood of a different result must be substantial, not just conceivable. *Id.* at 693; *Harrington*, 562 U.S. 86. “In determining whether the applicant has proven prejudice, the PCR court should consider the specific impact counsel’s error had on the outcome of the trial.”



Smalls v. State, 422 S.C. 174, 188, 810 S.E.2d 836, 843 (2018) (citing *Strickland*, 466 U.S. at 695-96 (explaining the court must analyze how individual errors of counsel affect the important factual findings in a particular case)).

Counsel failed to call character witness

Applicant alleges her trial counselors were ineffective for refusing to call any character witnesses. This Court finds this allegation is meritless. This Court has repeatedly held a PCR applicant *must produce the testimony* of a favorable witness *or otherwise offer the testimony in accordance with the rules of evidence* at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial. *Bannister*, 333 S.C. at 303, 509 S.E.2d at 809. Applicant failed to produce the testimony of her character witness during her PCR hearing. Applicant's allegation that Ms. Williams could have testified positively about her due to their relationship, and any potential result the testimony would have had on the proceeding, is purely speculative. Further, the decision not to call Ms. Williams as a witness was trial strategy.

The applicant's mere speculation what the witnesses' testimony would have been cannot, by itself, satisfy the applicant's burden of showing prejudice." *Bannister v. State*, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998). Here, Applicant alleges she requested her attorneys call Dorothy Williams as a character witness because Ms. Williams knew her for a period of almost twenty-eight years. However, during cross-examination, Applicant acknowledged that Ms. Williams had nothing to do with the case. (PCR Tr. 19). Applicant further testified she could not recall if she asked her attorneys to look into Ms. Williams as a character witness, and additionally that she was not sure whether she gave the name of Ms. Williams to her attorneys. (PCR Tr. 18).



As such, this Court finds Applicants testimony to lack credibility. This Court finds counsel Bank's testimony that he spoke to Dorothy Williams, who was a family friend, multiple times to update the family on the status of the case credible. The Court additionally finds credible counsel Bank's testimony that he never planned to call Ms. Williams as a witness at trial as she had no relevant information regarding the facts. (PCR Tr. 32). Further, this Court finds credible counsel Bank's testimony of his decision not to use Ms. William's as a "good" character witness in light of the risk her testimony would open the door to examination of damaging facts in Applicant's past that the defense thought it best to exclude. (PCR Tr. 32). This is a valid reason for deciding not to call Ms. Williams since she had no actual knowledge of which to testify, and Applicant's character would have been at issue if she testified. Thus, counsel was not ineffective for employing this strategy. *Stokes v. State*, 308 S.C. 546, 419 S.E.2d 778 (1992) (where counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel), *see also Jackson v. State*, 329 S.C. 345, 495 S.E.2d 768 (1998). Accordingly, this allegation is denied and dismissed with prejudice.

Counsel failed to request mental health evaluation

Applicant additionally alleges her counselors rendered ineffective assistance for failing to obtain a mental health evaluation. "Due process of law prohibits the conviction of a person who is mentally incompetent." *Jeter v. State*, 308 S.C. 230, 232, 417 S.E.2d 594, 595 (1992). An accused is competent to stand trial if he or she has sufficient capability to consult with his or her lawyer with a reasonable degree of rational understanding and have a rational as well as factual understanding of the proceedings. *Id.*, 308 S.C. at 232, 417 S.E.2d at 596. "The focus of a competency inquiry is the defendant's mental capacity; the question is whether he [or she] has



the *ability* to understand the proceedings.” *Garren v. State*, 423 S.C. 1, 14, 813 S.E.2d 704, 711 (2018) (quoting *Godinez v. Moran*, 509 U.S. 389 (1993)).

As to the deficiency prong under *Strickland*, an attorney may reasonably rely upon his or her own perceptions of a defendant in determining whether or not their client should be mentally evaluated. *Jeter*, 308 S.C. at 233, 417 S.E.2d at 596. When establishing *Strickland* prejudice in the context of counsel’s failure to request a mental competency evaluation, the applicant need only show a reasonable probability that they were incompetent at the time of the original proceeding. *Garren*, 423 S.C. at 12, 813 S.E.2d at 710 (citing *Ramirez v. State*, 419 S.C. 14, 21, 795 S.E.2d 841, 845 (2017)). As is the case with any other allegation that a defense attorney failed to adequately investigate some matter, an applicant must present some proof of identifiable mental health issues that undermine his or her competency; mere speculation and conjecture by the applicant is insufficient to establish prejudice. *Id.*, 423 S.C. at 13-14, 813 S.E.2d at 711.

Bank testified that Applicant may have requested a mental evaluation, but after discussion of the evaluation choices, they decided against it. (PCR Tr. 33). Bank additionally stated he had no reason to believe Applicant was not competent to stand trial. (PCR Tr. 33). The record demonstrates that Applicant understood the nature and object of the proceedings against her, such that she assisted in her defense by testifying at trial. Applicant testified she had a history of mental illnesses, and was self-medicating with street drugs, which she testified was a factor in the murder. (PCR Tr. 17).

Notably, Applicant never argued lack of capacity or incompetence as a basis for requesting the evaluation. Applicant additionally never claimed her mental illnesses rendered her incompetent at the time of the proceeding. Instead, the record establishes that Applicant intelligently and competently assisted in her defense. As such, this Court finds Applicant’s



testimony that she needed a mental health evaluation to be not credible. This Court finds Counsel Bank's testimony that he did not request an evaluation because he had no reason to believe Applicant was not competent to be credible. Counsel Bank's assessment that Applicant was competent was reasonable in light of the record of Applicant's communication and assistance to her trial attorneys in developing the theory of self-defense, contribution of names for possible witnesses, consistently testimony of her version of the incident, and testimony in her own defense at trial.

This Court therefore finds Applicant failed in her burden to establish that she was incompetent at the time of her trial, and likewise failed to establish any alleged deficiency on behalf of her trial counselors for failing to request an evaluation, and any resulting prejudice therefrom. Accordingly, this allegation is denied and dismissed with prejudice.

Counsel failed to seek immunity

Applicant asserts her trial counsel were ineffective for failing to seek immunity pursuant to the Protections of Persons and Property Act² (the Act) pretrial, when trial counsel sought a jury instruction on immunity under the Act during the charge conference. The Court disagrees.

Subsection 16-11-440(C) of the South Carolina Code provides in pertinent part:

A person who is not engaged in an unlawful activity and who is attacked in another place where he has a right to be . . . has no duty to retreat and has the right to stand his ground and meet force with force, including deadly force, if he reasonably believes it is necessary to prevent death or great bodily injury to himself or another person

"A claim of immunity under the Act requires a pretrial determination using a preponderance of the evidence standard" *State v. Curry*, 406 S.C. 364, 370, 752 S.E.2d 263, 266 (2013). After an adverse verdict at trial even the most experienced counsel may find it

² S.C. Code Ann. §§ 16-11-410 to -450.



difficult to resist asking whether a different strategy might have been better, and, in the course of that reflection, to magnify their own responsibility for an unfavorable outcome. *Strickland*, however, calls for an inquiry into the objective reasonableness of counsel's performance, not counsel's subjective state of mind. *Strickland*, 466 U.S., at 688, 104 S.Ct. 2052. *Harrington v. Richter*, 131 S. Ct. 770, 790, 178 L. Ed. 2d 624 (2011).

"Representation is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another." *Id.* at 691. Therefore, judicial scrutiny of counsel's performance must be highly deferential. *Id.* at 689. Where counsel articulates a valid strategic reason for his action or inaction, counsel's performance should not be found ineffective. *Roseboro v. State*, 317 S.C. 292, 454 S.E.2d 312 (1996); *Underwood v. State*, 309 S.C. 560, 425 S.E.2d 20 (1992); *Stokes v. State*, 308 S.C. 546, 419 S.E.2d 778 (1992). Courts must be wary of second guessing counsel's trial tactics; and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel. *Whitehead v. State*, 308 S.C. 119, 417 S.E.2d 529 (1992).

This Court finds Applicant's trial counsel were not deficient for failing to seek immunity pursuant to the Act because counsel articulated a valid strategy of focusing the defense efforts on pursuing a theory of self-defense. Counsel Bank testified he was aware of the Protections of Persons and Property Act while preparing for Applicant's trial, but chose not to pursue it through a pro/con process performed in any case. (PCR Tr. 26; 33). Bank testified that he considered whether Applicant was in a space she had a right to be in to qualify under the Act, among other factors. (PCR Tr. 26). Bank additionally testified that while seeking immunity would have not precluded Applicant from raising self-defense at trial; the trial strategy had always been to focus on pursuing and preparing the theory of self-defense. (PCR Tr. 26; 33). Moreover, a self-defense



charge was given to the jury in Applicant's case. (PCR Tr. 34). This Court finds credible Counsel's testimony that Applicant's version of the events best supported a self-defense theory, and her attorneys worked with her in developing her testimony and the case to best support those facts. Accordingly, trial counsel was not allegedly deficient for failing to seek immunity under the Act pretrial. As such, this allegation is denied and dismissed with prejudice.

CONCLUSION

Based on all the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant relief. The Court finds that trial counsel Bank, Goode, and Bailey's representation was neither deficient nor prejudicial. The Court finds Applicant failed to establish she lacked capacity at the time of the initial proceeding. The Court further finds Applicant competently and intelligently assisted in her defense, which is evinced by the trial transcript and testimony given at the PCR hearing.

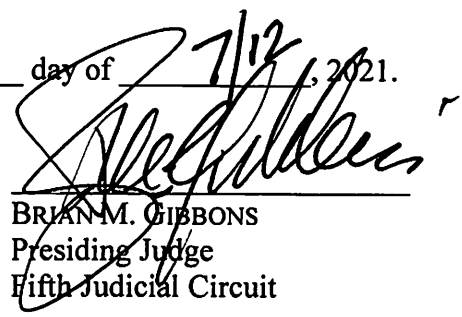
The Court notes Applicant must file and serve a notice of appeal within thirty days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review pursuant to Rule 203, SCACR. Applicant has a right to appellate counsel's assistance in seeking review of the denial of PCR. *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991). Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to Rule 243, SCACR, for appropriate procedures for appeal.

A handwritten signature in black ink, consisting of a large, stylized 'S' or 'G' shape with a loop at the bottom.

IT IS THEREFORE ORDERED:

1. The application for post-conviction relief be dismissed with prejudice; and
2. Applicant be remanded to the custody of the State.

AND IT IS SO ORDERED this ____ day of 7/12, 2021.



BRIAN M. GIBBONS
Presiding Judge
Fifth Judicial Circuit

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Holly Jo Thompson, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2021-000846

Appeal from Richland County
Brian M. Gibbons, Post-Conviction Relief Judge

Unpublished Opinion No. 2025-UP-017
Heard December 3, 2024 – Filed January 23, 2025

AFFIRMED

Appellate Defender Jessica M. Saxon, of Columbia, for
Petitioner.

Attorney General Alan McCrory Wilson, Deputy Attorney
General Donald J. Zelenka, Assistant Attorney General
Danielle Dixon, and Assistant Attorney General Brian
Hollis Gibbs, all of Columbia, for Respondent.

PER CURIAM: In this post-conviction relief (PCR) action, Petitioner Holly Jo Thompson assigns error to the PCR court's dismissal of her PCR application, wherein she alleged ineffective assistance of counsel because trial counsel failed to

pursue a pretrial immunity hearing under the Protection of Persons and Property Act (the Act).¹ We affirm.

In March 2016, Thompson was convicted of the murder of James Solomon and sentenced to forty-five years' imprisonment. Thompson alleged her actions were in self-defense because she hit Solomon with a vase after he attacked her with a knife and threatened to kill her. At the trial, Thompson was represented by Alicia Goode, Robert Bank, and J. Rhodes Bailey. This court upheld Thompson's conviction and sentence on direct appeal. *See State v. Thompson*, Op. No. 2018-UP-258 (S.C. Ct. App. filed June 13, 2018).

Thompson filed the underlying PCR application, alleging, in relevant part, that trial counsel were ineffective for failing to seek a pretrial immunity hearing pursuant to the Act. The PCR court held an evidentiary hearing during which Thompson testified that trial counsel never spoke with her about seeking immunity. Counsel Bank testified as follows:

[PCR Counsel]: Okay. Did you and Ms. Thompson or you and the other attorneys and Ms. Thompson ever discuss potentially seeking immunity under the Protection[] of Persons and Property Act?

[Counsel Bank]: I don't recall having [a] specific discussion with Ms. Thompson about that. I reviewed my notes before I came in today, and I didn't see anything in my notes about that either.

[PCR Counsel]: Okay. Did you do any research or look into whether it would have been appropriate to ask for that in this case?

[Counsel Bank]: I don't remember anything specifically other than just my general knowledge of the . . . statute in South Carolina. My first concern would probably be whether it was a place that she had [a] right to be, but I think it would have been. This was a place that she was invited into not only this night but regularly. So I think it's definitely something that could have been explored.

¹ S.C. Code Ann. §§ 16-11-410 to -450 (2015).

On cross-examination, when asked why he did not pursue immunity under the Act, Counsel Bank testified he could not "specifically remember anything regarding her case other than kind of typical pros and cons you do in any case" and did not "remember anything specific in this case in terms of why [they] didn't do that." Counsel Bailey testified that he did not recall any conversations about seeking immunity.

The PCR court found trial counsel were not deficient for failing to seek immunity under the Act because counsel articulated a valid strategy of "focusing the defense efforts on pursuing a theory of self-defense." The PCR court characterized Counsel Bank's testimony as acknowledging his awareness of the Act but explaining that he did not pursue it through "a pro/con process performed in any case" and that he considered whether Thompson was in a place where she had a right to be, among other factors. Further, the PCR court found trial counsel believed that Thompson's version of events best supported a self-defense theory. The PCR court did not make any specific findings as to prejudice. This appeal followed.

To establish an ineffective assistance of counsel claim, a PCR applicant must show "(1) counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) counsel's deficient performance prejudiced the applicant's case." *Speaks v. State*, 377 S.C. 396, 399, 660 S.E.2d 512, 514 (2008). Deficiency "is measured by an objective standard of reasonableness." *Taylor v. State*, 404 S.C. 350, 359, 745 S.E.2d 97, 102 (2013). "[C]ounsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Strickland v. Washington*, 466 U.S. 668, 690 (1984). "Where . . . counsel articulates a valid reason for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel." *Stokes v. State*, 308 S.C. 546, 548, 419 S.E.2d 778, 779 (1992). A PCR applicant must establish prejudice by showing "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland*, 466 U.S. at 694. "If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, . . . that course should be followed." *Id.* at 697. "In determining whether [a PCR] applicant has proven prejudice, the PCR court should consider the specific impact counsel's error had on the outcome of the trial." *Smalls v. State*, 422 S.C. 174, 188, 810 S.E.2d 836, 843 (2018).

Traditionally, a defendant asserting self-defense is required to show the following elements:

(1) The defendant was without fault in bringing on the difficulty;

(2) The defendant . . . actually believed he was in imminent danger of losing his life or sustaining serious bodily injury, or he actually was in such imminent danger;

(3) If the defense is based upon the defendant's actual belief of imminent danger, a reasonable prudent man of ordinary firmness and courage would have entertained the same belief . . . ; and

(4) The defendant had no other probable means of avoiding the danger of losing his own life or sustaining serious bodily injury than to act as he did in this particular instance.

State v. Dickey, 394 S.C. 491, 499, 716 S.E.2d 97, 101 (2011) (omissions in original) (quoting *State v. Wiggins*, 330 S.C. 538, 545, 500 S.E.2d 489, 493 (1998)). However, when the Act applies, "it replaces the duty to retreat element required to establish self-defense." *State v. Glenn*, 429 S.C. 108, 119, 838 S.E.2d 491, 497 (2019).

Subsection (C) of section 16-11-440 of the South Carolina Code provides,

A person who is not engaged in an unlawful activity and who is attacked in another place where he has a right to be, including, but not limited to, his place of business, has no duty to retreat and has the right to stand his ground and meet force with force, including deadly force, if he reasonably believes it is necessary to prevent death or great bodily injury to himself or another person or to prevent the commission of a violent crime as defined in [s]ection 16-1-60 [of the South Carolina Code (Supp. 2023)].

(emphasis added).

