STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

VOLUME 3 OF 3

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S.C. SUPREME COURT

Appeal from Richland County
The Honorable Clifton Newman, Circuit Court Judge
Appellate Case No: 2026-002249

STATE OF SOUTH CAROLINA, Petitioner,

v.

ANTONIO VASHON BARNES, JR., Respondent.

APPENDIX

LARA M. CAUDY
Division of Appellate Defense
P. O Box 11589
Columbia, SC 29211
lcaudy@sccid.sc.gov

ATTORNEY FOR RESPONDENT

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Sr. Assistant Deputy Attorney General

W. JOSEPH MAYE
Assistant Attorney General

Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-6305

ATTORNEYS FOR PETITIONER

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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County

Honorable Clifton Newman, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ANTONIO VASHON BARNES, JR.

APPELLANT

APPELLATE CASE NO. 2023-001390

RECORD ON APPEAL

LARA M. CAUDY
Senior 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

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General

W. JOSEPH MAYE
Assistant Attorney General
P.O. Box 11549
Columbia, SC 29211-1549
(803) 734-6305

BYRON E. GIPSON
Solicitor, Fifth Judicial Circuit
P.O. Box 192
Columbia, SC 29202-0192
(803) 576-1802

ATTORNEYS FOR RESPONDENT

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**THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:
FROM THE DECEMBER 5-13, 2022 TRIAL: STATE'S EXHIBITS #20, 25, 27, 28 (PHOTOGRAPHS), STATE'S EXHIBIT #71 (DVD OF INTERVIEW), AND DEFENDANT'S EXHIBIT #108 (DVD).**

like you were in danger but you were going towards the danger, right?

A. Yeah, going towards the front room where I heard the danger at, correct.

Q. All right, and how long, once you were in the hallway, did you take to assess the situation?

A. I didn't take no time to assess the situation. I had already ---

Q. No time?

A. --- assessed it when I was in the room.

Q. No time to assess. What could you see from your bedroom?

A. Couldn't see nothing from my bedroom. Just heard the noises that I thought was people breaking into my house.

Q. Okay. Let me ask you this.

A. Uh-huh.

Q. I -- what if it had been the police there to perform a search on you for all the weed that was there?

A. They would have -- the police beat on the door or notified somebody first. They didn't. And even if it -- if it would have been the police, then I would have got killed.

Q. All right, and what -- you, you took no time to assess the situation once you left your room. What did

you observe in your living room?
A. I didn't observe nothing. As soon as I got to the hallway, to the end of the hallway and I heard where the noise was coming from, I shot towards that area as I was still moving.
Q. And you didn't, you didn't tell the officers you saw two guys on top of one another fighting?
A. Yeah, that was simultaneously as I had already started firing. So, as you -- if you see the corner from the house, if you move and shooting, if you moving around the corner, when you -- that corner isn't nothing but a little edge right here. So, your body, as you shooting, your body would have already been moved all the way around. So, as you finish shooting, you have seen people on the ground, yes, sir.
Q. Okay, and how are you shooting around a corner? I'm just curious about that.
A. Well, as your body coming down the hallway, you -- what you seen with your own eyes, and I leaned around covering myself because I thought somebody was around there with guns. So, I shot to where I heard the commotion from still using the wall as cover as I was moving. Correct.
Q. Who taught you that move?
A. I just learned that from playing *Call of Duty*.

Q. *Call of Duty*?
A. Yes, sir.
Q. Okay. You saw that in a video game and you thought that's what you were going to do?
A. To protect my life, yes, sir.
Q. And now that you announce I've got a gun when you see these two people on the ground ---
A. No.
Q. --- tussling around?
A. No, sir.
Q. You had two roommates on February 7, 2019, correct?
A. Uh-huh.
Q. You had two male roommates on February 7, 2019, correct?
A. Correct.
Q. You had two Black male roommates on February 7, 2019, correct?
A. Correct.
Q. You had two Black male roommates in their early twenties in 2007 -- 2019, correct?
A. Correct.
Q. And so when you see two Black males in their early twenties on the floor wrestling ---
A. Well, I wouldn't be able -- I wouldn't be able to see that. I wouldn't be able to see that, sir. How --

what of age they would have been, it could have been two people in they sixties. How would I have been able to know?

Q. All right. So, did you think you just got lucky that you hit them every time you fired a shot?

A. Yes, sir.

Q. Because there's no shots in the walls or anything.

A. Yes, sir.

Q. You mean you, you hit them every time?

A. Yeah. I didn't say that I aimed towards the wall. If I was coming around the corner, the only way I would have been able to hit the wall is if I would had the gun almost facing this way. That would then wouldn't make sense.

Q. Why would two people who were doing a home invasion be fighting one another in your living room?

A. Well, in the home -- once I heard the TV -- like I said in my original testimony, when I heard the TV fall, that's when I got up and acted because that was on the side. My game's connected to it. So, that was my time to act. I felt like that.

Q. All right.

A. I didn't know that they was fighting or didn't think that they was fighting until I made it all the way around the corner.

Q. Why did you tell law enforcement there were two guys fighting and they ---

A. Well, I was speculating on what happened. Once I seen that two people that was on the ground and I was -- when I was in the interrogation room, I was speculating to what possibly could have happened, why they could have possibly been fighting. That's what I been doing the whole time because I don't know. I was in the room.

Q. Well, would you be able to demonstrate the maneuvers you took when you walked down the hall and how you shot the people?

A. If you want me to.

Q. That's -- I would like you to. Would you mind?

A. Hu-uh.

(A PAUSE.)

MR. SCOTT: And with Your -- with Your Honor's permission, maybe -- I've kind of laid out some of your -- based on the dimensions of a defense exhibit, the general dimensions of the room where the incident occurred. I don't know if they can see from a seated position. I'm going to attempt to have him demonstrate how he went into the room before firing a weapon.

And, Judge, I have a prop gun. It is -- it's incapable of firing. It's made out of plastic. Does not have any ---

THE COURT: Okay.

MR. SCOTT: --- firing mechanism.

Q. All right. So, does this represent generally your hallway?

A. Uh-huh.

Q. All right, and if we take a right right here, that's your kitchen, correct?

A. No, it doesn't -- when you take a right when you come out my room, that's the bathroom right there.

Q. Right behind you ---

A. On ---

Q. --- that's Tonio's room?

A. Correct.

Q. All right, and you look there and he's not there, right?

A. Why would I look here?

Q. You've got to step over it basically to get to the hallway, right?

A. No. I got to step over what?

Q. Your bedroom's right here. You stepped out in the hall, right?

A. Uh-huh.

Q. Right there is an opening of his closet, correct?

A. Yeah.

Q. All right.

A. I did not ---
Q. You didn't look at it?
A. No. Why would I look that way when the break in coming from this way?
Q. You don't know if your roommate's there or not, do you?
A. Yes, I know if he there. I said from the ---
THE COURT: Talk louder, please.
A. I said from the beginning I thought Tonio and Sam was gone; I been saying that the whole time.
Q. You thought?
A. Exactly.
Q. Did you check to see if he was there?
A. No.
Q. Okay, and then you walk right here, and that's the doorway that goes into Sam Thomas's room?
A. And I never looked there.
Q. Why not?
A. Because why would I do that?
Q. Because there's a noise coming out here and you want to make sure ---
A. But ---
Q. --- it's not your roommate.
A. But they would have made a sound. They would have yelled out something. I know both they voice. I been

living with them for a year. We already discussed that. I testified to that, right?

Q. And you're 100 percent certain that they would have made a sound?

A. Correct.

Q. Okay. You know that.

A. Uh-huh.

Q. All right. Show us -- and I guess this will be the wall.

A. The line, the line is -- the line's the wall?

Q. Yeah.

A. Okay.

Q. All right.

A. So, I came down. I came around the corner, and when I got right here, I started shooting. That's -- my body's still moving like that.

Q. Okay.

A. And I ended up right here.

Q. All right. Then what did you do?

A. And that's when I seen what it was and so I really -- oh, shit. I start panicking and just -- I was crying and hysterical. So, I walked to the front door, which would be this -- I viewed this as -- the front door right here?

Q. That's your front door, correct.

A. All right. So, I walked to the front door. When I opened the front door, Ieasha and his mama was coming up the stairs, which you would have to walk up this way first and come up this way. So, they was already at the top of the stairs and I let them in.

Q. All right, and how did the casings -- the two casings were right here.

A. I have ---

Q. You know how they got there?

A. I have no clue.

Q. Were you shooting from over here?

A. No, sir.

Q. All right. You don't know how they got there?

A. No, sir.

Q. Your testimony is that you're shooting around that corner before you even go?

A. Yes, sir, and my body was still moving, yes, sir.

Q. Your body's still moving. So, you're going out ---

A. Yeah.

Q. --- shooting at them like that?

A. Correct.

Q. Okay. Do you know why there weren't any casings in the hallway?

A. No, sir, I never said I started shooting from the hallway. I said I started shooting up behind this

corner right there.
Q. You're right there?
A. So, it in the -- the shells would have went out this way. They wouldn't of came out this way back to the hallway. They would have came out the other way ---
Q. Okay.
A. --- going towards the front door.
Q. Was there any reason there's no shells in the kitchen?
A. No, sir.
Q. Well, you just told me they would be going out this way.
A. Yeah, but the kitchen -- it's a wall right there. The kitchen opening would be back here somewhere.
Q. Okay. The crime scene said all of the shell casings are right here on the bodies.
A. Correct.
Q. And then there's two over here.
A. Yes.
Q. You don't know why?
A. No, sir.
Q. All right. Who was laying on their back when you come around the corner?
A. Antonio.
Q. Tony. Eric's on top of him?

A. Correct.
Q. Okay. Show me how you pressed against Eric's head before you shot him in the head.
A. I didn't press it against his head. Well, I don't remember pressing it against his head. That's what it saying -- that's what they -- the specialist did get up here. But I don't remember doing that.
Q. Okay. Did you black out maybe or something?
A. No, sir.
Q. Okay. Did you see any singe marks? Did you see the imprint of your pistol in the back of his head?
A. No, sir.
Q. You want to look at the pictures?
A. I seen them yesterday, but you can show them to me again if you want to.
Q. Okay. You saw them yesterday, right?
A. Correct.
Q. So, why did you press the gun against Eric's head when ---
MS. YOUNG: Your Honor, asked and answered.
Q. --- you pulled the trigger?
THE COURT: Objection's overruled.
Q. Why did you do that?
A. I don't remember doing that.
Q. You don't dispute the evidence then, do you?

A. No, sir.
Q. Do you see the singe marks on the back of Eric's head, don't you?
A. Yes, sir.
Q. Was that your kill shot?
A. No, sir. But I don't, I don't know. I just was trying to protect my life shooting towards people or whatever.
Q. That's ---
A. Well ---
Q. --- a hell of a thing to forget, isn't it?
A. Yes, sir.
Q. But you don't remember it?
A. I don't remember doing that.
Q. Okay. You remember getting on your knees and pressing down against his head?
A. No, sir.
Q. How could you forget something like that?
A. I know I didn't do that.
Q. Tell me how it happened.
A. I don't know how it happened. I told you exactly what happened just now and I explained. Even demonstrated it for you.
Q. You're not demonstrating how he got that contact wound to the back of his head.

A. I don't know how he got that.
Q. Okay. No explanation?
A. No, sir.
Q. You can take your seat.
All right. What did you do after you killed these two young men?
A. As I was just telling you, I walked to the front door and I let his mom and his girlfriend inside the house.
Q. I heard that. Say -- something about it took you two minutes to answer the door. Is that incorrect?
A. That's incorrect.
Q. All right. So, you went immediately up there?
A. Immediately to the door. I opened the front door. His mom and his girlfriend was walking up the stairs.
Q. And where was your gun when you opened the door?
A. Still in my hand.
Q. Okay. Then what did you do with it?
A. As I let them in, she walked in, grabbed Eric off the top of Antonio. I walked to the back to grab my phone to call the police because I wasn't going to move them until I call the police.
Q. Okay. So, when that expert was testifying about the movement of your phone, that really doesn't tell us anything because you didn't grab it until after all this

was over?
A. Correct.
Q. So, he testified basically for nothing?
A. Well, he testified that any way between ---
MS. YOUNG: Objection. Pitting.
THE COURT: The objection's sustained.
Q. All right. So, you leave what -- I'm sorry. When do you leave the apartment?
A. Well, after I let them in and I called the police, Shakihla, I believe she's suppose to be one of your witnesses. I don't know what happened to her, but she walked up inside the house. She knocked on the door. It was her and the dude. I think Mr. Charles. The other guy who you got up here to testify, he never walked inside. But when she walked in, she seen them on the ground.

At this time nobody knows what happened. They just upset about the people on the ground that's dead. We all sad. So, she seen me with the gun still in my hand, and she walked over to me and grabbed it out my hand and put it inside her pants and walked out.
Q. Okay. So, nobody at that point knew you were the shooter?
A. No, sir.
Q. Why didn't you stay on the scene after law

enforcement had been called?
A. I'm called -- I'm the one who called law enforcement, and I left out the apartment because it was mostly people inside. Multiple ex-family members. I didn't feel like that was a safe place to stay.
Q. Okay. Why didn't you stand down at the bottom of the stairs and wait for police?
A. I did.
Q. You did?
A. Yes, sir.
Q. Okay. Let me show you -- well, you kind of have a defense exhibit like this, but this is State's 77.
A. Uh-huh. Correct.
Q. You see yourself in that picture?
A. Yes, sir, right there.
Q. Okay, and that's at 9:02?
A. Uh-huh.
Q. Okay. So, Ieasha testified and we heard 8:55 is when she calls ---
A. Uh-huh.
Q. --- Eric's phone after she heard the gunshots.
A. Uh-huh.
Q. So, do you agree or disagree, about 8:55 is when you killed the two guys?
A. I can agree with that.

Q. 8:55? All right. So, I've got you seven minutes later out in the parking lot.
A. Uh-huh.
Q. Okay, and you remember when that officer got out. Said where's the shooter, where's the shooter?
A. No, sir.
Q. You don't remember that?
A. I don't remember them saying that.
Q. Okay. You, you wouldn't disagree that this officer was yelling where's the shooter when she got out of the car?
A. When she got out the car?
Q. Yeah.
A. No, I, I never seen a female officer. The first two officers on the scene was two males.
Q. Would it surprise you this is a shorthaired female?
A. Yeah, I don't see no shorthaired female.
Q. Well, this is body cam we're looking at.
A. Oh, yeah. Well, I don't -- no.
Q. All right. So, seven minutes later you're out in the parking lot?
A. Correct.
Q. You don't disagree?
A. Yes, sir.
Q. And then, at 9:04, who's this you're out there

talking with?
A. That's Richard Hamilton. I think his name -- last name Hamilton or Hamilton Jacobs.
Q. Who else?
A. Oh, that's the dude named Lando.
Q. Lando?
A. Uh-huh.
Q. That's at 9:04. So, you've moved from the parking lot and this is State's 78. You moved from the parking lot out into the road?
A. Uh-huh.
Q. Okay, and then at 9:05, this is -- you -- you're kind of outside the parking lot in a little grassy area between the road and the parking lot?
A. Yeah, that's, that's right in front of my apartment, yes, sir.
Q. I'm sorry?
A. That's right in front of my apartment.
Q. All right. Who are you with?
A. Hamilton and Lando.
Q. What y'all talking about?
A. Well, Hamilton asked me -- was asking me what happened. I really wasn't -- Lando came from inside my house. So, he seen with his own eyes what happened and I was telling Hamilton what happened.

Q. State's 81 at 9:06. That's you outside by the road?
A. Uh-huh.
Q. Okay. At this point law enforcement's starting to saturate the area. They're all over the place, right?
A. Uh-huh.
Q. 9:06, this is you walking away with Lando. Is that correct?
A. Uh-huh.
Q. And this is State's 80. Why are you walking away from the scene?
A. That's me pacing back and forth.
Q. Okay. 86, State's 86, this is 9:05. Whose car are you leaning into there?
A. Oh, bruh stayed in front of the building. He stayed in front of my house. Like, I stay in 14-G. He stay in 14-D.
Q. What's his name?
A. I can't remember. I think Main Main or something like that. I can't remember.
Q. May May?
A. Main Main.
Q. You don't know his name?
A. No, sir.
Q. State's 85, you're leaning into the car. Are you

putting something in his car?
A. No, sir.
Q. What are you doing?
A. Talking to him because he stated he couldn't get to his house. That's why he was parked right there. The police was all up there. He couldn't even get into his front door. So, that's why he was right there asking me what happened.
Q. Okay. Let me ask you. Instead of talking with Lando or Richard Jacobs or May May ---
A. Main Main.
Q. Can you spell that?
A. Main. Like main.
Q. M-A-I-N?
A. Yeah.
Q. Oh.
A. Correct.
Q. Okay. Main Main?
A. Correct.
Q. Instead of talking with Main Main and Mr. Jacobs and Lando.
A. Correct.
Q. Why not go to the police and say ---
A. I had already been to the police.
Q. Okay. The first time you talked to police ---

A. Uh-huh.
Q. --- okay, you say I'm a resident?
A. I, I give them -- I tell them it's my house. I give them my name, my date of birth, and my phone number.
Q. Okay, and you just said nobody knows you're the shooter at this point. They just know that the shooter ---
A. Nobody except Hamilton. I told Hamilton because he one of the first people I talked to and that's probably about it.
Q. All right. Why not go to law enforcement and go hey, hey, whoa, I'm the shooter, I need to explain what happened?
A. Well, immediately when I start talking to the police and I gave them my information, they told me to step outside the tape.
Q. Okay. I'm the shooter. You don't think that would have gotten their attention?
A. Maybe.
Q. Maybe? Why not do that, though? Okay, but instead you're walking around. Who else did you talk to besides Lando, Hamilton, and Main Main? Who else did you talk to?
A. At that area right there?

Q. Just anywhere.
A. Oh. Nobody. I walked to Wesley's house, which is a mutual friend, and that's who I communicate with.
Q. You walked to Wesley's house?
A. Uh-huh.
Q. How far away is he from the crime scene?
A. He two parking lots back. He stay in building 26. I stay in 14.
Q. Okay. Did it occur to you that I just killed two people, I should probably stay here and let the officers know, and let me explain myself what happened?
A. Yes, sir, but I was so panicked and I needed people to talk to. So, I had to call my family and my friends. Well, all our friends that's all cool with all this so --
Q. And you ---
A. --- they can know how ---
Q. --- needed to figure out what you were going to say when you talked to law enforcement I guess?
A. No.
Q. No. So, it only took you about two hours before you finally come to the officers and go I'm the shooter?
A. No, sir. If I'm correct, it said an hour and 15 minutes.
Q. 10:46 sound right to you?

A. I don't know.
Q. Huh?
A. I don't know. I'm just going off what it said on the paperwork, sir.
Q. 10:47 AM, does that sound right?
A. It sound right about what?
Q. About the time you finally go in say I'm the shooter.
A. I can't remember. I can't say.
Q. But you're not going to disagree with me if the, if the time that interview started is 10:47, you agree with me that's when you finally said I'm the shooter?
A. About 10:40. Correct.
Q. Okay. 47.
A. But I had to get my peoples to go find the investigator first. So, you got to take away all that time before I got to the investigator. But yeah.
Q. You ---
A. We can go to ---
Q. You've seen those body cams. There must have been seventy officers right there. You had to go -- took you two hours to find one?
A. No. I said the head investigator. I got my cousin to go find the head investigator. That's how I talked to the guy that you got up here yesterday.

Q. He wasn't the head investigator. He was a gang task force unit.
A. But that's who they brought to me ---
Q. Okay.
A. --- or brought me to.
Q. But -- so 8:55 you killed these two guys, and 10:47 you're finally saying it was me, I shot him?
A. Yes, sir.
Q. So those two hours, I guess you're kind of trying to ---
A. But I had been let mostly people know what had happened.
Q. And not ---
A. The people who -- Hamilton, I believe Hamilton called the police as well after me. So, I had already communicated with him what had happened. I never denied being the shooter.
Q. No, but it took you two hours to come up with a story that you were eventually going to tell law enforcement.
A. No, sir.
Q. Didn't you ---
A. I told him the same exact story on the scene right there.
Q. Okay, and you felt like, after killing the two

guys, you needed to go to the store and get some cigarettes.

A. Yes, sir.

Q. Correct?

A. Because I just killed my two friends, correct.

Q. And nothing, nothing goes better after killing people than a cigarette, right?

A. Nah. I just was so stressed out and all the phone calls that I was having. It just stressing me out even more. So, I needed cigarettes, yes, sir. I smoke cigarettes. So ---

Q. Yeah.

MR. SCOTT: Before I forget, this is State's 77, 78, 79, 80, 81, 85, and 86 for admission into evidence.

MS. YOUNG: No objection.

THE COURT: They're admitted.

(PHOTOGRAPHS INDIVIDUALLY MARKED AS STATE'S EXHIBIT NUMBERS 77, 78, 79, 80, 81, 85, AND 86 RECEIVED INTO EVIDENCE.)

Q. All right, and during those two hours, you called Shakihla Smalls. There was fifteen calls between you two.

A. Yes, sir. I -- she never answered not one of them, though.

Q. Okay. All right. So, we got Wesley. We got

Hamilton Jacobs. We got Lando. We got Main Main. Do you remember who else you called and talked to?

A. I talked to my grandma about Dash that morning. I talked to my mama and Katerra. That's about it.

Q. All right, and, and you knew eventually you were going to have to come forward and tell I'm the shooter, right?

A. I never was running; I never was trying to hide.

Q. Well, you couldn't because Ieasha and Lando had seen you come out of the apartment.

A. Yeah, but -- okay. Yes, sir.

Q. Right? I mean, three people were alive in there at 8:54 and only one walks out and that's you and they see you walk out, correct?

A. Correct.

Q. So, you kind of knew I'm going to have to have a story, right?

A. No, this the same thing I been saying from the beginning, sir. My story never changed.

Q. Well, I, I heard that you told three different stories to the one guy.

A. Well ---

MS. YOUNG: Objection. Pitting.

THE COURT: The objection's overruled.

A. Uh-huh.

Q. Yeah.
A. But you also heard that same guy get up here and say that when he first opened the door, nobody else was inside the house but me. But your two witnesses, Wanda and Ieasha, said they was the first people in the house. So, how would that be true?
Q. Well, the body cam comes up, they'd already gone out and about.
A. Yeah, but he said he was one of the first people upstairs and he testified to that yesterday.
Q. Okay, and then when, when you get in, you speak with law enforcement, it's essentially I heard a noise.
A. Correct.
Q. I immediately think I'm getting robbed.
A. Correct. Not ---
Q. I heard ---
A. Not just heard any noise. I heard noises that sounded like my house is getting broken into.
Q. Okay, and this is two days after you thought that your home had gotten robbed of a gun?
A. Well, a gun had got stolen out of my home, yes. Correct.
Q. Okay, and that was concerning to you. I mean, you were texting ---
A. Not really concerning to me. In those same text

messages, I even said that it wasn't my gun. So, that had nothing to do with me. I didn't have no issue with the gun being stole. It wasn't mines.

Q. Well, let's see: Tell me why somebody stole one of our guns today.

A. Correct.

Q. I don't know who, though.

A. Exactly.

Q. Right?

A. Uh-huh.

Q. And she says: Y'all be having too many people in there.

A. Uh-huh.

Q. And then you say: Still trying to figure out who took the gun.

A. Uh-huh. Correct.

Q. So, you're telling me it wasn't a concern to you to figure out who took the gun?

A. That's only because me -- I was only saying that because multiple people -- everybody that was inside are friends that we cool with. So, if one of your friends that -- you think one of your friends took something and from inside your house, you want to be trying to figure out who took it if all those same people going to be around you.

Q. No, and that was my question. You were -- that was something of a concern to you to figure out who did it.

A. No, sir.

Q. It was or was not a concern?

A. It was a concern of Tonio's, though. It wasn't mines. So, I had nothing to do with that.

Q. You were concerned with figuring out who did it, though.

A. Correct.

Q. Okay.

MR. SCOTT: Your Honor, if, if -- I would just ask to this -- question the video. Maybe if we can proffer this outside the presence of the jury briefly.

THE COURT: All right, ladies and gentlemen, if you'll go to the jury room. Please do not discuss the case.

(THE JURY EXITS AT 3:20 PM.)

THE COURT: Mr. Scott, tell me again what you're trying to do or want to do.

MR. SCOTT: So, I had some of the lyrics that we interpreted. I listened to the track. He basically said I had totally misinterpreted them. In fact, I had added certain lyrics.

So, what I'd like to do is just proffer the video to him and, and see what he thinks. I don't want to

play it to the jury necessarily. But I, I want to be clear on, on what the lyrics are with him.

THE COURT: All right. What says the defense?

MS. YOUNG: I mean, Your Honor, we object to it coming in. Here is otherwise proffering the evidence. We don't have an objection to that.

THE COURT: We're not talking about it coming in. We're talking about what he proposed to do at this moment.

MS. YOUNG: Yes, and no objection to that then.

THE COURT: All right. Thank you.

You may proceed.

PROFFERED EXAMINATION BY MR. SCOTT

(WHEREUPON, AUDIO FILE IS PLAYED FOR THE COURT. AUDIO IS NOT TRANSCRIBED.)

A. Hey, make sure you turn this part up so you can hear what I'm saying. Y'all turn this part up so you can hear what I'm saying because this part you messed up on for sure.

(PLAY RESUMES.)

A. For sure. You understand I'm business forever and always. I slide like maybe that gangsta shit be make believe. You gone call the twelves. Okay.

Q. Okay: This gangsta shit that make me shoot these N

words.

A. So, that's not what I said?

Q. Yeah, that's what I heard.

A. I said: That gangster shit be make believe. Clear as day. I didn't say that, what you just said.

Q. Gangsta shit be make believe.

A. Gangsta shit be make believe. Start it over.

(PLAY RESUMES.)

Q. Shoot a what? I hear it. I, I keep hearing shoot.

A. I said:

That gangster shit be make believe. I shoot a nigga. He going to call the twelves.

Q. What's the twelves?

A. Police.

Q. Okay.

A. Okay.

Q. What does that -- what were you meaning by that?

A. If you shoot a nigga, he going to call the twelves. That shit ain't real to me.

THE COURT: All right. So, so we're not going to do cross-examination outside the presence of the jury.

MR. SCOTT: No, I have some, Your Honor.

THE COURT: All right.

MR. SCOTT: I think, I think, I think we can agree on a couple of these lyrics that I'll stick to with him.

And I, I don't intend on playing it, though.

THE COURT: All right. Well, we'll ---

MR. SCOTT: The song.

THE COURT: We'll go with what you all agreed with and then ---

MR. SCOTT: Okay.

THE COURT: --- let that be that.

MR. SCOTT: All right. Thank you, Your Honor.

THE COURT: All right. How many, how many more minutes or hours you have with this witness?

MR. SCOTT: Oh, I'm, I'm wrapping up, Judge.

THE COURT: Okay.

MR. SCOTT: So, maybe two minutes.

THE COURT: Okay. All right. We'll take a three minute break and then we'll bring the jury back.

You can take a break. Don't talk to anybody.

(OFF THE RECORD.)

THE COURT: Let's bring the jury.

(THE JURY ENTERS AT 3:35 PM.)

THE COURT: All right. You may proceed.

MR. SCOTT: Thank you, Your Honor.

Q. When you get up and walk down that hallway, this hallway, did you see whether or not your front door had been kicked open?

A. I really wasn't paying attention.

Q. But it's right in front of you ---
A. Uh-huh.
Q. --- when you walk down the hallway.
A. Yeah, I never.
Q. Did you ---
A. I never looked at the front door.
Q. What were you looking at?
A. Just blind. I was just blind, bruh.
Q. You were blind?
A. Uh-huh. Going to ---
Q. How?
A. --- the front. Staying close to the wall. I just staying close to the wall.
Q. You said you kind of do this, kind of do it here?
A. Yes, sir.
Q. All right. Let me ask you. Is that something that a reasonable person should do, blindly shoot into a room?
A. Well, if you think that you getting attacked, then yes, sir.
Q. Okay. Is it reasonable -- do you think would a reasonable person hearing a boom ---
A. And hearing ---
Q. --- in a living room ---
A. --- everything else that I heard, yes, sir.

Q. Okay. A reasonable person has two roommates and they hear a noise in the front ---

A. Uh-huh.

Q. --- is it reasonable for them to blindly shoot into the room knowing people are in there that could be their roommate?

A. It's reasonable after you assess the situation like I did in the room, yes, sir.

Q. Okay, and you think a full assessment ---

A. Will be listening to see if I heard voices that was familiar, yes, that's correct.

Q. Okay. I got it. So, now that's what Antonio Barnes thinks is a reasonable assessment, wait until you hear a voice you recognize, but if you don't, just blindly shoot, right?

A. Just go around there and protect yourself, yes, sir.

Q. Go around and you kill people who are just in there?

A. If they was intruders, yes, sir.

Q. Okay, but they weren't.

A. How would I be able to know that?

Q. Because -- I mean, there's a million ways really. You could have stayed back there. You could have called your roommates and said hey, man, is that y'all? You

could have called out Sam, Antonio, is that y'all? You could have gone in this door, okay, the kitchen, and you could have walked around to the other door and peeped out while maintaining cover. You could have done a million things. But you decide to blindly shoot.

A. Yeah.

Q. You hit them every time, by the way.

A. Uh-huh.

Q. Was that just luck on your part?

A. Yes, sir, I had already said that earlier. Yes, sir.

Q. Okay. So, what are you shooting at, the noise you're hearing?

A. Yes, sir.

Q. Okay, and ---

A. And I was using the wall because I was expecting people to have guns around there. So, yeah.

Q. Because that's what you see in *Call of Duty*.

A. No. That's just what happens in real life. When somebody break into your house, they coming in with a gun.

Q. Which has never happened to you, though, in that apartment.

A. No, sir. But we -- my friends did just get robbed at gunpoint. So, that's what came to my mind.

Q. But you weren't there, though, were you?
A. No, but I couldn't ---
Q. And ---
A. I could have easily been.
Q. Okay, but you weren't, though, were you?
A. No, sir.
Q. And it didn't happen in your apartment, did it?
A. Hu-uh.
Q. Is that a yes or no?
A. No, sir.
Q. Okay, but you're a barber with a cutter. You watch them burn like alcohol.
A. That's what I said in my song, yes, sir.
Q. So, just to conclude, you only have to be a little bit scared before you begin shooting people, correct? It's what you testified to earlier.
A. Yes, sir, I said that earlier.
Q. All right, and you don't have to be certain that you're in danger before shooting at people and killing them?
A. Yeah. If you believe that they were intruders, you don't have to.
Q. Okay. Would you, would you advise me tonight if I hear a boom in my front living room to just go in there blazing with guns?

A. Nah. To be honest, sir, I wouldn't advise you to do anything.
Q. Okay, but you just said that's what reasonable people should do.
A. Uh-huh. If you believe that you getting your home intruded, yes, sir.
Q. Okay. So, if I hear ---
A. You didn't say if you was getting your home, home intruded. You said if you just heard noises.
Q. But you weren't getting your home invaded.
A. Well, it sounded like it.
Q. Well, you base that on the TV falling over?
A. And the boom that I heard ---
Q. And the boom.
A. --- coming from the front room, yes, sir, and all the movement that I heard from the feet, yes, sir.
Q. Okay, and one last time, Antonio.
A. Uh-huh.
Q. I want you to look at this jury in the face, and I want you to tell them how Mr. Griffin got this wound where a gun was pressed against his head ---
A. Uh-huh.
Q. -- and the trigger was pulled.
A. Yes, I don't remember doing that. I came around shooting exactly like I demonstrated earlier, and I

don't know how that happened.
Q. Well, you demonstrated. You didn't get down and press it against somebody's head?
A. No, sir, I didn't.
Q. Okay.
A. So, that's not what I did.
Q. That's not what you did?
A. No, sir.
Q. But you've got no explanation for that?
A. No, sir.
Q. State's 57, do you see that?
A. Yes, sir.
Q. And you see the black ring around the bullet hole, right?
A. Yes, sir.
Q. Okay. You're, you're not denying that's there, right?
A. Yeah, I'm not denying that.
Q. And you heard that pathologist who's done thousands of autopsies ---
A. Uh-huh.
Q. --- talk about that?
A. I heard him say a lot of things yesterday.
Q. Okay.
A. Uh-huh.

Q. All right. Did you -- do you dispute anything he said?
A. No. He disputed some of his own things that he said, but, no, I don't dispute anything that he said. I'm not a specialist.
Q. You're not a medical doctor, right?
A. No, sir.
Q. Okay. So, you heard how he described those contact wounds are identified, right?
A. Yes, sir.
Q. Okay, and you're not going to give this jury any explanation how Mr. Griffin had that gun ---
A. Nah, I ---
Q. --- shot in the back of the head?
A. My explanation earlier was when I was showing you how it happened. I don't -- no, sir, I don't know how that happened. That's what the medical examiner said. So, that's what we going with. But I don't remember doing that.
Q. Okay. On your demonstration, you didn't get down and put it against somebody's head?
A. I didn't get down. The medical, the medical examiner didn't say that I got down on my knees and did it. He ain't say that.
Q. Well -- and I, I know. I'm waiting for you to tell

me how it happened.
A. I told you how it happened. I explained to you when I just demonstrated it to you. That's what happened.
Q. At what point did you press the gun down to his head?
MS. YOUNG: Your Honor, asked and answered.
THE COURT: The objection's sustained.
Q. All right, and you saw that, right? You remember that stippling? Look at it.
A. Yes, sir.
Q. Do you remember that?
A. Uh-huh.
Q. 6 inches to 3 and a half feet.
A. Uh-huh.
Q. So, you're not disputing that you were that close to Antonio Dash when you were shooting him?
A. Yeah, it wouldn't be -- it would be possible for them not to been that close from the way that I just showed you when I demonstrated it. If -- from shooting -- if you holding your hand out from the ground, it wouldn't even be 3 and a half feet from inside the house. So, yeah, I'm not 7-feet tall, sir. I'm only 6-foot. So, that would be right around the exact amount how far my arm, arm would be if I'm aiming

it.

Q. Okay. So, you don't dispute you were at close range when you were shooting them?

A. Yes. I was inside the house.

Q. And you don't dispute, though, that you pressed the gun up against Eric's head before you pulled the trigger?

A. Yeah, I don't remember doing that.

Q. You don't dispute it? I'm sorry. Do you dispute that or not dispute it?

A. No, I don't dispute it, but I do not remember doing that.

Q. Okay. That's just the one thing you've forgot, though. I wonder why.

A. That's just the one thing that I know, sir. I'm telling you exactly what I seen, exactly what happened. I don't have no reason to lie.

Q. Well, I'm just thinking I heard earlier you were talking about, well, I remember Katerra put the shirt over the gun.

A. Correct.

Q. Then he moved over where the gun was.

A. Correct.

Q. My brother called at 2:30. I remember that and my brother called ---

A. Because that's ---

Q. --- at 2:30.

A. That's his normal -- that's his normal routine. He calls and asks for a ride probably, like, ten, fifteen minutes before he go to work. He do this every day. So ---

Q. Okay. Let me speak real quick, though.

A. Uh-huh.

Q. And then you remembered Sam got up to brush his teeth. I remember that.

A. Uh-huh.

Q. And then I remember they left. And two to three minutes went by and then Sam said the gun was missing. Why do you remember all those details?

A. I didn't -- I never said two, three minutes before Sam sat -- left or sat down. Whatever you just said is no -- I didn't say that. I said when E came back to the house, it was two, three minutes before Katerra left and E sat in the same spot that Katerra left. And we probably left probably like -- I can't really say. But I know my little brother had to be to work at 3 o'clock and Sam the one who took him. That's what I can vouch for.

Q. You remember all those details, and you remember Sam ---

A. Yes, sir.
Q. --- going to brush his teeth.
A. Uh-huh.
Q. You remember putting the shirt over a gun.
A. Yes, sir.
Q. And you remember who all was there.
A. Uh-huh.
Q. But you don't remember this one thing I'm asking you about over and over?
A. Yeah, because, because I can't vouch for that. What I can tell you -- what I can vouch for is how I came around the corner shooting, and that's exactly what happened.
Q. Okay, and, I mean, did you, did you try and render any aid to the guys after you ---
A. No, I wasn't -- I wasn't going to touch them. I was going to wait til the police got there. But his mom touched him and moved Eric off the top of Antonio. So, that's why and that's how -- why they was positioned like that.
Q. Okay. You, you just kind of got out of the apartment as quick as you could?
A. No, sir.
Q. How quickly did you try to get out the apartment?
A. I didn't just leave out of the apartment until

multiple people started coming inside.
Q. Okay, and that's when you went off to go get a cigarette?
A. That's when I walked downstairs. That's correct.
Q. All right.
MR. SCOTT: Thank you.
THE COURT: Any redirect?
MS. YOUNG: Thank you, Your Honor. Your Honor, as a brief housekeeping matter, the court reporter let me know that I inadvertently forgot to admit Defendant's Exhibit 111, 112, 113, 117, 116, 115, and 114 earlier during my direct. I don't believe that Mr. Scott has any objection.
MR. SCOTT: No objection, Your Honor.
THE COURT: They're admitted.
(PHOTOGRAPHS INDIVIDUALLY MARKED AS DEFENDANT'S EXHIBIT NUMBERS 111, 112, 113, 114, 115, 116, AND 117 RECEIVED INTO EVIDENCE.)
REDIRECT EXAMINATION BY MS. YOUNG:
Q. Antonio, was this a normal day for you?
A. No, not after what happened, no, ma'am.
Q. Were you in shock?
A. Yes, ma'am.
Q. And when -- you told Mr. Scott you don't dispute the contact wound.

A. No, ma'am, but I do not remember doing that.
Q. You do not remember walking up and putting, putting the gun to his head?
A. No, ma'am.
Q. But what you did demonstrate was coming around the corner with the gun and firing and getting closer to them as you fired?
A. Correct.
Q. And it's a pretty small apartment, right? It's not big.
A. Yes.
Q. And the area isn't very big.
A. Yes.
Q. And I think Mr. Scott asked you about getting -- you know, could you tell that your door was kicked in. Your door automatically shut, right?
A. Yes.
THE COURT: You can't ask, ask questions and then answer your questions. So, let's pose questions.
Q. Did your door automatically ---
THE COURT: Do not lead the witness.
Q. Did your door automatically shut after you opened it?
A. Yes.
Q. Did you think that your door was shut when you were

coming down the hallway?
A. Yes.
Q. But you don't know whether it had been kicked in -- you -- do you know whether it had been kicked in?
A. No, ma'am.
Q. And I think you said earlier you -- did you call 911 at 8:55?
A. Yes.
Q. And you know that you're on a responding officer's body-worn camera at 9:02, right?
A. Yeah.
Q. You saw that picture earlier.
A. Uh-huh.
Q. Do you know -- did you know that she was the first responding officer on scene?
A. No.
Q. Okay. The two first officers you saw, what did they look like?
A. It was a Hispanic guy and a white guy.
Q. Okay. You did not see a -- did you see a female, short hair ---
A. No, I don't remember seeing her.
Q. So, when you saw the two officers, the white guy and the Hispanic guy ---
A. Right.

Q. --- what did you do?
A. I walked over to them and I gave them all my information.
Q. Okay. Now, Tony, we heard about some rap lyrics.
A. Correct.
Q. Are you a rapper?
A. Yes.
Q. Do you enjoying making music?
A. Yes.
Q. Why?
A. Just because I just like to do it. That's a good way to express myself.
Q. Is it like your art?
A. Yes.
Q. Does it provide you some outlet for your -- what's going on with you?
A. Somewhat.
Q. Do you rap about things that are true?
A. Sometimes.
Q. Do you rap about things that are not true?
A. Sometimes.
Q. Do you -- I mean, I think Mr. Scott asked about pictures with you and some of your friends holding guns and you said, you know, your, your friend gets a new gun, you take a picture with it. Do you remember

telling him that, right?
A. Correct.
Q. And do rappers sometimes pose with guns?
A. Correct.
Q. Do rappers act in a bravado sort of way?
A. Yes. You have them in your videos. It's just part of your image sometimes. It depends on what type of music that you make.
Q. And you've only ever -- let me ask you this. How many guns have you owned at one time?
A. The maximum amount of guns I owned at one time is two.
Q. And you -- I think Mr. Scott asked you about not reporting one stolen. I mean, you're aware -- are you aware that they found a receipt from Academy Sports for a .40 caliber Smith & Wesson in your apartment?
A. Correct.
Q. What happened to that gun?
A. Well, I, I had to report it stolen.
Q. When did it get stolen?
A. Prior to 2000 -- March, 2018.
Q. And did the police come out to your apartment?
A. Yeah, they -- well, they came to Wesley house because that's where I was at when I reported it stolen.
Q. Okay. Took a report?

A. Yes.
Q. So, if you had a gun -- when you have a gun stolen, you call and report it to the police?
A. Yes.
Q. Are you able to lawfully carry a gun?
A. Yes, ma'am.
Q. And you can buy a gun legally?
A. Buy it out the store, yes, ma'am.
Q. I think Mr. Scott was -- he tripped you up a little bit with earlier with the selling weed question.
A. Uh-huh.
Q. Do you sell or did you, at the time, sell weed?
A. Yes.
Q. Were you making a lot of money doing that?
A. No, ma'am.
Q. Did you sell weed in order to support your habit?
MR. SCOTT: Objection. Leading.
THE COURT: Objection is sustained.
Q. Why did you sell weed?
A. Just to support my habit. I smoke a lot. So, I don't feel like I should just keep going to the weed man and spending a hundred dollars or $50.00 because it's not going to last.
Q. I think you also talked about some -- he talked with you about some calls that you made to Shakihla ---

A. Correct.
Q. -- or Shakihla. Do you know -- do you remember calling her several times?
A. Yeah.
Q. Okay, and I think that you told Mr. Scott that she didn't answer.
A. Yes, she didn't.
Q. Do you remember telling investigators during your interview that you were trying to call her to find out what happened to the gun?
A. Yes.
Q. And I believe Mr. Scott asked you about being paranoid.
A. Uh-huh.
Q. Was that your words?
A. I don't believe so.
Q. Were you afraid on this day?
A. Yes.
Q. But you don't -- you're -- are you generally paranoid?
A. No.
Q. Did Mr. Scott put that mouth in -- that word in your mouth?
A. Yes.
Q. He also asked you about being a little bit scared.

Were you a little bit scared that morning?
A. No.
Q. How scared were you?
A. I was scared as hell.
Q. And he asked you about certainty. Were you a little bit certain that you were in danger ---
A. Yes.
Q. -- or did you feel, like, certain that someone was breaking into your house at the time?
A. I just knew I was going to die if they made it to the back room. That's all I could tell you.
Q. And I asked you this earlier. Are you sorry for what happened?
A. Yes, ma'am.
Q. Do you recall giving an interview to Investigator Gilliam? I think we talked about it on direct. It was about six hours.
A. Correct.
Q. And you -- do you remember sitting in there and making some phone calls?
A. Yeah, I called my mom. I talked to a lot of people in the investigation room.

MS. YOUNG: Your Honor, at this time I'd like to play an excerpt from that -- I'd like to play an excerpt from that video.

THE COURT: What says the state?

MR. SCOTT: The objection would be to relevance. My prediction is that they are going to show an excerpt of him getting emotional. They can ask him about the thing. I do the same thing. But it's already in evidence. That's fine. But it's opening the door for recross on this if they want to keep talking about his emotional reaction to this.

THE COURT: What says the defense?

MS. YOUNG: Your Honor, under 801(d)(1)(A) -- I'm sorry, (1)(B), it's consistent with Mr. Barnes's testimony that has been attacked. Mr. Scott brought his remorse into play. Mr. Scott attacked his consistency about what he told people. He told -- brought up Mr. Archie saying that he said three different things. This is a prior consistent statement after his -- after their -- to express an implied -- express or imply a charge against the declarant of recent fabrications or improper influence.

THE COURT: What says the state?

MR. SCOTT: The direct examination question you recall of remorse and how he's sorry he did it, I crossed him briefly on that. But I raised no additional issues as to his remorsefulness. They're, they're treading over ground they covered during the direct.

THE COURT: I sustain the objection.

MR. SCOTT: Thank you, Your Honor.

MS. YOUNG: Your Honor, we'd like to proffer it.

THE COURT: Does -- is it -- it will be marked as a State's Exhibit or a Defense Exhibit, Exhibit and you may proceed.

MS. YOUNG: Your Honor, it's Defense Exhibit 108.

Q. Antonio.

MR. SCOTT: Your Honor, I'm just confused. If, if the objection was sustained and now they're playing the video.

MS. YOUNG: We're -- no, no. We just want to enter it as a Court's Exhibit ---

MR. SCOTT: Oh. Oh.

MS. YOUNG: --- for a proffer -- proffered it. I'm sorry. Court's Exhibit.

MR. SCOTT: I saw the screen. That's all.

(A PAUSE.)

(TEXT MESSAGE MARKED AS DEFENDANT'S EXHIBIT NUMBER 128 FOR IDENTIFICATION.)

MR. SCOTT: So, Your Honor, this, this is pertaining to something -- nothing new that was raised in cross-examination. This is a text they're purporting to enter.

THE COURT: Pardon?

MR. SCOTT: There's a text message they're purporting to enter. But I don't see that it pertains to any new evidence or any new information brought up during cross-examination.

MS. YOUNG: Your Honor, he asked on cross-examination about a text message exchange that Tony was having about our gun, and this is a text message where Tony said not his gun. So, it directly addresses something he brought out on cross.

THE COURT: I overrule the objection.

Q. Tony, what does that text message right there say?

A. It had to be one of your suppose to be friends. I don't know. It wasn't my gun. But still, how the fuck.

MS. YOUNG: Your Honor, at -- I probably should have admitted it first, but that's Defense Exhibit 128.

THE COURT: Proceed.

(TEXT MESSAGE MARKED AS DEFENDANT'S EXHIBIT NUMBER 128 RECEIVED INTO EVIDENCE.)

Q. Tony, can you tell me about the tattoo you have behind your ear?

A. Oh, I got a tattoo right there that say long live T.O.

Q. What else is it?

A. Two bird.

Q. And what do those birds represent?
A. That is one for T.O. and one for my peoples.
Q. Are you sorry for what happened?
A. Yeah.
MS. YOUNG: Beg the court's indulgence.
(A PAUSE.)
MS. YOUNG: Nothing further, Your Honor.
THE COURT: Any further questioning of this witness?
RECROSS EXAMINATION BY MR. SCOTT:
Q. You sorry that you're here today. I know that, right?
A. No, sir.
Q. You're not sorry? You're not sorry?
A. You asked me was I sorry if I was here. I responded to your question no.
Q. You sorry you got arrested for the murder of these two, aren't you?
A. No, sir.
Q. No, you're not. You think you deserve to get arrested for it then?
A. No, sir.
Q. Okay. You're so sorry and you're so remorseful that you put pen to paper and then you sing about killing these two, and you don't even ask the family for

permission. You don't even tell them you're about to do this for clout.