We hold trial counsel's performance was not deficient because at the time of the trial, and even now, an open question remains as to whether a person can invoke immunity under the Act when the person was a social guest and used force against

an attacker in the attacker's home.² Trial counsel cannot be deficient for failing to pursue a course of action that would require expanding existing precedent and testing unproven theories of law. *See Strickland*, 466 U.S. at 690 ("[C]ounsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment."); *Robinson v. State*, 308 S.C. 74, 78, 417 S.E.2d 88, 91 (1992) (holding that trial counsel was not ineffective for failing to request a charge on battered woman's syndrome when the theory was not well known at the time and had not been recognized by our supreme court as relevant to a claim of self-defense); *Gilmore v. State*, 314 S.C. 453, 457, 445 S.E.2d 454, 456 (1994) ("We have never required an attorney to be clairvoyant or anticipate changes in the law which were not in existence at the time of trial."), *overruled on other grounds by Brightman v. State*, 336 S.C. 348, 351 n.4, 520 S.E.2d 614, 615 n.4 (1999); *Arnette v. State*, 306 S.C. 556, 557–58, 413 S.E.2d 803, 804 (1992) (holding trial counsel provided effective assistance although he failed to consider the defense of accident because there was no evidence that the defense could be applied to the applicant); *State v. Moussa*, 53 A.3d 630, 637 (N.H. 2012) ("An attorney is not obligated to pursue weak options when it appears, in light of informed professional judgment, that a defense is implausible or insubstantial." (quoting *United States v. Woodard*, 291 F.3d 95, 108 (1st Cir. 2002))); *Esprit v. State*, 826 S.E.2d 7, 15 (Ga. 2019) ("A criminal defense attorney does not perform deficiently when he fails to advance a legal theory that would require 'an extension of existing precedents and the adoption of an unproven theory of law.'" (quoting *Williams v. State*, 818 S.E.2d 653 (Ga. 2018))).

We need not reach prejudice because we hold that trial counsel's performance was not deficient. *See Speaks*, 377 S.C. at 399, 660 S.E.2d at 514 (holding that in order to establish an ineffective assistance of counsel claim, a PCR applicant must show counsel's performance was deficient and that deficiency prejudiced the applicant's case); *Strickland*, 466 U.S. at 694 (stating that a PCR applicant establishes prejudice by showing "there is a reasonable probability that, *but for counsel's unprofessional errors*, the result of the proceeding would have been different" (emphasis added)).

Accordingly, the PCR court's dismissal of Thompson's PCR application is

AFFIRMED.

² At oral argument, both parties conceded there are no cases supporting the application of the Act to a social guest who uses force against a homeowner in the homeowner's home.

KONDUROS, GEATHERS, and HEWITT, JJ., concur.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to the Court of Appeals
Appeal from Richland County
Honorable Brian M. Gibbons, Circuit Court Judge

Opinion No. 2025-UP-017 (S.C. Ct. App. Filed January 23, 2025)

Lower Court Case No. 2018-CP-40-04637

HOLLY JO THOMPSON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2021-000846

PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS

JESSICA M. SAXON
Appellate Defender

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

ATTORNEY FOR PETITIONER

RECEIVED

Apr 07 2025

S.C. SUPREME COURT

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CERTIFICATE OF COUNSEL

Counsel for petitioner certifies that the petition for rehearing was made and finally ruled on by the Court of Appeals on March 6, 2025.

QUESTION PRESENTED

Whether the Court of Appeals erred in finding that trial counsel was not ineffective for failing to pursue immunity under the Protection of Persons and Property Act where the Court determined that an open question remains as to whether a person can invoke immunity under the Act when the person was a social guest and used force against an attacker in the attacker's home?

STATEMENT OF THE CASE

On January 27, 2014, Odell Middleton discovered the body of James Solomon (Decedent)¹ on the floor of the Decedent's trailer and called 911. App. 103, l. 20-App. 104, l. 7; App. 112, ll.13-17. Middleton saw that there was blood and broken glass around the decedent's head. He also noted signs of a struggle in the home, such as the rugs being "kicked" and "tangled" up, and the "sheets and stuff" having been "tore up on the bed." App. 104, l. 18-App. 105, l. 18; App. 109, ll. 5-13.

Investigators with the Richland County Sheriff's Department responded and processed the scene. Evidence collected included various blood swabs from the hallway, bedroom, and living room, a knife from the bedroom with blood on it, the bedroom sheets, and pieces of a glass vase. App. 267, l. 5-App. 268, l. 21. The blood evidence recovered from the home matched the Decedent. App. 382-398. A palm print in blood on the neck piece of the glass vase was matched to Holly Jo Thompson (Petitioner). App. 172, l. 24-App. 174, l. 4; App. 360, ll. 10-16.

An autopsy revealed that the Decedent had died from exsanguination due to multiple blunt and/or sharp force injuries. App. 322, ll. 21-24. The blunt force injuries were contained to the head with several superficial or shallow cuts to other parts of the body. App. 312, ll. 19-24; App. 318, ll. 11-18. A toxicology of the Decedent revealed alcohol, cocaine, and cocaine metabolites were present in his blood at the time of his death. Based on the levels of cocaine and cocaine metabolites in his blood, an expert with SLED opined that it was very possible the Decedent had taken multiple doses of cocaine on the day of his death and that the drug was influencing him at the time of his death. App. 612, ll. 7-23; App. 614, l. 23-App. 615, l. 8.

¹ Decedent was found approximately two to three days after his death. App. 324, ll. 4-5.

Petitioner was arrested for the murder of Decedent. At the time of her arrest, Petitioner told officers that she had been at the Decedent's home the night of the incident but that she "didn't kill the man." App. 628, ll. 10-14. Both before and during trial, Petitioner stated that she worked as a prostitute and that the Decedent was a regular client of hers. He would generally provide her with drugs in exchange for sex. App. 522, ll. 2-13; App. 523, ll. 21-25. In the roughly nine months to a year that Petitioner had known the Decedent, they had engaged in sex for drugs and/or money over one hundred times. App. 522, l. 22-App. 523, l. 2; App. 635, ll. 19-22.

On the night of the incident, Petitioner received a message from her then boyfriend/pimp, Michael Richardson, that the Decedent wanted her to come over to his trailer. App. 420, ll. 1-4; App. 524, ll. 13-16; App. 538, ll. 19-20. When she arrived, the Decedent let her into his home where the two began conversing. Petitioner noted it was extremely warm in the trailer, and she started to undress. She also thought that the Decedent was acting funny when she arrived and was not himself. The two used crack cocaine together, and Petitioner tried multiple times to engage the Decedent in various forms of sex, but he was unable to achieve or maintain an erection. App. 526, ll. 16-App. 527, l. 7. As the evening progressed the pair continued smoking crack cocaine. Petitioner would attempt to arouse the Decedent, but he was unable to perform sexually and began to become angry. App. 528, ll. 10-App. 529, ll. 10.

After attempting to engage the Decedent in sex multiple times without success, Petitioner decided it was time for her to leave. However, when she tried to leave, the Decedent started to yell at her to give him his money and crack back, and repeatedly stated that he was going to kill her. He grabbed a knife that he had been using to cut the crack cocaine with and began to swing it at Petitioner. App. 529, l. 21-App. 530, ll. 13; App. 534, ll. 10-12. Petitioner sustained

defensive wounds on her hands and arms from where she attempted to avoid the knife Decedent was swinging at her. App. 530, ll. 7-13; App. 340, ll. 4-10. To protect herself, Petitioner grabbed a glass vase that was full of the Decedent's urine² and swung it at him. The two continued to fight, he with a knife and her with a vase, until they both fell to the floor and the vase broke. At that point Petitioner got up, grabbed the remainder of her clothing, and left the trailer. When Petitioner fled from the Decedent's trailer, the Decedent was on his hands and knees, still yelling that he was going to kill her. App. 530, l. 17-App. 531, l. 19; App. 534, l. 1-App. 536, l. 22.

Petitioner thought she had struck the Decedent five or six times in the head with the vase prior to it breaking but was not sure. Petitioner maintained that she only grabbed the vase to defend herself against the Decedent's attack with the knife, that she was scared for her life, and that she did not feel she had any other option than to strike the Decedent with the vase. App. 534, ll. 20-App. 537, ll. 10. After she left the Decedent's trailer, she went back to Richardson's house and then called for Moses Warren to come pick her up. Both Richardson and Warren testified that Petitioner admitted to getting in a fight that night but that she did not offer any details about the event. Additionally, both men testified that they noticed marks or scratches on Petitioner. At trial, Warren confirmed he picked up Petitioner from the side of the road in the rain and took her to his home. Once there, he told Petitioner to shower so that she could warm up, and he noted that "she had all these blue marks on her, looked like somebody was throwing her around or knocking her out or something." He stated the marks were on Petitioner's arms, back, and legs. App. 421, l. 12-App. 422, l. 3; App. 439, l. 10-App. 442, l. 7.

² At trial Petitioner testified she had noticed the vase because it was pretty but could not determine what was inside of it. When she asked the Decedent, he stated that it was urine. When she asked why he peed in a vase he stated because he did not want to go to the bathroom to relieve himself. This was not typical behavior of the Decedent. App. 531, ll. 5-11

The case was called to trial on February 16, 2016, before the Honorable Robert Hood and a jury. The state was represented by Luck Campbell, Meghan Walker, and Laura Gregg. Petitioner was represented by Robert Bank, Alicia Goode, and Rhodes Bailey. App. 1. As she had from the beginning, Petitioner asserted she acted in self-defense when she killed the Decedent. App. 95, ll. 22-24. After a four-day trial, Petitioner was found guilty of murder and sentenced to forty-five years imprisonment. App. 758; App. 773, ll. 3-5.

Petitioner's conviction and sentence was affirmed on appeal. State v. Thompson, Op. No. 2018-UP-258 (S.C. Ct. App. filed June 13, 2018). Petitioner filed an application for post-conviction relief on August 29, 2018, alleging ineffective assistance of counsel for failing to call character witnesses and for failing to request Petitioner submit to a mental health evaluation. App. 776-781. The State filed a return dated January 10, 2019, requesting an evidentiary hearing. App. 783-790. A hearing was convened on October 29, 2019, before the Honorable Brian M. Gibbons. Petitioner was represented by Jonathan Waller. The State was represented by Samuel Key. App. 791. At the hearing, Counsel Waller proceeded on the claims of ineffective assistance of counsel raised in the original application. At the close of the hearing, Counsel Waller moved to amend the pleadings to conform to the evidence to include that counsel was also ineffective for failing to seek immunity prior to trial. App. 794-795; App. 836, ll. 4-10.

At the hearing, Petitioner testified that her claim had always been consistent, that she had been acting in self-defense, and that the Decedent was alive when she left his house. She confirmed that she had discussed the events of the incident with her lawyers many times. App. 799, ll. 4-20; App. 802, l. 20-App. 803, l. 7; App. 811, ll. 16-25. However, Petitioner did not remember talking with her attorneys about pursuing an immunity hearing and stated that she did

not know such a thing existed, so she did not ask them about it. App. 807, ll. 15-22; App. 809, ll. 5-7.

Counsel Bank testified that the case was assigned to him and as trial drew near, he brought in Counsel Goode and Counsel Bailey to assist him with the defense of Petitioner. He stated they had discussed the case many times, and he felt that Petitioner was always honest in her answers with him. He further testified that they had committed to asserting self-defense early-on in the case. App. 812, ll. 20-25; app. 815, ll. 3-25. Counsel Bank could not recall having a specific discussion with Petitioner about pursuing immunity under the Protections of Persons and Property Act (the Act). He did not have anything in his case file notes concerning the matter. He stated,

I don't remember anything specifically other than just my general knowledge of the 30(b) (ph) statute in South Carolina. My first concern would probably be whether it was a place that she had a right to be, but I think it would have been. This was a place that she was invited into not only this night but regularly. So, I think it's definitely something that could have been explored.

He further clarified that it was his understanding that pursuing an immunity hearing pre-trial would not prevent him from asserting a claim of self-defense at trial. App. 816, ll. 4-22. When questioned by the State, Counsel Bank confirmed he was aware of the Act and that he could not recall a specific reason, "other than kind of typical pros and cons you do in any case" as to why he did not pursue an immunity hearing in Petitioner's case. App. 823, ll. 11-23.

Counsel Goode testified that she was technically the second chair during Petitioner's trial. She handled the opening statement and some of the crime scene witnesses. App. 828, ll. 8-10. She also testified she worked with Petitioner to prepare her for testifying at trial. App. 829, l. 17-App. 830, l. 8. Counsel Goode was not asked about whether they discussed pursuing an immunity hearing. Counsel Bailey stated he was brought in as third chair to assist and supervise

as Counsel Bank was “still pretty new” as a lawyer, and he believed this was his first murder case. He testified that he did not think they discussed seeking immunity in Petitioner’s case, and he did not recall having an immunity hearing in Petitioner’s case. App. 834, ll. 4-22.

The PCR court issued an order of dismissal on July 28, 2021, finding that Petitioner had failed to meet her burden of proof. App. 840-858. Regarding the failure to seek immunity claim, the court found that Petitioner’s trial lawyers were not deficient because they “articulated a valid strategy of focusing the defense efforts on pursuing a theory of self-defense.” App. 857.

Petitioner timely appealed the denial of her PCR application. On June 13, 2022, the Petition for Writ of Certiorari and the Appendix were filed in this Court. The State’s return was filed on September 23, 2022. This Court transferred the case to the Court of Appeals on October 17, 2022. The Court of Appeals granted Certiorari on August 18, 2023. Following final briefing, the Court of Appeals held oral argument in this case on December 3, 2024. By way of an unpublished opinion, the Court of Appeals affirmed the PCR court. Thompson v. State, Op. No. 2025-UP-17, (S.C. Ct. App. filed January 23, 2025). Petitioner timely filed a petition for rehearing on February 2, 2025. The Court of Appeals denied the petition for rehearing on March 6, 2025. This Petition for a Writ of Certiorari to the Court of Appeals follows.

ARGUMENT

The Court of Appeals erred in finding that trial counsel was not ineffective for failing to pursue immunity under the Protection of Persons and Property Act where the Court determined that an open question remains as to whether a person can invoke immunity under the Act when the person was a social guest and used force against an attacker in the attacker's home.

In affirming the denial of Petitioner's PCR application the Court of Appeals held,

[T]rial counsel's performance was not deficient because at the time of the trial, and even now, an open question remains as to whether a person can invoke immunity under the Act when the person was a social guest and used force against an attacker in the attacker's home. Trial counsel cannot be deficient for failing to pursue a course of action that would require expanding existing precedent and testing unproven theories of law. Thompson v. State, Op. No. 2025-UP-17, (S.C. Ct. App. filed January 23, 2025).

Respectfully, as evidenced by the plain language of the statute the Act contemplates the possibility of immunity for an invited guest. Further, an examination of the case law interpreting the common law Castle Doctrine and the Act supports a finding that at the time of Petitioner's trial the Act was applicable to an invited guest fending off an attacker, even when the attacker is the homeowner. A review of the entire record reveals that Petitioner had a valid claim for immunity from prosecution under the Act, that the claim was not pursued, and that trial counsel did not have a valid strategy for failing to pursue the immunity claim, which resulted in Petitioner receiving ineffective assistance of counsel.

Applicability of the Protection of Persons and Property Act

The primary rule of statutory construction is to ascertain and give effect to the intent of the Legislature. Bryant v. State, 384 S.C. 525, 529, 683 S.E.2d 280, 282 (2009). "All rules of statutory construction are subservient to the one that the legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in light of the

intended purpose of the statute.” Broadhurst v. City of Myrtle Beach Election Comm'n, 342 S.C. 373, 380, 537 S.E.2d 543, 546 (2000). Words must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation. Bryant v. City of Charleston, 295 S.C. 408, 368 S.E.2d 899 (1988); State v. Blackmon, 304 S.C. 270, 273, 403 S.E.2d 660, 662 (1991).

Additionally, statutes are not intended to be read in a piecemeal fashion, taking only those parts which best serve a particular position. Citizens for Quality Rural Living, Inc. v. Greenville County Planning Commission, 426 S.C. 97, 825 S.E.2d 721 (2019) (The intention of the legislature when enacting a statute must be gleaned from the entire section and not simply clauses taken out of context). Courts, when interpreting a statute, should not concentrate on isolated phrases within the statute; a statute must be read as a whole and sections that are part of the same general statutory law must be construed together and each one given effect. Id. “A statute as a whole must receive a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of the lawmakers.” Browning v. Hartvigsen, 307 S.C. 122, 125, 414 S.E.2d 115, 117 (1992).

“Courts will reject a statutory interpretation which would lead to a result so plainly absurd that it could not have been intended by the Legislature or would defeat the plain legislative intention.” State v. Sweat, 386 S.C. 339, 351, 688 S.E.2d 569, 575 (2010) (internal citation omitted). “Any ambiguity in a statute should be resolved in favor of a just, equitable, and beneficial operation of the law.” Bennett v. Sullivan's Island Bd. of Adjustment, 313 S.C. 455, 458, 438 S.E.2d 273, 274 (Ct.App.1993).

The South Carolina General Assembly adopted the Act, S.C. Code Ann. § 16-11-410, et seq, in 2006. In the preamble to the Act the General Assembly stated its intent was to “codify

the common law Castle Doctrine which recognizes that a person's home is his castle and *to extend the doctrine* to include an occupied vehicle and the person's place of business." S.C. Code Ann. § 16-11-420(A) (emphasis added). The General Assembly found it "proper for *law-abiding citizens to protect themselves*, their families, and others *from intruders and attackers* without fear of prosecution or civil action for acting in defense of themselves and others." S.C. Code Ann. § 16-11-420(B) (emphasis added). The General Assembly recognized "*that persons residing in or visiting this State* have a right to expect to remain unmolested and safe within their homes, businesses, and vehicles." S.C. Code Ann. § 16-11-420(D) (emphasis added). Finally, the General Assembly explained "*that no person or victim of crime should be required to surrender his personal safety to a criminal, nor should a person or victim be required to needlessly retreat in the face of intrusion or attack.*" S.C. Code Ann. § 16-11-420(E) (emphasis added).

The legislative intent was set forth with plain language in the preamble of the Act. S.C. Code Ann. § 16-11-420. The intent of the General Assembly in codifying the common law Castle Doctrine was to create "substantive rights for citizens...to protect themselves, their families, and others from intruders and attackers without fear of prosecution or civil action." State v. Dickey, 380 S.C 384, 404-405, 669 S.E.2d 917, 928 (Ct. App. 2008), rev'd on other grounds, 394 S.C. 491, 716 S.E.2d 97 (2011). Taken as a whole, the preamble states that law abiding citizens whether they be residing in or visiting South Carolina have a right to protect themselves and others from intruders and attackers without fear of prosecution, without surrendering their personal safety to a criminal, and without being required to needlessly retreat. The statute plainly states that "*no person or victim* should be required to surrender their personal

safety to a criminal” and does not mention restricting the Act based on the geographical location of the incident. S.C. Code Ann. § 16-11-420(E).

The General Assembly included a definition section in the Act to assist courts with interpretation. The Act states that “‘dwelling’ means a building or conveyance of any kind, including an attached porch, whether the building or conveyance is temporary, permanent, mobile or immobile, which has a roof over it, including a tent, and is designed to be occupied by people lodging there at night.” S.C. Code Ann. § 16-11-430(1). It further states that “‘*residence*’ means a dwelling in which a person resides either temporarily or permanently or is visiting as an invited guest.” S.C. Code Ann. § 16-11-430(3) (emphasis added).

Applying the plain meaning rule to the definition section, a “residence” for the purposes of the Act encompasses a dwelling in which a person is visiting as an invited guest. Critically, under the common law Castle Doctrine an invited guest had standing to assert immunity, even against the homeowner. See State v. Brown, 321 S.C. 184, 467 S.E.2d 922 (1996) (applying the common law and holding that “a lawful guest attacked in the owner’s home has no duty to retreat where the attacker is an intruder” but “where the attacker is the homeowner, a lawful guest has a duty to retreat”) and State v. Curry, 406 S.C. 364, 374, 752 S.E.2d 263, 267-268 (2013) (“Under the Castle Doctrine, the absence of a duty to retreat does not extend to a visitor or social guest in the home of another unless the attacker is an intruder.”) It follows that in codifying and extending the Castle Doctrine by promulgating the Act, that an invited guest would be entitled to assert immunity under the Act the same way an invited guest person could have asserted self-defense under the common law. Regardless, the definitional section clearly sets forth that the General Assembly intended that the Act would apply to an invited guest.

S.C. Code Ann. § 16-11-440(A) provides for the presumption of reasonable fear of imminent peril of death or great bodily injury when using deadly force against another under the Act. Subsection (B) removes the legal presumption of reasonable fear if “the person against whom the deadly force is used has the right to be in or *is a lawful resident of the dwelling, residence, or occupied vehicle* including, but not limited to, an owner, lessee, or title holder.” S.C. Code Ann. § 16-11-440(B)(1) (emphasis added). Again, the language used by the Legislature was plain and straight forward. A person claiming immunity under the Act is presumed to have a reasonable fear of the person against whom force is used *unless* the person against whom the force is used is the lawful resident, which can also be read to mean the homeowner. In those cases, when the presumption of reasonable fear is removed, the immunity claim falls under S.C. Code Ann. § 16-11-440 (C) which states,

A person who is not engaged in an unlawful activity and *who is attacked in another place where he has a right to be*, including, but not limited to, his place of business, has no duty to retreat and has the right to stand his ground and meet force with force, including deadly force, if he reasonably believes it is necessary to prevent death or great bodily injury to himself or another person or to prevent the commission of a violent crime as defined in Section 16-1-60 (emphasis added).

In State v. Douglas, 411 S.C. 307, 768 S.E.2d 232 (Ct. App. 2014), the Court of Appeals analyzed the meaning of “another place” in subsection (C), writing

The primary definition of “another” is “different or distinct from the one first considered.” Merriam Webster's Collegiate Dictionary 51 (11th ed. 2003). This definition would arguably modify “place,” as used in section 16-11-440(C), in such a way as to make “dwelling, residence, or occupied vehicle” and “another place” mutually exclusive. This is the interpretation the State proposes. On the other hand, the second and third definitions of “another” are “some other” and “being one more in addition to one or more of the same kind,” respectively. Id. The third definition is more inclusive and arguably would *not* eliminate “dwelling, residence, or occupied vehicle” as a possible “place” where the person using deadly force has a right to be pursuant to section 16-11-440(C).

Id. at 330, 768 S.E.2d at 245 (emphasis in original). The Court of Appeals ultimately concluded that “the more inclusive definition of “another” is the proper definition to employ in interpreting section 16–11–440(C).” Id., at 331, 768 S.E.2d at 245. Later, in State v. Jones, 416 S.C. 283, 786 S.E.2d 132 (2016) this Court affirmed the more inclusive definition of “another place” writing “[w]e agree with the Court of Appeals that the phrase “another place” in subsection (C) *encompasses a residence.*” Id. at 295, 786 S.E.2d at 138 (emphasis added). This Court continued, “by using the language ‘but not limited to, his place of business,’ we find the Legislature intended the protection of subsection (C) to apply to incidents, provided the other requirements are met, *without a geographical restriction.*” Id., at 297, 786 S.E.2d at 139 (emphasis added). Furthermore, this Court stated that “to interpret 16–11–440(C) as the State proposes would *improperly limit the protection of the Act based on the geography of the incident and the identity of the assailant.*” Id. at 297, 786 S.E.2d at 140 (emphasis added).

The immunity provision of the Act, provides that

A person who uses deadly force as permitted by the provisions of this article *or another applicable provision of law* is justified in using deadly force and *is immune from criminal prosecution* and civil action for the use of deadly force, unless the person against whom deadly force was used is a law enforcement officer acting in the performance of his official duties and he identifies himself in accordance with applicable law or the person using deadly force knows or reasonably should have known that the person is a law enforcement officer.

S.C. Code Ann. § 16-11-450 (emphasis added). This Court has acknowledged that “another applicable provision of law” includes the common law of self-defense. See State v. Scott, 424 S.C. 463, 473, 819 S.E.2d 116, 120 (2018); State v. Glenn, 429 S.C. 108, 17, 838 S.E.2d 491, 496 (2019). This Court has also explained that the immunity provided by the Act is a true immunity to prosecution, not merely an affirmative defense. See State v. Duncan, 392 S.C. 404, 410, 709 S.E.2d 662, 665 (2011). Accordingly, a person who is permitted to use deadly force

under the Act, or under another applicable provision of law such as self-defense, is justified in using deadly force and is immune from prosecution.

Applying the law to the facts of this case, Petitioner was an invited guest in the home of the Decedent when she was attacked. Because the attacker was the homeowner, Petitioner was not entitled to the reasonable fear presumption in 16-11-440(A). Petitioner would have been defaulted into subsection (C). Under the Act she was in a residence (a place she was visiting as an invited guest pursuant to S.C. Code Ann. § 16-11-430(3)) in which she had a right to be when she was attacked. Had she asserted immunity under the old common law, she would have had to show a duty to retreat from her attacker. However, subsection (C) removed the duty to retreat provision. See Curry at 266, 752 S.E.2d at 371 (Consistent with the Castle Doctrine and the text of the Act, a valid case of self-defense must exist, and the trial court must necessarily consider the elements of self-defense in determining a defendant's entitlement to the Act's immunity. This includes all elements of self-defense, save the duty to retreat.) Petitioner was not required to surrender her personal safety or life to the Decedent merely because he attacked her inside of his home. To find otherwise would improperly limit the protections of the Act based on the geography of the incident and the identity of the assailant and would also lead to plainly absurd results that the Legislature could not have intended.

An examination of the plain language of the Act along with a review of the case law surrounding the common law Castle Doctrine and the Act reveal that there was not an open question at the time of Petitioner's trial regarding the applicability of the Act. At its core the Act was designed to protect lawful citizens from criminal assaults, regardless of geographical location or the identity of the assailant, so long as the person asserting immunity was in a place they had a right to be and had a valid claim of self-defense. Petitioner had a lawful, statutory

claim under the Act. Trial counsel was deficient in failing to move for pre-trial immunity under the Act and this failure prejudiced Petitioner in that she could have been found immune from prosecution as a matter of law under the lesser standard of preponderance of the evidence. Further, if she had been denied immunity, the appellate courts of our State could have reviewed that decision for errors or abuses of discretion.

Ineffective Assistance of Counsel

The PCR court incorrectly found that trial counsel provided effective assistance of counsel. At no point during the PCR hearing did counsel articulate a valid strategy for failing to pursue immunity under the Act. In the order of dismissal the PCR court misconstrued Counsel Bank's testimony taking his statements of what he *should have done* as what he did do. The testimony of Counsel Bank, Counsel Bailey, and Petitioner made it evident that an immunity hearing under the Act was neither fully considered nor discussed, and there was no valid strategy offered to excuse such a failure.

"The Sixth Amendment guarantees every criminal defendant the reasonably effective assistance of counsel." Stone v. State, 419 S.C. 370, 379, 798 S.E.2d 561, 566 (2017) citing U.S. CONST. amend. VI; Strickland v. Washington, 466 U.S. 668, 683, (1984). "The benchmark for judging any claim of ineffectiveness must be whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland at 686 (1984). To prove ineffective assistance of counsel, "the defendant must show that counsel's performance was deficient" and "that the deficient performance prejudiced the defense." Id. "When a convicted defendant complains of the ineffectiveness of counsel's assistance, the defendant must show that counsel's representation fell below an objective standard of reasonableness." Id. at 687-688. "[T]he performance inquiry

must be whether counsel's assistance was reasonable considering all the circumstances." *Id.* at 688. Concerning prejudice, "a defendant need not show that counsel's deficient conduct more likely than not altered the outcome in the case." Rather, "[t]he defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Id.* at 694.

This Court has held that trial counsel's decision to employ a certain strategy will not be found to be deficient performance *if counsel articulates a valid reason for employing the strategy*. *Stone v. State*, 419 S.C. 370, 384, 798 S.E.2d 561, 569 (2017) (emphasis added). "The necessary converse of this principle is that counsel's decision to employ a certain strategy will be deemed unreasonable under the Sixth Amendment if the reasons given for the strategy are not sound." *Id.*

The PCR court found that counsel for Petitioner was not ineffective in failing to pursue an immunity hearing because Counsel Bank considered the relevant factors of the Act and decided to instead focus on asserting self-defense at trial. There was no testimony or evidence in the record to support that finding. What Counsel Bank testified to was that he did not recall having discussions with Petitioner or his co-counsel about an immunity hearing, that he had *no notes* regarding discussions about an immunity hearing, and that his first concern *if he would have considered a hearing* probably would have been whether the Decedent's home was a place Petitioner had the right to be. App. 816, ll. 4-19. Further, neither Counsel Bailey nor Petitioner had any recollection of discussing pursuing immunity from prosecution under the Act.

The PCR court further found Counsel Bank's failure to file for immunity pursuant to the Act was not deficient performance by ruling that he had articulated a valid strategy of focusing

on self-defense. However, again, there was no evidence or testimony in the record to support that finding. Notably, Counsel Bank testified that a hearing under the Act was “something that *could* have been explored.” He confirmed that he understood he could have pursued immunity from prosecution under the Act and *still asserted self-defense at trial*. App. 816, ll. 20-22. At no point did he, or anyone else, testify that there was an affirmative decision to forgo a hearing under the Act to focus on self-defense at trial.

Even if there had been some affirmative decision to forgo a hearing and focus on self-defense, Counsel Bank was still required to articulate a valid reason for *not* pursuing immunity under the Act. While there are no appellate court decisions on this matter in South Carolina, the Supreme Court of Georgia has found that counsel was not ineffective for failing to file for immunity when counsel *explicitly stated* that the reason for not pursuing pretrial immunity was to avoid exposing the defendant to pre-trial cross examination from the State. Dent v. State, 810 S.E.2d 527 (Ga. 2018). Unlike the clear reasoning stated in Dent, the record in the present matter is utterly devoid of any strategic reasoning for failing to file for a hearing under the Act.

As discussed above, the intent of the Act was to “codify the common law Castle Doctrine which recognizes that a person’s home is his castle and to extend the doctrine to include an occupied vehicle and the person’s place of business” because the Legislature concluded that “no person or victim of crime should be required to surrender his personal safety to a criminal, nor should a person or victim be required to needlessly retreat in the face of intrusion or attack.” S.C. Code Ann. § 16-11-420(A)-(E).

To effectuate this intent, the General Assembly created a statute providing for immunity from prosecution to “[a] person who uses deadly force as permitted by the provisions of this article or another applicable provision of law.” S.C. Code Ann. § 16-11-450(A). This Court

explained that “another applicable provision of law” found within the Act “includes the common law of self-defense.” State v. Glenn, 429 S.C. 108, 117, 838 S.E.2d 491, 496 (2019). Further, this Court held that “[a] claim of immunity under the Act requires a pretrial determination using a preponderance of the evidence standard.” State v. Curry, 406 S.C. 364, 370, 752 S.E.2d 263, 266 (2013).

“This means a defendant may seek immunity from prosecution under the Act by ‘demonstrating the elements of self-defense to the satisfaction of the trial court by the preponderance of the evidence.’” Glenn, 429 S.C. at 18, 838 S.E.2d at 496 (internal quotation omitted). “Accordingly, a trial court should first consider whether the defendant has proved the elements of self-defense by a preponderance of the evidence. If the defendant has failed to meet the elements of reasonable fear or the duty to retreat, the court should then determine whether section 16-11-440(A) or (C) is applicable.” Id.

The Act provides:

A person who is not engaged in an unlawful activity and who is attacked in another place where he has a right to be, including, but not limited to, his place of business, has no duty to retreat and has the right to stand his ground and meet force with force, including deadly force, if he reasonably believes it is necessary to prevent death or great bodily injury to himself or another person or to prevent the commission of a violent crime as defined in Section 16-1-60.

S.C. Code Ann. § 16-11-440(C). Thus, “in cases where the defendant has not proved the duty to retreat element by a preponderance of the evidence, the court should then consider whether section 16-11-440(C) is applicable because the provision was enacted to extend the protections of the Castle Doctrine to other places where he has a right to be.” Id. at 118-119, 838 S.E.2d at 496. “Where this section is applicable, it replaces the duty to retreat element required to establish self-defense.” Id. at 119, 838 S.E.2d at 497. “In determining whether a defendant satisfies section 16-11-440(C), the circuit court must analyze whether, at the time of the incident,

he was engaged in an unlawful activity and was attacked in another place where he had a right to be.” Id.

The bare assertion that the accused was engaged in an unlawful activity at the time of the incident does not automatically bar an individual from raising a claim of immunity under the Act. This Court has held that the trial court must perform a proximate cause analysis on the unlawful activity element to determine whether the unlawful activity was the cause of the incident. Further, the burden is on the State to prove beyond a reasonable doubt that the unlawful act in which the accused was engaged was at least the proximate cause of the homicide. See Glenn at 121, 838 S.E.2d at 497-498 (2019) citing State v. Goodson, 312 S.C. 278, 280 n.1, 440 S.E.2d 370, 372 n.1 (1994).

Additionally, the fact that there are conflicts in the evidence is not grounds alone to deny immunity. As this Court has stated, “just because conflicting evidence as to an immunity issue exists does not automatically require the court to deny immunity; the court must sit as the factfinder at this hearing, weigh the evidence presented, and reach a conclusion under the Act.” State v. Andrews, 427 S.C. 178, 181, 830 S.E.2d 12, 13 (2019) citing State v. Cervantes-Pavon, 426 S.C. 442, 827 S.E.2d 564 (2019). The relevant inquiry is not merely whether there is a conflict in the evidence but, rather, whether the accused has proved an entitlement to immunity under the Act by a preponderance of the evidence. Id.

A defendant must establish four elements to justify the use of deadly force under the common law of self-defense.

First, the defendant must be without fault in bringing on the difficulty. Second, the defendant must have actually believed he was in imminent danger of losing his life or sustaining serious bodily injury, or he actually was in such imminent danger. Third, if his defense is based upon his belief of imminent danger, a reasonably prudent man of ordinary firmness and courage would have entertained the same belief. If the defendant actually was in imminent danger, the

circumstances were such as would warrant a man of ordinary prudence, firmness and courage to strike the fatal blow in order to save himself from serious bodily harm or losing his own life. Fourth, the defendant had no other probable means of avoiding the danger of losing his own life or sustaining serious bodily injury than to act as he did in this particular instance.

Glenn at 116, 838 S.E.2d at 495 (2019) (internal citations omitted).

Applying the law to the facts of the case *sub judice* supports that Petitioner had a valid claim for immunity that should have been presented to the circuit court prior to trial. Petitioner was an invited guest who had a right to be present in Decedent's home at the time of the incident. She was not engaged in any unlawful activity that proximately caused the incident. She was not at fault in bringing on the difficulty as she was merely trying to leave the Decedent's home when he attacked her with a knife placing her at imminent danger of death or great bodily injury. The Decedent was physically larger and stronger than Petitioner and he was high, paranoid, and upset that he could not perform sexually. These circumstances were such as would warrant a person of ordinary prudence, firmness and courage to strike the fatal blow in order to save themselves from serious bodily harm or losing their own life. Therefore, her actions of striking back with whatever she could find, in this case a vase filled with urine, were reasonable and justified.