A. I didn't put pen and paper -- pen to paper and write a song about killing them.

Q. You put ---

A. In the song I referenced my homeboy, which is like my brother. I -- did I have to ask them to get his tattoo name -- his name tattooed on my neck? I didn't. That being my friend, regardless of what his people have to say. So, that's what I'm saying. I can't answer that, sir.

Q. You don't think that's disrespectful not to ask ---

A. No, sir.

Q. --- T.O.'s mom ---

A. That's really ---

Q. Let me ---

A. --- my friend.

Q. Let me ask you a question. To ask T.O.'s mom, before you put on YouTube details about killing her son ---

A. No, sir.

Q. --- or Ms. Wanda Griffin? You don't think that's disrespectful ---

A. No, sir, them really my friend.

Q. --- to put on YouTube videos about killing her son

point blank range? You don't think that's disrespectful?

A. No, sir, because that's not what I said in the song. I said nothing -- I didn't use E name not one time, and we had already talked about this in the cross earlier. You didn't say that. So, I didn't say nothing about Eric Griffin at all in that song. You -- we already discussed that and I spoke about T.O. in that song because that's like my brother, and I even said but T.O. like my brother in the song. So, I don't see how you confused with that.

Q. You get some kind of clout when people know you kill people?

A. Clout for what? These my friends. I never asked for clout for this.

Q. You get some views, though, when you post videos.

A. No, I got views before this. So, I don't even need that.

Q. All right. How many other rap songs you put out since then?

A. I done put out most of the rap songs. I can't really sing.

Q. All right. So sorry you, write about killing these two?

A. Never wrote a song about killing them.

Q. Sounds real remorseful.
A. I never wrote a song about killing them.
Q. Who sang it?
A. Huh?
Q. Who sang it?
A. I, I rapped the song.
Q. What?
A. I rapped it, the song, yes, sir.
Q. Okay, and you downloaded it or uploaded it to YouTube, right?
A. Correct.
Q. And then you put it out there for the world to see?
A. Uh-huh.
Q. And you never asked Antonio -- Tonio's mom or Ms. Wanda Griffin ---

MS. YOUNG: Objection. Asked and answered.

A. I didn't speak on Eric name in that song anyway period. So, I didn't have to ask her nothing. I didn't speak on his name and Antonio's like my brother. Once again, I already said that. That's my real friend. So, I didn't get -- ask them for permission to get his name tattooed on my body. So, I feel like I have to do that to do a song.
Q. Okay.
A. Well, I clearly said that's like my brother and how

much I love him.
Q. Yeah.
A. I don't see how that was the issue.
Q. And you, you gone cut him down.
A. I never said that. I never said I was going to cut Antonio down. I said T.O. like my brother.
Q. Tell me about the thing about: I'm going to make them fall like leaves ---
A. Yes, that ---
Q. --- and you're not talking about leaves.
A. Yeah, that was the next line, correct.
Q. All right: Everybody say they ---
A. The next two lines to be exact.
Q. All right.
A. We listened to it earlier.
MS. YOUNG: Your Honor, I'm going to object. This is exceeding the scope of my redirect.
THE COURT: I sustain the objection.
Q. All right, and in the same song you're talking about these guys:

> I'm a barber with a cutter. Watch me burn them like alcohol.

A. First of all, it's a rap song. So, I don't know why you making every song -- every line in the song has to be about them when I clearly said one line that was

about them, which says T.O. like my brother. All the rest of that is speculations on your part. You don't know what I was talking about.

MS. YOUNG: Your Honor, I'm going to object again. It's outside the scope of my redirect.

THE COURT: Is that the next question or to the last question?

MS. YOUNG: Last -- to the last question but I believe he's about to follow up.

THE COURT: Well, it was asked and answered.

Q. So, so, you were remorseful, though, and you're sorry?

A. Yes, sir, that's my dawg.

Q. You going to put out any more rap songs about killing them?

A. I didn't put out rap songs about killing them.

Q. Okay, but you talk about killing people in the rap song with them.

A. If that's what you want to say, yes, sir.

Q. There's no -- you have any good reason why they're not here right now, Antonio Dash and Eric Griffin, alive and well?

A. Well, like I told you before, I thought my house was getting broke into. I thought my home was being invaded. So, that's why they not here. I wish they was

but ---

Q. What did they do to deserve to die that day?

A. Well, they didn't do nothing. I thought my house was being broken into, but I wasn't the cause of that, so I can't say.

Q. You weren't the cause of killing them?

A. I wasn't the cause of thinking that my house was being broke into. I didn't bust a hole in the wall; I didn't knock my TV down. All that happened before I came out the room. So, I don't know what was the cause of that.

Q. Are you saying they deserved to die because they may have done that?

A. The intruders that I thought was in my house had deserved to die.

Q. So, your testimony is Eric Griffin and Antonio Dash did not deserve to die that day.

A. Correct.

MR. SCOTT: Thank you.

THE COURT: You may step down.

MS. YOUNG: Your Honor, before we leave the witness, we have a matter of law.

THE COURT: You may step down.

(THE WITNESS EXITS THE STAND.)

THE COURT: Call your next witness.

MS. YOUNG: The defense would call Sara Goodman, call Sara Goodman.

THE COURT: While she's coming up, counsel approach.

Everybody stand for a moment.

(THE FOLLOWING CONFERENCE IS HELD AT THE BENCH OUTSIDE THE HEARING OF THE JURY.)

MS. YOUNG: Well, Your Honor, I'd like to play the video proffered. Mr. Scott got up on recross ---

THE COURT: Well, you have direct, cross, redirect, cross.

MS. YOUNG: Your Honor.

THE COURT: That's it for the witness. You can't put up evidence during the end of testimony of the witness.

MS. YOUNG: During his recross, he directly attacked his remorse again right after we had just brought that up.

THE COURT: That's it.

MS. YOUNG: And, Your Honor ---

THE COURT: That's the way the process is.

MS. YOUNG: --- the video goes directly to that issue.

THE COURT: They get the last word on that with cross-examination. You don't get a chance to -- he's

still arguing the same thing. Let me ask him one question. Let me introduce more evidence through the witness. He's through his cross-examination for the second time. That's the end of it for that witness. You don't get a chance to get a third bite at the apple.

MS. YOUNG: Well, Your Honor, he went right back ---

THE COURT: Okay, that's not a real matter of law. So, we're going to proceed. At the end of the day, you can put whatever else you want on the record. But that's not a matter of law.

MS. YOUNG: Thank you, Your Honor.

(END OF CONFERENCE AT THE BENCH.)

THE COURT: You may be seated.

SARA GOODMAN, BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

CLERK OF COURT: Please have a seat. State your full name for the record.

WITNESS: My name is Sara Goodman. Last name is G-O-O-D-M-A-N.

VOIR DIRE EXAMINATION BY MS. YOUNG:

Q. Good afternoon, Ms. Goodman.

A. Afternoon.

Q. Where do you work?

A. I work at the South Carolina Law Enforcement

Division, commonly referred to as SLED.
Q. And what is your title?
A. I am a forensic scientist assigned to the DNA casework department.
Q. How long have you worked there?
A. Approximately seven years.
Q. And what are some of your duties at SLED?
A. I do DNA casework analysis. So, I will receive items of evidence and known standards from law enforcement agencies throughout the state and perform requested DNA analyses on those items, write up a report based on my findings, and testify in court as necessary.
Q. And where did you attend school?
A. I attended school at Erskine College where I received a bachelor of science in biology, and I also have a master's of science in forensic science from Arcadia University in Pennsylvania.
Q. Okay.

MS. YOUNG: Your Honor, at, at this time I would offer Sara Goodman as an expert in DNA analysis.

MR. SCOTT: Your Honor, without objection.

THE COURT: She's so qualified.

DIRECT EXAMINATION BY MS. YOUNG:
Q. Can you please tell us what STRmix and how -- is and how it's used?

A. Yes. STRmix is a statistics or mathematics computer program. It is used after our analyses. So, when we create DNA profiles from items of evidence, and then from known standards, to give a weight to our conclusions, we will calculate statistics. So, STRmix is the computer program that helps us calculate those statistics.

So, we will put in the DNA profiles from the evidence. It will break it down into the different possibilities of DNA profiles or contributors to that profile, and we will then verify that the program functioned correctly, and then we will input DNA profiles from known standards and it will calculate the statistic for each of those known standards.

Q. And were you asked to analyze DNA in this case?

A. Yes, I was.

Q. What, what were you given to analyze?

A. So, I was given four known standards, which were Buccal swabs from four different individuals -- Antonio Dash, Eric Griffin, Antonio Barnes, Jr., and Shakihla Smalls -- and then I was also given some items of evidence. I had left-hand and right-hand fingernail scraping from Eric Griffin, left-hand and right-hand fingernail scrapings from Antonio Dash, swabs from the exterior of a .9 millimeter cartridge casing, and then

an impact collection from Items 14, 27 through 30, and 32, which were .9 millimeter cartridge casings.

Q. So, I'm going to walk through your report now a little bit, okay?

A. Okay.

Q. Direct your attention to Item Number 9. What, what -- or 9.1 I guess. What, what is Item 9.1?

A. Item 9.1 is the left-hand fingernail scrapings from Eric Griffin.

Q. And what did you do with those scrapings?

A. So, I took it through our normal processes to develop a DNA profile off of that item. Once I did my analysis for that DNA profile, I calculated likelihood ratios using STRmix.

Q. And how do you do that?

A. So, calculating likelihood ratios is what the computer program, STRmix, that's the type of statistic it is calculating. And what a likelihood ratio is, is that it's comparing two different possible scenarios to explain the DNA profile. And the result tells you which of those is more likely.

Q. And what were your findings as to Item 9.1?

A. So, for my first proposition set, which is -- each proposition set is one of the sets of likelihood ratios. So, typically we do one for each known standard that we

have in the case. We can sometimes group them together as well.

But for the first proposition set, the DNA profile was interpreted as a mixture originating from three individuals. Eric Griffin is contributing to the mixture. So, the first scenario is that Eric Griffin, Antonio Dash, and an unidentified, unrelated individual contributed to the mixture versus the second scenario of Eric Griffin and two unidentified, unrelated individuals contributed. The result is that the DNA profile is approximately 13 trillion times more likely is Eric Griffin, Antonio Dash, and an unattended -- excuse me, unidentified, unrelated individual contributed to the mixture than if Eric Griffin and two unidentified, unrelated individuals contributed.

For Proposition Set 2, it is similar to set one in the difference scenarios that it's setting up. So, again, Eric Griffin is contributing to this three person mixture. And then, for this one, Eric Griffin, the person of interest, and an unidentified, unrelated individual contributed to the mixture. Person of interest for us is just anyone whose known standard has been submitted for analyses. And then the second scenario again is Eric Griffin and two unidentified, unrelated individuals contributed. And the result for

that is that Antonio Barnes, Jr., and Shakihla Smalls are excluded as contributors to the mixture under the listed propositions.

Q. Okay. So, I'm going to boil that down a little bit. So, is it fair to say that it's likely that there's DNA from Antonio Dash in the fingernail scrapings of Eric Griffin's left hand?

A. Yes, that -- it is likely that Eric Griffin, Antonio Dash, and an unidentified individual contributed versus if it were two unidentified and Eric Griffin.

Q. Okay. I'm going to move you to Item 9.2. What was that?

A. That was the right-hand fingernail scrapings from Eric Griffin.

Q. And were you able to get a sufficient profile for the comparison?

A. No, the partial DNA profile developed was insufficient for interpretation.

Q. So, moving then to Mr. Dash in 10.1.

A. Uh-huh.

Q. What is Item 10.1?

A. Item 10.1 is the left-hand fingernail scrapings from Antonio Dash.

Q. Okay. What were your findings for that?

A. For this item, a DNA profile suitable for

comparison was developed and likelihood ratios for this profile were calculated using STRmix. For this item, I had three different proposition sets, all very similar again.

But for the first proposition set, the DNA profile was interpreted as a mixture originating from two individuals. The first scenario is that Antonio Dash and an unidentified, unrelated individual contributed versus if two unidentified, unrelated individuals contributed. And the result is that the DNA profile is approximately 12,000 times more likely if Antonio Dash and an unidentified, unrelated individual contributed than if two unidentified, unrelated individuals contributed.

For Proposition Set 2, again, it's a mixture originating from two individuals. This time I am assuming that Antonio Dash is contributing to the mixture based off of the first proposition set. So for this set, the scenarios are that Antonio Dash and Eric Griffin contributed to the mixture versus if it's Antonio Dash and an unidentified, unrelated individual. And that result is that the DNA profile is approximately 2.6 octillion times more likely if Antonio Dash and Eric Griffin contributed to the mixture than if Antonio Dash and an unidentified, unrelated individual contributed.

And then for the final proposition set, again, assuming that Antonio Dash is contributing, the scenarios are that Antonio Dash and the person of interest contributed versus Antonio Dash and an unidentified, unrelated individual. And the result for that is that Antonio Barnes, Jr., and Shakihla Smalls are excluded to -- as contributors to the mixture under the listed propositions.

Q. Okay. So, again, just to boil it down a little bit. This is Antonio Dash's left hand. And so it's likely that there's DNA from Eric Griffin under the -- in the fingernail scrapings of Mr. Dash's left hand?

A. Correct versus if it were an unidentified individual.

Q. And, again, just like on the first one, Mr. Barnes and Ms. Smalls were eliminated as contributors?

A. That's correct.

Q. And then moving to Item 10.2. What is that?

A. That is the right-hand fingernail scrapings from Antonio Dash.

Q. And what did you find with -- what were your results with that?

A. So, for this item, a DNA profile suitable for comparison was developed and likelihood ratios were calculated using STRmix. For the first proposition set,

the DNA profile was interpreted as a mixture originating from two individuals. The first scenario is that Antonio Dash and an unidentified, unrelated individual contributed versus two unidentified, unrelated individuals. And the result is that the DNA profile is approximately 170 times more likely if Antonio Dash and an unidentified, unrelated individual contributed versus if two unidentified, unrelated contributed.

The second proposition set is comparing the scenarios of Eric Griffin and an unidentified, unrelated individual contributing versus two unidentified, unrelated individuals, and that result is that the DNA profile is approximately 1.6 octillion times more likely if Eric Griffin and an unidentified, unrelated individual contributed versus two unidentified, unrelated individuals.

The third proposition set is comparing whether Antonio Dash and Eric Griffin contributed to the mixture versus two unidentified, unrelated individuals, and that result is that the DNA profile is approximately 720 octillion times more likely if Antonio Dash and Eric Griffin contributed than if two unidentified, unrelated individuals contributed.

And then I have an extra statement here that says that the LR for Proposition Set 3 was calculated to

confirm that the mixture can be explained by the contribution of DNA from all individuals listed under HP. Due to the disparity in the individual LRs between the contributors for this item, it is recommended to put more weight on the results of Proposition Set 1 rather than the, the result of Proposition Set 3 when considering Antonio Dash as a possible contributor to the mixture.

And then for my final proposition set for this item, I'm comparing whether the person of interest and an unidentified, unrelated individual contributed versus two unidentified, unrelated and the result is that Antonio Barnes, Jr., and Shakihla Smalls are excluded as contributors to the mixture.

Q. Okay. So, again, on Antonio Dash's right hand, it was fair to say that there's very likely DNA from Mr. Griffin in Mr. Dash's fingernail scrapings?

A. Yes, there is very strong likelihood that Eric Griffin and an unidentified individual contributed versus two unidentified.

Q. And, again, Ms. Smalls and Ms. Barnes were eliminated ---

A. Correct.

Q. --- as contributors? Okay, and I think then you did one more thing, which was a 31.1, Item 31.1?

A. Correct.
Q. What was that?
A. That was swabs from the exterior of a .9 millimeter cartridge casing.
Q. Okay. Did you -- what did you find on that?
A. For this item, a DNA profile suitable for comparison was developed and likelihood ratios were calculated using STRmix. This profile was interpreted as a mixture originating from two individuals for all of the proposition sets.

For the first set, Antonio Dash and an unidentified, unrelated individual contributed versus two unidentified, unrelated individuals are in the scenarios, and the result is that the DNA profile is approximately 62 quintillion times more likely if Antonio Dash and an unidentified, unrelated individual contributed versus two identified individuals.

For the second proposition set, in comparing whether Eric Griffin and an unidentified individual contributed versus two unidentified individuals, and the result is that the DNA profile is approximately 84 trillion times more likely if Eric Griffin and an unidentified individual contributed versus two unidentified individuals.

And then for Set 3, I'm comparing whether Antonio

Dash and Eric Griffin contributed to the mixture together versus two unidentified individuals. And that result is that the DNA profile is approximately 280 undecillion times more likely if Antonio Dash and Eric Griffin contributed than if two unidentified, unrelated individuals contributed.

And then for the final proposition set, I'm comparing whether the person of interest and an unidentified individual contributed versus two on unidentified. And the result is that Antonio Barnes, Jr., and Shakihla Smalls are excluded as contributors to the mixture.

Q. And that was a really big number, the 280 undecillion. Would it surprise you to learn that that -- you know, given your findings, would it surprise you to learn that that cartridge casing had been located in his blood?

A. That would not be unsurprising, no.

Q. And just because DNA is present, you don't know how it -- do you know how it got there?

A. I do not.

Q. Okay, and when you get fingernail scrapings, what kinds of -- what kinds of things do people have in their fingernails that might provide DNA?

A. Any bodily fluids have DNA to them. So, if they

have anything like that under their fingernails. Also your skin cells have DNA as well. So, just the skin cells from under the fingernails would have DNA. They could also have DNA from any item that they touched underneath their DNA -- or, excuse me, underneath their fingernails.

Q. Could you find tissue under there?

A. You could, yes.

Q. And when you get fingernail scrapings, do you have any way of knowing what the source of the DNA is that you're testing?

A. Not typically, no.

Q. Did you here?

A. I did not. We received incident reports sometimes, but as far as determining when or where the DNA came from, I can never say that.

Q. But it -- is it fair to say that your report finds that Eric Griffin and Antonio Dash had each other's DNA under their fingernails?

A. There was a likelihood of that, yes.

MS. YOUNG: Beg the Court's indulgence.

(A PAUSE.)

MS. YOUNG: Nothing further at this time, Your Honor.

THE COURT: By the state.

MR. SCOTT: Just briefly, Your Honor.

CROSS-EXAMINATION BY MR. SCOTT:

Q. Special Agent Goodman, so you can pretty much safely say that Antonio Dash had some DNA that's associated with Eric Griffin under his fingernails, correct?

A. Yeah.

Q. And vice versa. Eric Griffin had some DNA associated with Antonio Dash under his fingernails.

A. Yes, there's a strong likelihood of that.

Q. And then you talked about a casing that you test -- was it one casing you tested with some DNA on it?

A. For Item 31.1, yeah. I also had some -- an in vat collection from some cartridge casings from 32.1.

Q. I want to show you State's 25. What, what do you see there?

A. It appears to be a picture of two individuals lying on the ground in a red substance.

Q. A red substance?

A. Yes, sir.

Q. Does it appear to be a solid or a liquid?

A. It's hard to tell from the photograph. It looks like it could have been a liquid.

Q. Okay. If I were to tell you that was blood, and there were a lot of casings found in that pool of blood,

would that be an explanation for one of their DNA being found on the casing?

A. That could be a possible explanation, yes.

Q. Okay, and if they're both lying in each other's blood because one was shot six times, the other was shot seven times, could that possibly explain why they have each other's DNA under each other's fingernails?

A. That could be a possible explanation, yes.

Q. Okay, and you're not making -- you're not here to -- they may have been fighting with one another, right?

A. I couldn't say, but it's possible.

Q. You don't know or it could be there's just so much of each other's blood all over the place and it's getting everywhere that that could account for why they have each other's DNA on each other?

A. It could be a possibility.

Q. Okay.

MR. SCOTT: Thank you, Ms. Goodman.

THE COURT: Anything further?

MS. YOUNG: No, Your Honor.

THE COURT: Thank you. You may step down.

WITNESS: Thank you.

(THE WITNESS EXITS THE STAND.)

THE COURT: Your next witness.

MS. YOUNG: Your Honor, the defense rests.

THE COURT: All right, ladies and gentlemen, there's -- the defense has rested. You've now heard the defense's case. We need you to take another break. Please do not discuss the case.

(THE JURY EXITS AT 4:27 PM.)

THE COURT: Is there any matters of law?

MR. LUKE SHEALEY: Yes, Your Honor. May it please the court?

THE COURT: Yes, sir.

MR. LUKE SHEALEY: Defense would once again move for directed ---

BAILIFF: Quiet please.

(A PAUSE.)

MR. LUKE SHEALEY: Your Honor, may it please the court? The defense would once again move for self-defense -- or directed verdict in this case due to the overwhelming evidence of self-defense. Really there's not a whole lot of inconsistency between the, the state and the defense in this case regarding what happened.

It seems that both agree that a terrible fight ensued in the living room of Mr. Barnes's home. No one disputes that he was in bed sleeping. I think that would be additionally corroborated by some cell phone

data that we provided through an expert.

No one disputes his account is that he was lying in bed and hears this loud boom consistent with what he believed is a home invasion. He's given several reasons why he believes that. One is the quality of his neighborhood being what he would call a bad neighbor, a dangerous neighborhood. It happens all the time. He was very much aware of recently his two roommates being robbed at gunpoint just down at The Corner Store. That is very much in his, in his mind.

On the other hand, he's also questioned and admits that because he sells marijuana to help support his smoking marijuana habit, that it could be that people just want to take his stuff. But he lies in bed and he doesn't hear any noise that he's familiar with such as his roommates. He knows for a fact that they were at work that day. He was talking to, he testified, Mr. Dash, who informed him of that. He knows that -- the habit and routine in the house, given that they have one car. It's for Mr. Sam Thomas to drive Mr. Dash to work and that was what he expected at that time of day. There's no other evidence to dispute that.

We heard from Sam Thomas. The state called him. Hears those noises, listening for approximately two minutes, only hearing violent feet, violent noises, his

own TV crash. He assesses that situation and believes that he's being home invaded.

We know today that he assessed that incorrectly, that it, for unknown reasons, reasons that we can speculate upon regarding a stolen gun allegation between Mr. Dash and Mr. Griffin, that Mr. Griffin was in the home and objectively those gentlemen are engaged in a violent altercation with each other, unexpectedly to our clients.

We know that the law of self-defense does not require a refined assessment of the dangers. We know that the law of self-defense embraces the concept that you're entitled to act and seek -- and take preemptive measures to end a threat in your own habitation as long as it's a reasonable belief. There's a lot of questioning about the reasonableness, reasonableness of that. But I don't think that even there's a question of the jury when you hear the type of violence in the home. I don't think a citizen of South Carolina is required to ask twenty questions of would-be intruders about whether they're armed or what their true intentions are. It's a tragic mistake.

But I do believe that the state has not, even light most favorable to them, they don't have any direct evidence or substantial circumstantial evidence of

malice, which would be required to get to a jury on these charges. You can no longer infer malice in the State of South Carolina through the use of a deadly weapon, as Your Honor well knows. So, respectfully, I'd ask that you do not allow this case to get to the jury and you grant our, our motion.

THE COURT: I'll deny the motion for the reasons stated at the end of the state's case, including considering any claim of self-defense. It's matters for the jury, and given the inferences that can favor the state's version or view of the evidence, the motion is denied.

MR. LUKE SHEALEY: Yes, Your Honor.

THE COURT: Defense has rested. Any other -- regarding the matter of law that Ms. Young attempted to do in objecting to the witness coming down from the witness stand, the -- state that on the record.

MS. YOUNG: Sorry, Your Honor. Yes, this is regarding -- let me -- I think it's been marked as Defendant's Exhibit 108. Let me double-check so I can be clear for the record.

(A PAUSE.)

MS. YOUNG: That is correct. It's Defense Exhibit 108. We attempted on -- during -- I guess, I guess it was during cross to -- or redirect, to enter exhibits or

excerpts of the videos from our client's statement in the interrogation room where he is -- expressed a great deal of remorse.

THE COURT: When you said redirect, you're referring to what you attempted to do?

MS. YOUNG: Yes, Your Honor.

THE COURT: All right.

MS. YOUNG: Yes. Again ---

THE COURT: And you attempted to offer a video?

MS. YOUNG: I did, Your Honor ---

THE COURT: Yes, ma'am.

MS. YOUNG: --- of my client's ---

THE COURT: Yes, ma'am.

MS. YOUNG: --- confession. Yes, and he's expressing a great deal of remorse. He's sobbing to his mother. He's bringing ---

THE COURT: I understand all that, but you objected after you've had direct. State re -- cross-examined. You did redirect. The state recrossed testimony over -- the witness is through testifying, and you objected to him leaving the witness stand. And then you indicate you have a matter of law, and what is the matter of law?

MS. YOUNG: Well, Your Honor, you, you denied my request to admit that video.

THE COURT: Yes.

MS. YOUNG: Based on a rebuttal of his implied --- you know, he's just now making it up ---

THE COURT: Yes.

MS. YOUNG: --- that he's remorseful.

THE COURT: Well, the court ruled on the objection, yes.

MS. YOUNG: That's correct. And then on recross, he got up and did -- he said I wasn't attacking him and being, you know, not remorseful.

THE COURT: Well, did you object to that testimony?

MS. YOUNG: I believe that I did.

THE COURT: And did the court rule on that objection?

MS. YOUNG: I don't know, Your Honor. I don't, I don't -- what I'm saying is he went right back to the remorse issue, and yet I do believe that I objected and then ---

THE COURT: What is it that you were trying to do then?

MS. YOUNG: Well, he went right back to what you just denied ---

THE COURT: Were you trying to ask more questions of the witness?

MS. YOUNG: No. I wanted to play the video, Your Honor.

THE COURT: Well, that would be introducing more evidence.

MS. YOUNG: Yes.

THE COURT: That would be, in effect ---

MS. YOUNG: Yes, I ---

THE COURT: In effect, that would be a third direct examination.

MS. YOUNG: Your Honor, he made an expressed accusation that his remorse was being feigned and that it was new. We had evidence that should of come in under Rule 801.

THE COURT: All right. So, you object to the court's ruling.

MS. YOUNG: And we ---

THE COURT: I understand that.

MS. YOUNG: Yes, and then I guess he argued that he wasn't saying that he wasn't remorseful, and then he got up and attacked him for not being remorseful.

THE COURT: All right.

MS. YOUNG: He opened the door back up to being able to present ---

THE COURT: Yeah. So, I -- at what point do we end this with the back and forth?

MS. YOUNG: Well, Your Honor, obviously you decide that.

THE COURT: Okay.

MS. YOUNG: I have to make my record and I have to try to get it in.

THE COURT: But your record is not based on any rule or procedure. You're, you're arguing, in effect, that you have the right to do a, a, a third direct examination or that you have the right to introduce exhibits through the state's cross-examination.

MS. YOUNG: Well, Your Honor ---

THE COURT: When the state gets through cross-examining the witness, that's it. You don't get a third time to ask more questions.

MS. YOUNG: Well, Your Honor, I think what I'm arguing is that we're entitled to a full and -- full and fair defense in this case.

THE COURT: Oh, you don't need to argue that.

MS. YOUNG: Yes.

THE COURT: That's without saying.

MS. YOUNG: Right, and I believe that this prevented us from being able ---

THE COURT: So, you object to the court's ruling and, and, and the record will reflect the court's ruling. I'm trying to understand why you're objecting to a person who has had two direct examinations, two cross-examinations, they're through testifying, and

you're objecting to them leaving the witness stand.

MS. YOUNG: Your Honor, I believe that Mr. Scott opened the door back up to be able to bring that evidence in, and his right to a full and complete ---

THE COURT: Yeah.

MS. YOUNG: --- defense ---

THE COURT: All right.

MS. YOUNG: --- under the U.S. Constitution allowed -- it trumps the court rules.

THE COURT: All right.

MS. YOUNG: And not your ruling.

THE COURT: So, that's your ---

MS. YOUNG: But ---

THE COURT: You've made a record.

MS. YOUNG: Thank you, Your Honor.

THE COURT: I don't think it makes any -- I don't -- there's no precedence and rule of procedure and any examination under Rule 611 is subject to the discretion of the court to present a needless waste of time. The parties have had full opportunities to question the witnesses in a -- repeatedly had that opportunity to do so and, and through the numerous questions, many of which were quite repetitive, and I find that the mode and order of interrogation and presentation of evidence under Rule 611 has been

complied with, and your matter of law that you call a matter of law is noted for the record.

MS. YOUNG: Thank you, Your Honor.

THE COURT: All right. What else? We're through with all the testimony. I've denied directed verdict motions. I'm ready to let the jury go til 9:30 tomorrow morning, and we will stay and discuss any requested jury charges that you all might have.

Aside from that, any other comment at this time?

MR. SCOTT: Not from the state, Your Honor.

MS. YOUNG: Nothing from the defense, Your Honor.

THE COURT: Okay. Bring the jury, please.

(THE JURY ENTERS AT 4:39 PM.)

THE COURT: Ladies and gentlemen, you have now heard all of the testimony in the case; you've now received all of the evidence in the case. The next thing will be closing arguments, which we will do at 9:30 tomorrow morning.

So, we're done for the day. Please do not discuss the case with anyone, and we'll see you at 9:30 tomorrow morning.

(THE JURY EXITS AT 4:40 PM.)

THE COURT: Do you all have requested jury charges for me to look over?

MR. LUKE SHEALEY: Yes, Your Honor. May I

charge this.

THE COURT: Yeah, it's highly unlikely that I will charge the, the jury this. The jury is to evaluate credibility of witnesses and not just generally did the police do a good job or bad job or whether or not they were good witnesses or bad witnesses.

All right, what's the next one?

MR. LUKE SHEALEY: Would you like -- we'll, we'll email you the cite anyway.

THE COURT: Okay.

MR. LUKE SHEALEY: And if you choose not to grant, we'll just have to ---

THE COURT: All right.

MR. LUKE SHEALEY: --- make a record on it.

Number 5. Some of these are a little out of order. We've got self-defense generally in a couple like acting on appearance, imminent danger. 5 is acting on appearance. That's just the state of the law that, you know, is encompassed through cases like *State v. Sullivan, Rash, Starnes, Jackson*. I don't see a cite on that one. I could probably take out the last paragraph. That looks to be a -- we were kind of rushed doing this at lunch given that things were ---

THE COURT: The last paragraph of which one?

MR. LUKE SHEALEY: On, on acting on appearances.

That, that would not apply to this case, that last paragraph. Those are particular factors from a different case.

But the important thing -- this is probably the most important jury charge you might consider -- is that the law of our land is that, you know, you are allowed in the concept of self-defense to act on appearance. You may indeed mistaken. That is what our case law says.

THE COURT: All right.

MR. LUKE SHEALEY: And you're not held to a refined assessment of the danger as long as you're acting on -- as that reasonable person of ordinary coolness and courage would have acted in reading the appearance of danger. So, that is, that is longstanding jurist, jurist prudence and we request that it be charged.

THE COURT: What says the state?

MR. SCOTT: I think the defendant testified he didn't act on any appearances. He heard a boom and then blindly shot into a room.

(A PAUSE.)

THE COURT: All right, self-defense. He's without fault in bringing on the difficulty. Second possibility is contentious language, which is -- there's no language. Mutual combat. There's no mutual combat.

Let me see. And battered person's syndrome. That doesn't apply. The second element is being in imminent danger:

> Person of ordinary firmness would be -- would strike the fatal blow to prevent death or serious bodily injury. If he believes that he was in imminent danger, must be shown that a reasonably prudent person of ordinary firmness would have the same belief. He should consider all the facts and circumstances, including the physical condition and the characteristics of the defendant and the victims. Defendant does not have to show that he was actually in danger. It is enough if he believed he was in imminent danger and a reasonably prudent person of ordinary firmness and courage would have had the same belief, and defendant has the right to act on appearances even though the defendant's belief may have been mistaken. It's up for you to decide whether the defendant's fear of immediate danger of death or serious bodily injury was reasonable and would have been felt by an ordinary person in the same situation.

And I think this is probably everything you said

other than using the word preventive action and refining assessment.

MR. LUKE SHEALEY: And those are very important words in the context of this case, Your Honor, and that's from the case law.

THE COURT: What says the state?

MR. SCOTT: Just what is the case law that talks about refined? That -- that's not ---

THE COURT: Pardon?

MR. SCOTT: I was just asking what was the cite of the case that says that -- discusses refined assessment?

MR. LUKE SHEALEY: Beg the court's indulgence.

(A PAUSE.)

MR. LUKE SHEALEY: That will be *State v. Rash*, 182 S.C. 42, 1936. *State v. Starnes*, 340 S.C. 312. It's a 2000 case. *State v. Jackson*, 277 S.C. 271. It's a 1955 case:

> One may act on appearance. He may be mistaken. The law does not hold him to a refined assessment of the danger provided, of course, he acted as a person of ordinary coolness and courage would have acted and should of acted in meeting the appearance of danger. He does not have to wait until his assailant gets the drop on him. He has the

right to act on the law of self-preservation and prevent his assailant getting the drop on him. If it is apparent or reasonably apparent his assailant was taking steps to get the drop on him, he must take steps first to prevent such assailant from getting the drop on him.

And I think I can even add some interesting oral argument. I'll add the oral argument from *State v. Dickey* with Justice James during oral argument. He asks:

Does he have to interview?

Regarding defendant.

I'm not being facetious. Does he have to interview the perpetrators or ask which one of you fired that shot so I can fire my shot accordingly? The answer is no because a person has the right to act on appearances even if the person's belief is ultimately mistaken.

And that's a direct quote from Justice James.

MR. SCOTT: What was the cite for *Starnes*?

MR. LUKE SHEALEY: I said -- ask the court reporter.

Your Honor, it's the law of our land.

THE COURT: And what word are you using, Starne?

MR. LUKE SHEALEY: *Starnes*.

THE COURT: Oh, is that that death case out of ---

MR. LUKE SHEALEY: Yes.

THE COURT: --- out of Conway, Horry County?

MR. LUKE SHEALEY: I believe, yes, sir. 340 S.C. 312. It's a 2000 case. I cited *State v. Jackson*, 277 S.C. 271, 1955 case.

THE COURT: We don't want to go back to 1955.

MR. LUKE SHEALEY: Well, I know you're a *Mouzon* man, but *State v. Hendrix*. We can just go back as old as I am, 1978. 270 S.C. 653. *State v. Davis* is an '84 case. The list goes on and on, Your Honor. It's a very standard charge.

THE COURT: Well, I think the standard charge is the charge that I've just read to you.

MR. LUKE SHEALEY: Well, okay. Then it's not so standard, but it's very grounded in our jurisprudence and very applicable, applicable to this case.

THE COURT: It's a different, different *Starnes* than a -- this *Starnes* is a Lexington case.

MR. SCOTT: They're telling me refined assessment doesn't even show up in that *Starnes* case. They did a, a search for that term. It's not popping up.

MR. LUKE SHEALEY: Well, we'll let the court do his own research. I can send you my -- a brief on it

tonight if you'd like, Your Honor.

MR. FOWLER: Is there a pin cite for refined assessment? Do you have a page number that it goes to?

MR. LUKE SHEALEY: I don't, but you have my proposed order. It's all in that.

MR. SCOTT: Yeah, we, we object to that, that jury charge, Judge.

MR. LUKE SHEALEY: I'll email you all the cites tonight, Your Honor, specifically.

THE COURT: So in this *Starnes*, it says a:

> Murder defendant who claims self-defense was entitled to an appearance charge with respect to one shooting. According to the defendant, immediately prior to the shooting, the defendant observed the victim hold a gun to a third person's head and threaten to shoot third person apparently because intended drug dealing had gone bad. Fourth person then pointed a gun at defendant and threatened to kill him and defendant, unaware the victim had passed his weapon to fourth person, erroneously believed the victim was armed and intended to kill defendant.

And in that case, the conviction was reversed because the court did not instruct on the right to act

on appearance. The right to act on appearance is now a part of the standard self-defense charge, or the defense wants me to take certain words that, including this refined assessment, which has been given to me in bold, and we'll, we'll look at it and, and with anything else that's submitted and let you all know in the morning. All right. That's that.

Imminent danger.

MR. LUKE SHEALEY: Yes, sir, and there's a little overlap there, but some of the acting on appearance does encompass the imminent danger. But I think it's appropriate to have a specific definition of what imminent danger might be in the, in the context of a reasonable, prudent man of ordinary firmness. And that just goes -- cite of *State v. Jackson*, *State v. Rivers*.

It's important, again, to recognize that you don't have to wait until your assailant gets the drop on you. You have the right to act on the law of self-preservation to prevent that. So, there's a little overlap. But imminent danger is another kind of subcategory because that is, you know, you have to be reasonably believing you're in imminent danger. So, I think it is appropriate to flesh that out.

THE COURT: All right. What says the state?

MR. SCOTT: Just, Your Honor, imminent danger is

covered in your self-defense charge. This, this is more -- almost identical to the acting on appearances jury charge. And, again, it's -- imminent danger is covered in the standard self-defense.

THE COURT: Well, it says:

> The defendant has the right to act on appearances even though the defendant's belief may have been mistaken. It is up for you to decide whether defendant's fear of imminent danger of death or serious bodily injury was reasonable and would have been felt by an ordinary person in the same situation. He doesn't have to wait until his assailant ---

Who are the assailants here?

MR. LUKE SHEALEY: The would be assailants are the home invaders that he reasonably believed would come into his home based on the crashing TV, the loud bang, the violent noises, the loud ---

THE COURT: The assailant is his roommate?

MR. LUKE SHEALEY: No, sir, it's who he reasonably believed were his assailants.

THE COURT: Okay.

MR. LUKE SHEALEY: Unfortunately, they're not applicable, but the record is replete with information that he, thinking his roommates were not there based on

their usual habit and the course of going to work that morning, and based on what he heard, he didn't -- and his wife thought he was being home invaded.

And if Your Honor remembers the day before where Sam Thomas testified, the state witness, and my client testified there was an argument as well. But because he -- they -- our client was in his room sleeping, but because he heard his, his, his roommate's voices, he didn't go out with guns blazing.

THE COURT: Yeah.

MR. LUKE SHEALEY: So, it's -- he certainly has, at least in the record, he shows the ability to assess the threat and re -- and even in our final case it's not required. So ---

THE COURT: Yeah, I see here you have *State v. Jackson*, 1955; *Rivers*, 1938; *Rash*, 1936; and then *Starnes*, 2000. I'll look at it. But I believe the standard charge is, is sufficient on right, right to act on appearances. It's up for the jury ---

MR. LUKE SHEALEY: I've got ---

THE COURT: --- to decide based on their view of the evidence.

MR. LUKE SHEALEY: I think that was the imminent danger charge, Your Honor.

THE COURT: Well, part of the imminent danger

charge is the right to act on appearances. That's part of the same charge. These two charges are, are, are combined.

All right, no duty to retreat in one's own home, number 7.

MR. LUKE SHEALEY: Yes, Your Honor. That is the state of, of the law even against a co-occupant. *State v. Grambling.*

THE COURT: What says the state?

MR. SCOTT: You know, I'm -- I'll leave that to Your Honor's discretion.

THE COURT: It's part of the standard charge.

MR. SCOTT: Yes, sir.

THE COURT: And defense of habitation.

MR. LUKE SHEALEY: Yes, Your Honor, and that is very important in this -- to this case and that -- and analogous yet distinct from self-defense, as you know, but it doesn't require an attack. It just requires an intrusion or a trespass and that's the law extending back from -- to *State v. Bradley*, 1923, allows a man to, to take reasonable means, means to expel the intrusion or end the obstruction, including deadly force. There's numerous cases regarding the defense of habitation and failure to give that instruction when it is warranted. So, we would -- we do believe it's warranted here, given

that he was defending his habitation and reasonably believed that he was being home invaded.

THE COURT: What says the state?

MR. SCOTT: The first thing that occurs is the guy challenged me for a '57 case. Then he presents one thirty-four years older.

THE COURT: Say what now?

MR. SCOTT: I said he, he gets on to me about a 1957 case, and this one's thirty-four years older. But this, this is inapplicable, Your Honor. There's, there's been no evidence of any kind of trespass. The -- no evidence of any kind of a forceful entry that was testified to.

Eric Griffin was known as a frequent guest at the house. Testimony from the witnesses outside was that they heard him go up to the second level and knock on the door. Of course, Mr. Dash was a occupant of the apartment. I don't -- he -- I, I don't think this applies to our particular case, Your Honor.

MR. LUKE SHEALEY: And, Your Honor, I would disagree and it's, it's very important to note that what my client testified to and what is in the evidence is he's awakened to a loud bang. Yes, this door jam is not broken, but we're dealing with a metal door.

We know that Mr. Dash and Mr. Griffin appear to

have this animosity about a stolen gun. It doesn't require necessarily trespass. It requires an -- it can be a trespass. But it could be an intrusion into the home. He's -- this is my -- this is the original Castle Doctrine which is evolved into our stand-your-ground laws and it's defense of habitation.

It, it re -- it's important here because it doesn't require an attack. When you're in your own home and you feel reasonably that there's an intrusion and attack on your home, you don't have to first show that you were lunged at or someone pulled a gun on you. You have every right in your home to then end that intrusion, including to the point of deadly force. *Bradley* is just an example. It's a seminal case where in that case, someone was asked to leave and they refused.

So, this case, which I would respectfully ask the court to err on the side of caution because there is evidence of that, it should be charged and it's a distinct defense from self-defense.

THE COURT: The standard charge says that:

> The defense of habitation is a separate and distinct defense from self-defense. If the defendant or a member of the defendant's household is attacked in the defendant's own home, the defendant may use a force which

appears to be needed to protect himself or his household from death or serious bodily injury. If a trespasser refused to leave the home when asked to leave, the defendant may use the necessary force to eject the trespasser. Defendant -- the effort to eject the trespasser, the life or safety of the defendant or a member of the household is jeopardized, the defendant may take the life of the trespasser. The kind of degree of force which are justified depends on the conduct of the trespasser. If a person entered the dwelling at the invitation of a member of the household, the person becomes a trespasser when asked to leave. If while legitimately exercising in good faith the right to eject a trespasser the defendant is assaulted by the trespasser and fears death or serious bodily harm, the defendant would be without fault in bringing on the difficulty. Whether the defendant was acting in good faith in attempting to eject the victim and was assaulted in the process is a question for you to determine.

(A PAUSE.)

THE COURT: As part of the duty to ---

MR. LUKE SHEALEY: May I ---

THE COURT: --- retreat involves increased risk of harm, the defendant had no duty to retreat if, by doing so, the danger of being killed or suffering serious bodily injury was increased, and if the person defended was on his or her own premises as defending a third party, there'd be no duty to retreat. And where the person ---

There's some general stuff on duty to retreat.

MR. LUKE SHEALEY: I, I would, I would like to -- I would love to look at your defense of habitation charge, but I think we do need to add the charge.

THE COURT: We're going to send you the --

MR. LUKE SHEALEY: Thank you.

THE COURT: --- the standard charges on that. The one you've given me about ejecting a trespasser, this is, you know, in -- South Carolina has kind of affirmed pretty much the right to kill someone if you're trying to get them off your property and they won't leave. Very liberal with allowing people to kill people who won't leave when, when you're trying to get them to leave seemingly. That's sort of like forceful ejectment, the defense of habitation including using

deadly force, if necessary.

We're back in 1923:

> A man who attempts to force himself in another's dwelling or, or being in the dwelling by invitation refuses to leave when an owner makes that demand is a trespasser, and the law permits the owner to use as much force, even the taking of his life, as may be reasonably necessary to prevent the intrusion or the accomplishment or to accomplish the expulsion.

So ---

MR. LUKE SHEALEY: Okay, and Your Honor mentioned in -- within that charge an attack on a co-occupant or someone else who resides there, to defend against that. I mean, it's undisputed that Mr. Dash and Mr. Griffin were engaged in some type of a physical altercation, including ripping out of earrings, blunt force trauma to Mr. Dash's head.

Now, I don't -- there's no evidence that Mr. Barnes was aware of an attack against Mr. Dash because he just didn't think anybody was home. But he, he viewed this as being an attack on his habitation, an intrusion to the safety of his home, which does not require for you to first show that you were attacked. That's the main

difference between defense of habitation. So, he was using his powers as a citizen of South Carolina to end that intrusion, eject the problem, which you're allowed to use with deadly force.

Now, he's not sitting there saying he's saying leave, leave, leave. That's not in this case. But he's ending an intrusion into his home.

THE COURT: I mean, I think when he gets the, the self-defense charge that he can write -- that he can act on appearances, and that's what he testified to, I think that addresses that issue and, and this defense of habitation is not a separate charge that he's entitled to.

MR. LUKE SHEALEY: I respectfully disagree on that.

THE COURT: All right. Yeah, that's why ---

MR. LUKE SHEALEY: All right.

THE COURT: You know, whatever you've given me will be given to the jury, and whether you agree or disagree, you know, that's -- that will be a matter of record because I'm not going to charge every requested charge. So, you don't have to hit me over the head on this disagreement.

MR. LUKE SHEALEY: I'm not going to do that.

THE COURT: All right.

MR. LUKE SHEALEY: Going in order.

THE COURT: Yeah. Well, wait a minute. I'm going in order.

MR. LUKE SHEALEY: Okay.

THE COURT: You follow along.

MR. LUKE SHEALEY: The order may be a little messed up because I did withdraw one. So, forgive me.

THE COURT: Where are we now? All right, which one you want to go to next then?

MR. LUKE SHEALEY: Well, if we're going in order, I guess we're on Number 9.

THE COURT: All right:

A person can be acting lawfully even if he is in unlawful possession of a weapon at the time of the shooting.

MR. LUKE SHEALEY: Yes, Your Honor, that's -- obviously my client has no record. He's not precluded from owning a gun.

THE COURT: All right. We understand that.

Is there an objection to this charge?

MR. SCOTT: If they want it, that's fine. I mean, it seems to insinuate he was in unlawful possession. So, that sounds good to me.

MR. LUKE SHEALEY: Well, Your Honor, I just -- I have to bring it up because I -- there's a lot of testimony about drug dealing and acting unlawfully, and

I just think if it's not addressed, it will probably be argued -- it could be argued by Mr. Scott and I just don't want the record -- you know, the instructions ---

THE COURT: Do you want me to give this charge?

MR. LUKE SHEALEY: I do.

THE COURT: All right:

A person can be acting lawfully even if he is in lawful -- in unlawful possession of a weapon if he was entitled to arm himself at the time of the shooting.

So, the state does not object. That's what you want. We'll give that charge.

MR. LUKE SHEALEY: Thank you, Your Honor.

THE COURT: Number 10, use ---

MR. LUKE SHEALEY: And that ---

THE COURT: --- of force.

MR. LUKE SHEALEY: Yes, sir. This is, again, coming from some of these cases I've been citing, particularly *State v. Hendrix*.

THE COURT: Oh, it's a standard charge on ---

MR. LUKE SHEALEY: It is.

THE COURT: --- this, of course.

MR. LUKE SHEALEY: It is. If you have that identical charge, then I won't ---

THE COURT: All right.

MR. LUKE SHEALEY: --- dicker over it as long as it has that language until ---

THE COURT: Yeah, once you -- if you have a right to shoot, you can keep shooting.

MR. LUKE SHEALEY: Yes, sir.

THE COURT: All right. If you're in imminent danger.

MR. LUKE SHEALEY: All right.

THE COURT: Number 11, malice.

MR. LUKE SHEALEY: I submitted this in anticipation of the *Mouzon* argument. I think I -- I think we settled that. I'm okay with your standard.

THE COURT: All right, statements of counsel. That's standard.

MR. LUKE SHEALEY: Yes, sir.

THE COURT: The statements of counsel do not constitute evidence and that's -- I love to tell them that.

Number 14, self-defense generally.

MR. LUKE SHEALEY: That's just a general self-defense charge, Your Honor, which I'm sure you have it.

THE COURT: All right. I'll give them that.

Failure to produce a witness.

MR. LUKE SHEALEY: Yes, sir, Your Honor. There's

Four.

MR. LUKE SHEALEY: I think that will probably be me, Your Honor.

THE COURT: Okay.

MR. LUKE SHEALEY: I can't imagine any more than thirty, forty minutes.

THE COURT: All right.

MR. LUKE SHEALEY: I'll say.

THE COURT: We, we expect the jury to get this case by 11:30 or a little later, and we shall see because the charge is not that long on a murder case.

All right. See y'all tomorrow. Get some rest. Be at your best.

(WHEREUPON, THE CASE IS AT EASE.)

THURSDAY, DECEMBER 8, 2022

(COURT RESUMES AT 9:42 AM.)

THE COURT: Before we get a little further, I want to address first of all regarding the charges that I sent to you all last night. Any comment on any of these charges?

MR. LUKE SHEALEY: Your Honor, yes. Charges you have included, I find nothing wrong with those charges. The only thing I do find wrong is that it failed to include particularly the defense of habitation charge that we discussed.

THE COURT: Yes, sir.

MR. LUKE SHEALEY: And I would cite for the record *State v. Bryant*.

THE COURT: *Bryant*?

MR. LUKE SHEALEY: Yes, sir, 391 SC 225, Court of Appeals opinion regarding it being reversible error to not give the defense of habitation charge as well as a self-defense charge.

THE COURT: What were the circumstances?

MR. LUKE SHEALEY: That was a pretty famous case that also had a Supreme Court opinion about a different issue. This gentleman was in a wheelchair and was getting drunk at a bar and met a friend who the state believed he lured back to his hotel and killed by shooting him with a gun. He testified and said that he was being pestered; he was being hounded. The guy did come into his room without his permit -- his permission, and so he shot him, even though he wasn't being attacked, to end that unwanted intrusion into his ---

THE COURT: He was aware that the person was in his room and was trying to get the person to leave or what?

MR. LUKE SHEALEY: That, that is his testimony. He was aware, and I think -- I understand what Your Honor -- the distinction what I think in Your Honor's mind is again we have -- we have discussions about what we

reasonably believe for these matters. *State v. Rye*, the defense of habitation charge was given. It was just incorrect. But I would just cite those for the record, Your Honor, just to preserve it.

THE COURT: Well, I'd like to see it. Let me -- you can pass it up to me. I'll take a quick look at it.

MR. LUKE SHEALEY: Yes, sir.

(A PAUSE.)

THE COURT: Bryant is a paraplegic confined to a wheelchair living at the Days Inn. Let's see, where was this? Living at the Days Inn.

MR. LUKE SHEALEY: Richland County, I believe, Your Honor.

THE COURT: Richland?

MR. LUKE SHEALEY: Yes, sir.

THE COURT: Yeah, this is really amazing, the volume of cases that make it in the records from Richland County.

MR. LUKE SHEALEY: Yes, sir.

THE COURT: These appellate cases, and Lexington County. Seems to be 60 or 70 percent of the total.

So, he's a paraplegic living at the Days Inn 150 yards from the Bottoms Up Nightclub. He met Austin, was at the club with another man from North Carolina. They became friendly and they became intoxicated. There was

conflicting evidence on the relationship of the two men that evening and what occurred between them. People at the club characterized them as being very chummy. According to Bryant, Austin and two other men with Austin pressed Bryant to get some marijuana. He told him he did not do that. He didn't know where to get any. Left the club at 3:30 AM.

Before they left the club, Bryant had fallen out of his wheelchair. Austin helped him back in the wheelchair.

Let's see. Night auditor at the Days Inn was working. She observed a gentlemen pushing Bryant in the wheelchair and laughing and talked like buddies. Bryant testified he repeatedly told Austin he did not need help. He continued. Bryant stopped his chair. Told Austin he did not want his help, and he should leave him along. Austin then pushed Bryant, causing him to fall and swinging at each other, knocking his chair. Austin then picked Bryant up, put him back in the chair. Bryant attempted to roll away. He grabbed the back of the chair, kept arguing.

Bryant claimed he was scared to open the door to the room with Austin standing there because Austin had been pressing him for marijuana and they had been fighting. He attempted to stall opening the door and Austin tried to snatch a pouch from him, causing the

contents to fall.

Let's see. Bryant testified at the time he saw Austin in the breezeway angry:

> I am done. I'm seeing red. I'm very angry. I was doing like this. I was doing like this. When I seen him, I started shooting him and I just shot. Shot until shotgun was empty.

Died of birdshot.

So, the issue at the trial was whether the judge erred by refusing to instruct the jury on the defense because a self-defense instruction was not sufficient to cover the separate and distinct offense -- defense and Bryant testified he was threatened being around his hotel room, and Bryant was entitled to this instruction under the facts of this case.

> On appeal, Bryant asserts the defense of habitation provides that defending one's home or premises means ending an unwarranted intrusion through the use of reasonably necessary force to inject -- eject the person. That instruction that the same elements required by law to establish self-defense apply to defense of habitation with the exception of duty to retreat is an improper charge as it incorrectly implies the defense

of habitation requires the defendant to establish his person or property was in danger of injury or harm for the defense of habitation to apply. A defendant need only establish a trespass has occurred and the chosen means of ejectment were reasonable. And the defense of habitation is analogous to self-defense and should be charged when the defendant presents evidence that he was defending himself from imminent attack on his own premises. For the defense of habitation to apply, a defendant need only establish that a trespass has occurred and that his chosen means of ejectment were reasonable under the circumstances. Unlike the defense of self-defense, defense of habitation does not require that a defendant reasonably believe he or his property was in imminent danger. Although self-defense and habitation are analogous, they are not identical. When one becomes a trespasser, the law presents the owner of the home to employ such force as reasonable necessary to eject the person.

Let's see.

(A PAUSE.)

THE COURT: There is evidence that when Bryant fired the fatal shot attempting to eject Austin as a trespasser from his home, accordingly the fatal shot, based on his testimony, occurred while Austin was in Bryant's room and Bryant was attempting to eject him as a trespasser. We find such determinations for the jury, as there was evidence produced at trial from which the jury could find Bryant was attempting to eject a trespassing Austin from his home. Self-defense is an insufficient charge. It is insufficient to charge only self-defense when the charge of defense of habitation is warranted.

All right. What says the state?

MR. SCOTT: It's inapplicable to our case.

THE COURT: Okay.

MR. SCOTT: There's no evidence of trespass. There's no evidence of any kind of effort to eject a trespasser. It occurs to me this is a self-defense type defense by the defense. I don't think habitation in that respect applies to our facts, Your Honor. I think it's an inappropriate charge.

THE COURT: Yes, sir.

MR. LUKE SHEALEY: And, and what we're talking about here is a trespass for an intrusion into one's home. And, and what the law through *Bradley* on up to *Bryant* says is that you can use reasonable means to eject or end the intrusion, including deadly force.

So, obviously the benefit as distinguished from self-defense is you don't have to show you're under attack. You get the benefit from being in your own home, but it encompasses the idea that deadly force can be used to end the trespass upon someone's property, as our client reasonable believed he was being home invaded. So, it contemplates that there will and can be a death, but it doesn't necessarily mean that you have to say sir, please leave. I would like to tug you -- tug you by the ear out the front door. That is not what's required. I think we should err on the side of caution here. I think it is appropriate.

THE COURT: I tend to err on the side of caution because I think the juries typically, they correctly view the evidence regardless of the jury charge.

MR. SCOTT: In this, this case, Your Honor, you've got one person who's an invitee. No evidence to the contrary. No evidence of forced entry. Testimony was that Eric Griffin would visit the house on an almost daily basis. And of course we know Antonio Dash was a

resident who had been living there for one year.

Any concern as far as using deadly force to meet a threat is covered in the self-defense instructions. I just find it inapplicable based on the reading or listening to Your Honor read that particular case. It envisions the ejection of a trespasser.

This testimony here by the defense is I heard a bang. I think it was a home intrusion. I felt in fear of my life, so I felt the only reasonable means to extinguish the threat was firing blindly into a room. I heard no evidence of any effort to eject. I only heard an effort to extinguish a threat, and I heard no evidence whatsoever of any kind of trespass.

MR. LUKE SHEALEY: And I don't think there's any evidence in the record in this case of Mr. Griffin being invited that day to this home, Your Honor.

THE COURT: Under your theory, Mr. Shealey, Dash was just collateral damage, or he was being ejected, too?

MR. LUKE SHEALEY: Well, our client had a reasonable belief he was being home invaded. His, his ---

THE COURT: I understand that.

MR. LUKE SHEALEY: Right.

THE COURT: My question, was Dash collateral damage

under your theory?

MR. LUKE SHEALEY: He believed that he had a right to end the intrusion and eject whoever was in there. He was mistaken about both. So, under the law of defense of habitation, as long as he's acting reasonably, it should be a question for the jury. I mean, everybody's collateral damage unfortunately. It's what the -- what law should be given to the jury and what was reasonable by Mr. Barnes that day.

THE COURT: I'm going to charge this habitation. Weighing everything I've said that -- all these cases all say that the charge should be based, uniquely based on circumstances of every case if the jury, they could possibly believe the defense's theory. So, I'm going to charge it, let you all ---

MR. LUKE SHEALEY: Thank you, Your Honor.

THE COURT: Pardon?

MR. LUKE SHEALEY: Are you charging from ---

THE COURT: I'm charging the standard habitation charge.

MR. LUKE SHEALEY: Yes, Your Honor.

THE COURT: And let you all argue it back and forth to the jury.

Anything else regarding the ---

MS. YOUNG: Your Honor, just very briefly? I was

tasked with reading over what you sent last night this morning. On page 8, I think it's the first sentence. Mr. Barnes's last name is accidentally left off. It just has his first and middle name. And then the second sentence it says it's a murder charge and it actually has Mr. Barnes listed instead of Antonio Dash. Just the last names got mixed up.

THE COURT: Okay. We'll be sure that it's clear.

(A PAUSE.)

THE COURT: All right, should intent be charged, criminal intent? Y'all have not requested it. Should it be charged?

MR. LUKE SHEALEY: Your Honor, I guess forgive our oversight for that. In thinking about that yesterday, I don't -- I defer to you on that. I would say yes. I haven't looked at your charge on that, but I'm sure it's standard. I'm sure I've heard it before.

THE COURT: As many cases as you've charged -- you've tried, I'm sure you've seen it.

MR. LUKE SHEALEY: Yes, Your Honor. I have no, no problem with that. I would agree with it.

THE COURT: Says the state.

MR. SCOTT: Well, Your Honor, I can't really think of a case I haven't seen intent charged. I guess murder is a general intent crime. Of course, intent is covered

in degrees of malice, but I don't see a reason to argue against the charge criminal intent.

THE COURT: All right, I'm going to charge intent.

Now, regarding this charge or not charging manslaughter, there's been an abundance of testimony by the defendant saying, well, I loved him like a brother. I didn't -- I wouldn't hurt him, et cetera, et cetera, and that he had no malice toward him even, even though he shot him the many times that he did.

Yesterday, you all had indicated that you -- neither side requested a charge on manslaughter. Sort of like all or nothing, role the dice type of approach. I heard from Mr. Shealey speaking for Mr. Barnes, but this is a matter that I have to hear from Mr. Barnes to be sure that he fully understands that murder is punishable by thirty years to life. Manslaughter is punishable by two years up to thirty years. Of course, not guilty means you go out that back door.

So, Mr. Barnes appears to be a quite intelligent young man. Regardless -- certainly if it's a guilty verdict, he will be -- there will be more papers filed on this case beyond this verdict today, including PCRs. So, I want to be sure if he is fully informed and that he's conferred or counsel has conferred with him because it's his case.

MR. LUKE SHEALEY: May we confer again with him briefly?

THE COURT: Yes, sir.

(COUNSELORS CONFER WITH DEFENDANT.)

MR. LUKE SHEALEY: Your Honor, we have consulted again with him, and he does still confirm our strategy to not seek voluntary manslaughter. I don't think there's much evidence of that personally, but he, he does not want us to ask for that instruction.

THE COURT: Is that correct, Mr. Barnes?

DEFENDANT: Yes, sir.

THE COURT: Sir?

DEFENDANT: Yes, sir.

THE COURT: All right. Very well.

Anything else before the jury comes?

MR. SCOTT: Nothing from the state.

MR. LUKE SHEALEY: Not from the defense. I assume we'll be opening with the law. Then I'll go, and then the facts.

MR. SCOTT: That's not how I understand the -- pursuant to *Beatty*, I will argue the facts and the law. Pursuant to *Beatty*, Mr. Shealey will make his case, and then I will have any responding closing argument based on any new issue he raises.

MR. LUKE SHEALEY: And I will formally object to

Beatty for the record.

THE COURT: Object to the Supreme Court? Say what?

MR. LUKE SHEALEY: I object to that case. I don't think it's appropriate. I think it burden shifts.

THE COURT: I don't think the state is restricted in opening to just talking about the law. He must talk about the facts and argue his case.

You can bring the jury.

(A PAUSE.)

THE COURT: Mr. Bowen, just one more second, Mr. Bowen. Go right back out for just a second.

(A PAUSE.)

THE COURT: This is -- this is further on this issue of self-defense and defense of habitation. The cases that I've reviewed indicate that where there is a claim of defense of habitation, that the duty of retreat does not apply because you -- if you have a right to defend your habitation, then the jury shouldn't say you have an obligation to retreat.

MR. LUKE SHEALEY: And that's correct, Your Honor, and also you also have that charge in your self-defense because he's in his own home even as to self-defense.

THE COURT: But it also includes, as we discussed yesterday, there is no duty to retreat. But do you all want me to mention anything about duty of retreat as an

element or just ignore that part?

MR. LUKE SHEALEY: I think it needs to be made clear there is no duty to retreat in one's own home even as to defense of habitation just in case there's any confusion.

THE COURT: Mr. Scott.

MR. SCOTT: Judge, I'm not going to argue with the court. I know better than that, but I find habitation completely inapplicable. We're confusing the jury now, blurring lines between self-defense.

THE COURT: The jury will be told about the fact that I have charged them on many things is not an indication of what their finding should be or what they should believe to be the facts.

MR. SCOTT: I, I find that confusion abounds whenever we start blending all these different legal theories that I don't find applicable. However, I'm going to just count on them using their common sense and judging the facts, and hopefully they go our way but if they don't, so be it.

THE COURT: On the question or whether not as part of the self-defense charge the court should tell the jury that, you know, given the various elements of self-defense, the duty of retreat, it says if a defendant was on his own premises, defendant had no duty

to retreat ---

MR. SCOTT: When we did ---

THE COURT: --- before acting in self-defense, is that given where defense of habitation is given?

MR. SCOTT: Your Honor, we had the Castle doctrine hearing back in March, and I remember at that point had no duty to retreat in that particular aspect of the case.

Honestly, candidly, I don't know. I haven't studied the law of habitation. It was brought up this morning while I was preparing my closing argument. I defer to the court.

MR. LUKE SHEALEY: That is the law of defense of habitation. There is no duty to retreat.

THE COURT: You said that's the law of defense of habitation. My question is is it part of the law of self-defense if you charge defense of habitation?

MR. LUKE SHEALEY: It does because we know self-defense can happen outside the home, but self-defense can also happen inside the home. Let's say amongst roommates fighting at a card table or game. In that scenario, via *State v. Grantham* you would have no duty to retreat in your own home even against a co-occupant. That's why you gave -- my understanding was you were giving that charge, and it was produced to

us as part of your instructions yesterday. So, yes, it applied. You have no duty to retreat for self-defense or defense of habitation if you're in your own home.

THE COURT: What's his position? You really have no position on that?

MR. SCOTT: Well, my position is ---

THE COURT: That none of them apply.

MR. SCOTT: Well, that is of course, and as I said, Mr. Griffin, the evidence that we heard was that he was over there almost every day. The evidence we heard was that he knocked on the door. The evidence we saw was there was no damage to the door. Of course, Mr. Dash lived there. Self-defense, there's no other probable or reasonable means to avoid the conflict. I just think it's almost -- under this theory, every time there's a self-defense claim that happens in someone's residence, they're going to get a habitation charge, and I just don't find a path.

THE COURT: I'm not -- I'm not making any eternal precedent here. I'm just dealing with the peculiar facts and claims of this case. Mr. Barnes said he's been reading a lot of law lately, so.

Well, I'm going to give the standard self-defense, which includes no duty to retreat.

MR. SCOTT: Okay, and no other probable -- or

likely means to avoid the...

THE COURT: Well, I'll give the -- give the charge that I sent to you all.

MR. SCOTT: Okay. Thank you.

THE COURT: All right, they can come now. Thank you.

(THE JURY ENTERS AT 10:13 AM.)

THE COURT: Good morning.

JURY [EN MASSE] Good morning.

THE COURT: So, ladies and gentlemen, you've heard all of the testimony, received all of the evidence. It's time for closing arguments. First by the state.

Mr. Scott.

MR. SCOTT: Thank you, Your Honor. May it please the court?

Antonio Dash and Eric Griffin should not be dead. They were mowed down in the prime of their lives. You've not heard one reasonable, justifiable, logical explanation for them to have been taken from their loved ones. The only mistake they made was associating with Antonio Barnes. That's the only thing they did wrong that day, but they did not deserve to die, certainly not this way.

We will follow the evidence. On November 7, 2019, Eric Griffin was employed at a hotel, and you heard

about that. On November 7, 2019, Antonio Dash was employed at a restaurant. On November 7, 2019, Antonio Barnes's sole occupation was a weed dealer.

On November 7, 2019, Eric Griffin had plans. He had the day off work. He was going to drop his mother off at work, Wanda, as he normally did. He was going to drop the baby off at the babysitter's, and then he and Ieasha Washington, his girlfriend, were going to go do some furniture shopping.

Antonio Dash was at the apartment, up early getting ready for work as usual. Antonio Dash at the time had been living in that particular apartment, 14-G, at the Willow Run Apartments for about a year. He, Sam Thomas, and Antonio Barnes all lived together there. You heard about that.

Sam Thomas would have normally been home that morning. However, Sam Thomas gone to the doctor's office. It was an appointment that he didn't share with Mr. Barnes or anybody else because it was of a personal nature, so Mr. Barnes would not have known that he would be gone that morning.

Eric Griffith -- Griffin, rather, sat in the front passenger's seat of Ieasha's car. Ieasha drove. Wanda was in the backseat as they dropped Bailey off, the one-year-old daughter, over here at the Hillandale

Apartments. It was shortly before 9 o'clock. Hardly a cloud in the sky. Sun was out. Beautiful February morning.

As they were leaving Hillandale, rather unexpectedly Mr. Griffin asked Ieasha pull in real quick. Let me talk to my -- let me talk to my friend. Talking about Antonio Barnes. This would -- was unexpected but would not necessarily have been out of the ordinary. Ieasha had just dropped him off there two days earlier, and there was some testimony from, I think, Sam Thomas that there were times he was over there every day. He, he was friends with those guys. He -- it would need to be a quick stop, though, because Wanda needed to be at work at 9:30, and so again this is just before 9.

With those car, car windows down, Ieasha and Wanda watched Eric go up the stairs, turn to the left, and go to 14-G. That was the last time they would ever see Eric Griffin alive. They heard him knock on the door, and that would be the last time anybody would ever hear from Eric Griffin outside of that apartment.

About seven minutes went by. Ieasha and Wanda are out in the car and maybe getting a little antsy because, again, she's got to be at work at 9:30. We know they didn't hear anything because they testified to that

until they did hear something, something. Gunshots, pause, and then more gunshots. Ieasha thought was that gunshots or was it not? You probably don't want to believe that gunshots are coming from the apartment that your boyfriend just went into.

She called Eric 8:54 AM. We know this because her phone shows that. 8:54, she's calling Eric. Of course, he doesn't answer and that's when Eric Griffin and Antonio Dash were shot that led to their deaths, 8:54 February 7, 2019, apartment 14-G at the Willow Run Apartments. The sun was bright; there was hardly a cloud in the sky. Gunshots interrupted what had been a beautiful morning.

When Eric didn't answer, of course we heard Ieasha and Wanda climbed the stairs to the apartment. They knocked and knocked. There was no answer. They said about two minutes went by. Both of them said that, two minutes. That's a long time for somebody to answer a door when you're knocking on it.

Antonio Barnes finally comes to the door. He opens it just enough to slide out and closes it behind him, walks straight past Wanda, Eric Griffin's mother, and he confronts Ieasha. Why are -- why are they in here fighting is what he's asking her, which is confusing to her. Who is they? Eric and them are fighting. Of

course, she doesn't know who they are. He's a little bit surprised, he says, because he didn't expect anybody to be out there, but now he's got Ieasha and Wanda who are identifying him coming out of the apartment.

He stammering about for little bit. He certainly doesn't indicate that he's just killed the two. He's just saying why are they fighting, Eric and them. It wasn't until Wanda finally grows impatient and goes inside the apartment that the truth is known. Eric Griffin was dead. So was Antonio Dash. There they lie in that enormous pool of blood.

(WHEREUPON, EXCERPT OF BODY-WORN CAMERA IS PLAYED FOR THE JURY. AUDIO IS NOT TRANSCRIBED.)

MR. SCOTT: Officers respond. A lot of officers respond. There is not a lot of information at first. Of course they find the two bodies, and they quickly realize that they died of gunshot wounds, but they don't have the identity of the shooter. Of course Ieasha and Wanda are hysterical. They're in shock and of course Barnes hadn't told them anything of what had happened.

He's milling around the parking lot, a lot at first. He then begins drifting away from the scene as more and more officers show up and they're trying to piece everything together.

Here we have Mr. Barnes. You see the officer go in

about 9:02. We talked about 8:54 is when the gunshots were first heard, okay? Now, eight minutes later, here's Mr. Barnes out in the parking lot, okay? When the officers get there, where is the shooter? Where is the shooter? You're not seeing Mr. Barnes right here, and I've got an explanation for you. You know, he's, he's milling about, weighing his options, trying to figure out what exactly the story needs to be.

9:02, he's talking to people. 9:04 and he's smoking a cigarette. 9:05, almost 9:06, and then he's kind of hightailing it away from the scene with other people, 9:06. Again, this is Mr. Barnes at 9:06, okay? So, this is him about ten minutes after he kills two people, and he's out there hobnobbing around. He's smoking cigarettes. He's doing things in cars. Main-Main, the first time we heard about Main-Main was yesterday, but apparently that's Main-Main's car he's leaning into at 9:06, almost 9:07.

He's talking with people. He's going to other people's homes. He's driving around with people. He's going to the store, all the while trying to figure what his story is going to be. Again, he knows that apartment is going to be linked to him, and he knows that Wanda and Ieasha saw him come out. So, he's got to figure out what the story is going to be. He can't say

I didn't do it, right? His name is on the lease on that apartment. Wanda and Ieasha see him come out, the only living person in the apartment, when they go up those stairs.

He's formulating what his version of events is going to be. So, when Javontae Davis sees him and asked what happened, he says I don't know. I was asleep. I woke up, and they was dead. Okay, that's the first story.

But then he's got to tinker with it a little bit more because when he talks with Kevin Archer -- Archie, he tells him I don't know what happened. Archie presses him. Come on, man. You know. You were in there, right? He said, well, they tried to rob me, and he says, well, that doesn't make sense. One of them's your homeboy. The other's your roommate. He says, okay, they were on the ground fighting, and I shot them. So, you see kind of, like, the evolution of this story as he's walking around, as he's talking with other people, as he's thinking about the case.

At 10:47 AM, about two hours after killing these two, he finally tells the police he shot Antonio Dash and Eric Griffin. All right, so this is about two hours of wandering the parking lot, observing what's going on with law enforcement, then leaving and talking with God

knows who and going God knows where. He finally says it was me, 10:47.

Of course, he thought other people had already gone to the police. He was concerned, you know, when he goes in there. Y'all have the interview. He thought Shakihla Smalls has already gone and talked to the police. So, this is his version of trying to get ahead of the story, or his attempt to.

He goes in. He says he saw two people in his living room fighting, and he shot them. All right, he says he thought Sam was there, too. None of this made any sense at all. Antonio Dash and Eric Griffin's bodies were taken for an autopsy. Antonio Barnes was arrested. We will follow the evidence.

This is Antonio Dash's left arm. Antonio Dash had every right in the world to be in that apartment. Antonio Dash had lived there a year. Antonio Dash was killed in his living room at almost 9 AM February 7, 2019. Antonio Dash was shot between 6 inches and 3 and a half feet from the gunman. Antonio Dash had four bullet holes in his left arm.

You can see the stippling, and you heard Dr. Monroe said that this was a close range shooting. Stippling occurs 6 inches to 3 and a half feet away, and that was how Antonio Dash met his end, I guess. Close range by

somebody he thought was a friend.

This is Antonio Dash's left arm. You see the bullets were such close range and it was such a high caliber cartridge that it went cleanly through his left arm. This is Antonio Dash's right arm. This is Antonio Dash's right scalp, okay? He was shot in his head.

Bring those dummies over here, y'all.

(A PAUSE.)

MR. SCOTT: Antonio was shot in his right scalp, and for good measure, Antonio Barnes went over to the other side of him and shot him in his left temple for good measure.

I want y'all to look at these gunshot wounds. Rather thorough, wouldn't you say? I mean, every part of these men's bodies from the waist up are, are riddled with bullets. It's not from one side. It's from all angles.

You saw the autopsy pictures, you guys. You got, on his right arm, you've got an entry wound to the elbow, okay? You got an exit out at the right elbow. Again, you've got this gunshot wound to the right scalp. You've got a gunshot wound to the left temple. This is where he's peppered on his left arm. All these on the outside of his left arm are entry wounds; all of these you see on the inside are exit wounds.

Mr. Barnes was thorough. We give him that, and he does carry a gun that holds up to eighteen rounds at a time. This is malice, ladies and gentlemen. This is what malice looks like, this shooting somebody you claim to be your friend in both sides of the head.

Eric Griffin had a similar fate. Of course, you've got him being shot in the back twice. You see these on our mannequin here. You remember the pathologist, Dr. Monroe, showing you generally where these wounds were. The mannequin is helpful because you get to see instead of picture by picture of the wounds how they all look in conjunction with one another and their general positions on the body.

It's noteworthy and it's compelling because the man was shot twice in the back. He was shot in his left elbow. That's an entry and exit. He was shot in his right shoulder. And the coup de grace, of course, is going up to the man, putting that gun against the back of his head, pulling the trigger. That's the kill shot.

You heard the pathologist, who's done thousands and thousands of these autopsies. He said you know what I noticed, one of the first things I noticed about that particular wound is the contact nature. He explained this grayish color of the skin around the bullet hole. He describes that gas is being pushed in and mushrooming

out the actual wound. You see the hair's been pushed into the wound, it was such close range. He described these marks here where the chamber slaps against the gun and then the barrel was pressed against the head, causing those wounds.

Let's call this murder what it is. This is an execution. That's what this is. This is not, oops. Sorry, Ms. Griffin. Sorry, Ms. Dash. It was a goof. It was an accident because isn't that what they're telling you? Isn't that what they're saying to you guys? Anybody could do this, right, Mr. Barnes? Any reasonable person would do this. That's the story.

We, we're going to follow all the evidence, right? CSI went. They kind of did a sketch of some of their findings, and it's helpful for us because we are interested in following the evidence.

And you heard from their CSI investigator from the police department that this was Mr. Barnes's bedroom, and the infamous hall is located right down the middle, okay, and the front door is right here, the door he was so worried that somebody had busted open, okay? You can't go down this hall without seeing that door.

At any rate, his story is this. I was in my bed. I knew with 100 percent certainty that my roommates weren't home. Well, if you listen to his interview with

the police, he says I thought Sam Thomas was going to be home at the time, okay? He somehow knew with 100 percent certainty at the trial that nobody was going to be home, but his story is there's a boom, bang. And he's a dope dealer, so the first thing he says comes to his mind, because he has a lot of traffic in there, was that somebody had to be breaking into his house, okay, and he heard footsteps in the apartment, okay? He didn't say he heard multiple people. He heard footsteps. Is it so hard to imagine that was Sam Thomas out there? I don't know. Not to him. He just knew it was home invaders. He heard the TV fall.

And he didn't call the police, and he didn't lock his bedroom door. He just ran down the hall and started shooting indiscriminately. That's his story, and we'll talk a little bit more about that later.

He did a demonstration yesterday. I hope you guys were able to see the demonstration, but his story was as he goes down this hall -- of course, this is where Antonio Dash lives. He said didn't bother to look in there to see if he was in there. Didn't even bother. He passed by the open door of Sam Thomas. Didn't bother to look in there to see if Sam was in there. He just comes around and shoot, shoot, shoot, shoot, shoots.

And I say, okay, is that reasonable? He said yeah,

any reasonable person would do that. That -- that's what you do if you hear something from your bedroom. You just start shooting. Even though you live in a house with two other people, that's what you do. I said is that -- is that right? That's what you think is reasonable? He said yeah. To me, that's very reasonable. I say All right. Okay. Well, if that's what you believe, you know, and I say, well, you know, what is your interpretation of how certain you need to be before you start shooting at people and killing them? I said do you need to be a thousand percent certain of your danger? He said no, just a little bit. I said, well, how scared do you have to be before you start shooting at people who are your friends and your roommates? He said just a little bit scared is fine.

And that is his understanding, but that is not a reasonable, prudent person's interpretation. God, I hope not. I really hope not, and I hope people don't go around with the understanding that if you live in a home with people and you hear a sound up front, you should just run up there and start shooting because it's terrifying, but I guess some people may believe that. I don't really think so because, you know, again I'll say okay, if that's what you believe, that's fine, whatever.

But tell me this. How did Mr. Griffin come to be

executed with a .9 millimeter pressed up against the back of his head? And he says oh. I forgot doing that. You remember everything else in detail. You remember hearing the boom, and then you remember waiting the two minutes, and remember a TV falling. And even before that, two days before you remember Katerra being at your house. You remember Sam Thomas being at your house. You remember Eric being there. You remember Sam Thomas getting up to brush his teeth. You remember Katerra putting her shirt over a gun. You remember your brother called you at 2:30.

You remember all these things, but when Mr. Scott asked you about how Mr. Griffin came to die that way with a gun pressed against the back of his head, I can't remember. I said please tell this jury how you did it. Explain to them. You've taken the stand. You've explained a lot of things. Now explain to these people, these twelve people, these fourteen people. He looked at you and said I don't remember that.

I can ask the questions as many times -- and I tried to. I tried to keep asking until finally it was clear to me I needed to move on because he didn't really want to give y'all that answer. But we, we're going to follow the evidence. That's what we do.

His, his story doesn't make sense. Never will.

Never has made any sense, and it never will. We could -- we could give him another year to think about it and try to see if he can ---

MR. LUKE SHEALEY: Objection, Your Honor.

MR. SCOTT: What's the objection?

MR. LUKE SHEALEY: Objection, Your Honor, under Sixth Amendment. Impugn my client's right to present a complete and full defense. He is mischaracterizing the evidence. Talking about giving him another year to think about it.

THE COURT: Objection is overruled.

MR. SCOTT: We could give him another year to think about it. He could try his darndest to come up with a version of evidence that somehow fit this, somehow make it justifiable, but he's never going to be able to do it. He spent two hours that morning trying to come up with something. He tried to sell it to y'all yesterday, a version of it that he's modified to some degree, and it still doesn't make any sense because we're going to follow the evidence, but we're also going to call this murder, these two murders, what they are, and they're executions.

People with roommates do not run into rooms during the daylight blindly firing their guns. If they do, that is a level of recklessness and total disregard for

human life that is really off the charts. People don't do that. You know, you don't hear a unfamiliar noise living with two people, okay?

Let's suppose you have a family. You live in a home. You hear a noise during the morning time in the front that you don't recognize. Okay, you just run up there and start shooting. You kill your family members and then say oh. Oops. I thought I was getting my house broken into. Never mind the door is closed. It's not -- it's not broken in. You know, I thought somebody was breaking into my house, but as I come down this hall, it's very clear that my door is intact.

You know, no other probable means of -- you're going to hear about self-defense, that he had no other means to avoid this outcome. I said why not lock your door, call the police? You got a pistol. Just sit there and aim it at the door if you're so worried about somebody coming because he never testified that anybody was coming down the hallway towards him. It was all in the front of the house. Could've done that, right? That would have been a probable, reasonable way to handle that.

Perhaps he could've opened this door, used this as cover, and aimed down the hallway waiting for somebody to approach him. That would have been reasonable.

Perhaps he could have said Sam, is that you and Tony? Is that you? That would have been reasonable.

Tell you what is not reasonable. Running down the hallway and blindly shooting, knowing you have two roommates. Why not even just go into the kitchen and look over here to see what going on? There's, there's -- there is infinite, infinite other ways to have handled this, but he's saying this is the only way it could have ever gone down.

So, what his story is that he's come up with and he's tinkered with to some degree because he tried three different stories with Kevin Archie, tried a different one with Javontae. You'll hear his story he was telling the officers in the -- in the manager's office on the day of the incident. The day of the incident he says I see two people on the ground. I, I just start shooting, think it's a home invasion. Yesterday it was I, I just was blindly shooting around the corner until I got over them.

He did a 360 around these people, by the way.

Going back here, another thing I want y'all to look at, his story is that this corner is where he's reaching around firing, right? What do you see? What don't you see? I asked were there any shell casings in the hallway? I asked were there any shell casings over here

in the kitchen? These are where the shell casings were located, okay? Two by the door and the rest of them right around the victims, okay. And we got those pictures where they're all in between their legs and all around them. Of course, we have the close contact shooting. Some of it here on the far side of the victims over here, but there are absolutely none in this vicinity where he's saying all the shooting takes place. We were going to follow the evidence, okay?

Self-defense, for a valid self-defense -- and the judge is going to explain this to you -- first of all, Antonio Barnes must be without fault in bringing on the difficulty. He can't have any fault in bringing on this difficulty and shooting these guys.

Second, Antonio Barnes must have been in actual imminent danger of losing his life or sustaining serious bodily injury, or he must have actually believed he was in such danger, okay? There's been no evidence whatsoever that he was in any imminent danger.

Again, Eric Griffin was a buddy of his, supposed, supposed. The one he thought had stolen a gun that he shared with roommates. Antonio Dash was a friend supposedly, but I don't do this kind of stuff to my friends. Anyway, he was never in any imminent danger from these two guys.

Their theory is the two of them were fighting one another. How is he in any danger, and I was wondering. What kind of home invasion happens when the two guys break in and start fighting one another? How are you in any danger if they're on the floor wrestling? I'm sure that occurred to you, too. But anyway, he's not in any imminent danger.

If he believed he was in imminent, here, here, here's what the issue is. He's saying I believed I was in imminent danger, okay, but he can't show that he was. I believed I was. If that's his theory, then it must be shown that a reasonably prudent person of ordinary courage would have had the same belief. So, that's what he's trying to sell you guys. Anybody, any of you would've done the same thing. You know, if you hear something in the front room, every reasonable person does this. Every prudent person does this. They go run in the room and blindly shoot even if it could have been their roommates. That's just what reasonable people do, and that's what he's trying to sell y'all.

Finally, Antonio Barnes for a self-defense, for a valid self-defense -- and this is his defense. It was self-defense, guys. Never mind I made a whoopsie. It was self-defense. Any reasonable person would do it. Finally, if you were to believe his story, you also must

find that -- or he must be shown to have had no other probable means of avoiding the danger. In other words, this is about his only option. My only option was to kill these people by shooting blindly into the room. That's the law. That's what the judge is going to read to you all, but that's his story. I mean, that's the gist of his story. Any reasonable person would do this.

Let's call it what it is. It is an execution-style murder. His story doesn't make sense because that ain't how it happened. He is in that room. He's shooting around them, and he's going all the way 360 around these guys as he's doing it. And again the final shot, the one that I can't really remember. I remember all the rest of them, but this right here where I pressed the gun to the back of Eric's head and fired, I can't remember that.

But that's why even if you, you know, you give any kind of credence to his story, that -- that's not what happened. He didn't blindly shoot into that room. He knew what he was doing. He was in that room. The casings show he was in that room; the nature of the victims' wounds and the placement of their wounds show he was in that room. He was certainly with them while he was shooting. That's how you get gunshots all around your body like that, right? You don't just stand on one

side and fire at them.

We're going to follow the evidence, and we're going to use common sense. We're not going to take Mr. Barnes's word for it.

State must prove beyond a reasonable doubt that the defendant killed another person -- in this case, Mr. Barnes killed two people, right, we know that -- with malice aforethought. What is malice aforethought? How can malice be shown? There's -- there are different ways. Expressed malice. Sometimes we get these kind of cases, not often. Expressed malice is before you pull the trigger, you say I'm going to kill you, Eric. He is stating expressly what his intent is: to kill. And more often we have what's called an implied malice, and they do not mean different kinds of malice. They merely talk about the manner in which malice may be shown to exist either by direct evidence or by inference from facts and circumstances which are proved. Again, expressed malice is shown when a person speaks words which express hatred or ill will for another person, or when the person prepared beforehand to do the act which was later accomplished.

We're not talking about this expressed malice in this case. We're talking about inferred malice. Inferred malice may be shown ---

MR. LUKE SHEALEY: Objection, Your Honor. He's publishing to the jury a malice charge that you expressly did not include in your instructions.

THE COURT: The court will charge the jury on the law.

MR. SCOTT: Sorry.

Malice may be inferred from conduct showing a total disregard for human life. That's the one they want to kind of just glaze over, okay? Listen to the judge's charges. Total disregard for human life, he's going to tell you that, okay, because that's why -- you know, when Assembly is simply blocked off and I'm trying to get to work, you know, and I say I don't care if it's blocked off and there's a parade, I'm going down Assembly anyway and I'm driving 60 miles an hour because I'm in a hurry to get to work and, oops, I just hit and killed two people who were in the parade. Didn't mean to. Well, really, wasn't my behavior just a total and reckless disregard for ---

MR. LUKE SHEALEY: Objection, Your Honor. That's not what malice is. That's ---

THE COURT: Objection is overruled.

MR. SCOTT: I'm telling you, okay? That's why you're going to listen to the judge.

That would be a total and reckless disregard for

human life. Even if you were to believe his story, that is a total and reckless disregard for human life.

But I submit to you we're dealing with something much more sinister. We're dealing with cold blooded, cold, black hearted, evil, execution-style murder. So, when you look at the evidence, that's malice. That's hatred. That's ill will. That's an execution murder. Or if you believe his story about blindly shooting, that's still malice because it's a total disregard for the value of human life.

What I'm telling you now is even if you believe his story and you ignore the evidence, it is still malice. It is a total reckless disregard for the value of human life. There's no other way to put it when you go shooting into crowds of people or into two people who are in your living room.

I've got to prove my case beyond a reasonable doubt, okay? I don't know what this guy is going to tell you reasonable doubt is, but ---

MR. LUKE SHEALEY: Objection, Your Honor. Attack on counsel. Sixth Amendment. I would cite *Fortune v. State*.

THE COURT: The reference is to parties by name and not this guy. Go ahead.

MR. LUKE SHEALEY: 428 SE 545.

MR. SCOTT: I don't know what Mr. Shealey is going to tell you reasonable doubt is, but here's the way I interpret reasonable doubt. And of course the judge is going to give you instructions, but I submit to you this is essentially what he's going to tell you beyond a reasonable doubt is.

What does it mean? Does it mean beyond all doubt? No, and the judge is going to tell you this. It means if you have a doubt that is reasonable based on logic, you should find him not guilty. If you think his story is reasonable, you think reasonable people would behave the way he did, then you should find him not guilty. That's what the law is. I can't make it up and, you know, I can't misstate it because he's going to tell you what it is. If I do have anything different than what he says, always obey the judge's jury charge. But I submit to you this is essentially what he's going to tell you because this is well settled law.

But if your doubt is not reasonable, or your doubt is not really logical, you should find the defendant guilty, okay? If based on the facts you are firmly convinced of his guilt, you must find him guilty. That's what the law is.

Does that mean you have to be 100 percent certain of everything involved in the case? No, and the judge

is going to tell you there are very few things in this world we know with absolute certainty. In criminal cases, the law does not require proof that overcomes every possible doubt. If based on your consideration of the evidence you are firmly convinced -- I believe the judge will use that term twice, firmly convinced, in his instructions -- you must find him guilty. That's what reasonable doubt is.

If you are firmly convinced that he killed these people in a reckless disregard for human life, or he killed these people in a cold-blooded manner, that execution-style shooting we talk about, he's guilty of murder.

Used a weapon to do it. These are violent crimes. So, he's also been indicted for possession of a weapon during the commission of a violent crime. So, all that is is did he use a gun to kill these two people? He said yeah, I did. So, that -- that's what that charge is. You must find him guilty if you are firmly convinced that he used that gun to kill these two people. Malice aforethought, you must find him guilty of that charge, too.

Why did he -- why did the execution murder of these two men happen? Why did it happen? Why are those families about to spend the fourth Christmas without

their loved ones? Why do we have any of these killings we have to hear about day in and day out? It's rarely any kind of justifiable good reason that we feel good about. I mean, is it an odd fascination with guns? Is it the glorification of violence? Is it anger? Is it for clout? Is it for views? Is it for likes? Does it make a good lyric later on? Something to brag about maybe? Is it just a devaluation of other people's right to live? Is it utter disregard for the really priceless value of human life?

Something seems to me that we've gotten away from a little bit. You know, we only get one shot here, and life is just so precious, but it just doesn't seem that way to some people where they can't grasp the priceless value of a human life. It's been devalued. Is it all of the above sometimes? I told you there is no good, logical reason Antonio Dash and Eric Griffin aren't here today. They did not deserve to die; they did not deserve to die this way.

We're going to ask you to do what Paul, my co-counsel, did, he asked you to do in his opening statement, and I want you to use common sense. And I want you to ask yourself if I'm being logical and I'm using common sense, what makes sense and what doesn't make sense? What's reasonable and what's unreasonable?

And I do ask you to think about everything you've heard and everything you've seen. And I ask you to render the only verdict that speaks the truth in this case and fits the evidence. I ask you to find Mr. Barnes guilty of what he is guilty of, and that is murdering these two young men. Cut them down in the prime of their lives.

I ask you at the end of the closure of this case to deliberate. Look at the evidence. Talk amongst yourselves. What makes sense? What doesn't? The only verdict that speaks the truth is a verdict of guilty: two counts of murder, one for Eric Griffin, one for Antonio Dash, and then the accompanying charge, the possession of a weapon during the commission of a violent crime. Thank you.

THE COURT: Ladies and gentlemen, I'm going to have you go to the jury room for a short break. Please do not discuss the case.

(THE JURY EXITS AT 10:57 AM.)

THE COURT: Take about five minutes.

(OFF THE RECORD.)

THE COURT: Bring the jury.

(THE JURY ENTERS AT 11:07 AM.)

THE COURT: Mr. Shealey.

MR. LUKE SHEALEY: Thank you, Your Honor. May it please the court?

Boom. What's that? What's going on? My roommates are not here. I know they're at work. That's what they always do. What's that rumble? Were those footsteps? Crash. That's my TV.

I live in Willow Run Apartments. My roommates were robbed not two weeks ago. I'm being home invaded. People come in here trying to take my stuff, trying to kill me. What do I do? What do I do? Do I stay in this bed? Do I let them get back here? Is it fight or flight? I'm scared. I'm not going to stay in my bed and get killed.

That was my, as best as I could, rendition of what was going on in Tony's mind the morning of this incident.

We've heard a lot of evidence in this case. We've got a lot of facts. At the end, the judge is going to tell you what the law is. It's your job to apply the law to the facts as you've heard them.

This is a tragedy; this is a tragedy. No one is disputing that. Two young men died that day, a best friend of Tony and a good friend. Nothing that you twelve jurors do today can ever bring them back. Nothing. But we cannot turn a tragedy into a travesty by misapplying the facts in this case by not understanding what was going on in Tony's mind.

One of my favorite movies is *Twelve Angry Men*. It's a 1950s black-and-white classic starring Henry Fonda. He's the star of the show, of course, and it's all about the deliberation process. You have twelve jurors, and the start of the movie is they're back in the deliberation room. And, of course, back in the '50s, they're all white men, right, and they're all sitting there and it's a murder case, and they've been whipped up and they're angry. And as soon as they get back in the room, one of them raises their hand. Let's take a vote. Guilty, right?

And Henry Fonda, of course being the hero, says no. Our job is to apply the facts to the law. We need to deliberate. That is our duty as jurors. We have been tasked with this enormous responsibility. We are going to do this, this. Come over here, guys. Look at this evidence. Remember what we heard from that witness stand?

And, of course, at the end of the day he prevails. He convinces them to do their duty. He encourages them to not decide this case based on passion or their own internal bias, their prejudices, but to deliberate and render a true verdict in this case.

I'm going to ask you to do the same. I have some concerns that there are attempts to bring you down to a

sinkhole of thinking about executions, of thinking about drug dealing that had nothing to do with what happened in that living room, to thinking about a young Black man who happens to a own a lawful firearm, and maybe he owned two more previously. Nothing to do with this case except to say Black young men shouldn't own guns, Black young men shouldn't smoke weed and sell a little. That has nothing to do with this case. That is the prejudice that I'm asking you, that is the sinkhole that I'm asking you to avoid going down. Facts from this stand as applied to the law that His Honor gives you, I'm counting on you. I want to help you get through this.