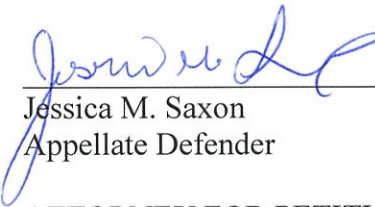
Counsel Bank's failure to even consider, much less pursue, immunity under the Act was deficient performance. Considering Petitioner's unwavering claim of self-defense and the facts of the case it was unreasonable under prevailing professional norms to not move for immunity under the Act. Petitioner was prejudiced, in that she could have been found immune from prosecution under the lesser standard of preponderance of the evidence. Further, if she had been denied immunity, the appellate courts of our State could have reviewed that decision for errors or abuses of discretion. Finally, despite the finding in the order of dismissal Counsel Bank

articulated no reason for failing to move for immunity under the Act. The failure to move for immunity under the Act was ineffective assistance of counsel.

CONCLUSION

Based upon the foregoing, Petitioner respectfully requests that this Court grant the petition for writ of certiorari to the Court of Appeals and order further briefing on the issue presented.

Respectfully Submitted,



Jessica M. Saxon
Appellate Defender

ATTORNEY FOR PETITIONER

This 7th day of April, 2025

THE STATE OF SOUTH CAROLINA
In the Supreme Court

ON PETITION FOR CERTIORARI FROM THE COURT OF APPEALS
Appeal from Richland County

Robert E. Hood, Trial Judge
Brian M. Gibbons, Post-Conviction Relief Judge

Appellate Case No. 2025-000654

HOLLY JO THOMPSON,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

**RETURN TO PETITION
FOR WRIT OF CERTIORARI**

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

DANIELLE DIXON
Assistant Attorney General

BRIAN H. GIBBS
Assistant Attorney General
S.C. Bar No. 104137

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
Phone: 803-734-3727

Attorneys for Respondent

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PETITIONER'S QUESTION PRESENTED

"Whether the Court of Appeals erred in finding that trial counsel was not ineffective for failing to pursue immunity under the Protection of Persons and Property Act where the Court determined that an open question remains as to whether a person can invoke immunity under the Act when the person was a social guest and used force against an attacker in the attacker's home?"

STATEMENT OF THE CASE*Procedural History*

Petitioner Holly Jo Thompson is presently confined in the South Carolina Department of Corrections serving a forty-five year sentence. In April 2014, a Richland County grand jury indicted her for the murder of James Solomon (Victim). On February 16-19, 2016, Petitioner proceeded to a jury trial before the Honorable Robert E. Hood. Public Defenders Robert Bank, Alicia Goode, and Rhodes Bailey represented Petitioner. Assistant Solicitors Luck Campbell, Meghan Walker, and Laura Gregg prosecuted the case. Petitioner was convicted as indicted, and the trial court sentenced her to forty-five years' imprisonment.

Petitioner filed a direct appeal that was perfected by Senior Appellate Defender Kathrine Haggard Hudgins. On appeal, Petitioner argued the trial court erred in (1) not instructing the jury on involuntary manslaughter, (2) not requiring the State to provide defense counsel with rap sheets of jurors with convictions, and (3) refusing to allow defense counsel to recross the forensic pathologist but allowing the prosecution to recross Petitioner. On June 13, 2018, the Court of Appeals issued an opinion affirming. *See State v. Thompson*, 2018-UP-258 (S.C. Ct. App. filed June 13, 2018). The remittitur was sent June 29, 2018.

On August 29, 2018, Petitioner filed this application for post-conviction relief (PCR). On October 29, 2019, an evidentiary hearing convened before the Honorable Brian M. Gibbons. Jonathan Waller represented Petitioner and Assistant Attorney General Samuel Key represented the State. On July 28, 2021, the PCR court issued an order denying relief.

Petitioner filed a timely notice of appeal. On June 13, 2022, Petitioner filed a writ of certiorari. On September 23, 2022, Respondent filed a return. On October 16, 2022, the case was transferred to the Court of Appeals, which granted certiorari on August 18, 2023. On December

3, 2024, the Court of Appeals heard oral arguments in this case, and on January 23, 2025, the Court of Appeals issued an opinion affirming the PCR court's order denying relief. *See Thompson v. State*, 2025-UP-017 (S.C. Ct. App. filed Jan. 23, 2025). On February 5, 2025, Petitioner filed a petition for rehearing, which the Court of Appeals denied on March 6, 2025.

On April 7, 2025, Petitioner filed a timely petition for writ of certiorari with this Court.

Trial Testimony

At trial, Victim's friend, Odell Middleton, testified he stopped by Victim's home one afternoon to visit. (App. 96-101). He testified the front door was locked but the back door was open. (App. 101-02). Middleton noticed an odor and went inside, where he found Victim's deceased body on the living room floor. (App. 103-04). He called 911. (App. 104).

Amy Durso, a pathologist, testified Victim had multiple blunt-force trauma injuries, including three lacerations on the right side of his head, six lacerations on the top of his head, two lacerations on the back of his head, three lacerations "kind of going towards the neck," two lacerations on his forehead, a laceration over his nose, and a fractured nasal bone. (App. 309-13). Additionally, Victim had two sharp-force injuries on the back of his neck, a sharp-force injury next to his chin, two sharp-force injuries on his lower chest, five sharp-force injuries on his left thigh, seven sharp force injuries on his right hand, three sharp-force injuries on his right arm, three sharp force injuries on his right shoulder, and nine sharp-force injuries to his left-arm. (App. 321-22). Dr. Durso opined Victim died of exsanguination, extreme blood lose, approximately two to three days before his body was discovered. (App. 322, 324).

Law enforcement testified about the bloody scene that spanned Victim's home from the bedroom, down the hall, and into the living room. (App. 115-16, 148-51, 167-70, 263, 490). Law enforcement collected a knife from the bedroom floor containing Victim's blood (App. 122, 165,

172, 200, 267, 396) and glass fragments from the hallway near a back door. (App. 116-17, 168). One of the glass fragments contained Petitioner's palmprint. (App. 358-60).

Stan Richards, an expert in bloodstain pattern analysis, opined the incident began in the bedroom and ended in the living room. (App. 288). He based this opinion on the fact the bedroom contained a smaller amount of blood, signaling the beginning of the blood-letting event. (App. 288-89). Richards testified the volume of blood increased as it moved down the hall away from the bedroom. (App. 289). He testified the area around the glass shards in the hallway contained an increased amount of blood, which was consistent with Victim being "stationary for a little while." (App. 289, 292). Richards opined that spherical blood spatter located on an HVAC in the hall indicated an impact occurred at the same level as the HVAC, which was below waist level. (App. 294-95).

Petitioner testified in her defense. She stated she was a prostitute, and Victim often gave her crack cocaine in exchange for sex. (App. 522-23). According to Petitioner, she had been at Victim's home that evening smoking crack cocaine with him. (App. 526-27). When they tried to engage in sex, Victim could not obtain an erection and became angry. (App. 528-30). Petitioner stated she attempted to leave but Victim accused her of stealing from him. (App. 529-30). She testified Victim started swinging a knife at her and "caught" her right hand, cutting her. (App. 530, 535). Petitioner stated that they were in the living room and that she grabbed a glass vase to protect herself. (App. 530-31). She testified, "I swung the vase at him, and he swung at me again. The next thing I know, we're fighting with a vase and a knife." (App. 531).

Petitioner testified Victim had threatened to shoot her¹ and she was "scared for her life." (App. 530, 534). She stated she was only wearing jeans and shoes; her shirt, bra, and jacket were

¹ Investigators did not testify to finding a gun in the home.

at the end of the couch. (App. 534). Petitioner testified she attempted to get her clothes and her crack pipe, which she "never left . . . anywhere"; as she bent over to pick up her pipe, Victim swung and hit Petitioner's left hand, bruising it. (App. 535). Petitioner testified she then swung the vase at Victim, hitting him in the face and head. (App. 535). She clarified Victim was "coming around the end of the coffee table" when she picked up the vase. (App. 534).

Petitioner was unsure how many times she hit Victim but thought it was five or six times. (App. 535). She stated Victim fell and she fell on top of him; she stopped hitting him when they fell and the vase broke. (App. 537). After they fell, she "got up real quick, grabbed [her] clothes, [and] went out the front door," which was located in the living room. (App. 536). Petitioner testified Victim was still yelling and threatening to kill her as she left. (App. 536). She maintained none of the fighting occurred in the bedroom. (App. 538). On cross-examination, when asked what prevented her from running out the front door when she crossed the living room to grab the vase, she replied, "It was cold outside and I really didn't want to run out there with no clothes on like that." (App. 559-61, 563). She testified she did not continue hitting Victim after he fell. (App. 566). Likewise, she claimed he was facing her at the time. (App. 567).

At Petitioner's request, the trial court charged self-defense. (App. 749-52). The jury convicted Petitioner of murder. (App. 758). The trial court sentenced her to forty-five years' imprisonment. (App. 773).

PCR testimony

At the PCR hearing, Petitioner maintained she had been acting in self-defense. (App. 799). However, she stated counsel never discussed a pretrial immunity hearing. (App. 807). Petitioner acknowledged the evidence indicated Victim's back door had been left open, which contradicted her trial testimony that she ran out the front door; however, Petitioner stated she would not have

left out the back door because Victim kept a large dog in his back yard that she was afraid of. (App. 801). Petitioner averred "[s]omeone else had to have been in that house because . . . the back door was open." (App. 811). She also asserted the knife that police found in the bedroom was in the living room when she left, and a screwdriver that police found by the back door was not on the floor while she was there. (App. 803).

Robert Bank (trial counsel) testified Petitioner told him that Victim had accused her of stealing crack cocaine and attacked her with a weapon and that Petitioner defended herself by "grabbing a glass vase and hitting him multiple times." (App. 813). Trial counsel also stated Petitioner told him that Victim was still alive when she left. (App. 813). Trial counsel did not recall whether he discussed the Protection of Persons and Property Act with Petitioner. (App. 816). He stated his initial concern would have been whether she was in a place that she had a right to be, although he averred evidence showing Petitioner "was invited [to Victim's home] not only this night but regularly" could show she was in a place she had a right to be. (App. 816). Trial counsel could not recall why he did not pursue a pretrial immunity hearing. (App. 823). He elaborated, "Sitting here today, I don't specifically remember anything regarding her case other than kind of typical pros and cons you do in any case. But, no, I don't remember anything specific in this case in terms of why we didn't do that." (App. 823).

The PCR court found Petitioner failed to prove counsel was deficient for not seeking a pretrial immunity hearing because counsel articulated a valid strategy of focusing on a theory of self-defense, and counsel chose not to pursue an immunity hearing through a pro/con process performed in any case. (App. 856-58). Based on its deficiency finding, the PCR court did not evaluate prejudice. (App. 856-58).

Court of Appeals Opinion

The Court of Appeals affirmed the PCR court's dismissal, holding that trial counsel's performance was not deficient because "at the time of trial, and even now, an open question remains as to whether a person can invoke immunity under the Act when the person was a social guest and used force against an attacker in the attacker's home." *Thompson v. State*, 2025-UP-017 at 4-5. The Court of Appeals stated that trial counsel could not be deficient for "failing to pursue a course of action that would require expanding existing precedent and testing unproven theories of law." *Id.* at 5. Like the PCR court, the Court of Appeals did not reach prejudice due to its holding that trial counsel's performance was not deficient. *Id.*

This appeal followed.

STANDARD OF REVIEW

The standard of review for post-conviction relief depends on the specific issue before the appellate court. *Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836, 839 (2018). When reviewing factual findings, the appellate courts defer to the PCR court's factual findings and will uphold them if any probative evidence in the record supports them. *Buckson v. State*, 423 S.C. 313, 320, 815 S.E.2d 436, 440 (2018); *Smalls*, 422 S.C. at 180-81, 810 S.E.2d at 839-40. Further, appellate courts "defer to the PCR court's credibility findings as to witnesses who testified before the PCR court." *Thompson v. State*, 423 S.C. 235, 247, 814 S.E.2d 487, 493 (2018). "Where matters of credibility are involved, this Court gives great deference to a judge's findings, because this Court lacks the opportunity to directly observe the witnesses." *Foye v. State*, 335 S.C. 586, 589, 518 S.E.2d 265, 267 (1999). However, pure questions of law will be reviewed de novo without deference to the PCR court. *Id.* Appellate courts will reverse the decision of the PCR court when it is controlled by an error of law. *Goins v. State*, 397 S.C. 568, 573, 726 S.E.2d 1, 3 (2012).

ARGUMENT

I. The Court of Appeals correctly held that trial counsel was not ineffective for failing to request a pretrial immunity hearing.

Here, probative evidence supports the PCR court's finding that counsel was not deficient because counsel testified he engaged in a pro/con analysis when deciding whether to pursue immunity. Further—and critically—Petitioner cannot show prejudice because Petitioner's testimony was inconsistent with the forensic evidence, making it not reasonably likely a trial court would have granted immunity.

"There is a strong presumption trial counsel provided adequate assistance." *Green v. State*, 351 S.C. 184, 192, 569 S.E.2d 318, 322 (2002). To prove ineffective assistance of counsel, an applicant must show counsel was deficient, and that deficiency prejudiced the applicant. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). In other words, "the applicant must show trial counsel's performance fell below an objective standard of reasonableness and, but for counsel's errors, there is a reasonable probability the result at trial would have been different." *Green*, 351 S.C. at 192, 569 S.E.2d at 322. "A reasonable probability is one sufficient to undermine confidence in the trial's outcome." *Id.*

The General Assembly enacted the Protection of People and Property Act² (the Act) to codify the common law Castle Doctrine. *State v. Curry*, 406 S.C. 364, 372, 752 S.E.2d 263, 267 (2013). "Consistent with the Castle Doctrine and the text of the Act, a valid case of self-defense must exist, and the trial court must necessarily consider the elements of self-defense in determining a defendant's entitlement to the Act's immunity." *Id.* at 371, 752 S.E.2d at 266. "This includes all elements of self-defense, save the duty to retreat." *Id.*

"[T]he legislature intended defendants [to] be shielded from trial if they use deadly force

² S.C. Code Ann. §§ 16-11-410 to -450.

as outlined under the Act." *State v. Duncan*, 392 S.C. 404, 410, 709 S.E.2d 662, 665 (2011). Thus, upon motion, the issue of immunity under the Act must be decided prior to trial. *Id.* A party seeking immunity under the Act must show entitlement to immunity by a preponderance of the evidence. *Id.* at 411, 709 S.E.2d at 665. As this Court has previously stated, common law self-defense has four elements:

First, the defendant must be without fault in bringing on the difficulty. Second, the defendant must have actually believed he was in imminent danger of losing his life or sustaining serious bodily injury, or he actually was in such imminent danger. Third, if his defense is based upon his belief of imminent danger, a reasonably prudent man of ordinary firmness and courage would have entertained the same belief. If the defendant actually was in imminent danger, the circumstances were such as would warrant a man of ordinary prudence, firmness and courage to strike the fatal blow in order to save himself from serious bodily harm or losing his own life. Fourth, the defendant had no other probable means of avoiding the danger of losing his own life or sustaining serious bodily injury than to act as he did in this particular instance.

State v. Glenn, 429 S.C. 108, 116, 838 S.E.2d 491, 495 (2019).

The Act sets forth two statutory presumptions:

(A) A person is presumed to have a reasonable fear of imminent peril of death or great bodily injury to himself or another person when using deadly force that is intended or likely to cause great bodily injury to another person if the person:

(1) against whom the deadly force is used is in the process of unlawfully and forcefully entering, or has unlawfully and forcibly entered a dwelling, residence, or occupied vehicle, or if he removes or is attempting to remove another person against his will from the dwelling, residence, or occupied vehicle; and

(2) who uses deadly force knows or has reason to believe that an unlawful or forcible entry or unlawful and forcible act is occurring or has occurred.

(B) The presumption provided in subsection (A) does not apply if the person:

(1) against whom the deadly force is used has the right to be in or is a lawful resident of the dwelling . . . ; or

. . .

(3) who uses deadly force is engaged in an unlawful activity or is using the dwelling, residence, or occupied vehicle to further an unlawful activity

(C) A person who is not engaged in an unlawful activity and who is attacked in another place where he has a right to be, including, but not limited to, his place of business, has no duty to retreat and has the right to stand his ground and meet force with force, including deadly force, if he reasonably believes it is necessary to prevent death or great bodily injury to himself or another person

§ 16-11-440.

A. Petitioner's testimony was inconsistent with the forensic evidence, which makes it not reasonably likely that a court would have granted immunity.

Petitioner cannot show prejudice from trial counsel's failure to request a pretrial immunity hearing because it is not reasonably likely a court would have granted immunity.³ The *Strickland* standard of prejudice requires a court to find that but for an alleged deficiency, there is a reasonable probability the result of the proceeding would be different. *Strickland*, 466 U.S. at 694. In other words, the proper question is, "If counsel had requested a pretrial immunity hearing, is there a reasonable probability the circuit court would have granted immunity?" *See Strickland*, 466 U.S. at 693 ("It is not enough for the defendant to show that the errors had some conceivable effect on the outcome of the proceeding. Virtually every act or omission of counsel would meet that test, and not every error that conceivably could have influenced the outcome undermines the reliability of the result of the proceeding." (internal citation omitted)).

Although credibility is generally best assessed by a trial court, here, where Petitioner's

³ The State acknowledges the PCR court did not make any finding of prejudice related to this issue in its Order. However, this Court can affirm for any reason appearing in the record.

testimony about what occurred is so blatantly refuted by the forensic evidence, and where a jury found the State *disproved* self-defense *beyond a reasonable doubt*, an appellate court can conclude that it is not reasonably likely a circuit court judge would have found Petitioner proved self-defense by a preponderance of the evidence.⁴

At trial, Petitioner admitted she was at Victim's home smoking crack and attempting to engage in prostitution. She claimed Victim became angry when he could not get an erection; she went into the living room to get her clothes, and Victim followed her and began swinging a crack knife at her. According to Petitioner, they were in the living room when this occurred. She denied that any fighting occurred in the bedroom. (App. 522-38).

In contrast, Stan Richards, an expert in bloodstain pattern analysis, opined the incident began in the bedroom and ended in the living room. (App. 288). He based his opinion on the fact the bedroom contained a smaller amount of blood, signaling the beginning of the blood-letting event. (App. 288-89). Richards testified the volume of blood increased as it moved down the hall away from the bedroom. (App. 289). He testified the area around the glass shards in the hallway contained an increased amount of blood, which was consistent with Victim being "stationary for a little while." (App. 289, 292).

Based on Richards' testimony, the forensic evidence showed (1) a blood-letting event began in the bedroom and (2) the volume of blood increased as it moved down the hall toward the living

⁴ Although "preponderance of evidence" is a less-stringent standard than "beyond a reasonable doubt," it is critical to remember *who* has the burden of proof. At a pretrial immunity hearing, the *defendant* has the burden of proving immunity by a preponderance of evidence. In contrast, at trial when a defendant raises self-defense, the *State* has the burden of *disproving* self-defense beyond a reasonable doubt. It is more difficult to disprove a fact beyond a reasonable doubt than it is to prove a fact by a preponderance of the evidence. Here, the State met the more-stringent burden of disproving self-defense beyond a reasonable doubt. If the State met that burden, it strains credibility to suggest that if the burden—albeit a lower one—shifted to Petitioner (as it would in a pretrial immunity hearing), it is reasonably likely a judge would grant immunity.

room. This starkly contrasts Petitioner's version of events. Petitioner denied any fighting occurred in the bedroom; rather, she claimed the fighting all occurred in the living room, where Victim's body was ultimately discovered. (App. 530-38).

The State's theory was that Petitioner attacked Victim in the bedroom. This was supported by the bent knife investigators found in the bedroom that contained Victim's blood. Petitioner's description of the fight is inconsistent with the forensic evidence, making it unlikely that a trial court would have found her testimony credible. The State acknowledges that conflicting evidence *alone* is not reason to deny immunity; however, due to the stark contrast between Petitioner's testimony and the forensic evidence, it is not reasonably likely that a judge would find her testimony credible. Likewise, it is not reasonably likely a circuit court judge would have found that Petitioner's testimony established by a preponderance of the evidence that she was without fault in bringing on the difficulty.

Additionally, Petitioner's testimony that she ran out the front door was contradicted by testimony that the front door was locked but the back door was open when Victim's body was discovered. (App. 101-02). Further, blood spatter evidence showing an impact occurred *below* waist level along with the relative size of Victim and Petitioner (who admitted she was shorter than Victim) shows Petitioner continued to beat Victim *while he was on the ground*. (App. 294-95). *Cf. State v. Chhith-Berry*, 437 S.C. 527, 544, 878 S.E.2d 352, 361 (Ct. App. 2022) (affirming trial court's denial of immunity when the defendant "testified that he stabbed Galloway once in the shoulder and that caused Galloway to fall off of Berry and stop fighting. Despite Chhith-Berry's testimony that Galloway stopped fighting after the first stab wound, Galloway sustained another twenty-four unaccounted-for stab wounds."). Due to the lack of credibility (based on the forensic evidence) in Petitioner's overall testimony, it is not reasonably likely a court would have found she

proved by a preponderance of evidence that she had no other reasonable means of escape than to brutally beat Victim.⁵ Thus, it is not reasonably likely a circuit court would have granted immunity, and Petitioner cannot show prejudice.

Finally, the presumptions of the immunity statute do not apply. Initially, the presumption of subsection 16-11-440(A) does not apply because this incident occurred at Victim's home. § 16-11-440(B)(1) (providing the presumption of § 16-11-440(A) does not apply when the force is used against a lawful resident of the dwelling). Additionally, the presumption of subsection 16-11-440(C) should not apply because Petitioner was a guest in Victim's home. *See Curry*, 406 S.C. at 374, 752 S.E.2d at 267 ("Under the Castle Doctrine, the absence of a duty to retreat does not extend to a visitor or social guest in the home of another unless the attacker is an intruder.").

Likewise, neither presumption applies because the uncontradicted evidence showed Petitioner was engaged in unlawful activity at the time of the incident that *by her own testimony* proximately caused the fatal beating. Petitioner admitted to two unlawful activities she was engaging in at the time of this incident: prostitution and drug use. Because Petitioner was engaged in unlawful activity, the presumptions of subsections 16-11-440(A) and (C) would not apply. *See* § 16-11-440(B)(3) (providing the presumption of subsection 16-11-440(A) does not apply if the person using deadly force was engaged in unlawful activity); § 16-11-440(C) (providing "[a]

⁵ The brutality of the beating itself further illustrates why it is not reasonably likely a Court would have found by a preponderance of evidence that Petitioner had no other reasonable means of escape or that Petitioner reasonably believed her actions were necessary to prevent great bodily injury. Specifically, Victim had multiple blunt-force injuries on his head, including three on the right side, six on the upper back, two more lower down on the back of the head, and three toward the neck (App. 311-12); two sharp-force injuries on the back of the neck (App. 312); three blunt-force injuries and one sharp-force injury on his face (App. 313); two sharp-force injuries on his right lower chest (App. 318); a cluster of five sharp-force injuries on his left thigh (App. 318-19); seven sharp-force injuries on his right hand (App. 319); three sharp-force injuries on his right lower arm (App. 320); two sharp-force injuries on his right shoulder (App. 320); and nine sharp-force injuries on his left lower arm (App. 320).

person who **is not engaged in unlawful activity**" has no duty to retreat in certain circumstances (emphasis added)).

To the extent that a trial court would need to perform a proximate cause analysis to determine whether the unlawful activity was the proximate cause of the incident, Petitioner's trial testimony provides such a proximate cause. *See Glenn*, 429 S.C. at 120-21, 838 S.E.2d at 497-98 ("[W]e find a proximate cause analysis must also be applied to the unlawful activity element of subsection (C)."). Petitioner testified that she went to Victim's residence to engage in prostitution and smoke crack cocaine with him; however, according to Petitioner, Victim became enraged when he could not sexually perform after smoking crack cocaine. (App. 522-38). Further, instead of leaving the home when, according to her, Victim attempted to attack her, Petitioner went back for her crack pipe, which was more important to her than escaping from an allegedly enraged attacker. (App. 522-38). Therefore, the State could show beyond a reasonable doubt that the illegal activities Petitioner was engaged in were a proximate cause of the incident, which would bar the application of subsection (C) to Petitioner's claim of self-defense. *See generally State v. Goodson*, 312 S.C. 278, 280 n.1, 440 S.E.2d 370, 372 n.1 (1994) ("[T]he burden rests upon the State to prove beyond a reasonable doubt that the unlawful act in which the accused was engaged was at least the proximate cause of the homicide.").

B. Evidence supports the PCR court's finding that Petitioner did not prove counsel was deficient because counsel conducted a pro/con analysis when deciding not to pursue a pretrial immunity hearing.

The State acknowledges that pursuing pretrial immunity would not preclude pursuing self-defense at trial, and trial counsel testified a pretrial immunity hearing would not have precluded Petitioner from pursuing self-defense at trial. (App. 816). However, probative evidence supports the PCR court's finding that counsel was not deficient because counsel conducted a pro/con analysis when deciding not to pursue pretrial immunity. Specifically, when asked why

they did not pursue pretrial immunity, trial counsel testified, "Sitting here today, I don't specifically remember anything regarding her case other than kind of typical pros and cons you do in any case. But, no, I don't remember anything specific in this case in terms of why we didn't do that." (App. 823). Based on this testimony, counsel *did* conduct a pro/con analysis when determining whether to request an immunity hearing. Because counsel conducted a pro/con analysis when determining whether to request an immunity hearing, Petitioner failed to meet her burden in overcoming the strong presumption that trial counsel rendered adequate assistance. *See Taylor v. State*, 404 S.C. 350, 360, 745 S.E.2d 97, 102 (2013) ("There is a strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in a case."); *Cherry v. State*, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989) ("The defendant is required to overcome the presumption that counsel was effective in order to receive relief.").

Any argument that if there had been some affirmative decision to forego a hearing and focus on self-defense, then trial counsel was still required to articulate a valid reason for *not* pursuing immunity under the Act constitutes burden-shifting. In a PCR action, it is the applicant's burden to prove her case. Further, "[t]here is a strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in a case." *Taylor*, 404 S.C. at 360, 745 S.E.2d at 102. Here, the forensic evidence itself—and the fact it directly contradicted Petitioner's story—must be considered when assessing whether trial counsel's decision to forego an immunity hearing was reasonable under prevailing professional norms. Because Petitioner's story itself was so directly refuted by the forensic evidence, and because lawyers frequently recognize that immunity hearings can provide the State a preview of the defense and potential fodder to impeach the defendant during cross-examination at trial,

Petitioner did not overcome the presumption that counsel's decision to forego an immunity hearing was reasonable under prevailing professional norms.⁶ *Cf. Dent v. State*, 810 S.E.2d 527 (Ga. 2018) (finding counsel was not ineffective for not moving for pretrial immunity when counsel explained he did not want to expose defendant to pretrial cross-examination from the State).

C. Trial counsel cannot be deficient for failing to pursue a course of action that would require expanding existing precedent and testing unproven theories of law.

The Court of Appeals held that trial counsel's performance was not deficient because "an open question remains as to whether a person can invoke immunity under the Act when the person was a social guest and used force against an attacker in the attacker's home." *See Thompson*, 2025-UP-017 at 4-5. As the Court of Appeals noted, both the State and Petitioner conceded at oral argument that South Carolina is without case law to support or reject the application of the Act to a social guest who uses force against a homeowner in the homeowner's home. *Id.* at 5 n.2.

This Court need not determine whether the Act applies in such a fashion due to Petitioner's illegal acts leading up to Victim's death, which would preclude a finding of self-defense at an immunity hearing as discussed above. However, the Court of Appeals' determination is another avenue for affirming the PCR court's denial of PCR, given the parties' concession from oral argument that there is an open question about the applicability of the Act in the specific circumstance of a social guest being attacked in the attacker's home. *See Strickland*, 466 U.S. at 690 ("[C]ounsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment."); *Robinson v. State*, 308 S.C. 74, 78, 417 S.E.2d 88, 91 (1992) (holding that trial counsel was not ineffective for failing to request a charge on battered woman's syndrome when the theory was not well known at the time and had

⁶ Applicant does not raise any claim related to the jury trial itself. If this Court determines counsel was deficient and this Court cannot evaluate prejudice, the proper remedy is a remand for the PCR court to consider prejudice.

not been recognized by our supreme court as relevant to a claim of self-defense); *Gilmore v. State*, 314 S.C. 453, 457, 445 S.E.2d 454, 456 (1994) ("We have never required an attorney to be clairvoyant or anticipate changes in the law which were not in existence at the time of trial."), *overruled on other grounds by Brightman v. State*, 336 S.C. 348, 351 n.4, 520 S.E.2d 614, 615 n.4 (1999); *Arnette v. State*, 306 S.C. 556, 557-58, 413 S.E.2d 803, 804 (1992) (holding trial counsel provided effective assistance although he failed to consider the defense of accident because there was no evidence that the defense could be applied to the applicant); *Winkler v. State*, 418 S.C. 643, 653-54, 795 S.E.2d 686, 692 (2016) (holding that trial counsel was not deficient for failing to object to the trial court's decision not to answer the jury's questions because then-existing case law interpreting the relevant statute did not provide any support for trial counsel making such an objection); *State v. Moussa*, 53 A.3d 630, 637 (N.H. 2012) ("An attorney is not obligated to pursue weak options when it appears, in light of informed professional judgment, that a defense is implausible or insubstantial." (quoting *United States v. Woodard*, 291 F.3d 95, 108 (1st Cir. 2002))); *Esprit v. State*, 826 S.E.2d 7, 15 (Ga. 2019) ("A criminal defense attorney does not perform deficiently when he fails to advance a legal theory that would require 'an extension of existing precedents and the adoption of an unproven theory of law.'" (quoting *Williams v. State*, 818 S.E.2d 653 (Ga. 2018))).

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CONCLUSION

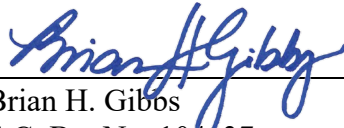
Based on the foregoing, the PCR court correctly determined that Petitioner failed to show that trial counsel and appellate counsel provided constitutionally ineffective assistance. Therefore, this Court should deny Petitioner's Petition for Writ of Certiorari.

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

DANIELLE DIXON
Assistant Attorney General

BRIAN H. GIBBS
Assistant Attorney General

By: 

Brian H. Gibbs
S.C. Bar No. 104137

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
803-734-3727

Attorneys for Respondent

May 7, 2025
Columbia, South Carolina

THE STATE OF SOUTH CAROLINA
In the Supreme Court

ON PETITION FOR CERTIORARI FROM THE COURT OF APPEALS
Appeal from Richland County

Robert E. Hood, Trial Judge
Brian M. Gibbons, Post-Conviction Relief Judge

Appellate Case No. 2025-000654

HOLLY JO THOMPSON,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

PROOF OF SERVICE

I, Grace Sommer, certify that I have served the within Return to Petition for Writ of Certiorari on Jessica M. Saxon, Esquire, counsel of record for the Petitioner by electronic mail to the address listed for counsel in AIS.

I further certify that all parties required by Rule to be served have been served.

This 7th day of May 2025.



Grace Sommer
Legal Assistant

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to the Court of Appeals
Appeal from Richland County
Honorable Brian M. Gibbons, Circuit Court Judge

HOLLY JO THOMPSON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-000654

REPLY TO RETURN TO PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS

JESSICA M. SAXON
Appellate Defender

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

ATTORNEY FOR PETITIONER

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ARGUMENT IN REPLY

Prejudice

Respondent argues that the forensic evidence in the case precludes a finding of immunity such that Petitioner cannot show prejudice. Respectfully, Respondent places too much stock in the questionable forensics performed in the case. During cross-examination the blood spatter expert testified “[b]lood drops can fool you. You have to get down and look at them really, really closely to see if there is some evidence of some type of angle at all.” App. 301, ll. 11-13. Yet, he admitted that he based his opinions *solely on photographs from the scene*. App. 301, l. 23-App. 302, l. 6. Critically, the alleged “blood spatter” that the State asserted showed decedent was struck below waist level was never marked by on-scene forensic teams and *was not tested* to confirm it was blood. The blood spatter expert even admitted during cross-examination that he could not say the alleged “spatter” was blood. App. 302, ll.7-24. He had merely noted the “spatter” in a photograph, *assumed it was blood*, and based his opinion that the evidence “shows Petitioner continued to beat Victim while he was on the ground” on that entirely unvetted assumption.

Respondent also suggests “the brutality of the beating” would preclude a finding of immunity. This argument ignores that a party asserting immunity under the Act is entitled to meet force with force and to continue to exert force until the danger to their life has passed. *See State v. Marin*, 415 S.C. 475, 482, 783 S.E.2d 808, 812 (2016) (quoting *State v. Hendrix*, 270 S.C. 653, 661, 244 S.E.2d 503, 507 (1978)). It should be noted that at the time of his death, the decedent was five feet, ten inches tall and weighed 191 pounds. App 308, ll.17-25. He made his living building large grills, described as “the ones you pull behind your vehicles,” out of 55-gallon and 300-gallon metal barrels. App. 98, ll. 8-19. He was a big, strong, physical man who

was under the influence of “a measurable amount of cocaine” that was having an effect on him at the time of his death. App. 614, l. 18-App. 615, l. 8. Comparatively, Petitioner weighed a mere 136 pounds. App. 521, ll. 9-12. Additionally, the State’s pathologist testified that the numerous sharp force injuries were all entirely superficial and could have come from glass, perhaps from when a glass vase breaks into sharp glass shards. App. 336, ll. 5-25. She also testified that Petitioner too had defensive wounds¹ on her person after the incident. App. 340, ll. 4-10. Far from precluding immunity, the evidence supports Petitioner’s story that she was fighting for her life against a much larger, stronger individual, who was high on cocaine, and acting crazy.² The evidence shows that she fought until the danger had passed – until the parties fell to the ground after the vase broke – and then she was able to retrieve her clothing before fleeing the decedent’s residence.