The Supreme Court says that Tony is cloaked in a robe of righteousness. The only way to remove that, because he's innocent with that cloaked robe, is to find that the state has proven his guilt beyond a reasonable doubt. The state has that burden. Tony doesn't have to prove anything; I am not required to prove anything. The state has all the burden in this case. He remains innocent if and until the state meets their burden, if they can.

We are going to hear about evidence of self-defense in this case. We're also going to hear about something from the judge calls a defense of habitation, meaning defending your own home. They are similar defenses yet

they are distinctly different. I want you to listen, and I know you will listen to the judge as he describes those. They are complete defenses to any -- to the crime of murder. Only if the state can disprove the evidence of self-defense that you have heard can you even consider the charge of murder. That is the law as you will be instructed by Judge Newman.

What is proof beyond a reasonable doubt? I've got a couple of different ways I like to talk about it. Everybody knows football. To meet the burden, the state would have to drive all the way through the back of the end zone proving their case. Probable cause where Investigator Gilliam charged Tony is basically about right here. To get a conviction, they have to drive, prove, drive, and prove their case all the way right here almost to the end because right at the end is where doubt exists and reasonable doubt exists and lives right there.

We have this -- the criminal justice system in our country is the best in the world. We are the envy of the world because we don't just whip up a lynch mob and go find somebody, say you're guilty of something, and sentence them. No. We have due process. We have rights. We have the privilege of having people like yourself hear these cases. The system is designed to

prefer that there is not a conviction if it would mean a wrongful conviction. Let me say that again. The system is designed for the burden to be hard for the state. It would much rather prefer that we not have that travesty of justice. This case is a tragedy. Let's not have a travesty.

You've heard a lot about Tony's account, and I submit to you it's been consistent and constant and true from the moment that people approached that apartment all the way into the interrogation room. There have been attempts to say that he took his time to try to figure out what to say, that he had to talk to people. This is not a case of Monday morning quarterbacking. It is extremely hard to put yourself in Antonio Barnes's shoes, young man who lived in a bad neighborhood, who may not have had great perception of police. They were always at his apartment. It's a high-crime area. Not at his apartment. His community.

He just killed his best friend and another good friend, and he realizes it after the fact. He's in shock. His family members are pouring in. The whole apartment is in the parking lot. People are coming over from Hillandale. It's chaotic, it's stressful, but we want to Monday morning quarterback this and say that Tony didn't do well enough. He should have stood there

to the grieving family members of Mr. Griffin and said guys, well, let me tell you what happened. This was a real tragedy. No. It's chaotic. It was chaos.

You heard him from the stand. He was -- they were losing their minds in there. This is the ultimate epitome of shock and grief, yet the State of South Carolina in this case thinks that Tony should have done better in how he told his statement completely there. He should have taken one step in the parking lot and told his statement completely there. He should have told his statement completely there. Tony was as consistent as he humanly could be under the circumstances.

But just so you can help understand that -- because here's the thing. This is why the state wants to tell you this. Generally when someone is consistent, that means they're telling the truth, right, because the truth really only has one version. That's something we can all understand. But why the state wants to tell you he was inconsistent is because that is indicative perhaps of not truth. So, they want to make you think he's being inconsistent.

Wanda Griffin, a grieving mother. You heard it from here and testified from this stand. She was there with Ieasha Washington. Eric, for reasons unknown to

this day, quickly wanted to pull over and go to that apartment. No one knows why, but even what you heard, as the grieving mother has heard, shots and runs up there to see what's going on with her baby, upon direct and thorough cross-examination, you heard her say that Tony even admitted to her they was in there fighting. She told you that Eric was known to carry a gun before. She's here as a grieving mother. She wants to help the state. I understand that.

She recalls, if you remember, just this being traumatic and three years, and she doesn't remember a lot of things. But she remembers Tony discussing they were there fighting.

Ms. Washington remembers more. She says that when she arrived, he came out and said what are they doing here? They were fighting. Who let them in? I was in bed sleep. That came out through her testimony. That is a shocked, condensed, just verbal expression from Tony Barnes right after this happened, not expecting to even see anybody at his door after realizing he'd just killed his friends.

Kevin Archie, we heard from him, a state witness. Tony says I never talked to that guy, but even given Kevin, who the state used to try to say three different stories -- you recall that? Through Kevin they say Tony

said three different stories. One was man, I don't know what happened, story number 1. Story number 2, I was in there sleep. Story number 3, thought somebody was trying to rob me, so I started spraying. Does that make sense to you? Let me help you out. That is one story.

Man, I don't know what happened. I was in there asleep. I thought someone was trying to rob me, so I started spraying. That is one account, the same account he has given time and time again in this case in the manager's apartment, which you have a video of, later when he was interviewed at police headquarters. Time and time again.

What we also heard was I'm going to change my shirt. That -- Mr. Archie was questioned about that. That's not in the statement. He did admit that he used to work with Eric. He's a friend of Eric's. Change my shirt. What's he talking about? It's an attempt by the state to insinuate that he was trying to hide something.

Tony was wearing the same clothes all day. He testified that he got up. He was wearing a tank top that night when he slept. Went to bed late talking to his girlfriend. Gray sweat shorts. And after the shooting, he went back to his room. He called -- he grabbed his phone to call 911, which he did which you have direct evidence of. State didn't mention that.

Put on that jacket and put on some non-slip shoes, I think as he said, just his sandals. That is directly from the dashcam of the officer that's driving up.

The apartment is, like, right here. Everybody's pointing. He's standing there, Tony, wearing the same outfit when he's at the apartment manager's office. Tony wearing the same outfit at 9:05.

Mind you, also Mr. Scott didn't mention this in his first closing to you. You have a photo in evidence of Tony talking to the officers, providing his birth date, his name, his identification. They weren't asking his whole story. He was providing his info. They said step on the other side of the tape. He said I live there. That was testified to. That is in evidence. Look at the picture. Again, still wearing the same clothes. And then later in the interview room -- this picture is in evidence -- still wearing the same clothes.

Tony didn't change his clothes. He didn't have a need to change his clothes. He wasn't covered in blood. He didn't get any blood on him from shooting behind that wall. The only person who had blood on them were the people that rushed in there.

You heard from Javontae Davis. He was a strange witness, very monotone, but there's pictures in evidence of him with blood on his white T-shirt and his

basketball shorts and his sandals. Maybe that's the confusion with Kevin Archie. Man, I'm going to change my shirt. Maybe he was talking to a Javontae. I don't know. But what I do know and what you know is Tony didn't -- did not change his clothes. He had nothing to hide.

So, after he takes a moment to talk to his mother, takes a moment to go talk to his friend, get his cigarette -- Tony smokes. He needed a cigarette. It wasn't a gratuitous thing as it was inferred on cross-examination. He's panicking. He's shaking. He's in shock. He killed his best friend.

He came back, grabbed the first police investigator that they could find, and said look, it was me. He sat down immediately, talking about what had happened. That you heard from Officer McIntyre. He was right there wearing the same clothes.

Tony told them that this woman named Shakihla Smalls just came in. This was an apartment with people flooding in. Everybody's coming to the commotion. She just snatched the gun out of his hand. He's trying to help them get it back. He's showing them who she is through Facebook, telling them where she lives, what apartment number. This is not the man that's trying to hide something. He's trying to provide them the gun of

his that killed his friends. If he were looking to hide, he would have tossed that gun in the gutter.

Do we hear from Shakihla Smalls this week? No, we did not, and I'm going to ask you to draw an inference from that. Again, the state has the entire burden of proof in this case. Why did they not bring Shakihla Smalls? Because that would not have been very good for them. Because that story would not be good. Tony's story is the truth.

Why did they not bring in Investigator Gilliam? The lead investigator on this case sat here all week. He's the one who signed off on those warrants, who swore an oath to a magistrate judge saying this is a murder case. There was malice aforethought. Why didn't we hear from Investigator Gilliam? Think about that.

We didn't hear one word from Investigator Gilliam about that six hour encounter at the police station that was recorded on video that you heard Tony testify about where he told him what happened and Gilliam didn't want to believe him, where he told him there was a whole beast of stuff going on in my apartment, that I was scared, that I was sleep. I thought I was being home invaded. There's a whole record of that, a wealth of information that Gilliam could've provided on that.

Now, the state doesn't have to call every witness.

Mr. Scott will tell you that, but to not call the lead investigator on a case that had that interaction with the man they want you to convict on murder, unconscionable.

But we did hear from this more, more or less informal encounter where Tony's talking to McIntyre. He said he was emotional. He said that he -- again, the direct quotes from Officer McIntyre. He told me he was asleep, awakened by a loud bang, heard a commotion, listened, listened for his roommates, heard the TV crash, got up from bed, and discharged rounds. Yeah, that's what he told the police as soon as he's having that formal sit down. Same morning.

And you have in evidence and you will hear it, too.

(WHEREUPON, A VIDEO OF INTERVIEW IS PLAYED FOR THE JURY. AUDIO IS NOT INCLUDED.)

MR. LUKE SHEALEY: This is my homeboy.

Now, Tony, he's rough around the edges. He may not be from the same places some of y'all are from. He's definitely different to lots of members of law enforcement and people that are prosecuting this case. He calls his friends bruh. He curses a lot, but that is real emotion the first time he encounters the police, real sincerity about what happened.

Prosecution wants you to think that he's just got

this manipulative -- manipulation going on of some magic story that he has finally concocted. No. Let me help you out again. Pull yourselves up by your bootstraps as he tries to tell that to you again. Do not decide this case on passion and prejudice but the facts. Your sense of logic and reason tells you that this man is deeply emotional, distraught about what just happened.

And you heard from him. He broke down crying talking about killing his friends. You think that was scripted? You think that was something that I could engineer? This man with the tough exterior who's sitting here talking about the worst day of his life to a bunch of strangers in a courtroom of people, half of which love him, half of which hate him, is there any dispute that that was not sincere? No. No.

The state called Sam Thomas, and I was surprised by that. Tony's roommate, his other good, long, best friend, the other man on the lease. He's got nothing to hide. He confirmed to you several very important things, and there's a picture of him that's in evidence of him talking to Investigator Gilliam when he got back.

He was not there that day, and they confirmed that it was their routine and habit, given that he -- that they had one car between them, Sam's car, to have Sam drive Dash to work every day where he worked at Wendy's.

Tony was not working at that time. He had recently quit his job; he didn't like it. He was in the process of looking for new work. Did you hear the state say his job was to be a drug dealer? How did that make y'all feel? Did that make you feel like he wants you to decide this case for an appropriate reason, or does he just want to call a young Black man a drug dealer and make you mad at him? Yeah.

He confirms the apartment would have been empty. Tony would have thought no one was there because that's the way it was during that time of day with their habit and routine.

He talks about two days prior a gun going missing. Let me tell you why this is important to this case. Let me tell you why we bring this up. We bring it up because it was brought up to police when Tony was arrested by Tony. He speculated. He has no idea why the people he now knows as Dash and Griffin laying dead on the ground, why would they have been locked into that fight to the death. He has no idea why. That is -- that's why he thought he was being home invaded. He tells that to McIntyre. He tells that to Gilliam. They don't believe that. They don't want to believe that. You got two bodies. You are getting locked up, young man. We don't believe this.

Tony's telling them. Did they follow up on it? Did they look into it? Did you hear anything about it other than through us? No. Did they try to find the gun? Would that gun that's missing have matched some of the evidence in this case? I don't know, but he told them at least to try to explain because them fighting to the death in his living room is why he thinks he's being home invaded. It's why he thinks all this crashing and holes in the wall -- that's why we wanted you to understand that there was this brewing conflict between Dash and Eric. He recalls that encounter, that accusation, not by -- it wasn't Tony's beef.

You've got some text messages in here. Mr. Scott tried very hard to get Tony to say it was his beef. They don't have a motive in this case. They don't need a motive, but it certainly helps paint a real story, so they're trying to make it like it's his gun. It's not his gun. We responded and put in a different text that shows that Tony's talking about it being Dash's gun, but it is a gun from the apartment, and Dash is upset.

You heard from Sam, the state's witness, that one day prior to this that there was a direct confrontation by Dash against Eric accusing him of this, saying you stole my gun and that he actually had Tony's gun in his hand while he was arguing about this. Tony talked about

this.

Listen to this. As the state tries to fill you with the concept that Tony is a young man, a drug dealer who's incapable of reason, the day prior, Tony testified he's awakened, this time not to the sounds of a home invasion but to the sounds of his familiar roommate voices arguing. So, he doesn't just go out blasting as the state would have you suspect that he, he might do any time there's a noise in his house. He hears it and goes uh-oh. My roommates are arguing. So, he gets up. It wakes him up. He walks down the hall. He testified, consistent with Sam, that Dash was present, Eric was present, a young woman named Katerra, and Sam was there. And Tony walked up and saw this argument getting heated, this confrontation from Dash to Eric, and Dash had his gun at his side, Tony's gun. Tony grabbed that gun, de-escalated the situation, showing immense restraint, reason, and, in his words, tried to play the peacemaker. Y'all talk it out. It wasn't talked out, though. It was left unfinished with Eric leaving basically with no plans to come back because he's been accused of stealing something of value from his roommate -- or from a friend of his.

And the next day during the encounter, you have to think about what Dash would be feeling after that the

very next day. Now, mind you, his schedule was to go to Wendy's, but he had called in sick for unknown reasons. He didn't go. No one knows. Tony thought he was going to be gone. He's there and when Eric knocks and Dash answers, that conflict is raw, and the rest unfolds in that living room.

Sam also confirms the other thing that is going on in Toby's mind is that there was a robbery of Sam and Dash very recently prior to this. We bring that up because Tony told that to police. Tony told that to Investigator Gilliam, saying he was scared. We know that this is what happens in our neighborhood. It's not the best neighborhood. It would be unsafe to not be armed in that neighborhood. It happens all the time.

Sam told them. He told them. They didn't care because there's two bodies, and, son, you're going to jail and we're going to ask for a murder conviction on you. We're going to call you a drug dealer and say that's all you care about. It has nothing to do with the nature of your neighborhood and what you know to be the reality in your neighborhood if you are not vigilant in your own home, in your own bed, while you're walking to The Corner Store. That's why we brought that information to you. Follow the facts, I think we just heard.

I want to tell you what murder is. You're going to be asked to consider that. Murder is the unlawful killing of another human being with malice aforethought. Malice is hatred, ill will, hostility towards another person. It's not recklessness; it's not a general disregard. It's evil in your heart for that person in that moment.

Sometimes I go deer hunting. Not often but when I do and I see a deer that I want to kill, I train my sites on that deer, and I think should I kill it? Did you need the meat? Is it big enough? Has it lived enough? And if I decide I need that meat and it's a big enough deer, I'll make that calculated decision to shoot. That's malice. That's malice in my heart for that deer.

Tony, as you heard, had fear in his heart, panic, not malice, not hatred. Fear in his heart at the time he pulled the trigger. That is all you're asked to decide. At the time he turns that corner pulling the trigger, what is in his heart? Is it a calculated evil for something, or is it fear of being home invaded? Fear is self-defense. Fear is not compatible with malice.

I want to talk to you about self-defense, but before I talk to you about self-defense, I want to talk

to you about the law of defense of your own habitation, defense of where you live. Judge Newman is going to give you a separate instruction on that, and I didn't have enough time to put it on my slide. Let me tell you what that is.

In the world of what you have to decide, you must first feel that the state has disproved defense of habitation. Put that to the side, that they have disproven self-defense beyond a reasonable doubt. Put that to the side. And then you have to dig into the meat of whether they've proven a case of unlawful killing with that evil, that malice. Only then could you possibly convict in this case.

So in the hierarchy defense of habitation is the ultimate defense. You're going to hear how it's different. In self-defense, you have to show that you didn't start some trouble, you didn't bring about the difficulty, that you were in danger, or reasonably thought you were, and that you had no other means to avoid the problem, and we'll talk about that.

But for defense of your own habitation, when someone is in their home, the key distinction is that you do not have to show that you were attacked. You do not have to show a reasonable belief that you were about to be attacked, okay? I'm going to say it to you again

because this is important.

Defense of your home -- because we have special duties when we're in our own beds at night, special protections for what should be the safest place in our whole universe -- you don't have to show that you were under attack. You don't even have to show that it was a reasonable belied that you were under attack. That is defense of habitation. And if there is a trespass or an intrusion into your home, you are allowed to end that intrusion through the use of deadly force if necessary. That is what the law of South Carolina says about what citizens are entitled to do.

Now, I'll tell you this. You have a duty to follow the law. It may not be what you like in your heart of hearts, but it is the law as the judge will tell you, and you have a duty to apply the facts that came out of this case to that evidence. Tony does not need to show that he was under attack, just that he was in his own home, and that there was an intrusion into the sanctity of his home, and he decided to use deadly force to end that intrusion.

If you can get past that beyond a reasonable doubt, which I would submit you will not, you consider self-defense. Self-defense also applies in someone's home, but it can apply elsewhere, but here, because this

incident happened in the home, it applies in Tony's home that he didn't bring about this conflict. Classic example of that, someone can't go rob a liquor store and when the clerk pulls out a gun to defend his liquor store, you can't shoot him and claim self-defense is the example of bringing about the difficulty.

Tony selling weed occasionally to support his smoking habit is not bringing about the difficulty, okay? There's been no evidence of that in this case. If it is mentioned to you again, it's to drag you down to a sinkhole to decide this case on an inappropriate fact. You cannot bring about the difficulty if you're lying asleep in your bed.

Was he either in actual imminent danger, or did he believe he was in imminent danger of death or great bodily injury? In this case, Tony reasonably believed he was in imminent danger of death or great bodily injury. From what he heard waking up in his bed -- knowing his roommates should not be there, listening, being reasonable, listening, doesn't hear familiar voices like he did the day before, crash of the TV, rumbling, violent sounds -- he had the right to act on appearances.

Mr. Scott left this out for you. The judge will tell you when you're considering self-defense, this is

the key to this case. We're spending so much time talking about if Tony is reasonable. You heard the testimony on the stand. Tony, are you paranoid? Are you paranoid, man? Do you think -- how much -- how much do you think is required to be scared? A little bit? Little more? Huh? Huh? You're unreasonable. Tony told you I was scared as hell. Those were his exact words. You have to decide if that's reasonable under those circumstances for Tony.

But he may be mistaken. It is enough if the defendant believed he was in imminent danger, and a reasonably prudent person of ordinary firmness and courage would have the same belief. Fancy legal words: average folks. Reasonably prudent, ordinary folks just like Tony. Would you have had the same belief if you're lying in bed and heard boom and crash and rumbling? Yes. The defendant has the act -- has the right to act on that appearance. He doesn't have to have eyes on the situation. On the appearance of that that, based on what he's hearing in his room, knowing his roommates aren't there.

Even though the beliefs of this defendant or a defendant may have been mistaken, most crucial thing. If you -- if you somehow get past the defense of habitation and you're analyzing self-defense, he's

allowed to be mistaken as long as -- as long as his belief was reasonable in the first case, okay? He's allowed to be mistaken.

Our law understands the world is not black or white, good or bad. There are not perfectly scripted self-defense situations. People encounter all kinds of stuff in this world that don't fit into a neat, little box. And our law understands that they should not be punished for not fitting in somebody's neat, little box.

The last prong is that there is no other way to avoid the danger. Well, you can't avoid the danger if you're in your bed. Again, you heard some more Monday morning quarterbacking from Mr. Scott through the prosecution. Well, could he have locked his door? Well, could he have pushed the mattress up and maybe hid there for awhile? In that neighborhood, if Tony lets the intruders who he thinks are there get back to his room, he's going to get smoked. Those are his words. Killed. You don't have to wait.

You're going to hear from the judge that you're allowed to meet the threat. Self-defense is the law of self-preservation. You do not have an obligation to wait in your bed cowering. That's an attempt to confuse you with what the law is and Monday morning quarterback. But you have no duty to retreat in your own home, not

even against somebody who lives there as well. That's critical. Don't be confused. You don't have a duty to retreat in your own home. All the elements of self-defense have been met if somehow you get past defense of habitation.

Spent so much time trying to have you think about Tony being unreasonable. What he heard produced that hole in the wall with the busted phone jack. Think about the immense amount of power and force it took for a body to be slammed into that wall. That's what was going on in his living room. That's why he reasonably believed he was home invaded.

There is his TV just like he told police day one soon as he talked to them. Crashed. He referenced how he liked to play video games. There they all are. There's the table the TV was sitting on. Crashed. There's no other furniture in that apartment other than two foldout church chairs. He would have heard every bit of that echoing through the apartment. That is why he reasonably believed he was being home invaded.

Why did we talk so much with the SLED agent Paul Greer, the firearms analyst? Why the talk and spend so much time with Dr. Monroe, the pathologist? Because they have facts and data and facts and data do not lie. There's no bias in facts and data in science. And all

the objective evidence in this case showed that there is another gun involved in this case. The state does not submit that Tony has two guns that day. They just don't want you to think about it.

We have thirteen distinct bullet wounds that you heard from Dr. Monroe in this case, seven on one, six on the other. That's thirteen. There's only seven shell casings. The .9 millimeters semiautomatic gun that Tony fired that day seven times each time would have ejected a shell casing onto the ground, and they collected all of them. This was in a enclosed apartment living room when those shell casings were put out on that floor.

Yes, there was traffic. EMS came. Family came. Curious onlookers came, but no one picked up the remaining six shell casings. That did not happen. It's feasible that maybe one might have gotten kicked off the balcony, but six? That does not pass the smell test, ladies and gentlemen.

We are missing a gun that shot six times. I bring that to you. I don't have enough information to blame someone else for a killing in this case, but I bring it to you because police should have looked into that. It helps to corroborate that it was a deadly struggle in that living room between Eric Griffin and Mr. Dash.

I talked to Paul Greer. Two, we have two entry

wounds into Mr. Dash's head. They did not exit. Mr. Scott's right. One is right here on the left temple. The other is back here. Each one are immediately incapacitating. Dr. Monroe told you that. Instantly someone would not be able to function. It does not stand to any kind of reason that someone would need to be shot another time after taking one of those shots. They come from different directions. The same gun did not shoot both of those bullets.

You have this in evidence, item 22. I talked a lot about that with Paul Greer. It was inconclusive. We talked about the different terms, whether something was a hard positive match, an absolute negative match. Something might be unsuitable, meaning just can't get any data off of it. Inconclusive means they don't know. It could -- that's what the report said and I asked him -- have matched another gun. It could have been identified to another gun that they did not have in evidence. It was not so damaged that they couldn't pull identifying data off of it. And what you heard is that it could have belonged to another .9 millimeter, a .38 Special, a .357 Magnum, and that that last characteristic -- and we use that term a lot -- could easily have been fired by a revolver, okay?

For those of you that don't know much about guns,

when you shoot a revolver, it does not eject shells like a semiautomatic. Paul Greer talked about that. They stay in that little wheel, that little cylinder unless you take the time to empty them, and that's not very prudent in the middle of a heated fight to take the time to unload your shells.

Common revolvers hold six. We have thirteen distinct bullet wounds, seven shell casings. We're missing six. You guys understand what I'm saying?

Here's how we know that Tony's gun did not fire all of these. Wounds. You have the pictures. You've heard the testimony. When Tony's gun was recovered from Shakihla Smalls's apartment where she had quickly tucked it under her mattress, it was recovered with six live rounds in what we call the magazine, and one was in the chamber, meaning it had already been cycled up and was resting there. Police being prudent, they took that out when they seized it, and you see that picture that you will have, and I want you to look at one hand of Investigator Smith who collected that gun holding six and one to the side. That's seven total.

All right, so I did a lot of that math with Paul Greer, and you guys might have been going why does he keep talking about this? Maybe some of you were on to it at the time. But knowing that there's thirteen shots

here and then his full magazine capacity, had it been loaded to the absolute maximum, would be seventeen in that magazine, and it has the listed numbers, one through seventeen. That's all it can hold and one in the chamber. That's eighteen total. So, if we have thirteen shots, seventeen -- seven, which is what was left in the gun, considering the thirteen shots they claim was fired by that gun, equals twenty. The gun only holds eighteen maximum.

Even if they want to take away one of those wounds, I talked to Paul -- I mean, Dr. Monroe. He mentioned his report. He never, as scientific as he is, he never said that any of those wounds, as he said, were slam dunk through and through from one body to the next. Otherwise, he would have noted it. He kind of equivocated and on -- you know, thinking now upon testimony here, maybe one, although he wasn't certain enough to state it in the report.

Well, let's do the math on maybe one. Maybe one means let's just say twelve wounds because one's a pass through. Still, the gun was found with seven bullets that only holds eighteen maximum. That's nineteen. The math doesn't work. That gun would be impossible to shoot all those rounds and still be left with that level of bullets in it. There's only seven shell casings.

They don't even want you to think about the shell casings. They don't even want you to wonder where the other six shell casings are.

I don't bring this up because I have conclusive evidence, but I want you to consider what was in the heart and mind of Tony. We have brought you all the evidence of this conflict between Mr. Dash and Mr. Griffin about the missing gun that was so heated the day before, Mr. Dash had to have a gun snatched from his hand in the middle of an argument.

Now, no one knows why Eric said turn over there that day. No one knows, but they only shared one car. That car was gone with Sam at the doctor's appointment. So, if you're driving by and you don't see the car that you know they all share, maybe you think you can talk to Tony alone, and you can tell him your side of the story again about the gun. But what he didn't expect to encounter was a still angry Dash who didn't expect this man to be at his door, the man that he had a gun in his hand while heatedly discussing this situation the day prior, and it was on.

I don't think there was a whole lot of discussion. Why the F are you back over here is what I think happened. And you had this brutal fight unfold, including tearing out of earrings. And I think Dash was

losing that fight. We talked about the wound to the back of his head. Somebody hit him with something extremely hard. Dr. Monroe said it could be from a pistol butt. It could be from any hard, hard object. It's not from your hand. He had blunt force trauma over his left eyebrow. I submit to you I think Dash was losing that fight, and Eric was on top of him, and we're missing shell casings and projectiles, and there's a gun in Mr. Dash's head that does not belong to Tony -- or bullet in his head that does not belong to Tony. I think it's quite possible by the time Tony got out to end this threat, Mr. Dash might have already just been killed.

But regardless of that evidence, I can't say that for sure, but I know police didn't look into it. And I know they laughed at the idea that he thought something was so terrible going on in his living room that he just should have done better. He just should have sat around a little more, assessed it.

We've got these mannequins over here, and I'm not going to hurt them in any way, but I think they are illustrative of this case. Tony told you that when he came out after realizing that the threat he thought was home invaders were actually his good friends, and Mr. Dash was lying on the ground face up and that Mr.

Griffin was on top of him with his back exposed almost -- Tony's words were like they were kissing. That was kind of strange, but that's what he said.

(A PAUSE.)

MR. LUKE SHEALEY: Now, does this make sense for these wounds? Mr. Scott is counting on your passion and your prejudice regarding this contact wound.

Sorry, Mr. Bowen.

He's counting on that. He's forcing you to stare into the hole of a young man's head just so he can rile you up. There is no more malice in that wound than any other wound, but it's sexy. We get to talk about execution and really drag you down into that swamp.

But Tony told you that when he walked down that hall against the wall and turned the corner, that he just started shooting. Actually, he said he started shooting before because he was fearful of what was there, and it was against the wall, and was moving forward. That is not inconceivable. He didn't remember the mechanics of this white hot moment of fear and panic in the twilight hours of his home. He's not expected to. He just knows he shot.

There's no evidence that this was some kind of cartel execution, stand up kill shot. Dr. Monroe told you, and I know you were listening. All I can tell is

that the barrel of a gun was pressed up on the skin. He can't tell you the position of anybody. He only knows about this. He doesn't know the position, but this is entirely consistent with what Tony said.

But is it consistent that Mr. Dash would have this left temple wound coming in like that from that position and also have a head wound on the other side of his body? No. No.

(A PAUSE.)

MR. LUKE SHEALEY: Apologize, gentlemen. Not trying to break your props.

Sometimes when you hear about red herrings, I don't want you to be fooled by that. In the old common phrase, the red herring is something that misleads or distracts from a relevant or important question. It might be a logical fallacy or a literal -- literary device that leads readers or audiences towards a false conclusion. It may be used intentionally as in a mystery fiction or as part of a rhetorical strategy. It may be used in argument. This is a red herring.

You know what a red herring is? A picture in evidence of Tony posing with guns, guns that had nothing to do with this, guns that are being only sent to your viewing faces to say he's a young Black man in America, and we need to get him off the streets. He's a bad guy.

You heard Mr. Scott up here talking about crime in our community. Yes, we do have crime in our community. That is not your task today. Do not go down that sinkhole. You have one job at hand: that is to decide the facts and the law of this case.

The red herring is the fact that Tony sold drugs to support his habit. It has nothing to do with this case. This was not a drug deal gone bad. Just to make you hate a young Black man so that we will lessen him, debase him so that you will be okay thinking that he doesn't enjoy the same protections and defenses as the rest of our state. You're not going to fall for that trap.

The state has the awesome power of proving their case beyond a reasonable doubt, and it is such a squishy, hard thing for good folks who have never sat on a jury. This is it. This is it. Guilt beyond a reasonable doubt. All the rest will equate to a not guilty verdict. He's proven not guilty. We have no burden in this case. If the evidence proves to you that he is not guilty because of defense of habitation, self-defense, or the fact that they have not proved malice, sure. That's not guilty. Highly unlikely? That's a not guilty verdict. Less than likely? A not guilty verdict. Probably not? That's not guilty.

Unlikely is not guilty. Possibly not is a not guilty. May not be is a not guilty. Perhaps, suspected, possibly guilty? Still not guilty. Probably guilty? Not guilty. You sit there and think guilt is likely, you wrestling with that means you have doubt because only likely, that's a not guilty. Guilt highly likely? Still not guilty. Only here with guilt proven beyond a reasonable doubt in our system that prefers a lack of conviction over an innocent man being convicted, only then could you find him guilty, only then.

I leave you now. Our system is set up where Mr. Scott is going to have the last word to you, but I ask you to consider what I've said. I want, I hope that I've given you some strength and some power and some tools to resist against what you will hear: that he's a drug dealer, that he should have done better, some Monday morning quarterbacking. If Mr. Scott stands up behind that mannequin again, standing like this, in your minds ask why. There's no evidence of that. Tony, whatever mental state he had when he shot, was the same for all of it.

Pull yourself up by your emotional and mental bootstraps and hold strong. You have an awesome responsibility, and I know you will do your duty. I know you have listened this whole week. You will apply

the facts to the law as Judge Newman tells you, and if you do that, you will find Tony not guilty in this case.

THE COURT: Let's all stand for a moment.

(A PAUSE.)

THE COURT: All right. Mr. Scott.

MR. SCOTT: When Mr. Shealey kind of had his dramatic moment where he sat with his eyes closed for some period of time and then he screamed as loud as he could, was anybody tempted to grab a gun and start shooting? I didn't see anybody do that. Mr. Shealey also said sometimes he looks at deer and he makes a decision whether they have lived long enough. We don't do that with humans. We don't look at another human and say, you know, I think Eric Griffin's lived long enough. I'm going to shoot him in the back of the head.

And they don't like me talking about that. They say there's no evidence of it. I just heard him say that, but y'all heard a pathologist talk at length about that wound. It's an inconvenient fact for them. They don't want me to talk about it. I get it. I would not be doing my job if I didn't talk about it. My job is to give you the evidence, not to hide it.

Most of his closing argument was Mr. Scott is the boogie man because all Mr. Scott wants to do is tarnish the image of a young Black man. You heard that. That

is not my job. My job is to see that there's some justice for two dead Black men who didn't deserve to die this way. I do not put words in Mr. Barnes's mouth. When he tells me I'm a drug dealer, I sell drugs, and there are people in and out of my house all the time because of it, and I choose to do it in a dangerous neighborhood, I'm going to tell you guys what he said. This is my job.

If he says I like having guns and posing with them, this is something I think is cool, and they say guns have nothing to do with this case, well, what were all these bullets we were pulling out of these two men? Guns have everything to do with this case.

And isn't that part of his story? A gun was stolen. And isn't that their theory, that's what this fight was about? I would not be doing my job if I didn't produce evidence for you people. That's what I do; that's my job.

I know you were paying attention, and what we say is not evidence, okay, but what you just saw was a defense attorney giving you theories that there was absolutely no evidence of, no evidence. He just did a demonstration with my manikins that I've worked so hard to put together and he broke them, but let me show you what he just did to mislead you all, okay?

This is Mr. Dwyer's body cam footage, All right? You saw what he did. He laid Mr. Dash on his back, and then he put Mr. Eric Griffin on top. Wonder why he did that. Was it to explain the injuries when there is no explanation? I can't answer that for him, but I can assure you.

(WHEREUPON, EXCERPT OF BODY-WORN CAMERA IS PLAYED FOR THE JURY. AUDIO IS NOT TRANSCRIBED.)

MR. SCOTT: We will follow the evidence. Not what a defense attorney tells us because when we look, we see Antonio Dash lying on top of Mr. Eric Griffin.

(PLAY RESUMES. AUDIO IS NOT TRANSCRIBED.)

MR. SCOTT: The person on top is Antonio Dash. Of course, you'll have still shots as well. The person on the bottom is Mr. Eric Griffin. I don't know why he reversed it. Was his attempt to explain the injuries? I don't know what his motivation was, but what you just saw was a mischaracterization of the evidence in front of you. We're going to choose to follow the evidence, and it's ---

MR. LUKE SHEALEY: Your Honor, I object. *State v. Parker*, 391 SE 606.

THE COURT: Sir.

MR. SCOTT: I don't know what the objection, *State v. Parker*, is.

THE COURT: I don't know your -- Mr. Shealey, I don't know what you're talking about.

MR. LUKE SHEALEY: That's just where the Supreme Court says it's generally improper for the prosecutor to denigrate or accuse defense counsel of fabricating a defense. That's what I'm talking about.

THE COURT: Objection is overruled.

MR. SCOTT: Thank you, Your Honor.

As you see, when you put the manikins -- he reversed them, and we don't know why he did that. Was it to explain the injuries? I don't know, but it's rich that he had this slide about a red herring. It's rich because a red herring, what he describes, is an attempt to mislead or distract.

A red herring would be, I don't know, continually harping on your client's emotion that day, talking about, well, he cried. And maybe yesterday I think there was some attempt for him to show emotion on the stand, too, but you guys get to judge credibility.

I submit to you harping on defendant's emotion, you've got the still shots of him minutes after this. You can judge for yourself. That would be a red herring. That would be a distraction from the evidence and the facts, okay?

Wild speculations, talking about evidence that's

not in the record, talking about a revolver and bullets he said come from another gun when you heard the expert said no. We were inconclusive on a couple fragments, and the reason was that there just wasn't enough to come up with a yes or no answer, and he characterized as definitely coming from another gun. That's not what that SLED agent said. It's inconclusive. He said otherwise.

Now, he did kind of back down a little bit, and I think he said I can't -- I have no conclusive evidence, but he's spitting it out to you anyway. That is a red herring. Commenting on Eric Griffin owning a gun in the past, that is a red herring. That has absolutely nothing to do with this case. I would have thought Mr. Antonio Barnes, when he heard a gunshot, would have told you. Are they saying Antonio Barnes had two guns? I don't know what they're talking about. There's no evidence of it. I don't have any evidence Mr. Barnes had two guns. If he did, he was able to get rid of it because we only have one. That was the one that ended up under Shakihla Smalls's bed. The only cases we have come from that gun. The identifiable bullets, including the one that came out of Eric Griffin's head, go back to that gun. So, it's rather rich when he brings up the slide about a red herring.

I submit to you those arguments were to distract you from the inconvenient truth. We're going to follow the evidence.

What do you see in this picture? You come out of this back room, you walk down the hall. How are these bodies positioned? Of course, we saw whenever Mr. Dwyer comes in, Dash is on top of Griffin, but look at their positions. What do you see? I don't disagree with Mr. Shealey that at some point when an officer stops and he does give -- Mr. Barnes does give his name and his date of birth. He says he lives in the apartment but, as he said, there are residents all over the place that live in the apartment. I'll tell you what he did not say. He didn't say I'm the shooter until two hours later.

In his analogy -- he says I knew my roommates are not there. Listen to the recording of him when he's talking in the manager's office. He says I thought Sam Thomas should have been there, but then on the stand yesterday he says I don't think Sam Thomas would be there. Look at what he's saying during the time. There is -- there is inconsistencies in his statements. He tells a Javontae Davis I wake up, there's two dead bodies. I don't know what's going on.

This fighting to the death, that is a term coined by the Shealey Law Firm that is never offered up in

evidence. Nobody ever said anything about fighting to the death. The evidence we have of fighting to the death is an overturned TV and a bit of sheetrock that has been dented in. A fight to the death, I don't know how many times I heard him say that.

He doesn't tell me what witnesses I call. He's right. I don't tell him what witnesses he calls. Each side gets to pick the witnesses they call. Of course, Investigator Gilliam's right there, All right? Each one of us decided to call some law enforcement agent. He's right there. Nobody's hiding anything. Unconscionable, he calls it.

You know, I'm thinking about these inconsistencies, and they are noteworthy. He just brought -- reminded me when he played the video. You know, yesterday Mr. Barnes had great detail about the day that that gun went missing, and he talked about little bit about it earlier, and he remembers Katerra being there, putting the shirt over the gun. Remembers who all was there, and he remembers what time his brother called. He remembers that Sam Thomas went to brush his teeth. But if you just listen to the video that he played from the office manager, he said I wasn't there when the gun was taken.

What is it? I mean, that's the problem here, you

know. I would like a consistent version of the defense. I don't always get that. I'm just saying that, but I would like some consistency. Is that so wrong? And if there are inconsistencies, again it's my job to bring that to your attention. I mean, geez, don't beat on me too much for doing my job. It's what I do. I am tasked by this court to present evidence to you and if he doesn't like it, I'm sorry.

You know, he, he gave you his definition of malice, and again that's the inconvenient part about it. He leaves out the fact that malice can be a complete disregard for human life. He didn't include that in his malice definition. I don't know why, but when this judge tells you about malice, he's going to tell you malice can be shown from hatred and ill will, but it can also be inferred from the complete disregard for the value of human life. Ask yourselves why he left that out of his definition when he described malice to you.

Some things are inconvenient, but we got to follow the evidence, and we're going to listen to this judge. I tell you what. He's not going to talk about football when he talks about reasonable doubt, I promise you that. He's not going to show you a diagram of a football field. He's going to tell you reasonable doubt means you are firmly convinced of guilt. He's not going

to give you a cute diagram like this. He's going to tell you reasonable doubt is being firmly convinced and being reasonable.

I'm going to sit down, you guys. I just -- when you sit down, the worst feeling is oh, I forgot to say that one thing, but -- and I know y'all are probably, I know, you're a dead horse now, but it's just, this is an important case. I mean, clearly. Any time there are two dead bodies and any time there is somebody accused of killing those two people, it's important. It goes without saying. There's a lot of people in this courtroom that find this important. I don't envy you guys, but I just, I plead with you. Use common sense. Use reason.

What does that picture show you when you look at his version of events? What does those wounds show you? I mean, I hate to keep harping on this thing, but that is highly, highly relevant. This is Eric Griffin right here. The wounds to his right -- the back of his right head. The only verdict, the only verdict that speaks the truth, the only verdict that fits the evidence -- and we all said we were going to follow the evidence. That's all I can ask you to do. The only verdict that is just and speaks the truth is a verdict of guilt on the murder of Eric Griffin, on the murder of Antonio Dash, and then

the weapons charge. Thank you.

THE COURT: Ladies and gentlemen, I'm going to send you to the jury room for another break, about five minutes. Do not discuss the case.

(THE JURY EXITS AT 12:28 PM.)

THE COURT: We'll take a five minute break. When we start, the doors will be locked, so don't think you can come wandering. If you're going to be in, be in and in your seats in five minutes.

(OFF THE RECORD.)

(COURT REPORTER REVIEWS EXHIBITS WITH COUNSEL DURING THE BREAK.)

THE COURT: You may be seated.

If you will bring the jury.

(THE JURY ENTERS AT 12:38 PM.)

JURY CHARGE

THE COURT: Madame Forelady and members of the jury, you heard the testimony, received the evidence, and heard the arguments of the state and the defendant. I will now explain to you the law that applies to this case.

Under the constitution and laws of South Carolina, you are the finders of the facts. I do not have the right to pass upon the facts or even to express any opinion that I might have as to them because this is a

matter solely for you go, the jury, to determine. As jurors, then, it is your duty to determine the effect, the value, and the weight of the evidence presented during this trial.

As the trial judge, it is my responsibility to preside over the case and to rule upon the admissibility of evidence offered during the trial. You are to consider only the testimony which has been presented from this witness stand, together with any other exhibits which have been made part of the record, as well as any stipulations of counsel.

I have the additional duty to charge you the law applicable to this case. And as the presiding judge, I am the sole judge of the law of this case. It is your duty as jurors to accept and apply the law as I now state it to you, then deliberate in an effort to reach your verdict.

And finally, I charge you in this regard that you should not be concerned with what you think the law ought to be but what I tell you that the law is.

You are also the judges, the sole judges of the credibility -- that is, the believability -- of the witnesses who have testified and of the evidence offered. In considering credibility, you may take into consideration many things such as the demeanor or manner

of testifying, whether the witness had reason to be biased or prejudiced, and whether a testimony was contradicted on the one hand or supported and corroborated on the other hand. You may believe a small portion of a witness's testimony and disregard the larger or vice versa. All these things you will consider, bearing in mind that you should give the defendant the benefit of any reasonable doubt. It becomes your duty as jurors to analyze and to evaluate the evidence and determine that evidence which convinces you of its truth.

Now, normally a person cannot give opinion testimony. When a person testifies, they must testify as to what they either saw, heard, or sensed by smell, or something of that nature. However, there is an exception when someone is qualified because of education or experience as an expert witness. These expert witnesses are permitted to give their opinion in certain areas if the court qualifies them in that way. To give opinion testimony in that area does not mean that you must accept the opinion, but it is evidence for you to use in any way you see fit and give it the weight you believe is appropriate.

Now, the fact that the defendant was arrested, charged, and indicted in this case is not evidence and

cannot be considered by you as evidence of guilt. Nor does it create any presumption or inference of guilt. The indictments are simply the formal written instruments which contain the charges made against the defendant. The indictments are the formal documents by which this case is brought into court.

The defendant, Antonio Vashon Barnes, Jr., has pled not guilty to the indictments, and that plea puts the burden on the state to prove the defendant guilty. A person charged with committing a criminal offense in South Carolina is never required to prove himself innocent. I charge you that it is an important rule of the law that the defendant in a criminal trial, no matter what the seriousness of the charge may be, will always be presumed to be innocent of the crime for which the indictment was issued unless guilt has been proven by evidence satisfying you of that guilt beyond a reasonable doubt.

This presumption of innocence does not end when you begin your deliberations, but it accompanies the defendant throughout the trial until you reach a verdict of guilt based on evidence satisfying you of that guilt beyond a reasonable doubt.

The presumption of innocence is like a robe of righteousness placed about the shoulders of the

defendant which remains with the defendant until it has been stripped from the defendant by evidence satisfying you of the defendant's guilt beyond a reasonable doubt.

The presumption of innocence is not a mere legal theory; it's not just a legal phrase. It is a substantial right to which every defendant is entitled unless you, the jury, are satisfied from the evidence of guilt of the defendant beyond a reasonable doubt. The state must prove the defendant guilty beyond a reasonable doubt.

So, what is a reasonable doubt in the law? A reasonable doubt is a doubt which makes a reasonable, honest, sincere, and conscientious juror to hesitate to act. Proof beyond a reasonable doubt must, therefore, be proof of such a convincing character that a reasonable person would not hesitate to rely and act upon it in the most important of his or her own affairs. Proof beyond a reasonable doubt can also be described as proof that leaves you firmly convinced of the guilt of the defendant.

Now, there are very few things in this world that we know with absolute certainty, and in criminal cases the law does not require proof that overcomes every possible doubt. If based on your consideration of the evidence you are firmly convinced that the defendant is

guilty of the crime charged, you must find him guilty. If, on the other hand, you think there is a real possibility that he is not guilty, you must then give him the benefit of the doubt and find him not guilty.

The indictments in this case allege three separate offenses against the defendant. The indictments are, number one, murder of Antonio Dash; indictment number two, murder of Eric Griffin; indictment number three, possession of a weapon during the commission of a violent crime. Each indictment charges a separate and distinct offense. You must decide each indictment separately on the evidence and the law applicable to it, uninfluenced by your decision as to any other indictment. The defendant may be convicted or acquitted on any or all of the offenses charged. You will be asked to write a separate verdict of guilty or not guilty for each indictment.

The defendant, Antonio Vashon Barnes, Jr., is charged with murder of -- with the murder of Antonio Dash and Eric Griffin. The state must prove beyond a reasonable doubt that the defendant killed -- the state must prove beyond a reasonable doubt that the defendant killed Antonio Dash and Eric Griffin with murder -- with malice aforethought.

Malice is hatred, ill will, or hostility towards

another person. It is the intentional doing of a wrongful act without just cause or excuse, and with an intent to inflict an injury, or under circumstances that the law will infer evil intent.

Malice aforethought does not require that malice exist for any particular time before the act is committed, but malice must exist in the mind of the defendant just before and at the time the act is committed. Therefore, there must be a combination of the previous evil intent and the act.

Malice aforethought may be expressed or inferred. These terms expressed and inferred do not mean different kinds of malice but merely the manner in which malice may be shown to exist. That is either by direct evidence or by inference from the facts and circumstances which are proven.

Expressed malice is shown when a person speaks words which express hatred or ill will for another, or when the person prepared beforehand to do the act which was later accomplished. For example, lying in wait for a person or any other acts of preparation going to show that the deed was within the mind of the defendant would be expressed malice. Malice may be inferred from conduct showing total disregard for human life.

The defendant is also charged with possession of a

weapon during the commission of a violent crime. The state must prove beyond a reasonable doubt that the defendant was in possession of firearm during the commission of a violent crime. A firearm means any weapon which will, is designed to, or may be readily converted to expel a projectile.

In order to find the defendant guilty of possession of a weapon during the commission of a violent crime, you must first find the defendant guilty of committing a violent crime. Murder is a violent crime. The state must prove beyond a reasonable doubt that the weapon furthered, advanced, or helped in the commission of the crime.

The defendant has raised the defense of self-defense. Self-defense is a complete defense and if it is established, you must find the defendant not guilty. The state has the burden of disproving self-defense beyond a reasonable doubt.

If you have a reasonable doubt of the guilt of the defendant after considering all the evidence, including the evidence of self-defense, then you must find the defendant not guilty. On the other hand, if you have no reasonable doubt of the guilt of the defendant after considering, considering all the evidence, including the evidence of self-defense, then you must find the

defendant guilty.

The following elements are required to establish self-defense. First, the defendant must be without fault in bringing on the difficulty. If the conduct of defendant was the type which was reasonably calculated to and did provoke a deadly or serious assault, the defendant would be at fault in bringing on the difficulty and would not be entitled to an acquittal based on self-defense.

The second element of defense is that the defendant was actually in imminent danger of death or serious bodily injury, or that the defendant actually believed he was in imminent danger of death or serious bodily, bodily injury.

If the defendant was actually in imminent danger, it must be shown that the circumstances would have warranted a person of ordinary firmness and courage to strike the fatal blow to prevent death or serious bodily injury. If the defendant believed he was in imminent danger of death or serious bodily injury, it must be shown that a reasonably prudent person of ordinary firmness and courage would have had the same belief.

In deciding whether the defendant actually was or believed he was in imminent danger of death or serious bodily injury, you should consider all the facts and

circumstances surrounding the crime, including the physical condition and characteristics of the defendant and the victims.

The defendant does not have to show that he was actually in danger. It is enough if the defendant believed he was in imminent danger and a reasonably prudent person of ordinary firmness and courage would have had the same belief. A defendant has the right to act on appearances even though the beliefs of the defendant may have been mistaken. It is for you to decide whether the fear of defendant of immediate danger of death or serious bodily injury was reasonable and would have been felt by an ordinary person in the same situation.

The final element of self-defense is that the defendant had no other probable way to avoid the danger of death or serious bodily injury than to act as the defendant did in this particular instance. If the defendant was on his own premises, the defendant had no duty to retreat before acting in self-defense.

A person cannot be required to make an exact calculation as to the degree or amount of force which may be needed to avoid death or serious bodily injury. Therefore, in self-defense the defendant has the right to use the force necessary to avoid death or serious

bodily harm.

The force used in self-defense does not have to be limited to the degree or amount -- or amount of force used by the victim or victims. The defendant has a right to use so much force as appeared to be necessary for complete self-protection and which a person of ordinary reason and firmness would have believed to be needed to prevent death or serious bodily harm.

If the defendant is justified in defending himself, then the defendant is also justified in continuing to defend until it is apparent that the danger of death or serious bodily injury has completely ended.

A person can be acting lawfully even if he is in unlawful possession of a weapon if he was entitled to arm himself in self-defense at the time of the shooting.

If the defendant or a member of defendant's household is attacked in the defendant's own home, the defendant may use the force which appears to be needed to protect himself or his household from death or serious bodily injury. If a trespasser refuses to leave the home when asked to leave, the defendant may use the necessary force to eject the trespasser. If in the effort to eject the trespasser the life or safety of the defendant or member of the defendant's household is jeopardized, the defendant may take the life of the

trespasser. The kind and degree of force which are justified depend on the conduct of the trespasser. If a person entered the dwelling at the invitation of a member of the household, the person becomes a trespasser if the person refuses to leave when asked.

If while legitimately exercising in good faith the right to eject a trespasser the defendant is assaulted by the trespasser and fears death or serious bodily harm, the defendant would be entitled -- the defendant would be without fault in bringing on the difficulty. Whether the defendant was acting in good faith in attempting to eject the victim or victims and was assaulted in the process is a question for you to determine.

In order to establish criminal liability, criminal intent is required. For example, the mental state required to be proven by the state for a particular crime might be purpose, intent, knowledge, recklessness, or criminal negligence. Criminal intent must be proven by the state beyond a reasonable doubt. Criminal intent is always a matter that must be determined by the jury from the circumstances surrounding the situation. There is no way to prove intent with a mathematical certainty. There is no way medical science can dissect a person's brain and determine what the person had in mind, so the

law says criminal intent may be inferred from the circumstances shown to have existed.

This is how you make a determination of whether or not the element requiring intent was present. It is not necessary to establish intent by direct and positive evidence, but intent may be established by inference in the same way as any other fact, taking into consideration the acts of the parties and all of the facts and circumstances of the case.

Criminal intent is a mental state, a conscious wrongdoing. It is up to you to determine what the defendant intended to do based on the circumstances shown to have existed. Criminal intent can arise from action or failure to act. It may arise from negligence, recklessness, or an indifference to duty, or to consequences that is considered by the law to be the equivalent of criminal intent.

Now, while the arguments of counsel are a beneficial part of every trial, you should remember that the statements made by counsel are not evidence. In presenting their arguments, counsel often refer to the evidence. However, you should base your verdict on the evidence as you remember it. If there are any conflicts between the recollection of counsel about the evidence and your own recollection, you should rely on your own

understanding of the evidence.

Madame Forelady and members of the jury, I am required to charge you the law as I have done through these instructions now being given to help guide you to a just and lawful verdict. Whether some of these instructions apply will depend upon what you find to be the facts. The fact that I have instructed you on various subjects must not be considered as indicating an opinion of this court as to what you should find to be the facts or what your verdict should be.

Now, you've been chosen and sworn to give the parties a fair and impartial trial. When you have done so, you will have complied with your oath, and no one will have a right to criticize your verdict.

You must not be influenced by opinions or expression of opinions you may have heard outside of the courtroom but rather should base your verdict solely on the testimony of the sworn witnesses who took stand, the exhibits received into evidence, and the law which I have stated. You should not be swayed by caprice, passion, prejudice, or improper sympathy for or against anyone. Remember you have no friends to reward or enemies to punish, and all parties are entitled to a fair and impartial trial.

It is your duty as jurors to consult with one

another and to deliberate in an effort to reach an agreement. Each of you must decide this case for yourself but only after impartial consideration of all the evidence with your fellow jurors.

In the course of your deliberation, do not hesitate to re-examine your own views and change your opinion if you become convinced it is erroneous. However, do not surrender your honest convictions as to the weight or effect of the evidence solely because of the opinion of your fellow jurors or for the mere purpose of returning a verdict.

As I stated earlier, you are the judges, the judges of the facts, but your verdict must represent the considered judgment of each of you. In other words, your verdict must be unanimous.

Now, you may have noticed that I have read these instructions. I do so to give you the law as accurately as possible. I will give you a copy of these instructions to have in the jury room. You may refer to these instructions to assist you in your deliberations. You must consider the instructions as a whole and not -- and may not follow some and ignore others.

And, Madame Foreperson, it will be your duty to preside over the deliberations of the jury.

If during your deliberations you should desire to

communicate with the court, please reduce your message or question to writing sign by your foreperson and the foreperson only and pass the note to the bailiff, who will bring it to my attention. I will then respond as promptly as possible either in writing by having you return to the courtroom. I caution you, however, with regard to any message or question you might send that you should never state or specify your numerical division at the time.

Now you've heard the evidence and you have heard the law. Whatever your verdict, Madame Forelady, you will indicate the verdict on the back of each indictment. There are three indictments and on the back of each indictment, there's a place on the left side of the bottom, verdict. On each indictment, you write the verdict of guilty or not guilty and then sign and date the verdict.

Remember that although the foreperson is the only juror who writes the verdict, it is not hers alone. The verdict has to be unanimous.

Madame Foreperson, you are not authorized to write the verdict until all of you have agreed on the verdict.

Now, we have selected fourteen jurors, but we can only use twelve to deliberate, and we have two alternates on the back row. So, out of the first twelve

jurors selected, if any of you cannot continue with deliberations for whatever reason, for whatever reason under the sun, if any of you cannot continue and participate in deliberations, please let me know by raising your hand.

(THERE IS NO RESPONSE.)

THE COURT: All right, that means that each of the first twelve jurors are good to go, which means that the two alternates will remain with us when the others go to the jury room. Certainly we'll have them retrieve your lunch. Otherwise, you will remain with us while the others go to the jury room.

So, ladies and gentlemen, I will now send you to your jury room, but do not begin deliberations until you have received a copy of this jury charge, the indictments, and the exhibits. Once you receive these things, that will be your signal to begin your deliberations. Once you begin deliberations, you will deliberate until you have reached a verdict, at which time you will knock on the door, advise the bailiff, and we will bring you out to receive your verdict.

Yes, sir, come forward.

(WHEREUPON, A JUROR HAS A PRIVATE BENCH CONFERENCE WITH THE JUDGE.)

THE COURT: Counsel approach.

(THE FOLLOWING BENCH CONFERENCE IS IN WITH THE PRESENCE OF COUNSEL.)

THE COURT: Mr. Bowen, I will use you as a clerk. Mr. Bowen, I'm going to use you as a clerk.

BAILIFF: All right.

THE COURT: Ladies and gentlemen, we're going to select one of the alternates to serve and participate in deliberations, Juror number 41 or 297. Are those your numbers? On the back row, 297 and 41? All right.

So in selecting an alternate, the process is you put the numbers of the alternates in a box and randomly select one. We've put their numbers in a box, the two numbers.

We've done that, Mr. Bowen. Mr. Bowen, we've put them in a box already.

Any objection to Mr. Bowen serving the role as the selector?

MS. YOUNG: No, Your Honor.

THE COURT: All right. All right, if you'll pick one out.

(A PAUSE.)

THE COURT: All right. So, Juror number 297, you will become -- if you'll change seats with the gentleman ahead of you.

(A PAUSE.)

THE COURT: So, you, you become a regular member the jury panel and will participate in the deliberation. Certainly you have been here and listened to all the evidence, and you are now a member of the regular panel.

So as the parties go, the remaining two jurors will stay with us. If you all will go now to the jury room and wait for the exhibits and indictments before beginning deliberations, and certainly we have your lunch back there, and how you manage that is totally up to you all, but you will deliberate until you reach a verdict.

(THE JURY EXITS AT 1:13 PM.)

THE COURT: Are there any additions or exceptions to the charge?

MR. SCOTT: None from the state, Your Honor.

MR. LUKE SHEALEY: There is one from the defense, Your Honor, regarding the defense of habitation charge. I was listening very carefully. I know this is kind of more of a last-minute one, but it did omit -- was a very critical part of that was that unlike defense of self-defense, the defense of habitation does not require that a defendant reasonably believe that he or his property was in imminent danger of sustaining serious injury or damage. Rather, defense of habitation provides when one attempts to force himself into a

dwelling, the law permits an owner to use reasonable force to expel the trespasser. I did hear the language about invitees being transformed into trespasser and what it means, but I did not hear that critical distinction about not requiring an attack or imminent threat. So, I just -- to be complete, I think it would be that, Your Honor.

THE COURT: The court is satisfied that the instruction was the proper instruction, and you can make your additional request part of the record.

MR. LUKE SHEALEY: Thank you, Your Honor.

THE COURT: Anything else?

MR. SCOTT: Not from the state.

THE COURT: All right, the exhibits, are they together?

COURT REPORTER: Yes, sir.

THE COURT: Together already?

COURT REPORTER: Yes, sir.

THE COURT: Okay. Well, you can make this note a part of the record, and jurors can begin deliberating.

(JURY NOTE MARKED AS COURT'S EXHIBIT NUMBER 2 RECEIVED INTO EVIDENCE.)

(WHEREUPON, JURY DELIBERATIONS BEGIN AT 1:18 PM.)

THE COURT: All right let's come to order. Come to order. Court is still in session.

Sir, you guys can go.

I want to thank you all for your service on the case. The one juror -- sir, I'm talking to you primarily, the two of you. They will get your things out of the jury room.

JUROR: You want us to leave?

THE COURT: Pardon?

JUROR: Did you say to leave?

THE COURT: No. I'm talking to you all. You can't leave while I'm talking to you. I'm thanking you for your jury service, and now you're released from jury duty. You can discuss the case with anyone that you might want to, but it's advisable to not disclose what you think the verdict should be or should have been until you hear a verdict from the jury. Other than that, you are now released from jury service. They will get whatever you have put in the jury room. They'll bring it out for you, including your lunch and any personal items and give you your cell phones and all that. I want to thank you on behalf of the state and defendant and the citizens of this county. So, thank you all.

And we will be at ease.

(OFF THE RECORD.)

THE COURT: I understand that the jury has a

verdict. I want to remind everyone that the decorum of the court must be maintained at all times. No outbursts allowed.

You can bring the jury.

(THE JURY ENTERS AT 4:14 PM.)

THE COURT: Madame Forelady, if you will stand for me. Have you reached a verdict?

FOREPERSON: We have.

THE COURT: Is it unanimous?

FOREPERSON: It is.

THE COURT: All right. If you will pass it up, and you may be seated.

The defendant will rise.

(A PAUSE.)

THE COURT: All right, Madame Clerk, you may publish the verdict.

VERDICT

CLERK OF COURT: Indictment number 2021-GS-40-1294, *The State v. Antonio Vashon Barnes, Jr.* This is an indictment for possession of a weapon during, during a violent crime. We, the jury, find the defendant guilty. It's signed foreperson, Juror number 156, December 8, 2022.

Indictment number 2021-GS-40-1292, *The State v. Antonio Vashon Barnes, Jr.* This is an indictment for

murder.

THE COURT: Of?

CLERK OF COURT: Murder of Eric Griffin. We, the jury, find the defendant guilty. This is signed foreperson, Juror number 156, December 8, 2022.

Indictment number 2021-GS-40-1293, *The State of South Carolina v. Antonio Vashon Barnes, Jr.* This is an indictment for the murder of Antonio Dash. We, the jury, find the defendant not guilty. This is signed by foreperson, Juror number 156 December 8, 2022.

Madame Foreperson, are these your verdicts and the verdicts of the entire jury?

FOREPERSON: They are.

THE COURT: Thank you.

Any individual polling requested?

MR. LUKE SHEALEY: Yes, Your Honor.

THE COURT: If you will poll the jurors individually, please.

CLERK OF COURT: Yes, Your Honor.

JURY POLLING

CLERK OF COURT: Ladies and gentlemen of the jury, I'm going to ask you two questions regarding each verdict, and if you will answer yes or no to these questions.

Juror number 156.

THE COURT: Thank you.

Anything else by the state? Mr. Walton?

MR. WALTON: I concur with Mr. Scott, Mr. Gilliam. What happened is heinous, and just leave it in Your Honor's discretion. You know the facts, and we trust in your judgment.

THE COURT: Mr. Fowler.

MR. FOWLER: Your Honor, I would just concur with the wishes of the family that suffered the most in all of this.

THE COURT: Anything else, Mr. Scott?

MR. SCOTT: Nothing else, Your Honor.

THE COURT: Mr. Barnes, if you will come around here for sentencing.

(A PAUSE.)

THE COURT: Anything you'd like to say, Mr. Barnes?

DEFENDANT: No, sir.

THE COURT: Mr. Barnes, you, you engage in a very high risk lifestyle where you said you were selling marijuana to support your habit. Had a lot of marijuana in your house. You had a lot of guns in your house, and when you say that you were sound asleep and were -- I imagine you slept with one eyes -- one eye open based on your lifestyle.

I see nothing in this case but just a totally

senseless killing. My evaluation of the case, listening to the testimony, is not the same as your lawyers. I don't see anything that was unique about this case. For you to jump up with a loaded gun and just at 9 o'clock in the morning, at 8:46 in the morning, 8:51, whatever it was and just start blindly firing your gun, knowing that you had roommates, without even attempting to ascertain any significant degree of danger. I imagine that had to have been the quietest tussle that ever existed for you to be in one room in an apartment when someone else is creating this thunderous, dangerous noise that you think is somebody breaking in without them otherwise making a sound.

And the jury did wrestle with this case, and I would think that they wrestled with the fact that neither side wanted the jury to be instructed on manslaughter. The jury had to find malice in order to find you guilty of killing Mr. Dash, and they could not find that beyond a reasonable doubt. You indicated how you loved him like a brother and how sorry you were after the shooting, and you rolled the dice on both charges. Did not want an instructions on manslaughter and maybe you -- you roll the dice and won on that one.

But you at no time expressed any regard for the life of Mr. Griffin during the police interrogation,

during your testimony, and most importantly during the time you put that gun to his head at close range and basically blew his brains out. As much malice as one can ever imagine at the time that you killed him. So, I, I don't buy the notion that this was a tragic misunderstanding.

You, during your testimony, talked about playing the video games and you approached this situation, it appeared, as if it was a video game where you could fire all these shoots as if it were a video game. Then at the end of it, they all would get up and just walk around as if you hadn't pulled the trigger.

So, there's nothing unique about that these days. You know, I see it all the time consistently by people your age, just a total reckless regard -- disregard for human life, reckless use of guns, reckless shooting, reckless killing, and yours just happened to be just one more. Two more in this instance. Three more including you, and it's just so sad.

I'm impressed by one thing in this trial, and that is your level of intelligence. The way you were be able to confront and face the cross-examination by the solicitor, you, you could match him word for word, thought for thought. You know, you, you displayed such a high level of intelligence, and that's why I could see

how your lawyers would be so impressed with you and maybe with your version of things because you're an extremely intelligent person. And for you to engage in the lifestyle you did and to commit the crime that you did, such a -- such a tragedy for you, in addition to a tragedy for everyone else, including all of the victims.

SENTENCE OF THE COURT

THE COURT: So, you've been convicted of murder, carrying thirty years to life. You've been convicted of possession of a weapon during the commission of a violent crime, which carries five years. I imagine you see Mr. Dash and Mr. Griffin for most days during your -- during your life from henceforth, if not from then til now.

On murder, the sentence is thirty-five years. The weapon charge, the sentence is five years to run concurrent with credit for any time that you are due. I hope you make the best of your time, the best of your life. Good luck to you.

MR. LUKE SHEALEY: Your Honor, I'd requested ten days for posttrial motions. Can we clarify that deadline? By my count, that would be the 22nd.

THE COURT: I haven't been counting. So, you can count to ten, whatever that is.

MS. YOUNG: Should that include weekends?

Type	Time stamp (New York)	Details	Content
iMessage	2/5/2019 18:03	Source: Apple Messages Direction: Outgoing message Status: Unread Time stamp: 02/05/2019 06:03:51 PM (UTC-5) Delivered: 02/05/2019 06:03:52 PM (UTC-5) Remote party: +18034798007 From: +18035698986 To: +18034798007 Type: iMessage	Text: Tell me y sumbody stole 1 of our guns today
iMessage	2/5/2019 18:03	Source: Apple Messages Direction: Outgoing message Status: Unread Time stamp: 02/05/2019 06:03:53 PM (UTC-5) Delivered: 02/05/2019 06:03:56 PM (UTC-5) Remote party: +18034798007 From: +18035698986 To: +18034798007 Type: iMessage	Text: Idk who doe
iMessage	2/5/2019 18:04	Source: Apple Messages Direction: Incoming message Status: Read Time stamp: 02/05/2019 06:04:09 PM (UTC-5) Read: 02/05/2019 06:08:37 PM (UTC-5) Remote party: +18034798007 From: +18034798007 To: +18035698986 Type: iMessage	Text: How that happen

iMessage	2/5/2019 18:08	Source: Apple Messages Direction: Outgoing message Status: Unread Time stamp: 02/05/2019 06:08:38 PM (UTC-5) Delivered: 02/05/2019 06:08:41 PM (UTC-5) Remote party: +18034798007 From: +18035698986 To: +18034798007 Type: iMessage	Text: Idek
iMessage	2/5/2019 18:14	Source: Apple Messages Direction: Incoming message Status: Read Time stamp: 02/05/2019 06:14:35 PM (UTC-5) Read: 02/05/2019 06:58:08 PM (UTC-5) Remote party: +18034798007 From: +18034798007 To: +18035698986 Type: iMessage	Text: Y'all be having to many ppl in there chillin and shit.
iMessage	2/6/2019 12:24	Source: Apple Messages Direction: Outgoing message Status: Unread Time stamp: 02/06/2019 12:24:27 PM (UTC-5) Delivered: 02/06/2019 12:24:28 PM (UTC-5) Remote party: +18034798007 From: +18035698986 To: +18034798007 Type: iMessage	Text: Still tryna figure out who took dha gun

iMessage	2/6/2019 12:54	Source: Apple Messages Direction: Incoming message Status: Read Time stamp: 02/06/2019 12:54:05 PM (UTC-5) Read: 02/06/2019 01:21:55 PM (UTC-5) Remote party: +18034798007 From: +18034798007 To: +18035698986 Type: iMessage	Text: I thought y'all fighter that out last night
iMessage	2/6/2019 13:22	Source: Apple Messages Direction: Outgoing message Status: Unread Time stamp: 02/06/2019 01:22:03 PM (UTC-5) Delivered: 02/06/2019 01:22:30 PM (UTC-5) Remote party: +18034798007 From: +18035698986 To: +18034798007 Type: iMessage	Text: Naw we never did
iMessage	2/6/2019 13:22	Source: Apple Messages Direction: Outgoing message Status: Unread Time stamp: 02/06/2019 01:22:06 PM (UTC-5) Delivered: 02/06/2019 01:22:30 PM (UTC-5) Remote party: +18034798007 From: +18035698986 To: +18034798007 Type: iMessage	Text: Shit crazy

iMessage	2/6/2019 13:26	Source: Apple Messages Direction: Incoming message Status: Read Time stamp: 02/06/2019 01:26:36 PM (UTC-5) Read: 02/06/2019 01:38:27 PM (UTC-5) Remote party: +18034798007 From: +18034798007 To: +18035698986 Type: iMessage	Text: Where was it at
iMessage	2/6/2019 13:38	Source: Apple Messages Direction: Outgoing message Status: Unread Time stamp: 02/06/2019 01:38:57 PM (UTC-5) Delivered: 02/06/2019 01:38:59 PM (UTC-5) Remote party: +18034798007 From: +18035698986 To: +18034798007 Type: iMessage	Text: On dha lul table in dha corner Nd shit so crazy is we was all in dha same plac
iMessage	2/6/2019 13:39	Source: Apple Messages Direction: Outgoing message Status: Unread Time stamp: 02/06/2019 01:39:07 PM (UTC-5) Delivered: 02/06/2019 01:39:08 PM (UTC-5) Remote party: +18034798007 From: +18035698986 To: +18034798007 Type: iMessage	Text: Like right in front our face type shit

iMessage	2/6/2019 13:41	Source: Apple Messages Direction: Incoming message Status: Read Time stamp: 02/06/2019 01:41:05 PM (UTC-5) Read: 02/06/2019 01:41:28 PM (UTC-5) Remote party: +18034798007 From: +18034798007 To: +18035698986 Type: iMessage	Text: Y'all asses must been playing the game and not paying attention
iMessage	2/6/2019 13:41	Source: Apple Messages Direction: Incoming message Status: Read Time stamp: 02/06/2019 01:41:22 PM (UTC-5) Read: 02/06/2019 01:41:28 PM (UTC-5) Remote party: +18034798007 From: +18034798007 To: +18035698986 Type: iMessage	Text: You think it was somebody you be serving to ?
iMessage	2/6/2019 13:42	Source: Apple Messages Direction: Outgoing message Status: Unread Time stamp: 02/06/2019 01:42:08 PM (UTC-5) Delivered: 02/06/2019 01:42:09 PM (UTC-5) Remote party: +18034798007 From: +18035698986 To: +18034798007 Type: iMessage	Text: It had to be one of our supposed to be friends idk it wasn't my gun but still how

iMessage	2/6/2019 13:46	Source: Apple Messages Direction: Incoming message Status: Read Time stamp: 02/06/2019 01:46:19 PM (UTC-5) Read: 02/06/2019 02:08:23 PM (UTC-5) Remote party: +18034798007 From: +18034798007 To: +18035698986 Type: iMessage	Text: Smh ▩♀
iMessage	2/6/2019 14:09	Source: Apple Messages Direction: Outgoing message Status: Unread Time stamp: 02/06/2019 02:09:43 PM (UTC-5) Delivered: 02/06/2019 02:09:44 PM (UTC-5) Remote party: +18034798007 From: +18035698986 To: +18034798007 Type: iMessage	Text: Ikr juss gotta keep Mfs from Round
iMessage	2/6/2019 14:28	Source: Apple Messages Direction: Incoming message Status: Read Time stamp: 02/06/2019 02:28:44 PM (UTC-5) Read: 02/06/2019 02:29:16 PM (UTC-5) Remote party: +18034798007 From: +18034798007 To: +18035698986 Type: iMessage	Text: That's so true

STATE OF SOUTH CAROLINA) **COUNTY OF RICHLAND)** **)** **)** **The State of South Carolina,)** **)** **)** **vs.)** **)** **)** **)** **Antonio Vashon Barnes, Jr.)** **Defendant.)**	**IN GENERAL SESSIONS COURT** **Warrant Nos: 2019A4021600441, 2019A4021600442, 2019A4021600444** **DEFENDANT'S REQUEST TO CHARGE # 8**

Defense of Habitation

The defense of habitation is the defense of one's dwelling house. Our common law has long recognized the defense of habitation as analogous, yet distinct to self-defense, and that for the defense of habitation to apply, a defendant need only establish that a trespass has occurred and that his chosen means of ejectment were reasonable under the circumstances. Stated differently, unlike the defense of self-defense, the defense of habitation does not require that a defendant reasonably believe that he (or his property) was in imminent danger sustaining serious injury or damage. Instead, the defense of habitation provides that where one attempts to force himself into another's dwelling, the law permits an owner to use reasonable force to expel the trespasser. For defense of habitation to apply it is also not necessary to show that the trespasser entered by force:

> A man who attempts to force himself into another's dwelling, or who, ***being in the dwelling by invitation or license refuses to leave when the owner makes that demand, is a trespasser, and the law permits the owner to use as much force, even to the taking of his life, as may be reasonably necessary to prevent the obtrusion or to accomplish the expulsion.***

State v. Bradley, 126 S.C. 528 (1923).

[Signature page to follow]

_____
Laura Young
Attorney for the Defense

_____
Brian R. Shealey
Attorney for the Defense

_____
Luke A. Shealey
Attorney for the Defense

December ___, 2022
Columbia, South Carolina

STATE OF SOUTH CAROLINA) **COUNTY OF RICHLAND)**	**IN THE COURT OF GENERAL SESSIONS** **Warrant Numbers: 2019A4021600441, 2019A4021600442, 2019A4021600444**
The State of South Carolina,	
vs.	**MOTION TO EXCLUDE PHOTOS OF GUNS AND EVIDENCE OF DRUG USE AND/OR DEALING**
Antonio Vashon Barnes, Jr. **Defendant.**	

RICHLAND COUNTY
FILED
2022 DEC -5 AM 8:56
JEANETTE W. McBRIDE
C.C.P., G.S., & Q.S.

The above-captioned defendant, Antonio Vashon Barnes, Jr. ("Barnes"), by and through his attorneys, Luke and Brian Shealey, Laura Young and Caroline Latimer, hereby moves this Honorable Court for an Order excluding prejudicial evidence of marijuana and guns. Pursuant to Rules of the South Carolina Rules of Evidence, Defendant requests that the Court prohibit a picture of Barnes' holding a gun and any evidence of marijuana possession or dealing as irrelevant, more prejudicial than probative and improper character evidence.

FACTS

The morning of February 7, 2019, Barnes was asleep in his bed, which is substantiated by the lack of activity on Barnes' phone that morning, when he heard a loud commotion coming from his living room. Barnes believed that both of his roommates would not be in the apartment that morning because one roommate, Antonio Dash ("Dash"), was supposed to go to work and the other roommate, Samuel Thomas ("Thomas"), was supposed to go to a doctor's appointment. Barnes further believed that the large commotion was due to unknown individuals attempting to rob his apartment. Believing that his apartment was being robbed, Barnes grabbed a gun from his room, entered the short narrow hallway of the apartment which led into the apartment's living room and shot towards the loud commotion. Barnes shortly discovered that the individuals making

the loud commotion were Dash and an acquittance, Eric Griffin ("Griffin"). Both Griffin and Dash suffered from gunshot wounds and died as a result of those gunshot wounds. Evidence of a fight or commotion is present in the apartment where a table is turned over, a hole is in the wall and one of the decedents potentially had an earring ripped out of their ear. The gun that Barnes possessed at the time of the shooting was recovered by law enforcement.

On March 30 and 31, 2022, a hearing was held before the Honorable DeAndrea Gist Benjamin pursuant to Barnes' motion asserting statutory immunity from prosecution ("Immunity Hearing"), pursuant to Section 16-11-450 of the S.C. Code Ann. (otherwise known as the Protection of Persons and Property Act, S.C. Code Ann. § 16-11-410 *et seq).* At the Immunity Hearing, the State presented a photo of Barnes with a gun and photos of guns. The State also presented evidence of a gun going missing a few days before the shooting. The missing gun was Antonio Dash's ("Dash"), one of the roommates and decedents, gun. Around the time the gun allegedly went missing, on or about February 4, 2019, Dash, Barnes, Thomas, Griffin and another individual were present at Dash's, Barnes' and Thomas' apartment. Additionally, over the Defenses' objection, evidence of marijuana dealing and marijuana being found in the apartment were presented where Barnes, in an interview after the shooting, admitted to dealing marijuana.

DISCUSSION

I. Pictures of Barnes Holding a Gun and of Guns and Evidence of Marijuana Dealing and/or Consumption are Irrelevant

Irrelevant evidence is to be excluded. SCRE, Rule 402. Evidence is relevant if it has the tendency to make a fact of consequence more or less probable. SCRE, Rule 401.

Evidence of Barnes holding a gun prior to the shooting, being around a gun prior to the shooting or possessing a gun prior to the shooting is irrelevant to any fact in issue where Barnes

admits to possessing a gun at the time of the shooting and said gun was recovered by law enforcement.

Additionally, evidence of any marijuana dealing by Barnes is not relevant where there is no evidence, circumstantial or direct, that Barnes was attempting to sell marijuana that morning. Evidence of prior marijuana dealing or possession is not relevant to any fact at issue in this case where circumstantial evidence supports Barnes' consistent account to law enforcement and witnesses that he was asleep prior to hearing the commotion in the living room. Therefore, any evidence of prior marijuana dealing or possession should be properly excluded.

II. Pictures of Barnes Holding a Gun and of Guns and Evidence of Marijuana Dealing and/or Consumption are More Prejudicial Than Probative

Relevant evidence "may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury..." Rule 403, SCRE. "Evidence is unfairly prejudicial if it has an undue tendency to suggest a decision on an improper basis, such as an emotional one." *State v. Wilson*, 345 S.C. 1, 7, 545 S.E.2d 827, 830 (2001).

Photos of Barnes holding a gun would present unfair prejudice because it would lead the jury to rely on their emotional dislike for Barnes to be holding a gun, possessing a gun or being around a gun. The imagery of Barnes being around copious amounts of guns, even though there is no substantial evidence to support that assertion, would incite the emotions of the jury where Barnes is alleged to have shot Dash and Griffin and has admitted to shooting Dash and Griffin. This imagery the evidence would create outweighs any probative value of the images where Barnes admits to possessing a gun and using a gun on the day of the perceived robbery and shooting.

Evidence of Barnes prior marijuana dealing and/or possession would be more prejudicial because it would incite strong emotions in the jury surrounding drug use, possession and dealing.

This prejudicial effect would outweigh any probative effect, if any exists. As previously argued, marijuana use and dealing is irrelevant to any facts at issue in this case therefore there is no probative value of such evidence. Furthermore, such evidence does not possess any probative value where Barnes asserts that he was asleep at the time of the commotion and did not have knowledge of who the individuals in the living room were. Subsequently, evidence of prior marijuana dealing or possession should properly be excluded as more prejudicial than probative.

III. Pictures of Barnes Holding a Gun and of Guns and Evidence of Marijuana Dealing and/or Consumption are Improper Character Evidence

"Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible to show motive, identity, the existence of a common scheme or plan, the absence of mistake or accident, or intent." Rule 404(b), SCRE.

The presentation of Barnes holding a gun and possession of pictures of guns will only be presented as improper character evidence because, being devoid of any real probative value or relevance in this case as argued above, the images will be presented to show the jury that Barnes may have possessed or been around guns or possessed pictures of guns and therefore he possessed a gun the morning of February 7, 2019, which is not in dispute, and used that gun with some malicious intent, which is in dispute where Barnes states he believed his apartment was being robbed and had no idea of the identity of the individuals fighting in the apartment living room. Evidence that Barnes had previously been near a gun or possessed a photo of a gun is not circumstantial evidence of malicious intent other than to say because Barnes had been near guns or possessed photos of guns he is a bad guy who possessed a gun with a malicious intent on the morning of February 7, 2019.

Similarly, any evidence that Barnes may have previously sold marijuana or possessed marijuana has no probative value or relevance to Barnes motive, intent or mistake of fact on February 7, 2019, where forensic evidence of Barnes' cell phone is circumstantial evidence supporting Barnes' account of being asleep that morning and being unaware of Griffin and Dash in the living room. The introduction of such evidence would be presented to suggest that because Barnes was previously engaged in criminal activity he was engaged in criminal activity on the morning of February 7, 2019 and had malicious intentions. Therefore, evidence of prior marijuana dealing and/or possession should be properly excluded.

CONCLUSION

The admission of photos of Barnes holding a gun and pictures of guns as well as evidence of marijuana dealing and/or consumption should be excluded as inadmissible irrelevant evidence, more prejudicial than probative evidence and improper character evidence.

[Signature page to follow]

Laura Young
Deputy Public Defender
Richland County Public Defender's Office
1701 Main Street
Columbia, SC 29201
803-765-2592

Luke A. Shealey
The Shealey Law Firm, LLC
1507 Richland Street
Columbia, SC 29201
803-929-0008

Brian R. Shealey, Jr.
The Shealey Law Firm, LLC
1507 Richland Street
Columbia, SC 29201
803-929-0008

Caroline Latimer
Caroline Latimer
The Shealey Law Firm, LLC
1507 Richland Street
Columbia, SC 29201
803-929-0008

Columbia, South Carolina
This 5th Day December, 2022

STATE OF SOUTH CAROLINA) **COUNTY OF RICHLAND)**	**IN THE COURT OF GENERAL SESSIONS** **Warrant Numbers: 2019A4021600441, 2019A4021600442, 2019A4021600444**
The State of South Carolina,)	
vs.)	**MOTION TO EXCLUDE RAP LYRICS**
Antonio Vashon Barnes, Jr.) **Defendant.)**	

RICHLAND COUNTY
FILED
2022 DEC -5 AM 9:11
JEANETTE W. McBRIDE
C.P., G.S., & C.C.

The above-captioned defendant, Antonio Vashon Barnes, Jr. ("Barnes"), by and through his attorneys, Luke and Brian Shealey, Laura Young and Caroline Latimer, hereby moves this Honorable Court for an Order excluding the introduction of a rap video downloaded to Barnes' phone on or about January 18, 2019 into evidence because of the State's inability to authenticate the video, the video's lack of relevance, the prejudicial effect of the protected speech outweighing its probative value, and the video's presentation of improper character evidence.

FACTS

On March 30 and 31, 2022, a hearing was held before the Honorable DeAndrea Gist Benjamin pursuant to Barnes' motion asserting statutory immunity from prosecution ("Immunity Hearing"), pursuant to Section 16-11-450 of the S.C. Code Ann. (otherwise known as the Protection of Persons and Property Act, S.C. Code Ann. § 16-11-410 *et seq).* At the Immunity Hearing, the State elicited testimony from the Defense's cell phone forensics expert, Christopher Watkins ("Watkins"), who analyzed Barnes' cell phone about text messages sent and received February 6, 2019, about a missing gun, and about a rap video downloaded from Barnes' Instagram account on January 18, 2019, which was excluded from evidence. Watkins testified at the Immunity Hearing that the video was downloaded from Instagram and therefore,

originated from another device. Watkins further testified that, "any media content that's indicated by Instagram will be stripped of its original meta data so I cannot see the exact date and time it was created." Immunity Hearing Transcript, Pg 274, lines 24-25 & pg 275, lines 1-2. All Watkins was able to testify to was the time the video was downloaded, not the time the video was created or received. The rap video generally references killing an individual that attempts to steal. The text messages about the missing gun discussed a gun belonging to Dash that Dash had not seen since on or about February 4, 2019. No other evidence of Barnes being the victim of a theft was presented.

DISCUSSION

I. The Admission of the Rap Video is Barred by Basic Rules of Evidence Principles

Many courts, including South Carolina's Supreme Court[1], have come to realize the inequity with which Rap lyrics, a protected form of speech, are being presented in criminal cases in violation of basic Rules of Evidence prohibiting irrelevant evidence, evidence that is more prejudicial than prohibitive and improper character evidence[2].

---

[1] *State v. Cheeseboro*, 346 S.C. 526, 552 S.E.2d 300 (2001) (prohibiting a song lyric referencing leaving no prints and bodies left in a pool of blood written by the defendant as more prejudicial than prohibitive).

[2] *United States v. Stephenson*, 550 F. Supp. 3d 1246 (M.D. Fla. 2021) (excluding videos of raps about past drug dealings, trafficking in narcotics and possessing a firearm as more prejudicial than prohibitive where the defendant was facing drug and firearm charges); *United States v. Johnson*, 469 F. Supp. 3d 193 (S.D.N.Y. 2019) (excluding lyrics from a rap video presented by the State to show gang affiliation as unfairly prejudicial); *People v. Coneal*, 254 Cal. Rptr. 3d 653 (2019) (excluding rap videos because the videos were cumulative of other, less prejudicial evidence, and their probative value depended on construing the lyrics as literal statements of fact or intent commenting that "[a]bsent some meaningful method to determine which lyrics represent real versus made up events, or some persuasive basis to construe specific lyrics literally, the probative value of lyrics as evidence of their truth is minimal"); *DeHart v. State*, 87 N.E.3d 54 (Ind. Ct. App. 2017) (finding that the admission of rap lyrics for three songs was an abuse of discretion where the song was recorded three years before the events at issue in the prosecution and did not reference the victim nor reference the particular facts of the crime); *United States v. Felix*, 663 F. App'x 557 (9th Cir. 2016) (excluding rap videos on the grounds that the rap lyrics are not admissible as party admissions, are not inextricably intertwined with charged crimes, are not evidence of other acts relevant to establish motive or knowledge, and danger of unfair prejudicial effect substantially outweighs any probative value); *State v. Skinner*, 218 N.J. 496, 95 A.3d 236 (N.J. 2014) (holding that "[c]onsidering the content of these lyrics...there is no question that Evidence Rule 404(b)'s purpose was implicated. It is an understatement to say that...a jury could infer that the author of these rap lyrics, defendant, was a bad person who not only believed in addressing people who crossed him by killing them but also had done that in the past as he so vividly describes in his lyrics..."); *Hannah v. State*, 420 Md. 339, 23 A.3d 192 (2011) (excluding rap lyrics as "inadmissible works of fiction").

a. The State Cannot Properly Authenticate the Rap Video

Rule 901 of the South Carolina Rules of Evidence provides that, "[t]he requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims." Proper foundation establishing the authenticity of a piece of evidence is required prior to a determination of admissibility. *See State v. Rich*, 293 S.C. 172, 359 S.E.2d 281 (1987).

A cell phone forensic analyst has testified that due to the platform from which the rap video was downloaded the creation date of the rap video cannot be established. The only evidence of the creation date is the download date which was in January of 2019. Without additional supporting evidence, it is impossible to establish whether the video was created weeks, months, or years prior to January of 2019. Therefore, the authenticity, a precedent to determining its' relevance, probative and prejudicial value, of the rap video cannot be established without supporting evidence of its creation date. The rap video should properly be excluded for lack of evidence of authenticity.

b. The Rap Video is Irrelevant to the Shooting for Which Barnes is Charged

Irrelevant evidence is to be excluded. SCRE, Rule 402. Evidence is relevant if it has the tendency to make a fact of consequence more or less probable. SCRE, Rule 401.

"'Generally, motive is not an element of a crime that the prosecution must prove to establish the crime charged, but frequently motive is circumstantial evidence...of the intent to commit the crime when intent or state of mind is in issue." (quoting, Danny R. Collins, South Carolina Evidence 319 (2d ed. 2000)). "State of mind is an issue any time malice or willfulness is an element of the crime." *Id.* at 124-125. Malice is an element of murder. S.C. Code Ann. § 16-3-10.

The Defense anticipates that the State intends to introduce the rap video into evidence as circumstantial evidence of motive. While the exact date of creation is unable to be established, the rap video was created prior to Dash's gun allegedly going missing and any conversations about Dash's gun allegedly going missing where the gun allegedly went missing on or about February 4, 2019. Therefore, the rap is not relevant to motive or intent because the alleged theft of the gun had not yet occurred and a vague reference to violence is not admissible. *See Cheeseboro*, S.C. 526, S.E.2d 300. The rap video should properly be excluded as irrelevant evidence.

c. The Rap Video is More Prejudicial Than Probative

Relevant evidence "may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury..." Rule 403, SCRE. In *State v. Cheeseboro*, the South Carolina Supreme court considered whether the following rap lyrics were properly admitted by the trial court:

> Ruckus, I believe you're a perpetrator, gold and platinum hater, cause me and J.D. is a force like Dark Vador. Who do you despise a strong enterprise? Do the greed in your eyes lead you to tell lies? Victimize me and Jermain Dupri, don't let me see or else there'll be death in this industry. Want let go, set it fo'sho', I get hype like Mike put yo' blood on the dance flo'. Blow fo' blow, toe to toe, with that no mo'. Like the 4th of July, I spray fire in the sky. If I hear your voice, better run like horses or like metamorphis, turn all y'all to corpses. No fingerprints or evidence at your residence. Fools leave clues, all I leave is a blood pool. Ten murder cases, why the sad faces? Cause when I skipped town, I left a trail [of] bodies on the ground. Your whole click ain't nothing but tricks, bitch pulling sticks, grown men sucking dicks. No one bring ruckus like King Justice, but toughest the So So Def most corruptest.

S.C. 549-550 (). The trial court admitted the rap lyrics as an admission against interest due to their reference to leaving no prints and bodies left in a pool of blood where the defendant was being accused of an armed robbery and the murder of three individuals in an execution style shooting. The South Carolina Supreme Court found the admission to be in error because the prejudicial value of the rap lyrics far outweighed its probative value.

Much like *Cheeseboro*, the rap lyrics in this case are vague in context and much like *Cheeseboro*, "[t]he minimal probative value...is far outweighed by its unfair prejudicial impact as evidence of...bad character, *i.e.* his propensity for violence..." *Cheeseboro*, S.C. 550. Additionally, much like *Skinner*, there is no question that the prejudicial effect of these lyrics referencing theft well before any allegations of theft had occurred and a general claim of violence, normally used in rap lyrics as a metaphor for bravado, far outweighs any probative value, if any in fact exists. *Skinner*, 218 N.J. 496, 95 A.3d 236 (N.J. 2014). The rap video should properly be excluded as more prejudicial than probative.

d. The Rap Video Would be Improper Character Evidence

"Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible to show motive, identity, the existence of a common scheme or plan, the absence of mistake or accident, or intent." Rule 404(b), SCRE.

It is indisputable that rap videos have been presented in criminal trials as evidence of connections to gangs, drugs, violence, etc. without any legitimate reason other than as 'bad guy' evidence[3]. In this case, there is no legitimate connection to any motive, identity, the existence of a common scheme or plan, an absence of mistake or accident or intent where the rap was created prior to any alleged theft, the alleged theft was not of Barnes' gun, one of the victims of the alleged theft is a decedent, and the reference to theft and violence is vague and does not identify the decedents. Much like the rap lyrics in *Skinner*, "[i]t is an understatement to say that...a jury could infer that the author of these rap lyrics, defendant, was a bad person who not only believed in

[3] *United States v. Stephenson*, 550 F. Supp. 3d 1246 (M.D. Fla. 2021); *United States v. Johnson*, 469 F. Supp. 3d 193 (S.D.N.Y. 2019); *People v. Coneal*, 254 Cal. Rptr. 3d 653 (2019); *DeHart v. State*, 87 N.E.3d 54 (Ind. Ct. App. 2017); *United States v. Felix*, 663 F. App'x 557 (9th Cir. 2016); *State v. Skinner*, 218 N.J. 496, 95 A.3d 236 (N.J. 2014); *Hannah v. State*, 420 Md. 339, 23 A.3d 192 (2011).

addressing people who cross him by killing them..." 218 N.J. 496, 95 A.3d 236 (N.J. 2014). The rap video and the lyric it contains is merely being presented as evidence that because Barnes rapped a general lyric about theft and violence, before ever personally experiencing theft, he intentionally shot Dash and Griffin because of an alleged theft of one of the decedent's gun. The rap should properly be excluded as improper character evidence where no circumstantial evidence supports an assertion that the rap is evidence of motive, identity, the existence of a common scheme or plan, the absence of mistake or accident, or intent.

II. Use of the Rap Video Will Violate Barnes' First Amendment Right to Free Expression

Rap music is an artistic expression protected under the First Amendment. *See Ward v. Rock Against Racism*, 491 U.S. 781, 790 (1989) ("Music, as a form of expression and communication, is protected under the First Amendment."). Rap music, like other forms of art, has its own "artistic or poetic conventions." Andrea Dennis, *Poetic (In)Justice? Rap Music Lyrics as Art, Life and Criminal Evidence*, 31 Colum. J.L. & Arts 1, 20 (2007). Like other fiction authors, rap artists use "constructed images, metaphor, braggadocio, or exaggerated storylines" meant to "stretch and shatter credibility" where "[h]omocide serves as a frequent metaphor." *Id.* at 22-23, 25. Rap artists will "adopt mythical or real-life characters as alter egos or fictional personas," becoming a "thug, gangster...and hustler" when they rap. *Id.* at 23. Therefore, rap lyrics "may falsely or inaccurately depict the occurrence of events," and are not necessarily autobiographical statements. *Id.* at 24.

Importantly, the South Carolina Supreme Court ruled in *Cheeseboro* the admission of rap lyrics making a vague reference to violence, leaving no prints and bodies left in a pool of blood, where the appellant was charged with armed robbery and execution-style shooting of three

victims was more prejudicial than prohibitive considering the commonly violent nature of rap lyrics. *State v. Cheeseboro*, 346 S.C. 526, 552 S.E.2d 300 (2001). Similarly, the rap lyrics at issue in this case, which inception was before any alleged theft of Dash's gun, merely contains a vague reference to theft and homicide, a common metaphor in rap lyrics. The use of the rap video would violate Barnes' First Amendment right to free speech where the rap lyrics have no barring on Barnes' state of mind at the time of the shooting and would further have a chilling effect on an entire genre of music.

CONCLUSION

The admission of the rap video would violate Barnes' First Amendment right to expression and should further be excluded for the State's inability to authenticate the video and as inadmissible irrelevant evidence, more prejudicial than probative evidence and improper character evidence.