Respondent also seems to argue that the jury’s verdict somehow renders consideration of defense counsel’s failure to pursue an immunity hearing moot because the State “disproved self-defense beyond a reasonable doubt.” This argument rings hollow for several reasons. First, a jury determination is purely a matter of fact, while a judicial determination of immunity from prosecution is a matter of law. Second, this Court has made clear that the immunity hearing and the trial are separate proceedings with separate burdens. *See State v. Jones*, 416 S.C. 283, 290, 786 S.E.2d 132, 136 (2016) (A claim of immunity under the Act requires a pretrial determination using a preponderance of the evidence standard.); *State v. Cervantes-Pavon*, 426 S.C. at 452-53, 827 S.E.2d at 569 (The trial court’s immunity ruling must be based solely on the evidence

¹ Candidly, the pathologist also testified that the cut on Petitioner’s hand could have occurred when the glass vase broke in her hand during the incident. App. 341, ll. 16-23.

² As Petitioner testified “James started talking about ‘Bitch, give me my money back or give me my crack back. I’m going to shoot you,’ all kinds of craziness. And he just kept repeating it” while swinging the knife he used to cut the crack at Petitioner. App. 530, ll. 1-13.

presented at a pretrial hearing, while the jury's verdict must be based solely on the evidence presented at trial, which may be considerably different.) Third, if a jury verdict precluded a finding of prejudice, the appellate courts of this state would never have cause to review a denial of immunity under the Act and there would be no case law interpreting its reach. The jury's determination of facts would not supplant a legal judicial determination of immunity.

Proximate Cause

Respondent contends that Petitioner's unlawful activity of engaging in prostitution and drug use with the decedent proximately caused the decedent's death such that immunity would not be granted. "Proximate cause is the efficient or direct cause; the thing that brings about the complained of injuries." McKnight v. S.C. Dep't of Corr., 385 S.C. 380, 386, 684 S.E.2d 566, 569 (Ct. App. 2009). "Proximate cause is defined as the direct cause, the immediate cause, the efficient cause, or the cause without which the death would not have resulted." State v. Dantonio, 376 S.C. 594 (2008). Here, the attempted prostitution and joint drug use did not bring about the complained of injuries. It was Petitioner's attempt to leave the residence after decedent could not perform sexually that caused decedent to physically attack Petitioner with a knife causing cuts to her hands in various places. App. 534. Respondent argued Petitioner stayed to get her crack pipe instead of fleeing, thus proximately causing the death. However, the testimony reveals that Petitioner was naked from the waist up when the decedent began attacking her, that she grabbed the vase to protect herself so that she could pick up the rest of her clothes, along with her crack pipe, and that while she attempted to collect her personal belongings she was further assaulted by the Decedent. Her "unlawful activity" in no way proximately caused the death of decedent.

The Deficiency of Counsel

Respondent asserts the probative evidence in the record shows counsel conducted a pro/con analysis when deciding not to pursue pretrial immunity. Respectfully, the probative evidence in the record repeatedly shows that Counsel Bank never considered an immunity hearing. The testimony revealed that Counsel Bank 1) did not recall anything specifically as to why he did not pursue immunity in the case, 2) did not have any notes regarding an immunity hearing, such as a pro/con list, in his file, and 3) had no recollection of discussions with Petitioner or co-counsel regarding an immunity hearing. In fact, Counsel Bank testified “I think it’s definitely something *that could have been explored*” clearly indicating that immunity was *not* something that had actually been explored in Petitioner’s case. App. 816, ll. 4-22.

Requiring trial counsel to articulate a valid reason for not pursuing immunity under the Act is not burden-shifting. The law requires counsel’s strategic decisions to be sound and counsel is required to articulate the reasons for their decisions. *See Stone v. State*, 419 S.C. 370, 384, 798 S.E.2d 561, 569 (2017). Here, despite the findings in the order of dismissal, there was not testimony that Counsel Bank considered immunity but chose to forgo a hearing and focus on self-defense. The testimony was that immunity was not considered and Counsel Bank could not offer a valid, sound reason, as required by law, for that supposed strategic decision.

Applicability of the Act

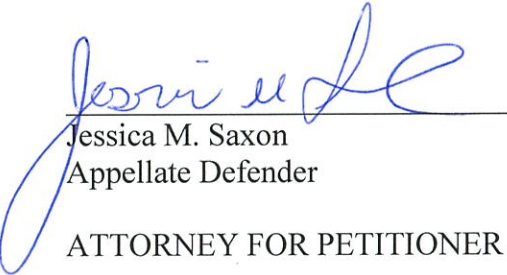
During oral argument at the Court of Appeals, the parties conceded that neither was aware of any cases applying the Act to the factual situation of an invited guest defending themselves against a homeowner. However, Petitioner did not concede that there was an open question about the applicability of the Act to her case and argued that the Act did, and does, apply to factual situations such as the one at issue in this matter. While it is tempting to think of

the Act as merely codification of the Castle Doctrine, it must be remembered that the Act expanded immunity to places other than the home of the defendant, if it was a place the defendant had a right to be. As this Court ultimately determined in State v. Jones, 416 S.C. 283, 297, 786 S.E.2d 132, 140 (2016), the protections afforded by the Act are not limited based on the geographic location of an incident and/or the identity of the assailant. Further, as detailed in the Petition for Writ of Certiorari to the Court of Appeals, the plain language of the Act specifically contemplates its application to an invited guest. *See* S.C. Code Ann. § 16-11-430(3).

While this Court has not explicitly determined that the Act applies to an invited guest defending themselves from attack against a homeowner, a review of the relevant case law and the plain language of the Act show that the Act did apply at the time of Petitioner's case. The fact that this question has not been answered by the appellate courts of this State should not be grounds for affirmance of the Court of Appeals opinion.

CONCLUSION

Based on the foregoing arguments, as well as the arguments presented in the petition for writ of certiorari, Petitioner respectfully requests that this Court grant the petition for writ of certiorari to the Court of Appeals to allow further briefing on the issue presented.



Jessica M. Saxon
Appellate Defender
ATTORNEY FOR PETITIONER

This 19th day of May, 2025.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Richland County

Honorable Brian M. Gibbons, Circuit Court Judge

HOLLY JO THOMPSON,

PETITIONER

V.

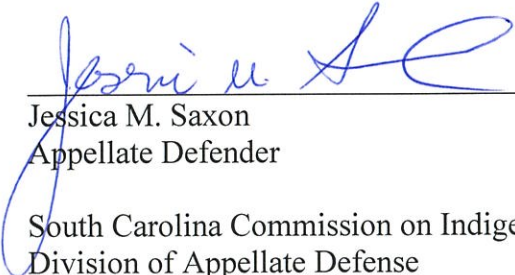
STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-000654

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the petition for writ of certiorari to the Court of Appeals and appendix in the above-referenced case has been served upon Danielle E. Dixon, Esquire, and Bryan H. Gibbs, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and the South Carolina Court of Appeals; and on Holly Jo Thompson, #299956, at Graham Correctional Institution, 4450 Broad River Road, Columbia, SC 29210, this 19th day of May, 2025.



Jessica M. Saxon
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR PETITIONER

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR**

**THE STATE OF SOUTH CAROLINA
In The Supreme Court**

Holly Jo Thompson, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2025-000654

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

Appeal From Richland County
The Honorable Brian M. Gibbons, Circuit Court Judge

Memorandum Opinion No. 2025-MO-039
Submitted June 11, 2025 – Filed August 20, 2025

REVERSED AND REMANDED

Appellate Defender Jessica M. Saxon, of Columbia, for
Petitioner.

Attorney General Alan McCrory Wilson, Deputy
Attorney General Donald J. Zelenka, Assistant Attorney
General Danielle Dixon, and Assistant Attorney General
Brian Hollis Gibbs, all of Columbia, for Respondent.

PER CURIAM: Petitioner Holly Jo Thompson (Thompson) seeks a writ of certiorari to review the court of appeals' decision in *Holly Jo Thompson v. State*, Op. No. 2025-UP-017 (S.C. Ct. App. filed January 23, 2025). We grant Thompson's petition for a writ of certiorari, dispense with briefing, and remand to the circuit court.

Thompson was convicted and sentenced to forty-five years' imprisonment for murder. Thompson filed a post-conviction relief (PCR) application, which was dismissed. The court of appeals granted Petitioner's petition for a writ of certiorari and ultimately affirmed the PCR court.

During the PCR hearing, both Thompson and trial counsel testified that trial counsel never spoke with Thompson about seeking an immunity hearing under the Protection of Persons and Property Act (the Act).¹ When asked if he looked into an immunity hearing for this case, trial counsel stated, "I don't remember anything specifically other than just my general knowledge of the . . . statute in South Carolina. My first concern would probably be whether it was a place that she had [a] right to be, but I think it would have been. This was a place that she was invited into not only this night but regularly. So I think it's definitely something that could have been explored."

Trial counsel further stated he understood requesting an immunity hearing would not have precluded him from claiming self-defense at trial. When questioned as to why he did not pursue an immunity hearing despite being aware of the Act, trial counsel could not specifically remember anything about Thompson's case in terms of why he did not request a hearing.

The PCR court found trial counsel was not deficient for failing to seek immunity pursuant to the Act because he articulated a valid strategy of "focusing the defense efforts on pursuing a theory of self-defense." The PCR court emphasized trial counsel knew about the Act, but chose not to pursue it through a pro/con analysis.

The court of appeals affirmed, holding trial counsel was not deficient because it is an open question—both at the time of trial and now—whether a person can invoke immunity under the Act when the person was a social guest and used force against an attacker in the attacker's home. Therefore, trial counsel could not be deficient for failing to pursue a course of action that would require expanding precedent and testing unproven theories of law. Neither the PCR court nor the court of appeals

¹ South Carolina Code Ann. §§ 16-11-410 to -450 (2015).

reached a prejudice determination.

Trial counsel did not assert he had a valid strategic reason for failing to seek immunity under the Act. Instead, trial counsel articulated no strategy at all on this issue—he testified he could not remember why he did not move for immunity. Therefore, the PCR court's determination that trial counsel was not deficient based on an articulated trial strategy is not supported by the evidence. *Earley v. State*, 418 S.C. 255, 266, 792 S.E.2d 226, 232 (2016) (holding where there is no support for the PCR court's conclusion, the decision should be reversed).

As to the court of appeals' conclusion that trial counsel was not deficient because the question of whether a social guest can use force against an attacker in the attacker's home has not yet been decided, trial counsel acknowledged he knew about the Act, immunity was something that could have been explored, and, again, he could not remember any specific reason why he chose not to request an immunity hearing. Therefore, trial counsel's failure to request an immunity hearing was not based on any ambiguity in the law as to whether Petitioner was entitled to immunity.

Even if trial counsel had testified he thought the Act was ambiguous in that regard, he would be incorrect. Section 16-11-440 (C) states:

A person who is *not engaged in an unlawful activity* and who is attacked in another place *where he has a right to be*, including, but not limited to, his place of business, has no duty to retreat and has the right to stand his ground and meet force with force, including deadly force, if he reasonably believes it is necessary to prevent death or great bodily injury to himself or another person or to prevent the commission of a violent crime as defined in Section 16-1-60.

(emphasis added).

We hold the plain language of this section includes a social guest, who is not engaged in any unlawful activity that was the proximate cause of the homicide, using force against an attacker in the attacker's home. A social guest has a right to be in the host's home, at least until the invitation is revoked. *See State v. Curry*, 406 S.C. 364, 370, 752 S.E.2d 263, 266 (2013) (holding because the defendant was a social guest, he was rightfully in the apartment); *State v. Glenn*, 429 S.C. 108, 120–21, 838 S.E.2d 491, 497–98 (2019) ("[T]he burden rests upon the State to prove beyond a reasonable doubt that the unlawful act in which the accused was engaged was at least the proximate cause of the homicide." (quoting *State v. Goodson*, 312 S.C. 278, 280 n.1, 440 S.E.2d 370, 372 n.1 (1994))). Whether a defendant can meet the burden of

proof as to immunity is ultimately a factual question for the trial court. *State v. Cervantes-Pavon*, 426 S.C. 442, 451, 827 S.E.2d 564, 568–69 (2019). However, as no request for a determination of immunity under the Act was made by trial counsel here, the question of immunity was never decided. Therefore, trial counsel was deficient in failing to request an immunity hearing.

To show prejudice from trial counsel's deficiency, Petitioner must show there is a reasonable probability the circuit court would have found her immune from prosecution under the Act had trial counsel requested a hearing. *See Williams v. State*, 363 S.C. 341, 343, 611 S.E.2d 232, 233 (2005) (holding there is prejudice when but for counsel's error, there is a reasonable probability that the outcome of the proceeding would have been different). Neither the PCR court nor the court of appeals addressed whether Petitioner was prejudiced by trial counsel's failure to request an immunity hearing. We, therefore, remand this matter to the PCR court to determine whether, on the existing record, Petitioner was prejudiced by trial counsel's failure to pursue immunity under the Act.

REVERSED AND REMANDED.

KITTREDGE, C.J., FEW, JAMES, HILL and VERDIN, JJ., concur.

The Supreme Court of South Carolina

Holly Jo Thompson, Petitioner,

v.

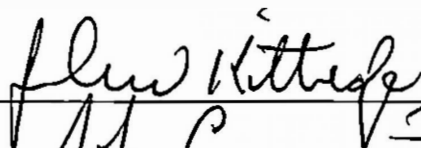
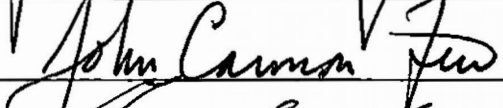
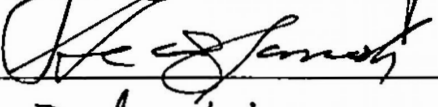
State of South Carolina, Respondent.

Appellate Case No. 2025-000654

ORDER

In this post-conviction relief matter, we granted Petitioner's petition for a writ of certiorari, dispensed with briefing, reversed the court of appeals' decision, and remanded for a determination of whether Petitioner was prejudiced by trial counsel's deficient performance. *Thompson v. State*, Op. No. 2025-MO-039 (S.C. Sup. Ct. filed Aug. 20, 2025). The State now seeks rehearing of the opinion.

Because the State has failed to show this Court overlooked or misapprehended any point in the opinion, the petition for rehearing is denied. *See* Rule 221(a), SCACR (providing a petition for rehearing must state with particularity the points supposed to have been overlooked or misapprehended by the Court).

	C.J.
	J.
	J.
D. Franklin	J.
	J.

Columbia, South Carolina
October 21, 2025

cc:

Danielle Dixon

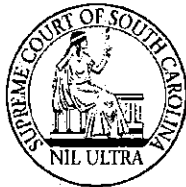
Alan McCrory Wilson

Donald J. Zelenka

Brian Hollis Gibbs

Jessica M. Saxon

The Honorable Jenny Abbott Kitchings



The Supreme Court of South Carolina

PATRICIA A. HOWARD
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

BLAIRE CANN
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA
29211
1231 GERVAIS STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1080
FAX: (803) 734-1499
www.sccourts.org

October 21, 2025

The Honorable Jeanette W. McBride
PO Box 2766
Columbia, SC 29202-2766

REMITTITUR

Re: Holly Jo Thompson v. State
Lower Court Case No. 2018CP4004637
Appellate Case No. 2025-000654

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court along with the earlier decision of the South Carolina Court of Appeals is enclosed.



Very truly yours,
Patricia A. Howard
CLERK

cc: Danielle Dixon
Alan McCrory Wilson
Donald J. Zelenka
Brian Hollis Gibbs
Jessica M. Saxon

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Holly Jo Thompson, #299956,
Applicant,

v.

State of South Carolina,
Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Case No.: 2018-CP-40-4637

**ORDER OF DISMISSAL
WITH PREJUDICE
ON REMAND**

JEANETTE W. McBRIDE
Clerk, C.C.P., G.S.C. & F.C.

2025 MAY 15 PM 3:42

RICHLAND COUNTY
FILED

This matter comes before the Court on remand from the Supreme Court of South Carolina to consider whether trial counsel's performance resulted in prejudice to Applicant Holly Jo Thompson. The Supreme Court determined trial counsel provided deficient performance because trial counsel could not articulate a valid strategic reason for his failure to pursue pretrial immunity under the Protection of Persons and Property Act (the Act¹). The Supreme Court limited this Court's consideration on remand to the existing record. On remand, Appellate Defender Jessica M. Saxon represented Applicant, and Assistant Attorney General Brian H. Gibbs represented the State.

Following a thorough review of the existing record in its entirety—including the trial proceedings, the post-conviction relief (PCR) proceedings, and all appellate proceedings—this Court finds Applicant failed to meet her requisite burden of proof to show that but for trial counsel's deficient performance, a reasonable likelihood existed that the result of her trial would have been different. Therefore, this Court denies relief and dismisses Applicant's application with prejudice.