[Signature page to follow]

Laura Young
Deputy Public Defender
Richland County Public Defender's Office
1701 Main Street
Columbia, SC 29201
803-765-2592

Luke A. Shealey
The Shealey Law Firm, LLC
1507 Richland Street
Columbia, SC 29201
803-929-0008

Brian R. Shealey, Jr.
The Shealey Law Firm, LLC
1507 Richland Street
Columbia, SC 29201
803-929-0008

Caroline Latimer
Caroline Latimer
The Shealey Law Firm, LLC
1507 Richland Street
Columbia, SC 29201
803-929-0008

Columbia, South Carolina
This 5th Day December, 2022

STATE OF SOUTH CAROLINA) **COUNTY OF RICHLAND)**	**IN GENERAL SESSIONS COURT** **Warrant Nos: 2019A4021600441, 2019A4021600442, 2019A4021600444**
The State of South Carolina,)	
vs.)	**MEMORANDUM OF LAW SUPPORTING ADMISSION OF CERTAIN EVIDENCE AND CERTAIN LINES OF EXAMINATION**
Antonio Vashon Barnes, Jr.) **Defendant.)**	

RICHLAND COUNTY
FILED
2022 DEC -5 AM 8:
JEANETTE W. WALTERS
C.C.P., G.S., F.M.C.

Comes now, the Defendant, by and through his undersigned attorney, providing the Court and opposing counsel a memorandum of law in support of the admission of certain evidence and the relevancy of certain lines of examination. Defense counsel has prepared this memorandum in anticipation of possible objections by the State regarding certain evidence and lines of examination.

Anticipating possible objections from the State, the Defendant provides the Court with this memorandum of law in support of his right to present and utilize certain evidence in presenting a full and complete defense.

ARGUMENT

I. THE DEFENDANT HAS CONSTITUTIONALLY PROTECTED RIGHTS UNDER THE 5th, 6TH AND 14TH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND ARTICLE I, §3 AND §14 OF THE CONSTITUTION OF SOUTH CAROLINA TO CONFRONT WITNESSES UNDER OATH AND TO HAVE A MEANINGFUL OPPORTUNITY TO PRESENT A FULL AND COMPLETE DEFENSE.

The Defendant has a constitutionally protected "right to present a defense," a right enumerated via the 6th Amendment to the Constitution of the United States and recognized by the Supreme Court of the United States in Washington v. Texas, 388 U.S. 14 (1967).

In *Washington*, the Supreme Court recognized that the compulsory process clause was designed to secure more than the presence of the defendant's witnesses:

> The right to offer the testimony of witnesses and to compel their attendance, if necessary, is in plain terms the right to present the defense, **the right to present the defentant's version of the facts as well as the prosecution's to the jury so it may decide where the truth lies**. Washington at 19, emphasis added.

In reversing a South Carolina conviction based on the right to present a defense, the United States Supreme Court stated that "the Constitution guarantees criminal defendants 'a meaningful opportunity to present **a complete defense**.'" Holmes v. South Carolina, 547 U.S. 319, 331 (2006), emphasis added. In quoting that language, the *Holmes* court cited to previous decisions. The full quote is actually:

> Whether rooted directly in the Due Process Clause of the Fourteenth Amendment or in the Compulsory Process or Confrontation clauses of the Sixth Amendment, the Constitution guarantees criminal defendants "a meaningful opportunity to present a complete defense." Crane v. Kentucky, 476 U.S. 683, 689 (1986), quoting California v. Trombetta, 476 U.S. 479, 485 (1984).

This concept is also firmly rooted in the Constitution of South Carolina. In a section titled "Trial by Jury; Witnesses; Defense," our State constitution reads:

> The right of trial by jury shall be preserved inviolate. Any person charged with an offense shall enjoy the right to a speedy and public trial by an impartial jury; to be fully informed of the nature and cause of the accusations; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, **and to be fully heard in his defense by himself or by his counsel or by both.** Art. I, Sec. 14 S.C. Constitution, (emphasis added).

The Supreme Court of South Carolina has embraced the "right to present a defense," specifically quoting the language from *Washington* cited above and further citing *Washington* in stating that, "This right is a fundamental element of due process of law." State v. Inman, 395 S.C. 539, 561 (2011), quoting Washington at 19. This right gains special importance when the evidence is critical of the accused's defense and, as argued below, state courts may not impinge a defendant's fundamental constitutional rights by relying on state evidentiary or court rules. Pettijohn v. Hall, 599 F.2d 476 (1st Cir. 1979), citing Chambers v. Mississippi, 410 U.S. 284, 302 (1973).

Furthermore, once a sixth amendment right is implicated, the state must offer a sufficiently compelling purpose to justify the practice. Various state evidentiary rules which advanced legitimate state interests have bowed to the defendant's right to let the jury hear relevant evidence. See, *e.g.*, Washington v. Texas, *supra*, (state interest in avoiding perjured

testimony did not justify its ruling barring co-conspirators from testifying); Chambers v. Mississippi, *supra*, (state law excluding third party hearsay confessions did not justify exclusion). Cf. Davis v. Alaska, 415 U.S. 308, 94 S.Ct. 1105 (1974) (confrontation right prevails over juvenile proceedings privilege statute); United States v. Nixon, 418 U.S. 683, 709; 94 S.Ct. 3090 (1974) (executive privilege yields to need for criminal evidence). Any reason offered for exclusions in this case would be likewise insufficient.

II. THE EVIDENCE AND EXAMINATION SOUGHT IS RELEVANT AND ADMISSIBILE.

For evidence to be admissible, there must be a logical or rational connection between the fact sought to be presented and a matter of fact in issue at trial. Gause v. Livingston, 251 S.C. 8, 159 S.E.2d 604 (1968). Evidence is relevant if it has any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. State v. Green, 397 S.C. 268, 724 S.E.2d 664 (2012), citing SCRE 401. Any evidence that assists the court in getting at the truth of an issue will be deemed relevant and admissible unless the evidence is incompetent because of some legal rule. Toole v. Salter, 249 S.C. 354, 154 S.E.2d 434 (1967).

In *Kyles v. Whitley*, the United States Supreme Court reversed a murder conviction and death sentence based on the prosecution's failure to disclose material evidence favorable to the accused. In doing so, the *Kyles* court devoted an entire section of their opinion (section IV, B) to the defense of attacking "the thoroughness and even the good faith of the investigation." Kyles v. Whitley, 514 U.S. 419, 445 (1995).

> A common trial tactic of defense lawyers is **to discredit the caliber of the investigation or the decision to charge the defendant**, and we may consider such use in assessing a possible *Brady* violation. Kyles at 446, quoting Bowen v. Maynard, 799 F.2d 593, 613 (CA10 1986), emphasis added.

Kyles makes clear that attacking the investigation and decision to charge the accused is a valid defense. Evidence and examination that speaks to those defenses are wholly relevant and admissible.

Additionally, the South Carolina Rules of Evidence specifically afford the Defendants the right to present evidence of bias, prejudice or motive in examining and impeaching witnesses. **This evidence can be provided by examination or by evidence otherwise adduced**. SCRE 608(c), emphasis added. "Anything having a legitimate tendency to throw light on the accuracy,

truthfulness, and sincerity of a witness may be shown and considered in determining the credit to be accorded his testimony. On cross-examination, any fact may be elicited which tends to show interest, bias, or partiality of the witness." State v. Saltz, 346 S.C. 114, 131-132; 551 S.E.2d 240, 250 (2011), emphasis added.

All of the authority cited above makes clear that the Defendant is entitled to present this evidence in his defense. The Court cannot restrict the Defendant's constitutionally protected right to present material and relevant evidence to a jury that goes to directly undermining the credibility of the State's investigation and decisions to charge.

Even if the Court were to find an evidentiary reason to exclude such evidence and examination, the Defendant would be entitled to an *Offer of Proof* under Rule 103(a)(2) SCRE in order to protect the record for appeal. In fact, failure to make an offer of proof would preclude consideration of the matter on appeal. Carson v. SCDNR, 371 S.C. 144, 638 S.E.2d 45 2002).

CONCLUSION

It is clear from the facts and law set out in this memorandum that the Defendant has protected rights under the 5th, 6th and 14th Amendments to the Constitution of the United States and Article I and Article V of the Constitution of South Carolina to confront witnesses against her and to present a full and complete defense. The evidence and testimony sought would be material and relevant to the Defendant's defense and would assist the finder of fact in getting at the truth of this contested criminal matter.

As such, the Constitutions of both the United States and South Carolina, as well as case law and the rules of evidence demand that the Court allow this evidence and examination.

Respectfully submitted,

(Signature page to follow)

Laura Young
Deputy Public Defender
Richland County Public Defender's Office
1701 Main Street
Columbia, SC 29201
803-765-2592

Luke A. Shealey
The Shealey Law Firm, LLC
1507 Richland Street
Columbia, SC 29201
803-929-0008

Brian R. Shealey, Jr.
The Shealey Law Firm, LLC
1507 Richland Street
Columbia, SC 29201
803-929-0008

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF GENERAL SESSIONS
Warrant Number: 2019A4021600442, 2021GS4001294; 2019A4021600444, 2021GS4001292

The State of South Carolina

vs.

Antonio Barnes,
Defendant.

MOTION FOR A NEW TRIAL

RICHLAND COUNTY
FILED
2022 DEC 22 PM 4:14
JEANETTE W. McBRIDE
C.C.P., G.S., & F.C.

On December 8, 2022 Antonio Barnes was found guilty at trial on one charge of murder (Eric Griffin) and one charge of possession of a weapon during a violent crime. He was found not guilty on the remaining charge of murder (Antonio Dash). He was sentenced to thirty-five years in prison on December 13, 2022. At this time, the defense renews all previous motions and objections and respectfully requests that a new trial be granted in this case. The denial of the following motions prevented Mr. Barnes from receiving a fair trial:

(1) The Defense Motion for Immunity on the murder charge should have been granted pursuant to the Protections of Persons and Property Act

An evidentiary hearing was held in front of the Honorable Judge DeAndrea Benjamin on March 30 and 31, 2022 to determine whether Mr. Barnes was immune from prosecution, and the Court later denied immunity by written order on June 14, 2022. Defense counsel filed a proposed order prior to the Court issuing its order denying immunity and believes that the Court misapprehended the facts and the law in this case, and believes immunity should have been granted as to the charges of murder.

Specifically, when the Court denied immunity under § 16-11-440(A) and § 16-11-440(C) it relied heavily on an account of events provided by Shakihla Smalls. Ms. Smalls was a resident

at the apartment complex where the shooting occurred and Mr. Barnes' gun was recovered at her home pursuant to a search warrant. At the immunity hearing, Investigator Emmit Gilliam testified that Ms. Smalls was at Mr. Barnes' apartment just prior to the shooting the morning of February 7, 2019. She stated that she went there to purchase marijuana. She saw Mr. Dash and Mr. Griffin in the living room together and told investigators that she saw Mr. Barnes come out of his bedroom and acknowledge the people in the living room, completely contradicting Mr. Barnes' statements that he had been asleep in his bed, believed that no one else was at home at the time and was awoken by a loud noise.

Throughout the written order denying immunity the Court references Ms. Smalls' version of events as support for its ruling. The order states that Ms. Smalls' testimony proves that Mr. Griffin was a social guest and did not make unlawful entry into the apartment, and that Mr. Barnes was aware of his presence and therefore was not entitled to a presumption of reasonable fear. Furthermore, Ms. Smalls' claim that she went there to purchase marijuana also meant that the residence was being used to further an unlawful activity very close to the time of the shooting.

The problem with Ms. Smalls' account of events is that it is demonstrably untrue and the State knew, or should have known, it was untrue at the time it was asserted to the Court as evidence. Ms. Smalls' statement about being at Mr. Barnes' apartment prior to the shooting that morning was not disclosed to defense counsel until Sunday, March 20, 2022 – over three years after her initial statement to law enforcement immediately following the shooting (which did not include anything about buying marijuana or being at Mr. Barnes' apartment beforehand). At the immunity hearing, defense counsel questioned Investigator Gilliam about surveillance video footage of the apartment complex showing Ms. Smalls at her apartment at Building 17 during the

exact timeframe that she said she was at Mr. Barnes' apartment at Building 14. Investigator Gilliam agreed that she could not be in two places at one time. *See Attachment 1 (Portion of Transcript)*. He also agreed that two other witnesses stated multiple times that no one entered or left Mr. Barnes' apartment after Eric Griffin went inside, indicating that it would not be possible for Ms. Smalls to have seen Mr. Griffin that morning.

In addition to the witnesses' testimony and video surveillance footage, at the time of the shooting Ms. Smalls was out on bond and wearing an ankle monitor pursuant to a bond condition. On March 18, 2022 Assistant Solicitor Dale Scott contacted Offender Management Services (OMS) to inquire about Ms. Smalls' ankle monitor data on the date of the incident and whether it would show her at Mr. Barnes' apartment that morning. *See Attachment 2 (Emails)*. Additionally, defense counsel requested Ms. Smalls' ankle monitor data from OMS (including geolocation information) on March 31, 2022 and Mr. Scott was included on the same day response that contained the requested information. *See Attachment 3 (Emails)*. Defense counsel provided that data to a digital forensic expert who was able to track Ms. Smalls' location the morning of the shooting. It definitively shows that Ms. Smalls was not at Mr. Barnes' apartment when she claimed to be there before the shooting. *See Attachment 4(Affidavit)*.

The State had the OMS data from Ms. Smalls' ankle monitor by March 31, 2022 and knew, or should have known, what that data revealed. On April 19, 2022 the State submitted a proposed order to the Court, almost entirely adopted into the Court's final order denying immunity. The proposed order contained the statements from Ms. Smalls as a basis for denying immunity, statements which the OMS data proves are untrue. *See Attachment 5 (Proposed Order)*. A prosecutor's failure to correct knowingly false testimony is a due process violation. *Napue v. Illinois*, 360 U.S. 264 (1959). In this case, the prosecutor not only failed to correct

false testimony, he provided it to the Court as a basis for denial of immunity. The State did not call Ms. Smalls as a witness at the trial, leading to a presumption that the State is aware of her credibility issues. However, as of the time of this filing no correction to the prior testimony provided at the immunity hearing has been made and the Court's ruling relied heavily on it. Had the Court been aware of the fact that Ms. Smalls was not in fact at Mr. Barnes' apartment that morning, did not see Mr. Griffin, Mr. Dash or Mr. Barnes, and did not purchase marijuana that morning, the request for immunity would have been granted.

(2) Admission of Defendant's statements about selling marijuana out of his home, pictures of ammunition found in the home and Mr. Barnes' prior possession of unrelated guns was error under SCRE 403, 404(b)

At trial, and over defense objections, the State cross-examined Mr. Barnes about photos in his phone of him holding unrelated guns and admitted a photo of unrelated ammunition that was recovered in Mr. Barnes' apartment by Investigator McIntyre. Mr. Barnes was also questioned about his admission to law enforcement that he sold marijuana. Evidence of Mr. Barnes holding a gun prior to the shooting, being around a gun prior to the shooting or ammunition found in his apartment was irrelevant to any fact in issue in this case. Mr. Barnes admitted to possessing a gun at the time of the shooting and that gun was recovered by law enforcement. Additionally, evidence of any marijuana dealing by Mr. Barnes was not relevant where there was no evidence, circumstantial or direct, that Mr. Barnes was attempting to sell marijuana on the morning of the shooting.

Relevant evidence "may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury... " Rule 403, SCRE. "Evidence is unfairly prejudicial if it has an undue tendency to

suggest a decision on an improper basis, such as an emotional one." *State v. Wilson*, 345 S.C. I, 7,545 S.E.2d 827, 830 (2001

This presented unfair prejudice because it led the jury to rely on their emotional dislike for Mr. Barnes holding other guns, possessing a gun or being around a gun and ammunition as a basis for finding him guilty of murder. The imagery of Mr. Barnes being around copious amounts of guns, even though there was no substantial evidence to support that assertion, incited the emotions of the jury where Mr. Barnes admitted to shooting Mr. Dash and Mr. Griffin. This imagery the evidence created outweighed any probative value of the images where Mr. Barnes admitted to possessing a gun and using a gun on the day of the perceived robbery and shooting. This prejudicial effect was demonstrated during the sentencing proceeding when the Court referenced Mr. Barnes living a dangerous lifestyle and possessing many weapons, when in fact, the evidence was that Mr. Barnes only ever owned two guns at one time, and was lawfully allowed to own guns.

Furthermore, evidence of Mr. Barnes' prior marijuana dealing and possession was more prejudicial than probative. Marijuana use and dealing is irrelevant to any facts at issue in this case therefore there is no probative value of such evidence. Such evidence possessed no probative value as Mr. Barnes was asleep at the time of the disturbance in his apartment and did not have knowledge of who was in his living room. Subsequently, evidence of prior marijuana dealing or possession should have been excluded as more prejudicial than probative and its admission denied Mr. Barnes' a fair trial.

Lastly, presentation of Mr. Barnes holding unrelated guns and ammunition was improper character evidence, devoid of any real probative value or relevance in this case.

Evidence that Mr. Barnes had previously been near a gun or possessed a photo of a gun is not circumstantial evidence of malicious intent other than to say because Barnes had been near guns or possessed photos of guns he is a bad guy who possessed a gun with a malicious intent on the morning of February 7, 2019.

Similarly, evidence that Mr. Barnes previously sold marijuana or possessed marijuana had no probative value or relevance to this case, Mr. Barnes' motive, intent or mistake of fact on the date of the incident where forensic evidence of Mr. Barnes' cell phone supported Mr. Barnes' testimony that he was asleep that morning and unaware of Mr. Griffin and Mr. Dash in the living room. The introduction of such evidence simply suggested to the jury that because Mr. Barnes was previously engaged in criminal activity he was engaged in criminal activity on the morning of February 7, 2019 and had malicious intentions. Therefore, evidence of prior marijuana dealing and possession should have been excluded and its admission denied Mr. Barnes a fair trial.

(3) Admission of Defendant's rap lyrics was error under SCRE 403, 404(b), the U.S. Const. amend I and SCRCrimP 5(a)(1)(C)

While Mr. Barnes was testifying about the events of February 7, 2019, the State, over defense objection, elicited testimony from Mr. Barnes about rap lyrics from a music video that Mr. Barnes posted to his SoundCloud account. The lyrics were from a song titled "Let Me Explain" and the State argued it was a song about the shooting of Mr. Dash and Mr. Griffin.

The lyrics were not turned over to defense counsel prior to the State's questioning of Mr. Barnes which is a clear violation of SCRCrimP 5 (Rule 5). In response, the State argued that the song was contained on Mr. Barnes' cell phone extraction that defense counsel had provided to the State; a clear impossibility since Mr. Barnes did not possess his phone after his arrest.

Allowing the State to cross-examine Mr. Barnes about rap lyrics that were not turned over pursuant to Rule 5 was an error.

While there are no cases directly on point for Rule 5(a)(l)(C), in *State v. Lawton*, 675 S.E.2d 454 (S.C. App. 2009), the Court of Appeals explicitly held that there is no distinction regarding the State's obligations to provide materials it uses for impeachment purposes versus materials it uses in its case-in-chief under Rule 5(a)(l)(A). The Court of Appeals reversed the trial court for allowing the use of materials that had not been turned over to the Defense, but which the State used for impeachment purposes under Rule 5(a)(l)(A), without ruling on the Rule 5(a)(l)(C) issue. The late disclosure in this case prevented the defense from examining the video, investigating its origin, and reviewing the lyrics with Mr. Barnes prior to his testimony.

Additionally, the rap lyrics should have been excluded because the probative value was substantially outweighed by the danger of unfair prejudice, the lyrics were used as improper character evidence and their use against Mr. Barnes was a violation of his right to free expression under the First Amendment of the United States Constitution. Defense counsel adopts and asserts the same arguments from its pretrial motion to exclude, and asserts those grounds as a reason for a new trial.

(4) **The Court's refusal to admit the Defendant's prior consistent statement, contained in the police interview room was error and denied his right to present a complete and full defense , a well as to rebut the charge of fabrication under SCRE 801(d)(1)(B)**

The State seized upon the Court's error allowing Mr. Barnes to be questioned about rap lyrics, and accused Mr. Barnes of fabricating his account of what happened on the morning of the shooting. He also accused Mr. Barnes of faking the remorse he expressed on the stand while testifying, by referencing the rap lyrics. In addition to the use of the rap lyrics, the State used a lay witness, Kevin Archie, to argue that Mr. Barnes gave three different accounts of what

occurred in his apartment on the morning of the shooting.

To rebut the State's efforts to attack Mr. Barnes' credibility, defense counsel on re-direct attempted to admit portions of Mr. Barnes' videotaped confession to law enforcement conducted a couple of hours after the shooting. Pursuant to SCRE 801(d)(1)(B), Mr. Barnes' prior consistent statement should have been admitted as non-hearsay because it was offered to rebut the State's charge that Mr. Barnes had fabricated his account of events. However, the Court denied admitting that evidence.

The State then seized upon that error and immediately on re-cross examination attacked Mr. Barnes' lack of remorse and accused him of manufacturing remorse on the stand. Defense counsel again tried to admit the prior statements to law enforcement which contained sobbing, crying, pained accounts of the shooting of his friends. The Court again denied admission of the statements. The prejudice of this error was demonstrated during sentencing when the Court mistakenly stated that Mr. Barnes did not show remorse for the killing of Mr. Griffin. In fact, the prior consistent statements reflected a great deal of remorse for the killings of both Mr. Dash and Mr. Griffin.

(5) The Court's jury instruction regarding defense of habitation was inadequate and erroneous

There was ample evidence submitted during the trial to warrant both a self-defense jury instruction, as well as the analogous yes distinct instruction of defense of habitation. Testimony from state witnesses as well as defense witnesses described the condition of the apartment, objectively indicating that Mr. Dash and Mr. Griffin were engaged in a violent physical altercation just prior to the shooting. Evidence of damaged walls, tables, overturned television, blunt force trauma and torn earrings is consistent with the same. Testimony from state witness

Samuel Thomas, as well as the Defendant, established that it was the schedule and routine of the occupants for Mr. Thomas and Mr. Dash to be gone from the apartment and at work during the time of the incident. The Defendant testified extensively that given his reasonable belief that his apartment was empty that morning, coupled with the violent noises he heard coming from his living room, that he believed he was being home invaded the morning of the incident.

At the end of the third day of trial, during a charging conference, defense counsel submitted request to charge number 8, which was the Defense of Habitation. This charge, citing the seminal case of *State v. Bradley*, 126 S.C. 528 (1923), was requested as distinct to the defense of self-defense, as "defense of habitation does not require that a defendant reasonably believe that he (or his property) was in imminent danger of sustaining serious injury or damage. Instead, the defense of habitation provides that where one attempts to force himself into another's dwelling, the law permits an owner to use reasonable force, including deadly force, to expel the trespasser." *State v. Sullivan*, 345 S.C. 169, 173 (2001). The Court refused to grant this request to charge at that time. The following morning the Court sought any additional comment concerning jury charges prior to the beginning of closing arguments, and once again defense counsel implored the court to consider charging on Defense of Habitation. After hearing further argument on this subject, the Court agreed that it should err on the side of caution and charge on Defense of Habitation. The Court refused to charge based on defense counsel's submitted charge number 8, but instead announced it would charge from its standard Defense of Habitation charge. After closing arguments, the Court charged the jury, and then outside of the presence of the jury the Court inquired of counsel whether there were any exceptions to the charges. Defense counsel immediately objected to the Court's charge regarding Defense of Habitation, as it did not make any mention of the charge being distinct from Self-Defense, and the charge was incomplete as it

did not include the required language concerning how Defense of Habitation does not require a showing of imminent danger to person or property prior to taking measures to use force to end the obtrusion into one's home. Defense counsel asked the Court to recharge Defense of Habitation to include the previously omitted language and the Court declined this request.

State v. Rye, 357 S.C. 119 (2007) is instructive regarding the error caused by an incomplete Defense of Habitations charge. The Court in *Rye*, in refusing to instruct on defense counsel's proposed charge, ended up charging an incomplete Defense of Habitation charge, thereby depriving the jury of the critical language that ***"unlike the defense of self-defense, the defense of habitation does not require that a defendant reasonably believe that he (or his property) was in imminent danger of sustaining serious injury or damage. Instead, the defense of habitation provides that where one attempts to force himself into another's dwelling, the law permits an owner to use reasonable force to expel the trespasser"*** *Id.* at 124 (emphasis added). Like the incomplete charge in Rye, the charge in Mr. Barnes' case incorrectly implied that habitation requires a defendant to establish that his person or property was in some danger of injury or harm. This is reversible error and grounds for a new trial.

(6) All issue raised pretrial, during trial and in this motion, upon which the Court did not rule for the defense or provide an adequate remedy have resulted in cumulative error and prejudice, the result of which required a new trial as the only remedy

Defense counsel moves for a new trial because the cumulative effect of all of the issues raised by counsel has resulted in cumulative prejudice and a cumulative violation of Mr. Barnes' right to a fair and impartial trial under the United Constitution and the South Carolina Constitution. U.S. Const. amend. VI; S.C. Const. art 1, section 14. The only remedy is for the court to grant a new trial.

For all of the aforementioned reasons a new trial should be granted in this case.

Laura Young, 79079
Richland County Public Defender's Office
1701 Main St.
Columbia SC 29201

Luke A. Shealey
The Shealey Law Firm
1507 Richland Street
Columbia, SC 29201

Brian R. Shealey
The Shealey Law Firm
1507 Richland Street
Columbia, SC 29201

This 22nd day of December, 2022
Columbia, SC

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	IN THE COURT OF GENERAL SESSIONS INDICTMENT NOS: 2021GS4001294; 2021GS4001294
STATE OF SOUTH CAROLINA VS. Antonio Barnes, DEFENDANT,	ORDER DENYING DEFENDANT'S MOTION FOR A NEW TRIAL

2023 SEP -7 PM 3:43

This matter is before the Court upon motion of the Defendant for a new trial.

Having fully considered the motion and the arguments made therein, the motion is hereby denied.

AND IT IS SO ORDERED.

CLIFTON NEWMAN
PRESIDING JUDGE

August 25, 2023

RECEIVED
Sep 07 2023
SC Court of Appeals

WITNESSES

(S) Emmit D Gilliam
– Columbia Police Department

ARREST WARRANT NUMBER

2019A4021600444

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: APR 14 2021

VERDICT

GUILTY

SCANNED

Foreperson of Petit Jury
Date: 12/8/22

[redacted]

DOCKET NO. 2021GS4001292

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

APRIL TERM 2021

67

THE STATE
vs.

Antonio Vashon Barnes Jr

Indictment for
MURDER / 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.

SCANNED

1260

APP.1260

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on April 13th, 2021, the Grand Jurors of Richland County present upon their oath:

MURDER

That Antonio Vashon Barnes Jr did in Richland County, on or about February 7, 2019, kill the victim, Eric Griffin, with malice aforethought, either express or implied, by means of Shooting with a firearm, 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.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

BYRON E. GIPSON, SOLICITOR

WITNESSES

(S) Emmit D Gilliam
– Columbia Police Department

ARREST WARRANT NUMBER

2019A4021600442

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: APR 14 2021

VERDICT

GUILTY

Foreperson of Petit Jury
Date: 12/8/22

DOCKET NO. 2021GS4001294

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

APRIL TERM 2021

67

THE STATE
vs.

Antonio Vashon Barnes Jr

Indictment for
WEAPONS / POSS. WEAPON DURING VIOLENT CRIME, IF NOT ALSO SENTENCED TO LIFE WITHOUT PAROLE OR DEATH

SC Code: **16-23-0490**
CDR Code: **0549**

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.

1262

SCANNED

APP.1262

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on April 13th 2021, the Grand Jurors of Richland County present upon their oath:

POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME

That Antonio Vashon Barnes Jr did in Richland County, on or about February 7, 2019, possess a firearm, or visibly display what appeared to be a firearm, or visibly displayed a knife, during the commission or attempted commission of a violent crime, in violation of Section 16-23-0490, S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

BYRON E. GIPSON, SOLICITOR

STATE OF SOUTH CAROLINA
COUNTY OF Richland

IN THE COURT OF GENERAL SESSIONS

STATE

VS.

Antonio Vashon Barnes Jr
AKA:
Race: BLACK Sex: M Age: 28
DOB: [redacted]-1994 SS#:
Address: [redacted]
City, State, Zip: Columbia, SC 29203
DL#: SID#:

INDICTMENT/CASE#: 2021 - GS - 40 - 1292

A/W#: 2019A4021600444
Date of Offense: 2/7/2019
S.C. Code § 16-03-0010
CDR Code #: 0116

SENTENCE SHEET

*CDL Yes ☐No☐CMV Yes☐No☐Hazmat Yes No ☐

In disposition of the above indictment comes now the Defendant who was CONVICTED OF or PLEADS

TO: Murder / Murder

in violation of § 16-03-0010 of the S.C. Code of Laws, bearing CDR Code # 0116

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS §17-25-45 (CSC w/minor 1st or CSC w/minor 3rd)

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. _____ (def.'s initials)

The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST:

Scott, Dale 73081 SC Bar # Defendant 79079 SC Bar#

WHEREFORE, the Defendant is committed to the ☒**State Department of Correction,** ☐**County Detention Center,**

for a determinate term of 35 days/months/years/Time Served ☐**Youthful Offender Act** not to exceed ___ years and/or to pay a fine of $ _____; provided that upon the service of ___ days/months/years/Time Served and or payment of $ _____; ; plus costs and assessments as applicable*; the balance is suspended with **probation** for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

The sentence shall run
☒ CONCURRENT or ☐CONSECUTIVE to sentence on: _____

☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDOC. 576 days/months

☒ To include time spent on monitored house arrest prior to trial and sentencing.

☐ The Defendant Shall be Released from County Detention Center.

Pursuant to 18 U.S.C. § 922 and § 16-25-30 it is unlawful for a person convicted of a violation of § 16-25-20 or § 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SCANNED

STATE VS. Antonio Vashon Barnes Jr INDICTMENT/CASE#: 2021 - GS - 40 - 1292

SPECIAL CONDITIONS:

☐ **PTUP** after _____ months/years

And Other Terms Listed Below:

☐ Substance Abuse Counseling ☐ Completion of GED ☐ Random Drug/Alcohol Testing

☐ Attend Voc. Rehab. or Job Corp ☐ No Contact with Victim ☐ Domestic Violence Intervention Program

☐ Mental Health Counseling ☐ May serve W/E beginning: _____

☐ Sex Offender Registry pursuant to S.C. Code § 23-3-430 ☐ Public Service Employment _____ days/hours

☐ Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

☐ Other: _____

☐ **RESTITUTION:** ☐ **Deferred** ☐ **Def. Waives Hearing** ☐ **Ordered**

Total: $ _____ plus 20% fee: _____ $ _____

Payment Terms: _____ ☐ Set by SCDPPPS

Recipient: _____

*Fine: $ _____

Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ _____ Beginning _____

§14-1-206 (Assessments 107.5 %)		$
§14-1-211(A)(1) (Conv. Surcharge)	$100	$ 107
§14-1-211(A)(2) (DUI Surcharge)	$100	$
§56-5-2995 (DUI Assessment)	$12	$
§56-1-286 (DUI Breath Test)	$25	$
§14-1-212 (Law Enforce. Funding)	$25	$ 25
§14-1-213 (Drug Court Surcharge)	$150	$
§34-11-70(b)and(c), and 34-11-90(c)and(d) (Admin Fraud Check Court Costs)	$41	$
§50-21-114(BUI Breath Test Fee)	$50	$
§56-5-2942(J) (Vehicle Assessment)	$40/ea	$
3% to County (if paid in installments)	TBD	$ 3.75
☐ Appointed PD or appointed other counsel, Proviso requires $500 be paid to Clerk during probation and shall be collected before any other fees.	$500	$
☐ § 17-3-30(B) Unpaid Application Fee to be paid to the Public Defender Fund	TBD	$
	TOTAL	$ 128.75

Clerk of Court/ Deputy Clerk: Jeanette W. McBride/Jeanette W. Harris

Court Reporter:

Presiding Judge: G. Warren

Judge Code: 2127

Sentence Date: Dec 13, 2022

SCCA/217 (07/2021)

SCANNED

STATE OF SOUTH CAROLINA
COUNTY OF Richland

IN THE COURT OF GENERAL SESSIONS

STATE
VS.
Antonio Vashon Barnes Jr
AKA:
Race: BLACK Sex: M Age: 28
DOB: [redacted]1994 SS#::
Address: [redacted]
City, State, Zip: Columbia, SC 29203
DL#: SID#:

INDICTMENT/CASE#: 2021 - GS - 40 - 1294
A/W#: 2019A4021600442
Date of Offense: 2/7/2019
S.C. Code §: 16-23-0490
CDR Code #: 0549

SENTENCE SHEET

*CDL Yes ☐No☐CMV Yes☐No☐Hazmat Yes No ☐

In disposition of the above indictment comes now the Defendant who was X CONVICTED OF or PLEADS TO: Weapons / Poss. weapon during violent crime, if not also sentenced to life without parole or death in violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS §17-25-45 (CSC w/minor 1st or CSC w/minor 3rd)

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. _____ (def.'s initials)

The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST:

73081 Scott, Dale SC Bar # Defendant 79079 SC Bar#

WHEREFORE, the Defendant is committed to the ☑ **State Department of Correction,** ☐ **County Detention Center,** for a determinate term of 5 days/months/years/Time Served ☐ **Youthful Offender Act** not to exceed ___ years and/or to pay a fine of $ ____; provided that upon the service of ___ days/months/years/Time Served and or payment of $ ____; ; plus costs and assessments as applicable*; the balance is suspended with **probation** for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

The sentence shall run
☑ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____

☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDOC. 576 days/months

☒ To include time spent on monitored house arrest prior to trial and sentencing.

☐ The Defendant Shall be Released from County Detention Center.

Pursuant to 18 U.S.C. § 922 and § 16-25-30 it is unlawful for a person convicted of a violation of § 16-25-20 or § 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

STATE VS. Antonio Vashon Barnes Jr INDICTMENT/CASE#: 2021 - GS - 40 - 1294

SPECIAL CONDITIONS:

☐ **PTUP** after _____ months/years

And Other Terms Listed Below:

☐ Substance Abuse Counseling ☐ Completion of GED ☐ Random Drug/Alcohol Testing

☐ Attend Voc. Rehab. or Job Corp ☐ No Contact with Victim ☐ Domestic Violence Intervention Program

☐ Mental Health Counseling ☐ May serve W/E beginning: _____

☐ Sex Offender Registry pursuant to S.C. Code § 23-3-430 ☐ Public Service Employment _____ days/hours

☐ Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

☐ Other: _____

☐ **RESTITUTION:** ☐ **Deferred** ☐ **Def. Waives Hearing** ☐ **Ordered**

Total: $ _____ plus 20% fee: _____ $ _____

Payment Terms: _____ ☐ Set by SCDPPPS

Recipient: _____

*Fine:		$
Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ _____ Beginning _____		
§14-1-206 (Assessments 107.5 %)		$
§14-1-211(A)(1) (Conv. Surcharge)	$100	$ 100
§14-1-211(A)(2) (DUI Surcharge)	$100	$
§56-5-2995 (DUI Assessment)	$12	$
§56-1-286 (DUI Breath Test)	$25	$
§14-1-212 (Law Enforce. Funding)	$25	$ 25
§14-1-213 (Drug Court Surcharge)	$150	$
§34-11-70(b)and(c), and 34-11-90(c)and(d) (Admin Fraud Check Court Costs)	$41	$
§50-21-114(BUI Breath Test Fee)	$50	$
§56-5-2942(J) (Vehicle Assessment)	$40/ea	$
3% to County (if paid in installments)	TBD	$ 3.75
☐ Appointed PD or appointed other counsel, Proviso requires $500 be paid to Clerk during probation and shall be collected before any other fees.	$500	$
☐ § 17-3-30(B) Unpaid Application Fee to be paid to the Public Defender Fund	TBD	$
	TOTAL	$ 128.75

Clerk of Court/ Deputy Clerk: Jeanette W. McBride
Court Reporter: Davis

Presiding Judge: C Newman
Judge Code: 2127
Sentence Date: Dec 13, 2022

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,

RECEIVED
Apr 09 2025
SC Court of Appeals

Lara M. Caudy
Senior Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR APPELLANT

This 9th day of April, 2025.

RECEIVED
Apr 09 2025
SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County

Honorable Clifton Newman, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ANTONIO VASHON BARNES, JR.

APPELLANT

APPELLATE CASE NO. 2023-001390

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Record on Appeal in the above referenced case has been served upon W. Joseph Maye, Esquire, at his primary email address listed in the Attorney Information System (AIS), this 9th day of April, 2025.

Lara M Caudy

Lara M. Caudy
Senior Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR APPELLANT

From:	Mcinnis, Sara
To:	jmaye@scag.gov
Cc:	Donna D"Alessio; Caudy, Lara
Subject:	2023-001390 The State v. Antonio V. Barnes, Jr. Record on Appeal Vol. 3
Date:	Wednesday, April 9, 2025 10:11:00 AM
Attachments:	2023-001390 The State v. Antonio V. Barnes, Jr. Record on Appeal Vol 3 of 3.pdf

Good Morning Mr. Maye,

Attached for service in the above-referenced case is volume 3 of the record on appeal.

Thank you,

Sara McInnis
Administrative Assistant
South Carolina Commission on Indigent Defense
Appellate Division
(803) 734-1330

RECEIVED
Apr 29 2025
SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County

Honorable Clifton Newman, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ANTONIO VASHON BARNES, JR.

APPELLANT

APPELLATE CASE NO. 2023-001390

FINAL BRIEF OF APPELLANT

LARA M. CAUDY
Senior 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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2.

The trial court erred by failing to correctly instruct the jury on the defense of habitation as requested by Appellant when there was evidence to support the charge, particularly where the instruction given incorrectly told the jury the defense only applied if Appellant or a member of his household was attacked in Appellant's home and the life or safety of Appellant or a member of his household was jeopardized, which is an incorrect statement of law. 17

3.

The trial court abused its discretion by admitting evidence of Appellant's marijuana possession and prior marijuana distribution as well as evidence of Appellant's possession of unrelated firearms and ammunition since the evidence was not relevant pursuant to Rule 402, SCRE, any probative value of the evidence was substantially outweighed by the danger of unfair prejudice pursuant to Rule 403, SCRE, and the evidence was improper bad character evidence merely used to establish propensity in violation of Rule 404(b), SCRE. 25

4.

The trial court abused its discretion by admitting lyrics from a song Appellant rapped and posted on YouTube when the state failed to disclose the evidence to the defense in violation of Rule 5, SCRCrimP, and where the rap lyrics should have been excluded because the evidence was not relevant pursuant to Rule 402, SCRE, any probative value of the evidence was outweighed by the danger of unfair prejudice pursuant to Rule 403, SCRE, and the evidence constituted bad character evidence in violation of Rule 404(b), SCRE. 34

5.

The trial court abused its discretion by refusing to admit Defendant's Exhibit No. 108, Appellant's prior consistent statement, pursuant to Rule 801(d)(1)(B), SCRE, to rebut the state's argument that Appellant had fabricated his account of events, and to counter the state's suggestion Appellant manufactured remorse on the stand, particularly where the exclusion violated Appellant's constitutional right to present a complete defense. 44

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STATEMENT OF ISSUES ON APPEAL

1. Did the trial court err by denying Appellant immunity from prosecution pursuant to the Protection of Persons and Property Act, when Appellant proved by a preponderance of the evidence that he was entitled to immunity pursuant to the Act?

2. Did the trial court err by failing to correctly instruct the jury on the defense of habitation as requested by Appellant when there was evidence to support the charge, particularly where the instruction given incorrectly told the jury the defense only applied if Appellant or a member of his household was attacked in Appellant's home and the life or safety of Appellant or a member of his household was jeopardized, which is an incorrect statement of law?

3. Did the trial court abuse its discretion by admitting evidence of Appellant's marijuana possession and prior marijuana distribution as well as evidence of Appellant's possession of unrelated firearms and ammunition since the evidence was not relevant pursuant to Rule 402, SCRE, any probative value of the evidence was substantially outweighed by the danger of unfair prejudice pursuant to Rule 403, SCRE, and the evidence was improper bad character evidence merely used to establish propensity in violation of Rule 404(b), SCRE?

4. Did the trial court abuse its discretion by admitting lyrics from a song Appellant rapped and posted on YouTube when the state failed to disclose the evidence to the defense in violation of Rule 5, SCRCrimP, and where the rap lyrics should have been excluded because the evidence was not relevant pursuant to Rule 402, SCRE, any probative value of the evidence was outweighed by the danger of unfair prejudice pursuant to Rule 403, SCRE, and the evidence constituted bad character evidence in violation of Rule 404(b), SCRE?

5. Did the trial court abuse its discretion by refusing to admit Defendant's Exhibit No. 108, Appellant's prior consistent statement, pursuant to Rule 801(d)(1)(B), SCRE, to rebut the state's argument that Appellant had fabricated his account of events, and to counter the state's suggestion Appellant manufactured remorse on the stand, particularly where the exclusion violated Appellant's constitutional right to present a complete defense?

6. Did the trial court err by refusing to grant a new trial based on the cumulative effect of the trial errors?

STATEMENT OF THE CASE

A Richland County grand jury indicted Appellant on April 13, 2021 for two counts of murder, for the killings of Antonio Dash and Eric Griffin, and possession of a weapon during the commission of a violent crime. R. 1260-1263. A pretrial hearing on Appellant's motion for immunity pursuant to the Protection of Persons and Property Act was held on March 30-31, 2022 before the Honorable DeAndrea Benjamin. R. 1. Assistant Solicitors Dale Scott, Paul Walton, and Nick Fowler represented the state. Laura Young, Luke Shealy, Brian Shealy, and Caroline Latimer represented Appellant. R. 1. By order filed June 14, 2022, Judge Benjamin denied Appellant's motion for immunity. R. 469-483.

Appellant's case was called for trial on December 5, 2022 before the Honorable Clifton Newman, and a jury. R. 484. Assistant Solicitors Dale Scott, Paul Walton, and Nick Fowler represented the state. Laura Young, Luke Shealy, Brian Shealy, and Carolina Latimer represented Appellant. R. 484. On December 8, 2022, the jury acquitted Appellant of one count of murder related to the killing of Antonio Dash, but found him guilty of the second count of murder for the death of Eric Griffin as well as the weapons offense. R. 1215, l. 18 – 1216, l. 10.

On December 13, 2022, Judge Newman sentenced Appellant to thirty-five years for murder and five years concurrent for the weapons offense. R. 1220, ll. 15-17. On December 22, 2022, Appellant filed a motion for a new trial. R. 1248-1258. By order filed September 7, 2023, Judge Newman denied Appellant's motion for a new trial. R. 1259.

This appeal follows.

STATEMENT OF FACTS

In February 2019, Appellant lived in Apartment 14G at the Willow Run Apartments with Samuel Thomas and Antonio Dash, one of the decedents. It was a two bedroom apartment located in a "dangerous neighborhood" in Columbia. R. 908, ll. 12-15. Appellant and Thomas, who were listed on the lease, allowed Dash to live with them because he had nowhere else to stay. The three,

who had been good friends for more than a decade, had been living together for at least a year. Thomas used the front bedroom, which was the first door on the right off the hallway. Appellant slept in the back bedroom, which was the second door on the right off the hallway. Dash, who did not have his own bedroom, slept on an air mattress in a large walk in closet at the very end of the hallway. Dash kept his belongings in this closet as well. R. 659, l. 20 – 660, l. 25. The apartment also had a bathroom, a kitchen, and a living room. The living room had little to no furniture. There was a table with a TV on top, "two church foldup chairs" and a second table with a "missing leg" in the corner that people would sit on. R. 916, ll. 14-18.

Thomas was the only roommate with a car. He routinely gave his roommates and other friends a ride to work or wherever else they needed to be. Thomas drove Dash to Wendy's where he worked every morning. Appellant quit his job a week before the shooting and had not gained new employment. However, he regularly worked and was working at AutoZone at the time of trial. Appellant also sold marijuana. Though, he was not "a big drug dealer" and did not make a lot of money selling weed. He only sold marijuana to support his own smoking habit. R. 975, l. 9 – 976, l. 9; R. 1048, ll. 12-23.

Appellant, Dash, and Thomas all routinely carried a firearm because they lived in a high crime neighborhood. About two weeks before the shooting in this case, Thomas and Dash were robbed at gunpoint at The Corner Store, a convenience store located just down the road from their apartment. Both Thomas and Dash had a gun stolen from them during this robbery. Dash was able to obtain another gun from his brother after the robbery. However, Thomas had not acquired another gun. R. 668, l. 20 – 670, l. 17; R. 905, l. 21 – 908, l. 17.

Eric Griffin, the other decedent, had been Appellant's friend for seven years. R. 891, l. 20 – 892, l. 6. Griffin had recently been released from jail. Appellant had helped Griffin post bond. After Griffin was released from jail, he "started coming back over" to Appellant's apartment. R. 898, l. 23 – 899, l. 16.

On February 5, 2019, two days before the shooting, Griffin visited Appellant's apartment. Samuel Thomas and a woman named Katerra Harper were also at the apartment. The group was "chilling" and playing videogames. Antonio Dash was at work and was not present. For whatever reason, Thomas had the gun Dash had recently obtained from his brother. Initially, Thomas had the gun on his person. However, as the group was hanging out in the living room, Thomas placed the gun on the table in the corner. At some point, Appellant's brother called and asked for a ride to work. Thomas agreed to take Appellant's brother to work and the group dispersed. Griffin and Katerra left the apartment. Appellant also left and went to a friend's apartment nearby. R. 671, l. 1 – 673, l. 13; R. 899, l. 17 – 904, l. 20.

A few minutes after Appellant left, Thomas called Appellant and said Dash's gun, which he had placed on the table in the living room, was missing. Thomas "said the only thing he could think of" was that Griffin had taken the gun. Appellant immediately called Griffin and asked Griffin if he had taken the gun. Griffin denied taking the gun and Appellant believed him since Griffin was his friend. R. 904, l. 23 – 905, l. 12.

The following morning, February 6, 2019, Appellant woke up to the sounds of arguing. He walked into the living room and discovered Dash and Griffin arguing about the missing gun. Thomas and Katerra were also present. The argument between Dash and Griffin was "heated." Dash was holding Appellant's gun, which he had borrowed the night before to go to the store. Because the men were being aggressive, Appellant "snatched" his gun out of Dash's hand and attempted to deescalate the argument. He tried to be a mediator between the two. Griffin again denied taking Dash's gun. Eventually, Griffin left the apartment. R. 908, l. 18 – 910, l. 19.

Later that night, Appellant stayed up late playing videogames with Dash. Appellant learned while hanging out with Dash that Dash planned to go to work the following morning as usual. Appellant also talked on Facetime with his girlfriend into the early morning hours. The call with

his girlfriend ended at 2:59 am. R. 865, ll. 1-6. Appellant then went to sleep. R. 912, l. 21 – 913, l. 9.

Appellant was awoken the following morning by a "loud boom." He thought the noise was the front door of his apartment being "kicked in." Appellant laid in bed for a minute or two and listened. He heard what sounded like "feet moving" and someone in the house "running." He also heard furniture "turning over" and then a loud crash, which he suspected was his TV falling to the floor. Appellant listened for the voices of his roommates, Samuel Thomas and Antonio Dash. However, he did not hear any voices he recognized. Based on their daily routine, Appellant did not believe Thomas or Dash were home. Thomas usually drove Dash to work around that time every morning and Dash told Appellant the night before that he had to work that day. R. 913, l. 15 – 915, l. 18.

On edge because he lived in a dangerous neighborhood, Appellant was scared. He believed his apartment was being "home invaded." He was afraid that if he remained in bed, the intruders would find and kill him. Appellant grabbed his gun, which he always kept on the box spring under his mattress while he slept.[1] R. 917, ll. 1-19. He ran out into the hallway. His heart was "racing." Appellant quickly moved down the hallway hugging the wall as he did so. As soon as he reached the corner, Appellant began firing in the area where he heard the sounds. He started shooting while he was still moving forward. Once he made it around the corner, Appellant saw two men on the ground. They were on top of each other. At first, Appellant did not recognize the men. Then he realized the man on the bottom who was facing upward was Antonio Dash. The man on top of Dash was Eric Griffin. The men were so close together, it looked like they were kissing. R. 915, l. 19 – 921, l. 10.

[1] Appellant legally owned and carried this firearm. He had purchased it and a prior gun he owned from Academy Sports and Outdoors. R. 977, ll. 8-15.

Appellant began to panic. Dash was his best friend and like a brother to him. Appellant was also close with Griffin. After accessing the scene, Appellant suspected Dash and Griffin had been in a physical altercation causing the commotion he had heard prior to the shooting. R. 921, l. 11 – 922, l. 22. The physical evidence supported this conclusion. Dash suffered blunt force trauma to the right side of his head and his left eyebrow. R. 841, l. 16 – 843, l. 9. One of Griffin's earrings had been ripped out of his ear lobe and was found on the floor next to his body. R. 731, l. 10 – 732, l. 10. Both Griffin and Dash had each other's DNA under their fingernails. R. 1065, l. 6 – 1071, l. 24. Ultimately, they both suffered multiple gunshot wounds and were pronounced dead at the scene. R. 804, l. 13 – 820, l. 12.

After the shooting, Appellant walked to the front door and opened it. He saw Griffin's mother and girlfriend walking up the stairs. Appellant held the door open for them. The women began screaming and crying at the sight of the bodies. R. 922, l. 4 – 923, l. 7. Appellant went to his bedroom, grabbed his phone, and called 911 at 8:55 a.m., within a minute or so of the shooting. Other people also began to approach the apartment to find out what happened. Shakila Smalls, who lived two apartment buildings over, walked into the apartment, saw the bodies, and "snatched" the gun out of Appellant's hand.[2] Appellant then walked downstairs and gave his name and contact information to the police. R. 923, l. 8 – 925, l. 24.

Samuel Thomas testified that he "always" took Dash to work. R. 657, l. 22 – 658, l. 9. However, on the morning of February 7, 2019, Dash told Thomas that he had another ride. Because Dash did not need a ride, Thomas chose to go to the doctor. He left the apartment around 8:15 a.m. When he left, Dash was sitting in the living room. He had his work uniform on. Appellant was

[2] Law enforcement found the firearm in Smalls's apartment while executing a search warrant later that day. R. 652, l. 3 – 653, l. 4; R. 743, l. 5 – 748, l. 7. There is no evidence in the record as to why Smalls took the gun from Appellant. The state presumably did not call Smalls as a witness during trial because she had significant and obvious credibility problems as shown by the evidence presented during the immunity hearing.

asleep. Based on their usual daily routine, Dash and Thomas would not have been home at the time of the shooting. R. 658, l. 10 – 659, l. 1; R. 661, l. 25 – 662, l. 16; R. 678, l. 13 – 680, l. 13. When Thomas returned to the apartment after visiting the doctor, he learned about the shooting. He spoke to investigators outside around 9:30 a.m. and told them that when he left one of his roommates was asleep and the other was about to leave for work. R. 680, l. 14 – 682, l. 21.

Griffin's mother, Wanda Griffin, and his girlfriend, Ieasha Washington, both testified that Griffin suddenly asked to stop by Appellant's apartment on their way to take Wanda to work that morning. Griffin did not say why he wanted to stop by. Washington, who was driving, parked the car directly in front of Appellant's apartment. Washington and Wanda both testified that no one else came or went from Appellant's apartment after Griffin entered. R. 573, ll. 14-17. After waiting for about five minutes, the women heard gunshots. Washington immediately called Griffin. This call was placed at 8:54 a.m. The women then ran up the stairs to Appellant's apartment. Wanda knocked on the door and Appellant walked outside. Appellant walked straight to Washington and exclaimed, "What are they doing here? Why [were they] fighting? Who let him in? How did he get here?" R. 521, l. 16 – 535, l. 24; R. 550, l. 10 – 551, l. 1; R. 562, l. 12 – 569, l. 10. Washington testified that Appellant was "spazzing." He was pacing back and forth and pulling his hair. He told Washington that he had been asleep. Numerous people then started approaching the apartment. Washington saw Appellant walk down the hallway to his bedroom and then back outside. The next time Washington saw Appellant he was downstairs talking to the police. R. 575, l. 6 – 577, l. 5.

Kevin Archie, who performed maintenance for the apartments, testified that Appellant told him while they were downstairs minutes after the shooting that he was "back there" asleep, that he thought "they were trying to rob him," that Dash and Griffin were "in there fighting," and that Appellant "came out the back" and "started blasting." R. 592, l. 21 – 595, l. 25.

Appellant gave numerous statements to law enforcement that day. He was always consistent in his account of what occurred. R. 635, l. 22 – 637, l. 7.

ARGUMENT

1.

The trial court erred by denying Appellant immunity from prosecution pursuant to the Protection of Persons and Property Act, when Appellant proved by a preponderance of the evidence he was entitled to immunity pursuant to the Act.

Relevant Facts

Appellant filed a motion pretrial seeking immunity from prosecution pursuant to S.C. Code Ann. § 16-11-450 (otherwise known as the Protection of Persons and Property Act, S.C. Code Ann. § 16-11-410 *et seq*.). A pretrial hearing was held on Appellant's motion eight months before trial. Appellant presented ten witnesses during the hearing: Emmitt Gilliam, Kevin Archie, Samuel Thomas, Steven Harper, Christopher Watkins, Castro, Daren Monroe, Sara Goodman, Paul Greer, and Ralph Tressel. At the conclusion of the hearing, the court requested the parties submit proposed orders. Appellant filed a proposed order granting immunity on April 18, 2022. R. 439-454. The state likewise submitted a proposed order. R. 455-468. By order filed June 14, 2022, the trial court denied Appellant immunity from prosecution.[3] R. 469-483.

Standard of Review

"A claim of immunity under the Act requires a pretrial determination using a preponderance of the evidence standard, which [the appellate court] reviews under an abuse of discretion standard of review." State v. Curry, 406 S.C. 364, 370, 752 S.E.2d 263, 266 (2013). "An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual

[3] The state's proposed order and the trial court's order denying immunity are nearly identical.

conclusions, is without evidentiary support." State v. Jones, 416 S.C. 283, 289, 786 S.E.2d 132, 136 (2016).

Discussion

The trial judge erred by denying Appellant immunity from prosecution pursuant to the Protection of Persons and Property Act, when Appellant proved by a preponderance of the evidence he was entitled to immunity pursuant to the Act.

In 2006, the South Carolina General Assembly adopted the Protection of Persons and Property Act. S.C. Code Ann. § 16-11-410, et seq. The General Assembly explained 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). The Act expresses the General Assembly's finding "that it is 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). 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). 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).

To effectuate its 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). The phrase "another applicable provision of law" includes the common law of self-defense. State v. Glenn, 429 S.C. 108, 118 838 S.E.2d 491, 496 (2019). "Another applicable provision of law" would include the analogous common law defense of defense of habitation.

Section 16-11-440 sets forth the circumstances under which the Act allows the use of deadly force. Id. The statute states in relevant part:

> (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 death or 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 and forcible entry or unlawful and forcible act is occurring or has occurred.
>
> …
>
> (C) A person who is not engaged in an unlawful activity and who is attacked in another place where he has the 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.

According to our Supreme Court, "a trial court should first consider whether the defendant has proved the elements of self-defense by a preponderance of the evidence." State v. Glenn, 429 S.C. 108, 118, 838 S.E.2d 491, 496 (2019). "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. 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 had a right to be." Id. at 118-19, 838 S.E.2d at 496. Where section 16-11-440(C) 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.

Furthermore, when considering whether the defendant was in a place where he had a right to be as required by the Act, the trial court must consider proximate cause or a causal connection to the incident. Id. at 119-120, 838 S.E.2d at 497. "To bar a victim of crime from claiming immunity based on a hyper-technical reading of the statute would lead to absurd results when his presence in the place he was attacked had no relation to the incident itself." Id. at 120, 838 S.E.2d at 497. Additionally, "a proximate cause analysis must also be applied to the unlawful activity element of subsection (C)." Id.

"A claim of immunity under the Act requires a pretrial determination using a preponderance of the evidence standard." Curry, 406 S.C. at 370, 752 S.E.2d at 266. Thus, a person who proves by a preponderance of the evidence that he satisfied (1) the elements of common law self-defense or defense of habitation *or* (2) the elements of the Act is entitled to immunity from prosecution. The trial court must "sit as fact-finder at [the pretrial] hearing, weigh the evidence presented, and reach a conclusion under the Act." State v. Cervantes-Pavon, 426 S.C. 442, 451, 827 S.E.2d 564, 569 (2019).

A. Appellant is Immune From Prosecution Under Common Law Defense of Habitation

Appellant proved by a preponderance of the evidence that he is immune from prosecution under the common law defense of habitation.

"For the defense of habitation to apply, a defendant need only establish that a trespass has occurred and that his chosen means of ejectment were reasonable under the circumstances." State v. Rye, 375 S.C. 119, 124, 651 S.E.2d 321, 323 (2007) (citing Bradley, 126 S.C. 528, 533, 120 S.E. 240, 242 (1923)); See State v. Bryant, 391 S.C. 225, 233, 705 S.E.2d 465, 470 (Ct. App. 2010). "Stated differently, unlike the defense of self-defense, the defense of habitation does not require that a defendant reasonably believe that he (or his property) was in imminent danger sustaining serious injury or damage." Id. "Instead, the defense of habitation provides that where one attempts to force

himself into another's dwelling, the law permits an owner to use reasonable force to expel the trespasser." Id. Although South Carolina precedent properly recognizes that self-defense and habitation are analogous, the defenses are not identical. Id. (citing State v. Sullivan, 345 S.C. 169, 173, 547 S.E.2d 183, 185 (2001)).

"When one becomes a trespasser, the law permits the owner of the home to employ such force, even to the taking of the life of the trespasser, as may be reasonably necessary to accomplish the expulsion." Bryant, 391 S.C. at 234, 705 S.E.2d at 470 (citing State v. Sparks, 179 S.C. 135, 137, 183 S.E. 719, 720 (1936)). "A man who attempts to force himself into another's dwelling, or who, being in the dwelling by invitation or license refuses to leave when the owner makes that demand, is a trespasser, and the law permits the owner to use as much force, even to the taking of his life, as may be reasonably necessary to prevent the obtrusion or to accomplish the expulsion.) Id. (citing State v. Bradley, 126 S.C. 528, 533, 120 S.E. 240, 242 (1923)).

The evidence presented during the immunity hearing showed Appellant was awakened the day of the shooting to a loud boom followed by sounds of commotion and fighting. Appellant distinctly heard his television crash to the floor. It was Appellant's firm belief that he was being home invaded and would be killed in his bed if the intruders made it to his bedroom. Although Griffin was Appellant's friend and had been welcomed in the home recently, there was no evidence to suggest Griffin was invited or expected to come over that morning. Based on Appellant's statement to law enforcement and Ieasha Washington's testimony, there was an ongoing dispute between Griffin and Dash regarding a gun Griffin allegedly stole from Dash. It is unclear whether Griffin used force at the door to gain entry or whether he was initially permitted entry by Dash prior to Dash's violent confrontation with Griffin. Either scenario is plausible given the loud boom Appellant heard, and both would justify defensive action. Because Dash suspected Griffin of stealing his firearm, it is unlikely Dash would have welcomed Griffin into the apartment. Based on the evidence of the violent struggle in the living room, it is axiomatic that Dash was in the process of trying to forcibly eject Griffin from

the home and viewed him as an unwelcomed intruder. Under the common law defense of habitation, Appellant was justified in using deadly force to end the unwarranted intrusion and expel the trespasser, Griffin. Although, Griffin's and Dash's identities were unknown to Appellant at the time he sought to end the intrusion into his home, he is immune from prosecution under the common law defense of habitation as it relates to Griffin, as it is clear Griffin was engaged in a violent attack against the home and one of its occupants, Dash.

B. Appellant is Immune From Prosecution Under Common Law Self-Defense

Our Supreme Court emphasized in State v. Curry, 406 S.C. 364, 752 S.E.2d 263 (2013) "that immunity under the Act 'is predicated on an accused demonstrating the elements of self-defense to the satisfaction of the trial court by a preponderance of the evidence,' save the duty to retreat." State v. Douglas, 411 S.C. 307, 318, 768 S.E.2d 232, 238 (Ct. App. 2014) (quoting Curry, 406 S.C. at 371-372, 752 S.E.2d at 266-267). "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 318, 768 S.E.2d at 238 (quoting Curry, 406 S.C. at 371, 752 S.E.2d at 266) (alternation in original).

"There are four elements required by law to establish a case 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 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." Id. at 318, 768 S.E.2d at 238-239 (internal citation omitted). As

mentioned, the last element, the duty to retreat, need not be shown when seeking immunity under the Act. Id. at 318, 768 S.E.2d at 239 (citing Curry, 406 S.C. at 371, 752 S.E.2d at 266.

An individual has a right to act on appearances. State v. Starnes, 340 S.C. 312, 531 S.E.2d 907 (2000); State v. Jackson, 277 S.C. 271, 87 S.E.2d 681 (1955). Furthermore, "when a person is justified in firing the first shot, he is justified in continuing to shoot until it is apparent that the danger to his life and body has ceased." State v. Hendrix, 270 S.C. 653, 244 S.E.2d 503 (1978).

This case is similar to the factual and legal finding from State v. Scott, 424 S.C. 463, 819 S.E.2d 116 (2018), where a homeowner was granted immunity while defending his property under the common law of self-defense, which resulted in him killing an uninvolved party mistakenly.

Appellant, like Scott, was acting lawfully at the time of the shooting and cannot be said to have brought about the difficulty. He was asleep in his bed when he heard a loud "boom" that was followed by further commotion and his television crashing. His is corroborated by Appellant's statements, the physical evidence, and Appellant's cell phone activity. Like Scott, Appellant had a reasonable belief that he was under threat of imminent death or great bodily injury based on the sounds coming from his living room, combined with his belief that he was home alone with his roommates at work. Appellant laid in bed for a couple of minutes and listened for his roommates and heard no familiar voices. He reasonable believed, based on the nature of his neighborhood, that he was being home invaded and if he allowed the intruders to get back to his room he would be "smoked" or killed. Appellant was entitled to arm himself with his lawfully owned handgun and take action to defend himself against what he reasonably believed to be a threat to his person and home. He traveled the short distance from his bedroom to the hall and shot at the threat until the threat was extinguished. Like Scott, pursuant to the common law, Appellant had no duty to retreat on his own premises. Like Scott, Appellant was ultimately mistaken. It is unclear what Griffin's intentions were that day toward Appellant, if any. The evidence showed Appellant called 911 for help, and throughout the day gave consistently shocked and remorseful statements concerning the

shooting of his friends. Appellant was permitted to take action to preserved his own life against what he reasonably perceived to be a serious threat by unknown intruders.

C. Appellant is Immune From Prosecution Pursuant to § 16-11-440(A)

The above analysis shows Appellant is entitled to immunity pursuant to the common law principles of self-defense and defense of habitation. However, for purposes of argument, even if Appellant's common law claim failed in one or more respects, he is still entitled to immunity pursuant to § 16-11-440(A) and § 16-11-440(C). Section 16-11-440(A) is applicable in this case and provides the Act's strongest protections:

> 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 death or 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 and forcible entry or unlawful and forcible act is occurring or has occurred.

(emphasis added).

The evidence showed Griffin had unlawfully and forcefully entered Appellant's apartment. Appellant was awoken by a loud "bang." The living room was discovered in a damaged state. Based on the physical evidence presented, Griffin and Dash were undisputedly engaged in a violent fight. Dash suffered blunt force trauma to the right side of his head and his left eyebrow. One of Griffin's earrings had been ripped out of his ear lobe and was found on the floor next to his body. Both Griffin and Dash had each other's DNA under their fingernails. There was a hole in the living room wall likely caused by a body striking the wall. There was also forensic and ballistic evidence that suggested Griffin was armed and shot Dash during the struggle. This unlawful and forceful entry into Appellant's apartment entitled him to the presumption of reasonable fear of imminent

peril of death or great bodily injury. Accordingly, Appellant has established he is entitled to immunity pursuant to § 16-11-440(A) by a preponderance of the evidence as to Griffin.

D. Appellant is Immune From Prosecution Pursuant to § 16-11-440(C)

Although immunity has been established by a preponderance of the evidence under common law principals of self-defense and defense of habitation, as well as pursuant to the Act under § 16-11-440(A) regarding Griffin, if the Court finds § 16-11-440(A) is not applicable then Appellant has proven he is entitled to immunity pursuant to § 16-11-440(C). This section states:

> A person who is not engaged in an unlawful activity and who is attacked in another place where he has the 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.

This portion of the Act specifically removes any common law duty to retreat so long as an individual can prove he was attacked while acting lawfully and in a place where he had a right to be. The evidence showed Appellant was sleeping in his own bed in his lawfully rented apartment when he heard a loud bang and commotion he reasonably believed was caused by home invaders. The evidence revealed through Appellant's statements to police as well as his phone records that he was not awake that morning and he believed, as was the custom, that his roommates were at work as usual that day. After laying in bed for a couple of minutes listening for any familiar voices, once he heard his television crash, Appellant made the decision to meet force with force and confront his would be assailants. He met what he reasonably believed to be home invaders and used deadly force as permitted pursuant to the Act. Only after did Appellant realize who he had shot, at which time Appellant called 911 as shown by his phone records.

There was evidence based on Appellant's statement to police and a search of Appellant's apartment, that he was in possession of a quantity of marijuana and sold marijuana. As required by State v. Glenn, a "proximate cause analysis must be applied to the unlawful activity element of

subsection (C)." 429 S.C. at 120, 838 S.E.2d at 497. The evidence presented during the pretrial hearing showed Appellant's possession or prior distributions of marijuana had nothing to do with the killings. Accordingly, although Appellant could be said to be acting unlawfully because of his possession of marijuana, there was no evidence to suggest that unlawfulness had played any part in the shooting of Griffin and Dash or why Griffin and Dash were fighting that day. Consequently, as in Glenn, the possession or prior sale of marijuana was not the proximate cause of the killings and does not preclude Appellant from otherwise establishing immunity pursuant to the Act.

Appellant has proven by a preponderance of the evidence that he entitled to immunity from prosecution for the killing of Eric Griffin pursuant to the common law principals of defense of habitation and self-defense as well as both § 16-11-440(A) and § 16-11-440(C) of the Act. Respectfully, this Court should hold the trial court abused its discretion by denying Appellant immunity from prosecution and dismiss Appellant's charges.

2.

The trial court erred by failing to correctly instruct the jury on the defense of habitation as requested by Appellant when there was evidence to support the charge, particularly where the instruction given incorrectly told the jury the defense only applied if Appellant or a member of his household was attacked in Appellant's home and the life or safety of Appellant or a member of his household was jeopardized, which is an incorrect statement of law.

Relevant Facts

During the charge conference, Appellant requested the following charge on the defense of habitation:

> The defense of habitation is the defense of one's dwelling house. Our common law has long recognized the defense of habitation as analogous, yet distinct to self-defense, and that for the defense of habitation to apply, a defendant need only establish that a trespass has occurred and that his chosen means of ejectment were reasonable under the circumstances. Stated differently, unlike the defense of self-defense, the defense of habitation does not require that a defendant reasonably believe that he (or his property) was in imminent danger [of] sustaining serious

> injury or damage. Instead, the defense of habitation provides that where one attempts to force himself into another's dwelling, the law permits an owner to use reasonable force to expel the trespasser. For defense of habitation to apply it is also not necessary to show that the trespasser entered by force: A man who attempts to force himself into another's dwelling, or who, ***being in the dwelling by invitation or license refuses to leave when the owner makes that demand, is a trespasser, and the law permits the owner to use as much force, even to the taking of his life, as may be reasonably necessary to prevent the obtrusion or to accomplish the expulsion.*** State v. Bradley, 126 S.C. 528 (1923).

R. 1227-1228 (emphasis in original).

In support of the request, defense counsel argued the charge is "analogous yet distinct from self-defense" because it does not require an attack. Rather, it only requires an intrusion or a trespass. Counsel argued the charge dates back to State v. Bradley, 126 S.C. 528, 120 S.E. 240 (1923), the case cited in Appellant's written request to charge. The defense of habitation allows a man to take reasonable means to expel the intrusion or end the obstruction, including the use of deadly force. Counsel asserted the charge was warranted because there was evidence Appellant was "defending his habitation and reasonably believed that he was being home invaded." R. 1097, l. 14 – 1098, l. 2.

The assistant solicitor argued the charge was "inapplicable" because there was no evidence of any kind of trespass or forceful entry. He maintained that Eric Griffin was a frequent guest of the apartment and there testimony from witnesses that they heard Griffin knock on the apartment door. The solicitor also asserted that Antonio Dash was an occupant of the apartment. R. 1098, ll. 8-19.

Defense counsel countered that the defense of habitation does not necessarily require a trespass, any intrusion into the home is sufficient to support the charge. He argued that the charge is important because the defense does not require an attack. He stated, "When you're in your own home and you feel reasonably that there's an intrusion and attack on your home, you don't have to first show you were lunged at or someone pulled a gun on you. You have every right in your home to end that intrusion, including to the point of deadly force." Counsel concluded that habitation should be charged as a distinct defense from self-defense. R. 1098, l. 20 – 1100, l. 19.

Lastly, defense counsel asserted Appellant "viewed this as being an attack on his habitation, an intrusion to the safety of his home, which does not require for you to first show that you were attacked. That's the main difference between defense of habitation [and self-defense]. So, he [Appellant] was using his powers as a citizen of South Carolina to end that intrusion, eject the problem, which you're allowed to use with deadly force." R. 1102, l. 13 – 1103, l. 7.

The trial court initially ruled that the self-defense instruction, including the right to act on appearances, adequately covered what Appellant "testified to" and that the defense of habitation "is not a separate charge that he's entitled to." R. 1103, ll. 8-13. Defense counsel respectfully disagreed. R. 1103, l. 14.

The following morning, after the parties had reviewed the instructions the trial court intended to charge the jury, defense counsel objected to the absence of an instruction on the defense of habitation. In support of his objection, counsel cited State v. Bryant, 391 S.C. 225, 705 S.E.2d 465 (Ct. App. 2010), which held it was "reversible error to not give the defense of habitation charge as well as a self-defense charge." He also cited to State v. Rye, 375 S.C. 119, 651 S.E.2d 321 (2007), where an incorrect defense of habitation instruction was given. R. 1107, l. 17 – 1109, l. 4.

After the trial court read the opinion in Bryant, the assistant solicitor continued to argue the instruction was "inapplicable" to Appellant's case because there was no evidence of trespass or any effort to eject a trespasser. R. 1113, ll. 17-24. He contended that "any concern as far as using deadly force to meet a threat is covered in the self-defense instructions." R. 1115, ll. 2-13.

Defense counsel again asserted that the "benefit" of the defense of habitation "as distinguished from self-defense" is the defendant does not have to show he or she was under attack. The defense "encompasses the idea that deadly force can be used to end the trespass upon someone's property, as our client [Appellant] reasonably believed he was being home invaded." R. 1114, ll. 1-17. Counsel continued, "He [Appellant] believed that he had a right to end the intrusion and eject whoever was in there. He was mistaken about both [of the decedents]. So, under the law

of defense of habitation, as along as he's acting reasonably, it should be a question for the jury." R. 1116, ll. 2-9.

After "weighing everything," the trial court agreed to charge defense of habitation. He reasoned, "All these cases all say that the charge should be based, uniquely based on [the] circumstances of every case[.] [I]f the jury, they [the jurors] could possibly believe the defense's theory. So, I'm going to charge it." When defense counsel asked for clarification, the court stated it was "charging the standard habitation charge" and the parties could "argue it back and forth to the jury." R. 1116, ll. 10-23.

The trial court instructed the jury on defense of habitation as follows:

> **If the defendant or a member of the defendant's household is *attacked* in the defendant's own home**, the defense may use the force which appears to be needed **to protect himself or his household from death or serious bodily injury.** If a trespasser refuses to leave the home when asked to leave, the defendant may use the necessary force to eject the trespasser. **If in the effort to eject the trespasser, the life or safety of the defendant or member of the defendant's household is jeopardized, the defendant may take the life of the trespasser.** The kind and degree of force which are justified depend on the conduct of the trespasser. If a person entered the dwelling at the invitation of a member of the household, the person becomes a trespasser if the person refuses to leave when asked.
>
> If while legitimately exercising in good faith the right to eject a trespasser, **the defendant is assaulted by the trespasser and fears death or serious bodily harm, the defendant . . . would be without fault in bringing on the difficulty.** Whether the defendant was acting in good faith in attempting to eject the victim or victims and was assaulted in the process is a question for you to determine.

R. 1204, l. 16 – 1205, l. 14 (emphasis added).

After the court instructed the jury, it asked if there were any exceptions to the charge. Appellant objected to the defense of habitation instruction given. Defense counsel argued the court omitted a critical part of the instruction. He asserted, "Unlike the defense of self-defense, **the defense of habitation does not require that a defendant reasonably believe that he or his property was in imminent danger of sustaining serious injury or damage**. Rather, the defense of habitation provides [that] when one attempts to force himself into a dwelling, the law permits an

owner to use reasonable force to expel the trespasser. I did hear the language about invitees being transformed into trespasser and what it means, but **I did not hear that critical distinction about not requiring an attack or imminent threat**." R. 1212, l. 13 – 1213, l. 7 (emphasis added).

The trial court stated it was satisfied the instruction on the defense of habitation was the proper instruction and refused to further instruct the jury. R. 1213, ll. 8-10.

Standard of Review

"A trial court's decision regarding jury charges will not be reversed where the charges, as a whole, properly charged the law to be applied." State v. Rye, 375 S.C. 119, 123, 651 S.E.2d 321, 323 (2007) (citing State v. Burkhart, 350 S.C. 252, 263, 565 S.E.2d 298, 304 (2002)). "Conversely, where a defendant requests a charge on a defense that is supported by the evidence presented at trial, the trial court is required to charge the jury on that defense, and the failure to do so is reversible error." Id. (citing State v. Day, 341 S.C. 410, 416-17, 535 S.E.2d 431, 434 (2000)).

Discussion

The trial court erred by incorrectly instructing the jury on the defense of habitation where the instruction was warranted by the evidence presented. The instruction the trial court gave failed to inform the jury that the defense of habitation does not require that a defendant reasonably believe he or his property was in imminent danger of sustaining serious injury or damage. Rather, the instruction given incorrectly told the jury that Appellant had to show he or a member of his household was attacked in Appellant's home and that the "life and safety" of Appellant or a member of his household was "jeopardized."

"For the defense of habitation to apply, a defendant need only establish that a trespass has occurred and that his chosen means of ejectment were reasonable under the circumstances." State v. Rye, 375 S.C. 119, 124, 651 S.E.2d 321, 323 (2007) (citing Bradley, 126 S.C. 528, 533, 120 S.E. 240, 242 (1923)); See State v. Bryant, 391 S.C. 225, 233, 705 S.E.2d 465, 470 (Ct. App. 2010). "Stated differently, unlike the defense of self-defense, the defense of habitation does not require that

a defendant reasonably believe that he (or his property) was in imminent danger sustaining serious injury or damage." Id. "Instead, the defense of habitation provides that where one attempts to force himself into another's dwelling, the law permits an owner to use reasonable force to expel the trespasser." Id. Although South Carolina precedent properly recognizes that self-defense and habitation are analogous, the defenses are not identical. Id. (citing State v. Sullivan, 345 S.C. 169, 173, 547 S.E.2d 183, 185 (2001)). "It is insufficient to charge only self-defense when a charge on defense of habitation is warranted." Bryant, 391 S.C. at 236, 705 S.E.2d at 471.

"When one becomes a trespasser, the law permits the owner of the home to employ such force, even to the taking of the life of the trespasser, as may be reasonably necessary to accomplish the expulsion." Bryant, 391 S.C. at 234, 705 S.E.2d at 470 (citing State v. Sparks, 179 S.C. 135, 137, 183 S.E. 719, 720 (1936)). "A man who attempts to force himself into another's dwelling, or who, being in the dwelling by invitation or license refuses to leave when the owner makes that demand, is a trespasser, and the law permits the owner to use as much force, even to the taking of his life, as may be reasonably necessary to prevent the obtrusion or to accomplish the expulsion.) Id. (citing State v. Bradley, 126 S.C. 528, 533, 120 S.E. 240, 242 (1923)).

There was ample evidence presented during Appellant's trial to support both a self-defense and a defense of habitation instruction. There was extensive testimony describing the condition of the apartment, which objectively showed the decedents were engaged in a violent physical altercation immediately prior to the shooting. For example, there was evidence of damaged walls and an overturned table and television. Additionally, Dash suffered blunt force trauma to the right side of his head and his left eyebrow and one of Griffin's earrings had been violently ripped out of his ear lobe. Samuel Thomas and Appellant both testified that it was the regular schedule and routine for Thomas and Dash to be gone from the apartment and at work during the time of the shooting. Appellant testified extensively that given his reasonable belief that he was the sole occupant of the apartment that morning, coupled with the violent noises he heard coming from his

living room, that he believed there were unwanted intruders in his apartment. The trial court correctly agreed there was evidence to support a defense of habitation instruction and the jury "could possibly believe the defense's theory." See R. 1116, ll. 10-14.

Despite correctly deciding to instruct the jury on defense of habitation because there was evidence to support the charge, the instruction the trial court ultimately gave was inadequate and incorrect. The charge incorrectly implied that habitation requires a defendant to establish that his person or property was in some danger of injury or harm. It also incorrectly informed the jury that in order for the defense to apply, the defendant or a member of his household had to be attacked or assaulted. Such error requires this Court to reverse Appellant's convictions.

In State v. Rye, our Supreme Court reversed the appellant's murder conviction holding the trial court incorrectly instructed the jury on the defense of habitation since the instruction given erroneously implied the defense of habitation required the defendant to establish that his person or property was in some danger of injury or harm. 375 S.C. at 121, 651 S.E.2d at 322. Rye owned a piece of property on which he stored tools and equipment he used for his business. Id. Although the property was not Rye's primary residence, he occasionally slept in a house located on the property and visited the property at least once a day to feed several pet cats he kept there. Id. For several months, Rye experienced a continuous problem with trespassers who not only damaged the premises and stole Rye's equipment, they also "made a sport of shooting (and killing) [his] pet cats." Id.

On the day of the shooting, Rye went onto his property, saw a dead cat by the front steps of his house, and observed footprints around the house. Id. at 122, 651 S.E.2d at 322. Rye called the police, reported the trespassing, and went back to his driveway to await the police's arrival. Id. While waiting, Rye said he heard a gunshot on his property, grabbed his rifle, and ran toward his house. Id. As Rye approached the house, he heard additional gunshots, and then saw the decedent "charging at him in a slouching position with his rifle." Id. The men immediately exchanged

gunfire and Rye shot and killed the trespasser. Id. Rye's neighbor, on the other hand, who was with the decedent that day, claimed that upon being confronted by Rye, the decedent held his gun by the handle and, as he knelt to put the gun down, Rye shot him multiple times. Id.

Rye argued on appeal that the trial court erred by incorrectly instructing the jury on the defense of habitation. Id. at 123, 651 S.E.2d at 323. Our Supreme Court agreed. The Court noted, "While charging the jury on the law of habitation, the trial court properly stated that the law recognizes the right of every person to defend his or her premises, but differentiated habitation from self-defense with the sole caveat that a 'person defending his or her home or premises . . . has no duty to retreat.'" Id. The Court emphasized that the trial court failed to instruct the jury on exactly what "defending one's home or premises meant." Id. Defending one's home or premises "means ending an unwarranted intrusion through the use of reasonably necessary means of ejection." Id. The Supreme Court also held that by instructing the jury that the same elements required by law to establish self-defense apply to the defense of habitation, with the exception of the duty to retreat, the charge "incorrectly implied that habitation requires a defendant to establish that his person or property was in some danger of injury or harm." Id. at 123-24, 651 S.E.2d at 323. Consequently, the Court reversed Rye's conviction. Id. at 125, 651 S.E.2d at 324.

While the defense of habitation instruction given in Rye incorrectly implied that habitation requires a defendant to establish that his person or property was in some danger of injury or harm, the more egregious instruction given in Appellant's case directly stated the defense requires the defendant to show he or a member of his household was attacked in the defendant's home. It further stated that if "the life or safety of the defendant or a member of the defendant's household is jeopardized, the defendant may take the life of the trespasser." This was blatantly incorrect, as we know from Rye, which cited by counsel at trial, that "unlike the defense of self-defense, the defense of habitation does not require that a defendant reasonably believe that he (or his property) was in imminent danger sustaining serious injury or damage." Rye, 375 S.C. at 124, 651 S.E.2d at 323.

In State v. Bryant, this Court held Bryant was entitled to a defense of habitation charge in addition to a self-defense charge where the evidence showed Bryant was confined to a wheelchair, he argued with and was assaulted by the decedent before entering his (Bryant's) hotel room, that he tried to prevent the decedent from entering his room, that the decedent managed to enter his room after Bryant entered but before Bryant was able to close the door, and that Bryant shot the decedent in the hotel room as the decedent advanced toward him. 391 S.C. at 234-235, 705 S.E.2d at 470. This Court concluded the trial court's instruction on self-defense "was clearly insufficient to cover the law on the defense of habitation." Id. at 236, 705 S.E.2d at 471. The Court further determined the error in failing to charge defense of habitation could not be harmless as the trial court "effectively deprived Bryant of an entire defense." Id. at 237, 705 S.E.2d at 471-72.

Likewise, here, even though the trial court correctly instructed the jury on self-defense, the jury instructions as a whole were insufficient where an instruction of the defense of habitation was also warranted. The court's incorrect charge on habitation deprived Appellant of an entire defense. See Id. It was important for the jury to understand both the concept of self-defense and the defense of habitation. Respectfully, this Court should hold the trial court erred by failing to correctly instruct the jury on the defense of habitation and Appellant should be granted a new trial.

3.

The trial court abused its discretion by admitting evidence of Appellant's marijuana possession and prior marijuana distribution as well as evidence of Appellant's possession of unrelated firearms and ammunition since the evidence was not relevant pursuant to Rule 402, SCRE, any probative value of the evidence was substantially outweighed by the danger of unfair prejudice pursuant to Rule 403, SCRE, and the evidence was improper bad character evidence merely used to establish propensity in violation of Rule 404(b), SCRE.

Relevant Facts

Appellant filed a written motion pretrial to exclude any evidence of marijuana possession or distribution and photographs of guns and Appellant holding a gun recovered from Appellant's phone extraction. R. 1229-1234. Appellant argued such evidence was inadmissible pursuant to Rule 402, SCRE, because the evidence was not relevant; Rule 403, SCRE, because any probative value of the evidence was substantially outweighed by the danger of unfair prejudice; and Rule 404(b), because the evidence constituted improper character evidence. R. 1229-1234.

At the beginning of Appellant's trial, defense counsel explained the grounds for the motion and the evidence that supported the motion. However, the trial court refused to rule on the motion pretrial. R. 486, l. 12 – 493, l. 5.

Ryan McIntyre, an investigator with the Columbia Police Department, spoke to Appellant briefly at the Willow Run Apartments, within a couple of hours of the shooting. The state called McIntyre as a witness to testify about the statements Appellant made to McIntyre in the management office at the apartment complex. Appellant objected to any testimony from McIntyre about Appellant's admission that he sold marijuana from his apartment and that he suspected the commotion he heard that morning was caused by intruders attempting to steal marijuana. Appellant's objection was again based on Rules 402, 403, and 404, SCRE, and State v. Lyle, 125 S.C. 406, 118 S.E. 803 (1923).

Defense counsel argued the evidence was not relevant or probative because there was no evidence Appellant was participating in a drug deal immediately before or at the time of the shooting. Additionally, there was no evidence that Eric Griffin arrived at the apartment to purchase marijuana. Consequently, counsel contended the evidence would only serve as improper character evidence that the state would use to assert Appellant acted as a bad person because he sold drugs. She asserted, "So, it's not like a drug deal gone bad. This is just going to be improper character evidence." R. 637, l. 11 – 639, l. 25.

The assistant solicitor maintained the evidence was relevant and probative because it was part of Appellant's explanation for why he acted the way he did. R. 640, l. 2 – 641, l. 12.

The trial court found the evidence was relevant and "not inadmissible." R. 642, ll. 12-14.

Over objection, McIntyre told the jury that Appellant admitted he sold marijuana and that he thought someone was breaking into his apartment to "steal his weed." R. 643, ll. 11-20.

The state subsequently called Investigator George Potash to testify about the execution of a search warrant at Appellant's apartment the day of the shooting. Appellant objected to any evidence, specifically Potash's testimony and State's Exhibit Nos. 20, 25, 27, and 28, which were photographs taken during the search, indicating that marijuana, drug paraphernalia, firearms, or ammunition were found in the apartment. The state proffered Potash's testimony in response to Appellant's objection. Potash testified *in camera* that in the first bedroom, he found "green plant residue from atop of a footlocker, a sleeve of small plastic bags, and then an identification card. Moved to the second bedroom and we located a plastic container containing a quantity of green plant material from the top drawer of a dresser in the second bedroom." Also in the second bedroom, Potash testified officers found "a black rifle scope" and Appellant's driver's license. In the walk-in closet, Potash testified they found "nine small clear plastic bags containing green plant material, unused small clear plastic bags, and ammunition to include one round of .40 caliber Smith & Wesson, one .380 auto round, a small silver colored grinder, more unused plastic bags, and . . . six rounds of .380 auto in a bag, eleven rounds of Speer .40 S&W in a foil cigar pack." In the kitchen, Potash testified they located "a copy of a firearms purchase receipt for a Smith & Wesson SD40 VE pistol, a digital scale, and a partial box of CCI .22 long rifle ammunition." Lastly, Potash testified that in the dining room, there was a .22 rifle leaning in the corner. R. 713, l. 8 – 715, l. 12.

Defense counsel explained that only .9 millimeter shell casings were collected from the apartment and the recovered gun used in the shooting was a .9 millimeter. He argued that "unrelated evidence of firearm ownership" and ammunition was not relevant under Rule 402,

SCRE, and should be properly excluded. He further argued that Appellant was not charged with drug possession and any evidence of drug possession is not relevant. Lastly, defense counsel asserted the evidence should be excluded pursuant to Rule 403, SCRE, and Rule 404(b), SCRE, because the state is only seeking to admit the evidence "to say that this is a gun-toting thug who has guns, likes guns, shoots people. It has nothing to do with this case." Counsel also cited to Appellant's written motion on the matter. R. 715, l. 13 – 716, l. 23.

The assistant solicitor argued the evidence was relevant simply because "this is what's in this man's apartment." The solicitor contended that anything a crime scene investigator collects pursuant to a search warrant is relevant. R. 718, l. 1 – 719, l. 2.

Defense counsel reiterated that the evidence is "simply to show" that Appellant is "a guy who has a lot of guns because he's bad and violent." R. 720, ll. 1-6.

The trial court overruled the objection. It reasoned, "The state has to prove motive. The state has to prove malice. The state has to prove criminal intent. I find that all of this is more probative than prejudicial, given the nature of the scene, the nature of the killings, and what was in the mind of the defendant at the time he killed these people. So I'm allowing it all in." R. 720, ll. 13-19.

Appellant contemporaneously objected to State's Exhibit Nos. 20, 25, 27, and 28, photographs of the challenged evidence found during the execution of the search warrant, when the state sought to admit them before the jury. Potash explained to the jury what law enforcement found in the apartment, including marijuana, ammunition, and the unrelated firearm. R. 721, l. 4 – 723, l. 6.

Later, during the testimony of Christopher Watkins, the digital forensic examiner who extracted Appellant's phone, the assistant solicitor sought to admit evidence that Appellant had photographs of unrelated firearms, as well as photographs of Appellant holding firearms, on his

phone. Defense counsel objected to this evidence arguing it was not relevant "to anything that happened in this case." R. 877, l. 4 – 879, l. 11.

The solicitor indicated that there were a series of photographs of Appellant "posed with a number of different guns. Any one of them could have been the gun that he's worried about that people took from his apartment." The solicitor stated that he would not seek to admit the actual photographs, but he would question Watkins about what the photographs showed. The solicitor asserted that he would seek to admit a series of text messages from Appellant's phone in which Appellant discussed the firearm Antonio Dash suspecting Eric Griffin of stealing. R. 879, l. 13 – 881, l. 20.

Defense counsel argued none of the evidence was admissible because it was not relevant pursuant to Rule 402, SCRE, and "it just makes him [Appellant] look like a bad guy" in violation of Rule 403, SCRE, and Rule 404, SCRE. R. 880, ll. 12-15.

The trial court ruled the evidence was admissible simply stating, "I overrule the objection." R. 881, l. 20.

Defense counsel contemporaneously objected when the state sought to admit State's Exhibit No. 83, which showed Appellant's text messages concerning the stolen gun. R. 881, l. 24 – 882, l. 10. The state had Watkins read the content of the text messages to the jury. R. 882, l. 11 – 883, l. 21. The solicitor also elicited testimony from Watkins that there were photographs on Appellant's phone showing "a number of different types of guns" and photographs showing Appellant "posing with several different types of guns." R. 884, l. 5 – 885, l. 22.

Standard of Review

"In criminal cases, the appellate court sits to review errors of law only." State v. Collins, 409 S.C. 524, 529-530, 763 S.E.2d 22, 25 (2014) (quoting State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006)) (internal quotation marks omitted). "This Court is bound by the trial court's factual findings unless they are clearly erroneous." Id. at 530, 763 S.E.2d at 25 (quoting

Baccus, 367 S.C. at 48, 625 S.E.2d at 220) (internal quotation marks omitted). "The admission or exclusion of evidence is a matter addressed to the sound discretion of the trial court and its ruling will not be disturbed in the absence of a manifest abuse of discretion accompanied by probable prejudice." Id. (quoting State v. Wise, 359 S.C. 14, 21, 596 S.E.2d 475, 478 (2004)) (internal quotation marks omitted). "An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law." Id. (quoting Wise, 359 S.C. at 21, 596 S.E.2d at 478) (internal quotation marks omitted).

Discussion

The trial court abused its discretion by admitting evidence of Appellant's marijuana possession and prior distribution as well as evidence of Appellant's possession of unrelated firearms and ammunition since the evidence was not relevant pursuant to Rule 402, SCRE, any probative value of the evidence was substantially outweighed by the danger of unfair prejudice pursuant to Rule 403, SCRE, and the evidence constituted improper bad character evidence merely used to establish propensity in violation of Rule 404(b), SCRE.

"Evidence is relevant if it has a direct bearing upon and tends to establish or make more or less probable the matter in controversy." State v. Cartwright, 425 S.C. 81, 90, 819 S.E.2d 756, 760 (2018) (quoting Rule 401, SCRE) (internal quotation marks omitted); See State v. Alexander, 303 S.C. 377, 401 S.E.2d 146 (1991). "All relevant evidence is admissible, except as otherwise provided . . ." Id. (quoting Rule 402, SCRE) (internal quotation marks omitted); See State v. Langley, 334 S.C. 643, 515 S.E.2d 98 (1999). "Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice." Id. at 90, 819 S.E.2d at 761 (quoting Rule 403, SCRE) (internal quotation marks omitted). "The determination of the prejudicial effect of the evidence must be based on the entire record and the result will generally turn on the facts of each case." Id. (quoting State v. Gillian, 373 S.C. 601, 609, 646 S.E.2d 872, 876 (2007)) (internal quotation marks omitted). "Evidence is unfairly prejudicial if it has an undue

tendency to suggest a decision on an improper basis, such as an emotional one." Id. at 91, 819 S.E.2d at 761 (quoting State v. Wilson, 345 S.C. 1, 7, 545 S.E.2d 827, 830 (2001)) (internal quotation marks omitted).

"Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity. It may, however, be admissible to show motive, identity, the existence of a common scheme or plan, the absence of mistake or accident, or intent." SCRE Rule 404(b); State v. Lyle, 125 S.C. 406, 118 S.E. 803 (1923). To be admissible, the record must support a logical relevance between the prior bad act and the crime for which the defendant is accused. State v. Brooks, 341 S.C. 57, 61, 533 S.E.2d 325, 327 (2000). "Further, even though the evidence falls within a Lyle exception, it must be excluded if its probative value is substantially outweighed by the danger of unfair prejudice to the defendant." SCRE Rule 403; See State v. Garner, 304 S.C. 220, 221-222, 403 S.E.2d 631, 632 (1991).

Evidence of Appellant's prior marijuana distribution and his possession of marijuana was not relevant because there was no evidence, direct or circumstantial, that Appellant was attempting to sell marijuana on the morning of the shooting. The evidence had no "direct bearing upon" nor tended "to establish or make more or less probable" any "matter in controversy" given that all the circumstantial evidence presented supported Appellant's consistent account to both law enforcement and other witnesses as well as his testimony before the jury that he was asleep in his bedroom prior to hearing the commotion in the living room. For the same reasons, the evidence had no probative value. However, evidence of Appellant's prior marijuana distribution and his possession of marijuana was unfairly prejudicial because it had an undue tendency to suggest a decision on an improper basis, namely an emotional one. Specifically, this unfairly prejudicial evidence likely incited strong emotions in the jury surrounding illegal drug use, possession, and dealing, and prejudiced the jury against Appellant.