[continued on following page]

¹ S.C. Code Ann. §§ 16-11-410 to -450.

PROCEDURAL HISTORY

Applicant is presently confined to the South Carolina Department of Corrections. In April 2014, a Richland County grand jury indicted Applicant for the murder of James Solomon. (Indictment No. 2014-GS-40-2072; App. 861-62).² On February 16-19, 2016, Applicant proceeded to a jury trial before the Honorable Robert E. Hood. (App. 1). Public Defenders Robert Bank, Alicia Goode,¹ and Rhodes Bailey represented Applicant. (App. 1). Assistant Solicitors Luck Campbell, Meghan Walker, and Laura Gregg prosecuted the case. (App. 1). Applicant was convicted as indicted, and the trial court sentenced her to forty-five years' imprisonment. (App. 860).

Applicant filed a direct appeal that was perfected by Senior Appellate Defender Kathrine Haggard Hudgins. On appeal, Applicant argued the trial court erred by (1) not instructing the jury on involuntary manslaughter, (2) not requiring the State to provide defense counsel with rap sheets of jurors with convictions, and (3) refusing to allow defense counsel to recross the forensic pathologist but allowing the prosecution to recross Applicant. On June 13, 2018, the Court of Appeals issued an opinion affirming Applicant's conviction and sentence. *See State v. Thompson*, 2018-UP-258 (S.C. Ct. App. filed June 13, 2018). The Court of Appeals issued its remittitur on June 29, 2018.

On August 29, 2018, Applicant filed this PCR application. (App. 776). On October 29, 2019, an evidentiary hearing convened before the Honorable Brian M. Gibbons. (App. 791). Jonathan Waller represented Applicant, and Assistant Attorney General Samuel Key represented the State. (App. 791). On July 28, 2021, this Court issued an order denying relief. (App. 791).

² Unless otherwise indicated, all citations to the record are citations to the Appendix from Applicant's PCR appeal. When Applicant appealed the decision of the Court of Appeals, the Supreme Court utilized the same Appendix.



Applicant filed a timely notice of appeal. On June 13, 2022, Applicant filed a writ of certiorari. On September 23, 2022, Respondent filed a return. On October 16, 2022, the case was transferred to the Court of Appeals, which granted certiorari on August 18, 2023. On December 3, 2024, the Court of Appeals heard oral arguments in this case, and on January 23, 2025, the Court of Appeals issued an opinion affirming the PCR court's order denying relief. *See Thompson v. State*, 2025-UP-017 (S.C. Ct. App. filed Jan. 23, 2025). On February 5, 2025, Applicant filed a petition for rehearing, which the Court of Appeals denied on March 6, 2025.

On April 7, 2025, Applicant filed a timely petition for writ of certiorari with the Supreme Court of South Carolina. On August 20, 2025, the Supreme Court granted Applicant's petition, dispensed with further briefing, reversed the opinion of the Court of Appeals, and remanded to this Court "to determine whether, on the existing record, [Applicant] was prejudiced by trial counsel's failure to pursue immunity under the Act." *Thompson v. State*, Op. No. 2025-MO-039, at *4 (S.C. Sup. Ct. filed August 20, 2025).

TRIAL TESTIMONY

At trial, Victim's friend, Odell Middleton, testified he stopped by Victim's home one afternoon to visit. (App. 96-101). He testified the front door was locked but the back door was open. (App. 101-02). Middleton noticed an odor and went inside, where he found Victim's deceased body on the living room floor. (App. 103-04). He called 911. (App. 104).

Amy Durso, a pathologist, testified Victim had multiple blunt-force trauma injuries, including three lacerations on the right side of his head, six lacerations on the top of his head, two lacerations on the back of his head, three lacerations "kind of going towards the neck," two lacerations on his forehead, a laceration over his nose, and a fractured nasal bone. (App. 309-13). Additionally, Victim had two sharp-force injuries on the back of his neck, a sharp-force injury next



to his chin, two sharp-force injuries on his lower chest, five sharp-force injuries on his left thigh, seven sharp force injuries on his right hand, three sharp-force injuries on his right arm, three sharp force injuries on his right shoulder, and nine sharp-force injuries to his left-arm. (App. 321-22). Dr. Durso opined Victim died of exsanguination³ approximately two to three days before his body was discovered. (App. 322, 324).

Law enforcement testified about the bloody scene that spanned Victim's home from the bedroom, down the hall, and into the living room. (App. 115-16, 148-51, 167-70, 263, 490). Law enforcement collected a knife from the bedroom floor containing Victim's blood (App. 122, 165, 172, 200, 267, 396) and glass fragments from the hallway near a back door. (App. 116-17, 168). One of the glass fragments contained Applicant's palmprint. (App. 358-60).

Stan Richards, an expert in bloodstain pattern analysis, opined the incident began in the bedroom and ended in the living room. (App. 288). He based this opinion on the fact the bedroom contained a smaller amount of blood, signaling the beginning of the blood-letting event. (App. 288-89). Richards testified the volume of blood increased as it moved down the hall away from the bedroom. (App. 289). He testified the area around the glass shards in the hallway contained an increased amount of blood, which was consistent with Victim being "stationary for a little while." (App. 289, 292). Richards opined that spherical blood spatter located on an HVAC in the hall indicated an impact occurred at the same level as the HVAC, which was below waist level. (App. 294-95).

Applicant testified in her defense. She stated she was a prostitute, and Victim often gave her crack cocaine in exchange for sex. (App. 522-23). According to Applicant, she had been at Victim's home that evening smoking crack cocaine with him. (App. 526-27). When they tried to

³ Extreme blood loss.



engage in sex, Victim could not obtain an erection and became angry. (App. 528-30). Applicant stated she attempted to leave but Victim accused her of stealing from him. (App. 529-30). She testified Victim started swinging a knife at her and "caught" her right hand, cutting her. (App. 530, 535). Applicant stated that they were in the living room and that she grabbed a glass vase to protect herself. (App. 530-31). She testified, "I swung the vase at him, and he swung at me again. The next thing I know, we're fighting with a vase and a knife." (App. 531).

Applicant testified Victim had threatened to shoot her⁴ and she was "scared for her life." (App. 530, 534). She stated she was only wearing jeans and shoes; her shirt, bra, and jacket were at the end of the couch. (App. 534). Applicant testified she attempted to get her clothes and her crack pipe, which she "never left . . . anywhere"; as she bent over to pick up her pipe, Victim swung and hit Applicant's left hand, bruising it. (App. 535). Applicant testified she then swung the vase at Victim, hitting him in the face and head. (App. 535). She clarified Victim was "coming around the end of the coffee table" when she picked up the vase. (App. 534).

Applicant was unsure how many times she hit Victim but thought it was five or six times. (App. 535). She stated Victim fell and she fell on top of him; she stopped hitting him when they fell and the vase broke. (App. 537). After they fell, she "got up real quick, grabbed [her] clothes, [and] went out the front door," which was in the living room. (App. 536). Applicant testified Victim was still yelling and threatening to kill her as she left. (App. 536). She maintained none of the fighting occurred in the bedroom. (App. 538). On cross-examination, when asked what prevented her from running out the front door when she crossed the living room to grab the vase, she replied, "It was cold outside and I really didn't want to run out there with no clothes on like

⁴ Investigators did not testify to finding a gun in the home.



that." (App. 559-61, 563). She testified she did not continue hitting Victim after he fell. (App. 566). Likewise, she claimed he was facing her at the time. (App. 567).

At Applicant's request, the trial court charged self-defense. (App. 749-52). The jury convicted Applicant of murder. (App. 758). The trial court sentenced her to forty-five years' imprisonment. (App. 773).

PCR TESTIMONY

At the PCR hearing, Applicant maintained she had been acting in self-defense. (App. 799). However, she stated counsel never discussed a pretrial immunity hearing. (App. 807). Applicant acknowledged the evidence indicated Victim's back door had been left open, which contradicted her trial testimony that she ran out the front door; however, Applicant stated she would not have left out the back door because Victim kept a large dog in his back yard that she was afraid of. (App. 801). Applicant averred "[s]omeone else had to have been in that house because . . . the back door was open." (App. 811). She also asserted the knife that police found in the bedroom was in the living room when she left, and a screwdriver that police found by the back door was not on the floor while she was there. (App. 803).

Robert Bank (trial counsel) testified Applicant told him that Victim had accused her of stealing crack cocaine and attacked her with a weapon and that Applicant defended herself by "grabbing a glass vase and hitting him multiple times." (App. 813). Trial counsel also stated Applicant told him that Victim was still alive when she left. (App. 813). Trial counsel did not recall whether he discussed the Protection of Persons and Property Act with Applicant. (App. 816). He stated his initial concern would have been whether she was in a place that she had a right to be, although he averred evidence showing Applicant "was invited [to Victim's home] not only this night but regularly" could show she was in a place she had a right to be. (App. 816). Trial



counsel could not recall why he did not pursue a pretrial immunity hearing. (App. 823). He elaborated, "Sitting here today, I don't specifically remember anything regarding her case other than kind of typical pros and cons you do in any case. But, no, I don't remember anything specific in this case in terms of why we didn't do that." (App. 823).

This Court found Applicant failed to prove counsel was deficient for not seeking a pretrial immunity hearing because counsel articulated a valid strategy of focusing on a theory of self-defense, and counsel chose not to pursue an immunity hearing through a pro/con process performed in any case. (App. 856-58). Based on the deficiency finding, this Court did not evaluate prejudice. (App. 856-58).

COURT OF APPEALS OPINION

The Court of Appeals affirmed the PCR court's dismissal, holding that trial counsel's performance was not deficient because "at the time of trial, and even now, an open question remains as to whether a person can invoke immunity under the Act when the person was a social guest and used force against an attacker in the attacker's home." *Thompson v. State*, 2025-UP-017 at 4-5. The Court of Appeals stated that trial counsel could not be deficient for "failing to pursue a course of action that would require expanding existing precedent and testing unproven theories of law." *Id.* at 5. Like the PCR court, the Court of Appeals did not reach prejudice due to its holding that trial counsel's performance was not deficient. *Id.*

SUPREME COURT OPINION

The Supreme Court reversed the Court of Appeals opinion, holding that this Court's determination that trial counsel articulated a valid trial strategy was not supported by evidence in the record because trial counsel did not articulate any strategy, instead testifying only that he could not remember why he did not move for pretrial immunity. *Thompson v. State*, 2025-MO-039 at

*3. The Supreme Court noted that for Applicant to show prejudice from trial counsel's deficiency, she "must show there is a reasonable probability that the circuit court would have found her immune from prosecution under the Act had trial counsel requested a hearing." *Id.* at *4; *see also Williams v. State*, 363 S.C. 341, 343, 611 S.E.2d 232, 233 (2005) (holding there is prejudice when but for counsel's error, there is a reasonable probability that the outcome of the proceeding would have been different). Stating that neither this Court nor the Court of Appeals ruled on prejudice, the Supreme Court remanded this matter to this Court "to determine whether, on the existing record, [Applicant] was prejudiced by trial counsel's failure to pursue immunity under the Act." *Thompson v. State*, 2025-MO-039, at *4.

CURRENT ACTION BEFORE THE COURT

In her PCR application, Applicant alleged she is being held unlawfully for the following reasons:

1. Ineffective assistance of counsel;
 - a. Attorney refused to call character witnesses;
 - b. Attorney did not honor Applicant's request for a mental health evaluation.

At the evidentiary hearing, Applicant's PCR counsel proceeded on allegations made in the original application. Additionally, at the close of the hearing, PCR counsel moved to amend the pleadings to conform to the evidence and include an allegation of ineffective assistance of counsel for failure to seek immunity. This Court granted PCR counsel's motion. (App. 836).

However, because the only allegation raised on appeal and ruled upon by both the Supreme Court and the Court of Appeals was Applicant's issue regarding failure to seek immunity, that is the only issue before this Court. Applicant's other issues were ruled upon in the first Order of Dismissal, were not appealed, and are now law of the case. *See Judy v. Martin*, 381 S.C. 455, 458, 674 S.E.2d 151, 153 (2009) ("Under the law-of-the-case doctrine, a party is precluded from



relitigating, after an appeal, matters that were either not raised on appeal, but should have been, or raised on appeal, but expressly rejected by the appellate court.").

STANDARD OF REVIEW

The Uniform Post-Conviction Procedure Act⁵ provides that any person who has been convicted of a crime may seek post-conviction relief based upon the following types of allegations:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy

S.C. Code Ann. § 17-27-20.

The Sixth and Fourteenth Amendments to the United States Constitution guarantee Applicant, like all other defendants, the right to effective assistance of counsel. *Strickland v. Washington*, 466 U.S. 668, 685 (1984); *Taylor v. State*, 404 S.C. 350, 359, 745 S.E.2d 97, 101 (2013). Ordinarily, PCR allegations are centered upon an allegation that an applicant did not receive effective assistance of counsel guaranteed by the Sixth Amendment. *See generally* S.C. Code Ann. § 17-27-20(A) (enumerating allegations cognizable in PCR actions). The allegation of

⁵S.C. Code Ann. §§ 17-27-10 to -160.



denial of such representation sets forth a prima facie violation of this constitutional right and raises a question of fact that can only be determined by an evidentiary hearing. *Rogers v. State*, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

In a PCR action, the applicant bears the burden of proving the allegations by a preponderance of the evidence—a mere allegation of ineffective assistance is not sufficient to warrant granting relief. *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985); Rule 71.1(e), SCRPC. The reviewing court applies the two-part test outlined in *Strickland* to determine whether counsel's conduct "was so [ineffective] as to require reversal" of the applicant's conviction. 466 U.S. 668, 687 (1984). To obtain relief, a PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice because of counsel's deficient performance. *Id.* at 687–88; *accord Cherry v. State*, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. *Strickland*, 466 U.S. at 700; *see also Bell v. Cone*, 535 U.S. 685, 695 (2002) (explaining that "[w]ithout proof of both deficient performance and prejudice to the defense, . . . it could not be said that the sentence or conviction resulted from a breakdown in the adversary process that rendered the result of the proceeding unreliable." (citation modified)).

Regarding the deficiency prong of the *Strickland* analysis, the proper measure of performance is whether counsel provided representation within the reasonable range of competence required in criminal cases. *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. When analyzing counsel's performance, the reviewing court will strongly presume counsel provided adequate assistance, and the applicant is responsible for rebutting that presumption "by proving that his attorney's representation was unreasonable under prevailing professional norms and that



the challenged action was not sound strategy." *Kimmelman v. Morrison*, 477 U.S. 365, 384 (1986); see also *Cullen v. Pinholster*, 563 U.S. 170, 189 (2011) (explaining a defendant must show defense counsel failed to act reasonably considering all the circumstances to overcome the presumption of adequate representation).

Furthermore, the reviewing court will scrutinize counsel's performance in a highly deferential manner, make every effort "to eliminate the distorting effects of hindsight," and "evaluate the conduct from counsel's perspective at the time" considering then-existing circumstances. *Strickland*, 466 U.S. at 689. To establish counsel's performance was deficient, the applicant must demonstrate "counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." *Id.* at 687. Accordingly, counsel's performance will be considered deficient only when it was objectively incompetent under prevailing professional norms and *not* when it simply "deviated from best practices or most common custom." *Harrington v. Richter*, 562 U.S. 86, 105 (2011).

Beyond satisfying the burden required by the deficiency prong, an applicant also bears the burden of establishing prejudice to be entitled to relief as "[a]n error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment." *Strickland*, 466 U.S. at 691. To meet this burden, counsel's deficient performance must have prejudiced the applicant to such an extent that there is a reasonable probability the result of the proceeding would have been different but for counsel's unprofessional errors. *Cherry*, 300 S.C. at 117-18, 386 S.E.2d at 625; see *Johnson v. State*, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) ("To establish a claim of ineffective assistance of trial counsel, a PCR applicant has the burden of proving counsel's representation fell below an objective standard of reasonableness and, but for counsel's errors, there is a reasonable probability the result



at trial would have been different."). Importantly, "[t]he likelihood of a different result must be *substantial*, not just conceivable." *Richter*, 562 U.S. at 112.

The *Strickland* standard must be applied with scrupulous care, lest "intrusive post-trial inquiry" threaten the integrity of the very adversarial process the right to counsel is meant to serve. 466 U.S. at 689-90. Courts must be wary of second-guessing counsel's trial tactics, and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel. *Whitehead v. State*, 308 S.C. 119, 417 S.E.2d 529 (1992). The applicant's burden of proving both *Strickland* components is heavy considering the strong presumption that counsel's conduct fell within the range of reasonable professional legal assistance. 466 U.S. at 690. Representation is constitutionally ineffective only if counsel's conduct "so undermined the proper functioning of the adversarial process" that the defendant was denied a fair proceeding. *Id.* at 686; *see Nix v. Whiteside*, 475 U.S. 157, 175 (1986) (noting that under *Strickland*, the "benchmark" of the right to counsel is the "fairness of the adversary proceeding"); *see also United States v. Morrow*, 977 F.2d 222, 229 (6th Cir. 1992) ("[T]he threshold issue is not whether [the applicant's] attorney was inadequate; rather, it is whether he was so *manifestly* ineffective that defeat was snatched from the hands of probable victory.").

FINDINGS OF FACT AND CONCLUSIONS OF LAW

As noted above, the only claim presently before this Court on remand from the Supreme Court is Applicant's allegation of ineffective assistance of counsel for failure to request a pretrial immunity hearing. In analyzing this claim, this Court has considered the legal arguments by counsel and thoroughly reviewed the record in its entirety. Before this Court are the appendix from the PCR appeal and the accompanying appellate documents, including the petitions for writ of certiorari, returns to those petitions, and the opinions of the Supreme Court and Court of



Appeals. The PCR appeal appendix includes records from the Richland County Clerk of Court from the underlying trial, the trial transcript, the PCR evidentiary hearing transcript, the PCR application, the State's return to the PCR application, and this Court's first Order of Dismissal. Further, this Court heard the testimony presented at the evidentiary hearing and was able to observe the witnesses, which allowed the Court to evaluate and scrutinize their credibility. *See, e.g., State v. Mercer*, 381 S.C. 149, 166, 672 S.E.2d 556, 565 (2009) ("In this post-trial setting, our jurisprudence recognizes the gatekeeping role of the trial court in making a credibility assessment."); *Clemons v. Mississippi*, 494 U.S. 738, 766 (1990) (Blackmun, J., concurring in part and dissenting in part) ("The trial judge who hears the witnesses live, observes their demeanor and in general smells the smoke of the battle is by his very position far better equipped to make findings of fact which will have the reliability that we need and desire.").

Upon conducting and completing its analysis, this Court finds Applicant has failed to establish any constitutional violations or deprivations that would require this Court to grant her PCR application. *See* Rule 71.1(e), SCRPC (stating that in a PCR action, "[t]he applicant has the burden of establishing [her] entitlement to relief by a preponderance of the evidence."); *Lucero v. State*, 414 S.C. 238, 244, 777 S.E.2d 409, 412 (Ct. App. 2015) ("In a PCR proceeding, the applicant bears the burden of establishing that he or she is entitled to relief."); *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) ("The burden of proof is on the Applicant in post-conviction proceedings to prove the allegations in his application.").

[continued on following page]



Accordingly, set forth below are the relevant findings of facts and conclusions of law as required by section 17-27-80 of the South Carolina Code:

INITIAL FINDINGS

This Court notes the strong presumption that at all stages of Counsels' representation of Applicant, he rendered adequate assistance and exercised reasonable professional judgment in his representation. *Ard v. Catoe*, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citing *Strickland, supra*). The United States Supreme Court has cautioned that "every effort be made to eliminate the distorting effects of hindsight" and evaluate counsel's decisions at the time they were made. *Strickland*, 466 U.S. at 689; *see also Whitehead v. State*, 308 S.C. 119, 122, 417 S.E.2d 529, 531 (1992).

Ineffective Assistance of Counsel

Allegation: Trial counsel provided ineffective assistance by failing to request a pretrial immunity hearing pursuant to the Act.

Applicant asserts trial counsel provided ineffective assistance for failing to seek immunity pursuant to the Act and instead only seeking a jury instruction on self-defense at trial. This Court disagrees and finds that Applicant has failed to meet her burden of showing trial counsel's performance prejudiced her.

A. Deficiency

The Supreme Court of South Carolina has determined that Applicant has shown trial counsel's failure to request a pretrial immunity hearing and inability to articulate a valid trial strategy for doing so constituted deficiency. *See Thompson v. State*, 2025-MO-039 at *3.

B. Prejudice

Applicant cannot show prejudice because her testimony at trial was inconsistent with the forensic evidence, which makes it not reasonably probable that a circuit court would have found



Applicant immune from prosecution under the Act. *See generally Green v. State*, 351 S.C. 184, 192, 569 S.E.2d 318, 322 (2002) ("A reasonable probability is one sufficient to undermine confidence in the trial's outcome."). Further, Applicant has failed to show that a substantial likelihood existed that but for trial counsel's deficiency, a different result would have occurred. *See Richter*, 562 U.S. at 112 ("The likelihood of a different result must be *substantial*, not just conceivable.").

By way of background, the General Assembly enacted the Act to codify the common law Castle Doctrine. *State v. Curry*, 406 S.C. 364, 372, 752 S.E.2d 263, 267 (2013). "Consistent with the Castle Doctrine and the text of the Act, a valid case of self-defense must exist, and the trial court must necessarily consider the elements of self-defense in determining a defendant's entitlement to the Act's immunity." *Id.* at 371, 752 S.E.2d at 266. "This includes all elements of self-defense, save the duty to retreat." *Id.*

"[T]he legislature intended defendants be shielded from trial if they use deadly force as outlined under the Act." *State v. Duncan*, 392 S.C. 404, 410, 709 S.E.2d 662, 665 (2011). Thus, upon motion, the issue of immunity under the Act must be decided prior to trial. *Id.* A party seeking immunity under the Act must show entitlement to immunity by a preponderance of the evidence. *Id.* at 411, 709 S.E.2d at 665. Common law self-defense has four elements:

First, the defendant must be without fault in bringing on the difficulty. Second, the defendant must have actually believed he was in imminent danger of losing his life or sustaining serious bodily injury, or he actually was in such imminent danger. Third, if his defense is based upon his belief of imminent danger, a reasonably prudent man of ordinary firmness and courage would have entertained the same belief. If the defendant actually was in imminent danger, the circumstances were such as would warrant a man of ordinary prudence, firmness and courage to strike the fatal blow in order to save himself from serious bodily harm or losing his own life. Fourth, the defendant had no other probable means of



avoiding the danger of losing his own life or sustaining serious bodily injury than to act as he did in this particular instance.

State v. Glenn, 429 S.C. 108, 116, 838 S.E.2d 491, 495 (2019).

Further, the Act sets forth two statutory presumptions:

(A) A person is presumed to have a reasonable fear of imminent peril of death or great bodily injury to himself or another person when using deadly force that is intended or likely to cause great bodily injury to another person if the person:

(1) against whom the deadly force is used is in the process of unlawfully and forcefully entering, or has unlawfully and forcibly entered a dwelling, residence, or occupied vehicle, or if he removes or is attempting to remove another person against his will from the dwelling, residence, or occupied vehicle; and

(2) who uses deadly force knows or has reason to believe that an unlawful or forcible entry or unlawful and forcible act is occurring or has occurred.

(B) The presumption provided in subsection (A) does not apply if the person:

(1) against whom the deadly force is used has the right to be in or is a lawful resident of the dwelling . . . ; or

...

(3) who uses deadly force is engaged in an unlawful activity or is using the dwelling, residence, or occupied vehicle to further an unlawful activity

(C) A person who is not engaged in an unlawful activity and who is attacked in another place where he has a right to be, including, but not limited to, his place of business, has no duty to retreat and has the right to stand his ground and meet force with force, including deadly force, if he reasonably believes it is necessary to prevent death or great bodily injury to himself or another person

S.C. Code Ann. § 16-11-440.

Applicant did not show prejudice from trial counsel's failure to request a pretrial immunity hearing because it is not reasonably likely a court would have granted immunity. The *Strickland*

standard of prejudice requires a Court to find that but for an alleged deficiency, there is a *reasonable probability the result of the proceeding would be different*. *Strickland*, 466 U.S. at 694. In other words, the proper question is, "If counsel had requested a pretrial immunity hearing, is there a reasonable probability the circuit court would have granted immunity?" *Strickland*, 466 U.S. at 693 ("It is not enough for the defendant to show that the errors had some conceivable effect on the outcome of the proceeding. Virtually every act or omission of counsel would meet that test, and not every error that conceivably could have influenced the outcome undermines the reliability of the result of the proceeding." (citation modified)); *see also Thompson v. State*, 2025-MO-039 at *4.

At trial, Applicant admitted she was at Victim's home smoking crack and attempting to engage in prostitution. (App. 522-35). She claimed Victim became angry when he could not get an erection; she went into the living room to get her clothes, and Victim followed her and began swinging a crack knife at her. (App. 530-35). According to Applicant, they were in the living room when this occurred. She denied that any fighting occurred in the bedroom. (App. 522-38).

In contrast, Stan Richards, an expert in bloodstain pattern analysis, opined the incident began in the bedroom and ended in the living room. (App. 288). He based this opinion on the fact the bedroom contained a smaller amount of blood, signaling the beginning of the blood-letting event. (App. 288-89). Richards testified the volume of blood increased as it moved down the hall away from the bedroom. (App. 289). He testified the area around the glass shards in the hallway contained an increased amount of blood, which was consistent with Victim being "stationary for a little while." (App. 289, 292).

Based on Richards' testimony, the forensic evidence showed (1) a blood-letting event began in the bedroom and (2) the volume of blood increased as it moved down the hall. This starkly

contrasts Applicant's version of events. Applicant denied any fighting occurred in the bedroom; rather, she claimed the fighting all occurred in the living room, where Victim's body was ultimately discovered. (App. 530-38).

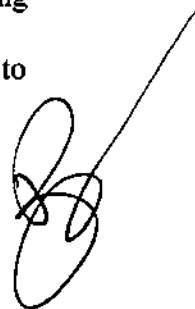
The State's theory was that Applicant attacked Victim in the bedroom. This theory was supported by the bent knife investigators found in the bedroom that contained Victim's blood. Applicant's description of the fight is inconsistent with the forensic evidence, making it unlikely a trial court would have found her testimony credible at a pretrial immunity hearing. Likewise, it is not reasonably likely a circuit court judge would have found that Applicant's testimony established by a preponderance of the evidence that she was entirely without fault in bringing on the difficulty.

Additionally, Applicant's testimony that she ran out the front door was contradicted by testimony that the front door was locked but the back door was open when Victim's body was discovered. (App. 101-02). Further, blood spatter evidence showing an impact occurred *below* waist level along with the relative size of Victim and Applicant (who admitted she was shorter than Victim) shows Applicant continued to beat Victim *while he was on the ground*. (App. 294-95). *Cf. State v. Chhith-Berry*, 437 S.C. 527, 544, 878 S.E.2d 352, 361 (Ct. App. 2022) (affirming trial court's denial of immunity when defendant "testified that he stabbed Galloway once in the shoulder and that caused Galloway to fall off of Berry and stop fighting. Despite Chhith-Berry's testimony that Galloway stopped fighting after the first stab wound, Galloway sustained another twenty-four unaccounted-for stab wounds."). Due to a lack of credibility (based on the forensic evidence) in Applicant's overall testimony, it is not reasonably likely a court would have found Applicant proved by a preponderance of evidence that she had no other reasonable means of escape than to brutally beat Victim.

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The brutality of the beating itself further illustrates why it is not reasonably likely a court would have found by a preponderance of evidence that Applicant had no other reasonable means of escape or that Applicant reasonably believed her actions were necessary to prevent great bodily injury. Specifically, Victim had multiple blunt-force injuries on his head, including three on the right side, six on the upper back, two more lower down on the back of the head, and three toward the neck (App. 311-12); two sharp-force injuries on the back of the neck (App. 312); three blunt-force injuries and one sharp-force injury on his face (App. 313); two sharp-force injuries on his right lower chest (App. 318); a cluster of five sharp-force injuries on his left thigh (App. 318-19); seven sharp-force injuries on his right hand (App. 319); three sharp-force injuries on his right lower arm (App. 320); two sharp-force injuries on his right shoulder (App. 320); and nine sharp-force injuries on his left lower arm (App. 320). Thus, it is not reasonably likely a circuit court would have granted immunity, and Applicant cannot show prejudice.

Here, where Applicant's testimony about what occurred is so blatantly refuted by the forensic evidence, and where a jury found the State *disproved* self-defense *beyond a reasonable doubt*, this Court concludes that it is not reasonably likely a circuit court judge would have found Applicant proved self-defense by a preponderance of the evidence. Although "preponderance of evidence" is a less-stringent standard than "beyond a reasonable doubt," it is critical to remember *who* has the burden of proof. At a pretrial immunity hearing, a *defendant* has the burden of proving immunity by a preponderance of evidence. In contrast, at trial when a defendant raises self-defense, the *State* has the burden of *disproving* self-defense beyond a reasonable doubt. It is more difficult to disprove a fact beyond a reasonable doubt than it is to prove a fact by a preponderance of the evidence. Here, the State met the more-stringent burden of disproving self-defense beyond a reasonable doubt. Where the State met that burden, it strains credibility to



suggest that if the burden—albeit a lower one—shifted to Applicant (as it would in a pretrial immunity hearing), it is reasonably likely a judge would grant immunity.

Finally, the presumptions of the immunity statute do not apply. First, the presumption of subsection 16-11-440(A) does not apply because this incident occurred at Victim's home. *See* S.C. Code Ann. § 16-11-440(B)(1) (providing the presumption of section 16-11-440(A) does not apply when the force is used against a lawful resident of the dwelling). Second, the presumption of subsection 16-11-440(C) does not apply because Applicant was a guest in Victim's home. *See Curry*, 406 S.C. at 374, 752 S.E.2d at 267 ("Under the Castle Doctrine, the absence of a duty to retreat does not extend to a visitor or social guest in the home of another unless "the attacker is an intruder."). Likewise, neither presumption applies because the uncontradicted evidence showed Applicant was engaged in unlawful activity at the time of the incident that *by her own testimony* proximately caused the fatal beating. Applicant admitted to at least two unlawful activities she was engaging in at the time of this incident: prostitution and drug use. (App. 522-35). Further, Applicant testified that she went back for her crack pipe, which constitutes the crime of possession of drug paraphernalia. (App. 535). Because Applicant was engaged in unlawful activity, the presumptions of subsections 16-11-440(A) and (C) would not apply. *See* § 16-11-440(B)(3) (providing the presumption of subsection 16-11-440(A) does not apply if the person using deadly force was engaged in unlawful activity); § 16-11-440(C) (providing "[a] person who is **not engaged in unlawful activity**" has no duty to retreat in certain circumstances (emphasis added)).

Accordingly, this Court finds Applicant has failed to establish that she suffered any prejudice due to trial counsel's failure to request a pretrial immunity hearing as she cannot show a reasonable probability that she would have been granted immunity but for trial counsel's deficiency. Therefore, this allegation is **DENIED** and **DISMISSED**.



CONCLUSION

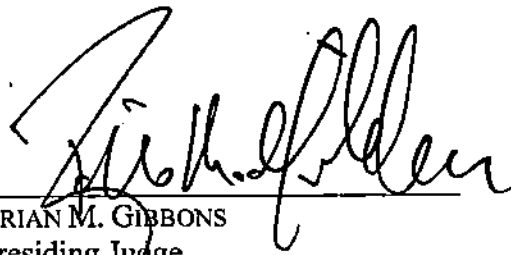
Based on the foregoing, this Court finds that Applicant has not established any constitutional violations or deprivations that would require this Court to grant her PCR application. Therefore, Applicant's PCR application is **DENIED** and **DISMISSED WITH PREJUDICE**.

This Court notifies Applicant that she must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. *See* Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has the right to an appellate counsel's assistance in seeking review of the denial of PCR. Further, Rule 71.1(g) of the South Carolina Rules of Civil Procedure provides that PCR counsel must serve and file an Notice of appeal on Applicant's behalf if Applicant wishes to seek appellate review. *See also* Rule 243, SCACR. (setting forth procedure for PCR appeals).

IT IS THEREFORE ORDERED:

1. Applicant's Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant is to remain in the custody of the South Carolina Department of Corrections pending the completion of her lawful sentence.

IT IS SO ORDERED this ____ day of 5/5/2022.


 BRIAN M. GIBBONS
 Presiding Judge
 Fifth Judicial Circuit


 _____, South Carolina

WITNESSES

(S) KE Johnson
- Richland County Sheriff

ARREST WARRANT NUMBER

2014A4010200295

ACTION OF GRAND JURY

TRUE BILL

K.D. Wilson
Foreperson of Grand Jury

Date: **APR 09 2014**

VERDICT

1016
Foreperson of Petit Jury

Date:

DOCKET NO. 2014-GS-40-02072

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

APRIL TERM 2014

42

**THE STATE
vs.**

Holly Jo Thompson

Indictment for

MURDER

SC Code: 16-03-0010

CDR Code: 0116

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

**CERTIFIED TRUE COPY
OF ORIGINAL FILED,
Jeannette W. McBride
C.C.C.P.&G.S.
RICHLAND COUNTY
SOUTH CAROLINA**

SCANNED

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on April 9 2014, the
Grand Jurors of Richland County present upon their oath:

MURDER

That Holly Jo Thompson did in Richland County, on or about January 20, 2014, kill the victim, James Solomon, with malice aforethought, by means of blunt force trauma to head and body, and the victim did die as a proximate result thereof. All in violation of Section 16-03-0010, S. C. Code of Laws, 1976, as amended

24 Rett
Amended
w/o
objection
2/16/16

Against the peace and dignity of the State, and contrary to the
statute in such case made and provided.



DAN JOHNSON, SOLICITOR

CERTIFIED TRUE COPY
OF ORIGINAL FILED,
Heather L. McBride
C.C.C.P.&G.S.
RICHLAND COUNTY
SOUTH CAROLINA