Similarly, the evidence that Appellant previously sold marijuana and possessed marijuana had no relevance or logical connection to Appellant's motive, intent, or absence of mistake, the only potentially relevant exceptions found in Rule 404(b). The state only admitted such evidence to suggest that because Appellant was previously engaged in criminal activity, he was engaged in criminal activity on the morning of the shooting and acted with malice.

In State v. Coleman, 301 S.C. 57, 60, 389 S.E.2d 659, 660 (1990), our Supreme Court held prejudice to Coleman from the admission of evidence that he was a social user of cocaine outweighed any probative value to show Coleman's motive or state of mind at the time of the murder. Despite evidence Coleman was "wired" on the morning of the murder, the Court concluded there was no evidence Coleman's condition was the result of cocaine use nor was there any evidence in the record to support the inference that the victim and Coleman were involved in a drug transaction. Instead, the Court held the only function of this evidence was to demonstrate Coleman's bad character and thus it granted him a new trial.

In State v. Bolden, 303 S.C. 41, 398 S.E.2d 494 (1990), our Supreme Court held evidence of Bolden's alleged crack cocaine use in a hotel shortly before the hotel was robbed was prejudicial error when its only function was to demonstrate Bolden's bad character. The Court stated, "[T]here is nothing in the record to indicate a logical relevance between use of crack cocaine during the night before the robbery and the robbery which occurred at 6:10 am the following day." 303 S.C. at 43, 398 S.E.2d at 494-95. The Court further held that even if the testimony was relevant, its probative value was clearly outweighed by its unfair prejudice and thus remanded Bolden's case for a new trial. 303 S.C. at 43-44, 398 S.E.2d at 495.

In State v. Smith, 309 S.C. 442, 424 S.E.2d 496 (1992), our Supreme Court held evidence of Smith's prior drug use, unrelated to the murder and armed robbery, should have been excluded. Despite considerable evidence of cocaine use during the actual murder and armed robbery, the Court held Smith's *prior* cocaine use was highly prejudicial and "so destructive to [Smith's]

character, hence her credibility, that it cannot be held harmless error or cumulative." The Court reversed Smith's convictions and death sentence and remanded the case for a new trial. 309 S.C. at 446-47, 424 S.E.2d at 498-99.

The facts of Appellant's case are similar to the facts of the above cited cases. Evidence of Appellant's possession of marijuana and *prior* marijuana distribution was highly prejudicial, failed to establish any logical motive or intent based on the evidence presented, and was extremely destructive to his character and credibility. Moreover, it was not necessary for "a full presentation of the case." The trial court abused its discretion in admitting this evidence.

Furthermore, the unrelated ammunition and rifle found in Appellant's apartment during the execution of the search warrant as well as the photographs of Appellant holding firearms and other various unrelated firearms found on Appellant's phone were not relevant or probative, were unfairly prejudicial, and constituted bad character evidence. The evidence was not relevant or probative because Appellant admitted to possessing a gun at the time of the shooting and this gun was recovered by law enforcement and found to have fired the shell casings discovered at the scene. The evidence of other firearms and ammunition had absolutely no connection to the case. However, this evidence likely caused the jury to emotionally dislike Appellant and convict him on an improper basis. The imagery of Appellant being around a large number of guns likely incited an emotional reaction by the jury where Appellant was accused of unlawfully killing Griffin and Dash with a gun. Additionally, being devoid of any real probative value or relevance, the evidence was merely used by the state to show Appellant is a bad person and had the propensity to murder Griffin and Dash. The evidence was not relevant to any of the exceptions found in Rule 404(b) and no logical connection was shown nor can be shown by the state. Consequently, the trial court abused its discretion by admitting this evidence.

4.

The trial court abused its discretion by admitting lyrics from a song Appellant rapped and posted on YouTube when the state failed to disclose the evidence to the defense in violation of Rule 5, SCRCrimP, and where the rap lyrics should have been excluded because the evidence was not relevant pursuant to Rule 402, SCRE, any probative value of the evidence was outweighed by the danger of unfair prejudice pursuant to Rule 403, SCRE, and the evidence constituted bad character evidence in violation of Rule 404(b), SCRE.

Relevant Facts

During the pretrial immunity hearing, the assistant solicitor questioned Christopher Watkins, the digital forensic analyst who extracted Appellant's phone and analyzed the data, about a "rap video" that was uploaded to Instagram on Appellant's phone and discovered as part of the extraction. Defense counsel objected to the admission of the rap video, which was marked as State's Exhibit No. 17, pursuant to Rule 402, SCRE, Rule 403, SCRE, and Rule 404, SCRE. She argued the video was not relevant and that the state only sought to admit the video to make Appellant "look like a bad guy." R. 259, l. 15 – 261, l. 21.

The assistant solicitor argued the video was relevant because "it clearly goes to his [Appellant's] state of mind, clearly shows motive, and it clearly shows intent." He asserted that Appellant's defense was self-defense and "mistake of fact." However, the video "shows what he [Appellant] has warned others he would do if anybody stole from him" and there are allegations of a stolen gun. R. 261, l. 24 – 262, l. 15.

Defense counsel emphasized that there was no evidence as to when the rap video was made. She also argued the video had nothing to do with Appellant's state of mind: "That's like saying when an author writes a book about murder, then they have murder on their mind. That's completely absurd. He wrote a song and he rapped about it. It doesn't have anything to do with

what happened in his apartment that day. Just because someone creates art does not mean that's always their state of mind or it's somehow always in their mind." R. 262, l. 16 – 263, l. 2.

The trial court recognized that "things are said in rap music that is not necessarily true. A lot of times, it's a whole lot of bluffing." The court expressed concern with the lack of foundation given it had not heard any evidence as to when the video was made or posted on social media. R. 263, ll. 3-23.

Watkins testified that the meta data showed the video originated from Instagram on January 18, 2019, which means it was not recorded by Appellant's phone. Rather it was recorded by another device and then downloaded onto Appellant's phone on the specified date. R. 266, l. 17 – 269, l. 4.

The trial court sustained Appellant's objection. The court found the state did not properly authenticate the video as there was no evidence as to when the video was created. All that was presented was that the video originated from Instagram on January 18, 2019. The court further found the video was not relevant since it was downloaded nearly twenty days before the shooting in this case and the allegations concerning the stolen gun arose only a day or two prior to the shooting. Consequently, the lyrics were not relevant to Appellant's state of mind. For the same reasons, the court found the video was not admissible pursuant to Rule 404 as it did not establish motive or intent. R. 270, ll. 3-22.

Anticipating that the state may seek to admit the rap music video downloaded from Instagram on January 18, 2019 during Appellant's jury trial, Appellant filed a motion pretrial to exclude the rap lyrics. R. 1235-1242. Appellant argued the state cannot properly authenticate the video, the video is not relevant, any probative value of the video is outweighed by the danger of unfair prejudice, and the video would be improper character evidence. R. 1235-1242.

At the beginning of Appellant's trial, defense counsel raised the motion before the trial court. Counsel argued the rap video downloaded from Instagram on January 18, 2019 should be

excluded, as it was during the pretrial immunity hearing, because the state cannot authenticate it. She also argued the rap video was not relevant because it was downloaded before Appellant was ever "perceived to be a victim of any kind of theft." Lastly, counsel again asserted any probative value of the video is outweighed by its prejudicial effect and it is inadmissible "bad character evidence." R. 494, l. 1 – 496, l. 10.

The assistant solicitor maintained the lyrics "would be fodder for cross-examination should he [Appellant] take the stand." He claimed, "Some of these lyrics are going to his [Appellant's] state of mind. At least one of his rap songs specifically references him killing his two - - the victims in this case." R. 496, ll. 12-22.

The trial court indicated it would address the objection later in the trial. R. 496, ll. 23-24.

At the beginning of the state's cross-examination of Appellant, the assistant solicitor asked Appellant who is "Big Hood Lyfe?" Appellant stated it was his "rap name." The solicitor then asked Appellant whether he had made a rap song about killing the decedents. After Appellant answered no, defense counsel objected pursuant to Rule 5, SCRCrimP, Rules 402, 403, and 404, SCRE, and the First Amendment.

The solicitor told the court that the state had twenty-two rap videos Appellant posted on YouTube between December 16, 2018 and August 31, 2022. Despite initially stating the videos were discovered on Appellant's phone, the solicitor later clarified that only one song was obtained from the extraction of Appellant's phone. The others the state found on YouTube. The solicitor stated "as early as last week, we typed in Big Hood Lyfe in Google" and discovered Appellant's rap videos.

The solicitor further argued the rap lyrics were relevant. He explained that in one song Appellant said, "T.O. was like my brother. When the time comes, everybody freeze but I'm cold with that cut." The solicitor contended that this song seemed to be "celebrating the killing of these people" since T.O. is what Appellant called Antonio Dash. In a song from December 21, 2018,

almost eight weeks before the shooting, Appellant rapped, "I heard you trying to jack. I heard you trying to rob me. I'm scared to take a loss. I'm a business thread your cross." Then in a song posted on January 20, 2019, the solicitor said Appellant rapped, "I'll kill you. I'll kill you if you steal from me." The solicitor claimed Appellant "has telegraphed what [he] was thinking." He claimed the following lyrics were evidence of malice, a critical element of murder, "My heart is as black as a kettle. No, I'm not a grave digger. Grave filler, that's my name." R. 944, l. 24 – 947, l. 3.

Defense counsel asserted that only one rap video came from Appellant's phone extraction. She argued that if the state intended to use any other rap videos or lyrics as impeachment, the state was required to provide the evidence to Appellant pursuant to Rule 5, SCRCrimP. In support of her argument, counsel cited to State v. Lawton, 382 S.C. 122, 675 S.E.2d 454 (Ct. App. 2009), which held that "everything that is material to the defense has to be turned over even if it's just for impeachment." Counsel clarified that she was not claiming a Rule 5 violation" as to the video discovered on Appellant's phone. However, any additional rap videos the state "found somewhere on the internet that they intend to impeach him [Appellant] with" should have been provided to the defense pursuant to Rule 5. R. 947, l. 5 – 950, l. 2. She contended that the lyrics were "material to the defense" because the evidence "goes to whether Mr. Barnes [Appellant] will take the stand and testify. . . . This isn't trial by ambush." R. 956, ll. 5-10.

Defense counsel argued that rap musicians are artists and their music is art. Rap artists and other types of artists are not always autobiographical. Rap artists often rap about robbing and killing people. However, such lyrics are not representative of their mental state. She asserted, "When someone makes music, there is no . . . way to determine whether . . . it's something they're pulling out of the air, completely made up, something they'd never do." Counsel maintained that in this case, the lyrics from Appellant's songs are not relevant pursuant to Rule 402, SCRE. She also cited to State v. Cheeseboro, 346 S.C. 526, 552 S.E.2d 300 (2001) where our Supreme Court held

the admission of Cheeseboro's rap lyrics was error because any probative value of the lyrics was outweighed by the danger of unfair prejudice. R. 950, l. 4 – 953, l. 17. Counsel contended that the lyrics in this case are likewise "overly prejudicial" and should be excluded pursuant to Rule 403, SCRE. Lastly, counsel argued the lyrics were inadmissible bad character evidence that the state only sought to admit to "make him [Appellant] look bad because he raps." R. 956, l. 15 – 958, l. 4.

The assistant solicitor maintained that he had "songs were he [Appellant] is singing about the murder." R. 954, ll. 5-9.

After summarizing Appellant's argument, the court ruled that the lyrics that were disclosed to the defense were admissible. It reasoned, "The defense saw fit to explore the defendant's mind and thinking before, during, and after, including his . . . nightmares. . . . So I believe that particular lyrics/song involving the - - one of the victims in the case is relevant for impeachment purposes, and I'll allow that one at this stage of this case." R. 960, l. 19 – 962, l. 3.

After the court ruled, defense counsel asked to clarify what the lyrics were since the evidence still had not been turned over to the defense. The solicitor disagreed stating the lyrics were discussed during the pretrial immunity hearing. However, defense counsel stated that she understood the court's ruling to be that the state could impeach Appellant with the lyrics that referenced "T.O." The assistant solicitor finally provided defense counsel with a copy of these lyrics. Counsel again clarified that the parties did not discuss those lyrics at the immunity hearing, the lyrics did not come from the rap video on Appellant's phone, and the state failed to turn over the evidence to Appellant. R. 962, ll. 6-23.

The solicitor offered to tell the court the specific lyrics he sought to admit that referenced "T.O." The title of the song is *Let Me Explain* and the lyrics, according to the solicitor, were:

> Nobody know what happened. But everybody got something to say. But if the shoe was on the other foot, would you feel the same way? An N word talking about robbing me. An N word run into my house and try to harm me. You know I fuck with both of y'all. But T.O. is like a brother to me. Everybody say what they going to do but they freeze. I'm cold with that cutter. Watch him fall. It don't matter if it's T.O. I'm going to stand on business forever and always. That gangster shit be making me shoot these N words. I swear to God I'll beat the trial. I'm a soldier. I don't mean no truces. It's me against the rest of y'all. I'm a barber with a cutter. Watch me burn like alcohol.

Defense counsel again argued that the state's failure to turn over the lyrics was a Rule 5 violation. The assistant solicitor asked, "which one of the Shealeys [defense counsel] asked me which rap song we were going to be talking about?" Luke Shealey answered, "That was me. I was trying to get you to disclose some evidence and you were generally pretty vague about it." The solicitor stated, "I told you it was on Google, right?" Luke Shealey responded, "You just said something about the Google machine. But you refused to answer my direct question - - on the matter." The trial court interpreted and simply stated, "The court has ruled." R. 962, l. 24 – 965, l. 2.

Once the jury returned to the courtroom, the solicitor questioned Appellant about the lyrics contained in his song, *Let Me Explain*. Appellant denied writing the song about killing Griffin and Dash. He also testified that the solicitor incorrectly recited the lyrics. The solicitor then went through the lyrics line by line with Appellant. Appellant corrected the solicitor wherever he inaccurately stated the lyrics. The solicitor repeatedly suggested the lyrics were written about the shooting in this case, which Appellant denied. Appellant testified that his brother wrote the song and then Appellant recorded himself rapping it. R. 965, l. 7 – 975, l. 5.

Standard of Review

"The admission or exclusion of evidence is an action within the sound discretion of the [trial] court and will not be disturbed on appeal absent an abuse of discretion." State v. Tapp, 398 S.C. 376, 385, 728 S.E.2d 468, 473 (2012) (citing State v. Williams, 386 S.C. 503, 509, 690 S.E.2d 62, 65 (2010)). "An abuse of discretion occurs when the conclusions of the [trial] court are either

controlled by an error of law or are based on unsupported factual conclusions." Id. (citing State v. Douglas, 369 S.C. 424, 429-30, 632 S.E.2d 845, 848 (2006)).

Discussion

The trial court abused its discretion by admitting lyrics from a song Appellant rapped and posted on YouTube when the state failed to disclose the evidence to the defense in violation of Rule 5, SCRCrimP, and where the rap lyrics should have been excluded because the evidence was not relevant pursuant to Rule 402, SCRE, any probative value of the evidence was outweighed by the danger of unfair prejudice pursuant to Rule 403, SCRE, and the evidence constituted bad character evidence in violation of Rule 404(b), SCRE.

Rule 5, SCRCrimP

Rule 5(a)(1)(A) provides:

> (A) Statement of Defendant. Upon request by a defendant, the prosecution shall permit the defendant to inspect and copy or photograph: any relevant written or recorded statements made by the defendant, or copies thereof, within the possession, custody or control of the prosecution, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the prosecution; the substance of any oral statement which the prosecution intends to offer in evidence at the trial made by the defendant whether before or after arrest in response to interrogation by any person then known to the defendant to be a prosecution agent.

Rule 5(a)(1)(C) provides:

> (C) Documents and Tangible Objects. Upon request of the defendant the prosecution shall permit the defendant to inspect and copy books, papers, documents, photographs, tangible objects, buildings or places, or copies or portions thereof, which are within the possession, custody or control of the prosecution, and which are material to the preparation of his defense or are intended for use by the prosecution as evidence in chief at the trial, or were obtained from or belong to the defendant.

In State v. Lawton, 382 S.C. 122, 675 S.E.2d 454 (Ct. App. 2009), this Court held there is no distinction between the state's obligation to provide materials it uses for impeachment purposes versus materials it uses in its case in chief under Rule 5(a)(1)(A). Lawton was convicted of first degree burglary and possession of a weapon during the commission of a violent crime. Lawton

testified that he would frequently visit his ex-girlfriend's trailer at night even after they ended their relationship. One night, Lawton entered the trailer through the doggy-door, which he claimed was not uncommon. Lawton's ex-girlfriend, awakened by her dogs barking, went to her living room and saw an intruder coming through the doggy-door. After she retrieved her handgun, a struggle ensured and Lawton, who was also armed, was shot in the leg. Id. at 124-25, 675 S.E.2d at 455-56.

During cross-examination, the state produced a letter Lawton had written to his ex-wife that stated in part, "I know that my story is full of lies, but no more than hers, mine just have to be better than hers." Lawton immediately objected to the use of the letter based on the state's failure to disclose it prior to trial pursuant to Rule 5, SCRCrimP. Specifically, Lawton argued the state was required to produce the letter in response to his Rule 5 motion under subsection (a)(1)(A) because it qualified as a relevant written statement made by Lawton that was within the state's control. The trial court ruled the letter was admissible because it was only being used for impeachment. Id. at 125, 675 S.E.2d at 456.

Lawton later argued the letter also should have been produced in response to his Rule 5 motion pursuant to subsection (a)(1)(C), asserting the letter was material to Lawton's defense. The trial court found the letter was not relevant under subsection (a)(1)(A) but was a collateral matter having to do with the credibility of the witness and therefore allowed the state to impeach Lawton pursuant to Rule 608, SCRE. Id. at 126, 675 S.E.2d at 456.

This Court held the trial court erred in failing to suppress the letter because of the state's failure to comply with subsection (a)(1)(A). The Court determined the letter was "clearly relevant" and should have been provided by the state in response to Lawton's Rule 5 motion. This Court further held Lawton was prejudiced by the state's failure to turn over the letter before trial since disclosure of the letter was "clearly material" to the preparation of Lawton's defense because it likely would have affected his decision to testify, a fundamental right. The Court concluded that there was "a reasonable probability Lawton would not have testified had he known the state

processed such strong impeachment evidence." "The state's strategy in failing to disclose the letter and instead surprising Lawton with it during cross-examination clearly prejudiced Lawton." Consequently, this Court reversed Lawton's conviction and remanded for a new trial. Id. at 126-27, 675 S.E.2d at 456-57.

In this case, the trial court erred by failing to suppress the rap lyrics based on the state's failure to comply with Rule 5, SCRCrimP. The lyrics should have been disclosed to Appellant under both subsection (a)(1)(A) and (a)(1)(C). Defense counsel specifically requested the assistant solicitor disclose which lyrics the state intended to use during trial, but the solicitor refused. The defense was only aware of the rap song Appellant posted to Instagram that was found on Appellant's phone extraction and turned over to the state.

The lyrics should have been disclosed to Appellant pursuant to subsection (a)(1)(A) because the evidence consisted of a "relevant written or recorded statement made by the defendant . . . within the possession, custody, or control of the prosecution, the existence of which is known . . . to the attorney for the prosecution." The assistant solicitor knew of the lyrics, had possession of the lyrics, and failed to disclose them to Appellant despite a specific request by defense counsel. Moreover, it is clear that the solicitor intended to use the lyrics for impeachment purposes if Appellant testified, which in fact occurred. Additionally, the lyrics should have been disclosed pursuant to subsection (a)(1)(C) because the evidence was indisputably material to the preparation of Appellant's defense.

Rule 403, SCRE

Relevant evidence "may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice . . ." Rule 403, SCRE. In State v. Cheeseboro, 346 S.C. 526, 552 S.E.2d 300 (2001), our Supreme Court considered whether the following rap lyrics were properly admitted by the trial court:

> Ruckus, I believe you''e a perpetrator, gold and platinum hater, cause me and J.D. is a force like Dark Vador. Who do you despise a strong enterprise? Do the greed in your eyes lead you to tell lies? Victimize me and Jermain Dupri, don't let me see or else there'll be death in this industry. Want let go, set it fo' sho', I get hype like Mike put yo' blood on the dance flo'. Blow fo' blow, toe to toe, with that no mo'. Like the 4th of July, I spray fire in the sky. If I hear your voice, better run like horses or like metamorphis, turn all y'all to corpses. No fingerprints or evidence at your residence. Fools leave clues, all I leave is a blood pool. Ten murder cases, why the sad faces? Cause when I skipped town, I left a trail [of] bodies on the ground. Your whole click ain't nothing but tricks, bitch pulling sticks, grown men sucking dicks. No one bring ruckus like King Justice, but toughest the So So Def most corruptest.

Id. at 549-50, 552 S.E.2d at 313. The trial court admitted the rap lyrics as an admission against interest due to their reference to leaving no prints and bodies left in a pool of blood where the defendant was being accused of an armed robbery and the murder of three individuals in an execution style shooting. The Supreme Court held the admission was error because the minimal probative value of the lyrics was far outweighed by the danger of unfair prejudice. Id. at 550, 552 S.E.2d at 313.

Much like in Cheeseboro, the rap lyrics in this case were vague in context and the "minimal probative value" was "far outweighed by its unfair prejudicial impact as evidence of Appellant's bad character, *i.e.* his propensity for violence in general." Id. The state improperly used the evidence to unfairly attack Appellant's credibility and make him appear to be a bad person.

Rule 404, SCRE

"Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible to show motive, identity, the existence of a common scheme or plan, the absence of mistake or accident, or intent." Rule 404(b), SCRE. In this case, there is no logical connection between the rap lyrics the state used to impeach Appellant and any of the exceptions found in Rule 404(b). Rather, the state merely used the evidence to make Appellant appear to be a bad person and suggest that he had the propensity to murder Griffin and Dash.

Respectfully, this Court should hold the trial court abused its discretion by admitting the rap lyrics, reverse Appellant's conviction, and remand for a new trial.

5.

The trial court abused its discretion by refusing to admit Defendant's Exhibit No. 108, Appellant's prior consistent statement, pursuant to Rule 801(d)(1)(B), SCRE, to rebut the state's argument that Appellant had fabricated his account of events, and to counter the state's suggestion Appellant manufactured remorse on the stand, particularly where the exclusion violated Appellant's constitutional right to present a complete defense.

Relevant Facts

During defense counsel's redirect examination of Appellant, counsel sought to admit Defendant's Exhibit No. 108, which is the recorded video of Appellant in an interview room at the Columbia Police Department headquarters on the day of his arrest. Counsel sought to admit the portion of the video in which there is a break in questioning and Appellant is alone in the interview room. During this period, Appellant called his mother and a friend and recounted what occurred that morning. Appellant was very emotional during these discussions. See Defendant's Exhibit No. 108

The assistant solicitor objected to the admission of Defendant's Exhibit No. 108 based on relevance. He argued, "My prediction is that they are going to show an excerpt of him getting emotional. They can ask him about the thing. I do the same thing. But it's already in evidence. That's fine. But it's opening the door for recross on this if they want to keep talking about his emotional reaction to this." R. 1051, ll. 2-8.

Defense counsel countered that the video was admissible pursuant to Rule 801(d)(1)(B), SCRE, as a prior consistent statement offered to rebut an express or implied charge against the declarant of recent fabrication. She argued that during cross-examination, the assistant solicitor "attacked his [Appellant's] consistency about what he told people" and "brought his remorse into

play." Counsel specifically mentioned the solicitor's questioning of Kevin Archie, a state witness, in which the solicitor suggested Appellant told Archie "three different things" about what happened that morning. R. 1051, ll. 10-19.

The solicitor maintained that he "briefly" crossed Appellant on his remorsefulness in response to Appellant's direct examination. He asserted the defense was "treading over ground they covered during the direct." R. 1051, ll. 21-25.

Without any further argument, the trial court sustained the state's objection and refused to admit Defendant's Exhibit No. 108. R. 1052, l. 1.

During the state's recross examination, the assistant solicitor repeatedly questioned Appellant about his remorse suggesting Appellant was not remorseful. R. 1054, l. 23 – 1060, l. 18. At the conclusion of Appellant's testimony, defense counsel told the court she had a matter of law and the court asked counsel to approach. Defense counsel requested to play the proffered video, Defendant's Exhibit No. 108, which shows Appellant in the interview room speaking with his mother and a friend on the phone about what occurred earlier that day. Defense counsel asserted the solicitor "directly attacked his [Appellant's] remorse again" during his recross examination and the proffered video "goes directly to that issue." The trial court again immediately denied the request reasoning "you have direct, cross, redirect, recross . . . That's it for the witness. You can't put up evidence during the end of testimony of the witness. . . . That's the way the process works." The court told defense counsel she could not "get a third bite at the apple." R. 1060, l. 21 – 1062, l. 111.

In his written motion for a new trial, Appellant argued the trial court erred by refusing to admit portions of Appellant's recorded statement to law enforcement a few hours after the shooting as a prior consistent statement pursuant to Rule 801(d)(1)(B), SCRE, to rebut the state's charge that Appellant had fabricated his account of events and was remorseful. Appellant also argued that the refusal to admit Defendant's Exhibit No. 108, Appellant's recorded statement, violated Appellant's

constitutional right to present a complete and full defense. R. 1248 – 1258. In support of his argument, Appellant asserted, "The State seized upon the [trial court's] error allowing Mr. Barnes [Appellant] to be questioned about rap lyrics, and accused Mr. Barnes of fabricating his account of what happened on the morning of the shooting. He [the assistant solicitor] also accused Mr. Barnes of faking the remorse he expressed on the stand while testifying, by referencing the rap lyrics. In addition to the use of the rap lyrics, the State used a lay witness, Kevin Archie, to argue that Mr. Barnes gave three different accounts of what occurred in his apartment on the morning of the shooting." R. 1248 – 1258.

Lastly, Appellant argued the prejudice of the trial court's error in refusing to admit Defendant's Exhibit No. 108 was demonstrated during sentencing when the trial court "mistakenly stated Mr. Barnes did not show remorse for the killing of Mr. Griffin. In fact, the prior consistent statements reflected a great deal of remorse for the killings of both Mr. Dash and Mr. Griffin." R. 1248 – 1258.

Standard of Review

"The admission or exclusion of evidence is an action within the sound discretion of the circuit court and will not be disturbed on appeal absent an abuse of discretion." State v. Tapp, 398 S.C. 376, 385, 728 S.E.2d 468, 473 (2012) (citing State v. Williams, 386 S.C. 503, 509, 690 S.E.2d 62, 65 (2010)). "An abuse of discretion occurs when the conclusions of the circuit court are either controlled by an error of law or are based on unsupported factual conclusions." Id. (citing State v. Douglas, 369 S.C. 424, 429-30, 632 S.E.2d 845, 848 (2006)).

Discussion

The trial court abused its discretion by refusing to admit Defendant's Exhibit No. 108, Appellant's prior consistent statement, pursuant to Rule 801(d)(1)(B), SCRE, to rebut the state's argument that Appellant had fabricated his account of events, and to counter the state's suggestion

Appellant manufactured remorse on the stand, particularly where the exclusion violated Appellant's constitutional right to present a complete defense.

Rule 801(d)(1)(B), SCRE, states: "(d) Statements Which Are Not Hearsay. A statement is not hearsay if (1) Prior Statement by Witness. The declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement, and the statement is . . . (B) consistent with the declarant's testimony and is offered to rebut an express or implied charge against the declarant of recent fabrication or improper influence or motive; provided, however, the statement must have been made before the alleged fabrication, or before the alleged improper influence or motive arose."

"In order for a prior consistent statement to be admissible pursuant to Rule 801(d)(1)(B), the following elements must be present: (1) the declarant must testify and be subject to cross-examination, (2) the opposing party must have explicitly or implicitly accused the declarant of recently fabricating the statement or of acting under an improper influence or motive, (3) the statement must be consistent with the declarant's testimony, and (4) the statement must have been made prior to the alleged fabrication, or prior to the existence of the alleged improper influence or motive." State v. Winkler, 388 S.C. 574, 583, 698 S.E.2d 596, 601 (2010) (citing State v. Saltz, 346 S.C. 114, 121-22, 551 S.E.2d 240, 244 (2001)).

The video of Appellant in the interview room at the Columbia Police Department in which he emotionally recounts to his mother and a friend on the phone what occurred that morning, which was marked for identification as Defendant's Exhibit No. 108, should have been admitted pursuant to Rule 801(d)(1)(B) as a prior consistent statement "offered to rebut an express or implied charge against the declarant of recent fabrication" given that all four factors listed above were satisfied. During the assistant solicitor's cross-examination of Appellant, the solicitor repeatedly attacked Appellant's consistency about what he maintained occurred, his credibility, and his remorse for the killings. The solicitor also elicited testimony from other witnesses, such as Kevin Archie,

suggesting Appellant gave different accounts of what happened that morning. Accordingly, the trial court erred by failing to admit Defendant's Exhibit No. 108 as a prior consistent statement.

Moreover, the trial court's failure to admit Defendant's Exhibit No. 108 violated Appellant's constitutional right to present a complete defense. "The United States Constitution guarantees a criminal defendant the right 'to present a complete defense.'" State v. Burgess, 391 S.C. 15, 21, 703 S.E.2d 512, 515 (Ct. App. 2010) (quoting Crane v. Kentucky, 476 U.S. 683, 690 (1986)). "This right is also guaranteed by our State constitution: 'Any person charged with an offense shall enjoy the right ... to be fully heard in his defense....'" Burgess, 391 S.C. at 21-22, 703 S.E.2d 512, 515-516 (quoting S.C. Const. art. I, § 14 (2009)); See S.C. Code Ann. § 17-2-60 (2003) ("Every person accused shall, at his trial, be allowed ... to produce witnesses and proofs in his favor...."); State v. Lyles, 379 S.C. 328, 341, 665 S.E.2d 201, 208 (Ct. App. 2008); See Chambers v. Mississippi, 410 U.S. 284, 302 (1973).

Appellant's statements and emotional reaction recorded while he was in the interview room at the Columbia Police Department on the day of the killings was powerful evidence in support of his defense. The evidence established Appellant was remorseful for his actions that day and strengthened his credibility, which had been repeatedly attacked by the state throughout the trial. The trial court's arbitrary exclusion of this evidence violated Appellant's constitutional and statutory right to present a complete and full defense.

6.

The trial court erred by refusing to grant a new trial based on the cumulative effect of the trial errors.

Relevant Facts

In his written motion for a new trial, Appellant argued, "All issues raised pretrial, during trial, and in this motion, upon which the [trial court] did not rule for the defense or provide an adequate remedy have resulted in cumulative error and prejudice, the result of which requires a new

trial as the only remedy." R. 1248 – 1258. Appellant cited to the Sixth Amendment and Article 1, Section 14 of the South Carolina Constitution in support of his motion. R. 1248 – 1258. He asserted his right to a fair and impartial trial was violated due to the cumulative effect of the trial court's errors. R. 1248 – 1258. By order filed September 7, 2023, the trial court denied Appellant's motion for a new trial. The court stated it "fully considered the motion and the argument made therein." R. 1259.

Discussion

Each of the errors discussed above require reversal on their own. Alternatively, the cumulative effect of all of these errors deprived Appellant of a fair and impartial trial under the United States Constitution and the South Carolina Constitution and requires reversal of Appellant's convictions. U.S. Const. amend. VI; S.C. Const. art. 1, § 14.

"The cumulative error doctrine provides relief to a party when a combination of errors, insignificant by themselves, has the effect of preventing the party from receiving a fair trial, and the cumulative effect of the errors affects the outcome of the trial." State v. Beekman, 405 S.C. 225, 237, 746 S.E.2d 483, 490 (Ct. App. 2013) (citing State v. Johnson, 334 S.C. 78, 93, 512 S.E.2d 795, 803 (1999)); See State v. Gleaton, 444 S.C. 394, 429, 906 S.C.2d. 603, 648 (Ct. App. 2024). "An appellant must demonstrate more than error in order to qualify for reversal pursuant to the cumulative error doctrine; rather, he must show the errors adversely affected his right to a fair trial to qualify for reversal on this ground." Id. (citing Johnson, 334 S.C. at 93, 512 S.E.2d at 803).

The combination of errors in this case involving the admission of photographs of ammunition found in Appellant's apartment and evidence of Appellant's prior possession of unrelated firearms, the admission of Appellant's statements about selling marijuana, the admission of unfairly prejudicial rap lyrics, the exclusion of Appellant's prior consistent statement to rebut the charge of fabrication and demonstrate Appellant's remorse, and the incorrect and inadequate

instruction on the defense of habitation adversely affected Appellant's right to a fair trial qualifying for reversal.

In State v. Freeman, 319 S.C. 110, 123-24, 459 S.E.2d 867, 875 (Ct. App. 1995), this Court wrote:

> We are aware that every instance of trial error does not entitle an appellant to prevail on appeal. However, *the aggregation of errors may produce a cumulative effect of prejudice, where individually, the prejudice is insufficient to justify reversal.* In their totality, the cumulative effect of the lack of latitude allowed the defense in cross-examining the State's investigating officers along with the court's comments, unfairly prejudiced the defense and necessitates the convictions be set aside.

(emphasis added).

The aggregation of errors in the present case resulted in prejudice requiring reversal of Appellant's convictions.

CONCLUSION

Based on the foregoing argument, Appellant respectfully requests this Court grant him immunity from prosecution pursuant to the Protection of Persons and Property Act. In the alternative, Appellant requests this Court reverse his convictions and sentence and remand for a new trial.

Respectfully submitted,

Lara M. Caudy

Lara M. Caudy
Senior Appellate Defender

ATTORNEY FOR APPELLANT

This 29th day of April, 2025.

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Apr 29 2025
SC Court of Appeals

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."

April 29, 2025.

Lara M. Caudy
Senior 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

RECEIVED
Apr 29 2025
SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County

Honorable Clifton Newman, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ANTONIO VASHON BARNES, JR.

APPELLANT

APPELLATE CASE NO. 2023-001390

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Final Brief of Appellant in the above referenced case has been served upon W. Joseph Maye, Esquire, at his primary email address listed in the Attorney Information System (AIS), this 29th day of April, 2025.

Lara M. Caudy
Senior Appellate Defender

ATTORNEY FOR APPELLANT

From:	Mcinnis, Sara
To:	jmaye@scag.gov
Cc:	Donna D"Alessio; Caudy, Lara
Subject:	2023-001390 The State v. Antonio V. Barnes Jr. Final Brief of Appellant
Date:	Tuesday, April 29, 2025 1:16:00 PM
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Good Afternoon Mr. Maye,

Attached for service in the above-referenced case is the final brief of appellant, which will be filed with the Court of Appeals today, April 29, 2025, via email filing.

Respectfully,

Sara McInnis
Administrative Assistant
South Carolina Commission on Indigent Defense
Appellate Division
(803) 734-1330

RECEIVED
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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Richland County
The Honorable Clifton Newman, Circuit Court Judge

THE STATE,

RESPONDENT,

v.

ANTONIO VASHON BARNES, JR.,

APPELLANT.

Appellate Case No. 2023-001390

FINAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General

W. JOSEPH MAYE
Assistant Attorney General
S.C. Bar No. 100851
Post Office Box 11549
Columbia, SC 29211-1549
(803) 734-6305

HON. BYRON E. GIPSON
Solicitor, Fifth Judicial Circuit
Post Office Box 192
Columbia, South Carolina 29202-0192
(803) 576-1802

ATTORNEYS FOR RESPONDENT

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PROOF OF SERVICE

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APPELLANT'S ISSUES PRESENTED

I.

Did the trial court err by denying Appellant immunity from prosecution pursuant to the Protection of Persons and Property Act, when Appellant proved by a preponderance of the evidence that he was entitled to immunity pursuant to the Act?

II.

Did the trial court err by failing to correctly instruct the jury on the defense of habitation as requested by Appellant when there was evidence to support the charge, particularly where the instruction given incorrectly told the jury the defense only applied if Appellant or a member of his household was attacked in Appellant's home and the life or safety of Appellant or a member of his household was jeopardized, which is an incorrect statement of law?

III.

Did the trial court abuse its discretion by admitting evidence of Appellant's marijuana possession and prior marijuana distribution as well as evidence of Appellant's possession of unrelated firearms and ammunition since the evidence was not relevant pursuant to Rule 402, SCRE, any probative value of the evidence was substantially outweighed by the danger of unfair prejudice pursuant to Rule 403, SCRE, and the evidence was improper bad character evidence merely used to establish propensity in violation of Rule 404(b), SCRE?

IV.

Did the trial court abuse its discretion by admitting lyrics from a song Appellant rapped and posted on YouTube when the state failed to disclose the evidence to the defense in violation of Rule 5, SCRCrimP, and where the rap lyrics should have been excluded because the evidence was not relevant pursuant to Rule 402, SCRE, any probative value of the evidence was outweighed by the danger of unfair prejudice to Rule 403, SCRE, and the evidence constituted bad character evidence in violation of Rule 404(b), SCRE?

V.

Did the trial court abuse its discretion by refusing to admit Defendant's Exhibit No. 108, Appellant's prior consistent statement, pursuant to Rule 801(d)(1)(B), SCRE, to rebut the state's argument that Appellant had fabricated his account of events, and to counter the state's suggestion Appellant manufactured remorse on the stand, particularly where the exclusion violated Appellant's constitutional right to present a complete defense?

VI.

Did the trial court err by refusing to grant a new trial based on the cumulative effect of the trial errors?

STATEMENT OF THE CASE

On February 7, 2019, at approximately 8:55am, Appellant shot and killed his roommate, Antonio Dash (hereinafter referred to as Mr. Dash), and his friend Eric Griffin (hereinafter referred to as Mr. Griffin). Antonio Barnes (hereinafter "Appellant") was indicted for two counts of murder and possession of a weapon during the commission of a violent crime. (2021-GS-40-1292; 1293; 1294). Appellant was represented by attorneys: Caroline E. Latimer, Brian R. Shealey, Luke A. Shealey, and Larua W. Young. Senior Assistant Solicitor Christopher Dale Scott, along with Assistant Solicitors Nicolas A Fowler and Paul Walton prosecuted the case. Pursuant to the Protection of Persons and Property Act, Appellant first proceeded to an immunity hearing before the Honorable Deandrea Gist Benjamin on March 30-31, 2022. After hearing the evidence and Appellant's theory of self-defense, the trial court took the matter under advisement and permitted the parties to present proposed orders. Immunity was denied and Appellant proceeded to a jury trial on December 5 – 8, and 13, 2022, before the Honorable Judge Clifton B. Newman. At the conclusion of the trial, Appellant was found guilty for the murder of Eric Griffin and for the possession of a weapon during the commission of a violent crime; Appellant was found not guilty for the killing of Mr. Dash. Appellant was then sentenced to 35 years imprisonment for murder and 5 years imprisonment for the possession of a weapon charge, to be served concurrently. (R. p. 1215-1216; 1220).

STATEMENT OF FACTS

Trial

On the morning of February 7, 2019, Mr. Griffin was in the car with his fiancé, Ieasha Washington, and his mother, Wanda Griffin. They dropped off his daughter at the babysitters, but before heading to his mother's workplace to drop her off, he asked his fiancé to stop by the

apartment of his friend, Appellant. This was not an uncommon occurrence, and since Appellant's Willow Run 14G apartment was nearby their babysitter's home, she obliged. Mr. Griffin got out of the car, walked up to the apartment, knocked on the door, and went inside. (R. p. 521-526; 556-561). Mr. Griffin appeared to be in a happy mood when he exited the vehicle and he was not in possession of a firearm. (R. p. 527; 543-544; 562). Approximately five to six minutes passed. Then, at about 8:54am, Ms. Washington and Ms. Griffin heard what they thought might be multiple gunshots; Ms. Griffin heard three shots and Ms. Washington heard between five and seven. (R. p. 532; 563-565). They walked up to the apartment door and knocked three times over the course of a few minutes before Appellant finally answered the door. Appellant opened the door enough to slip outside the apartment and he then closed the door behind him while he spoke with Ms. Washington.[1] Ms. Griffin opened the door herself and went inside where she found victims' bodies. (R. p. 530-536; 563-564). In response, Ms. Washington dialed 911. (R. p. 551).

Ms. Washington spoke briefly with Appellant prior to the women entering the apartment. She testified that he shook her and asked: "What are they doing here? They were fighting. Who let them in?" He then claimed he was asleep. (R. p. 575-576). However, he never informed them that he had committed the shooting. She then followed in after Ms. Griffin. (R. p. 567-569). Ms. Washington noted that Mr. Griffin did not have a pulse when she checked and that Mr. Dash was gasping for air. Ms. Washington testified that Appellant then went down the hallway and soon left the apartment. (R. p. 569). Neither Ms. Griffin nor Ms. Washington saw Appellant with a gun that morning. (R. p. 570; 553).

[1] Appellant emphasized during trial that the door was either designed or installed in such a way that it tended to close itself.

Mr. Kevin Archie was working at the Willow Run apartments as a maintenance and HVAC technician when he heard the gunshots while outside of building 17. (R. p. 586). When called by some ladies to come help, he ran to Appellant's apartment in building 14. He knocked on Appellant's door and testified that Appellant's reaction was to say "What, what, what?" Mr. Archie saw the bodies in the entryway, and as a result of Appellant's reaction, tone, and volume, he turned and ran from the building. He then reported the shooting to the apartment complex office. (R. p. 586-589). Before leaving, Mr. Archie recalled seeing two other individuals, Shakihla Smalls (hereinafter "Ms. Smalls") and Richard Charles, at the apartment but noted that Ms. Smalls seemed to "disappear real fast during the chaos." (R. p. 598).

Shortly after leaving the apartment Appellant spoke to Mr. Archie again. Mr. Archie testified that Appellant attempted to explain what happened to him but gave three separate explanations. First, Appellant told him that he simply did not know what happened. Second, he told Mr. Archie that they were trying to rob him. Third, he said "I'm gonna tell ya what happened. They were in there fighting." Mr. Archie also noted that as part of Appellant's various explanations, he claimed that "they was in there fighting. I just came out blasting." (R. p. 595-596). Appellant told Mr. Archie to tell the police this explanation.[2] During cross examination, Mr. Archie was asked what he told the police Appellant's explanation was, to which he responded: "I told the police what he told me to tell them." (R. p. 593; 602). Javontae Davis also testified, and provided yet another version of Appellant's explanation, noting that he was "saying something about somebody tried to kick his door or something like that." When shown his previous statement

[2] Appellant asserts that he "was always consistent in his account of what occurred." (Brief of Appellant, p. 8) Respondent disputes such in light of the testimony of Mr. Archie, and as was argued in closing, asserts that Appellant's supposed consistency to law enforcement only came after Appellant evolved his story in the hours preceding his statements to police. (R. p. 1130).

to refresh his memory, he added that Appellant told him that "he was asleep or something, and they was on the floor dead." (R. p. 622; 625-626; 632). Again, Appellant did not inform Mr. Davis that he was responsible for the shooting.

Samuel Thomas, Appellant's other roommate, also testified at trial. He testified that he had a morning doctor's appointment and had left the apartment before Mr. Griffin arrived. He arrived back at the apartment after the shooting. He testified that he was the only individual in the apartment with a car and would commonly take Mr. Dash to work[3], and help Appellant with transportation as well. However, Mr. Dash had told him that he did not need a ride to work that morning. Mr. Thomas did not inform Appellant of this. Mr. Thomas testified that he was friends with Appellant, Mr. Dash, and Mr. Griffin, but noted that Mr. Griffin and Mr. Dash had been having a disagreement regarding a firearm that had gone missing. (R. p. 657-661). The disagreement had developed two days prior and had led to the two having a confrontation that Appellant ultimately diffused. (R. p. 668-675). Regarding the shooting on February 7, Mr. Thomas had an opportunity to speak with Appellant by phone about an hour after the shooting. Mr. Thomas testified that Appellant's explanation was that he was asleep and was woken by a boom in the apartment; he thought he was being robbed and he did not realize it was Mr. Dash and Mr. Griffin until after he had shot them. (R. p. 683-684). Mr. Thomas acknowledged that he only received Appellant's explanation of events, he was not there to witness the shooting. (R. p. 691). He further testified that Appellant is not friends with Ms. Smalls. (R. p. 688).

At approximately 10:47am, Appellant returned to the scene and informed officers that he was the shooter. He was interviewed briefly at the scene by Officer Ryan McIntyer, who initially

[3] The apartment only had two bedrooms, which Appellant and Mr. Thomas occupied. Mr. Dash was staying in the walk-in closet for the time being.

thought Appellant was merely a witness. (R. p. 635-636). Appellant gave his explanation about being awoken by a loud boom, believing he was being robbed, and committing the shooting. (R. p. 637-642). Appellant also offered an explanation for why he supposedly believed he was being robbed; Appellant noted that his roommate had recently been robbed and he confessed to dealing drugs and having marijuana in the apartment. Appellant explained that he thought he was being robbed for his weed. (R. p. 643; State's Exhibit 71). Appellant was taken to the station for further questioning, but he was not yet placed under arrest. (R. p. 644).

During the subsequent interview, Appellant gave law enforcement the version of his story about being awoken by the loud boom, coming down the hall thinking he was being robbed, and shooting at the two individuals on the floor before knowing who they were. He also informed law enforcement about the missing firearm that had caused a "beef" between Mr. Griffin and Mr. Dash. When asked where the gun used in the shooting was, Appellant explained that shortly after the shooting took place Ms. Smalls came up to the apartment and snatched his gun out of his hand and walked off. Critically, Appellant's statement to law enforcement suggested that he barely knew Ms. Smalls and he explicitly denied having her phone number; he only had her Facebook profile to show to police. (State's Exhibit 71; R. p. 650-654). In contrast, the data dump from Appellant's phone revealed that there were fifteen (15) calls going "back and forth between he and a Shakihla Smalls," between 10:10am and 10:29am on February 7, 2019. This was barely more than an hour after the shooting took place. (R. p. 876). Nevertheless, even after this data information was provided, Appellant testified on direct examination that he did not know Ms. Smalls' phone number, despite having his phone with him during the interview. (R. p. 932-933; 939; 1024).

Law enforcement's investigations provided additional evidence to the case. Pursuant to a search warrant, the 9-millimeter firearm used in the shooting was found underneath the mattress

in Ms. Smalls' apartment. The clip inside the gun had a seventeen round capacity and was found to contain six rounds of ammunition in addition to the one round in the chamber.[4] (R. p. 743-747). There were no signs of forcible entry into the apartment. (R. p. 699). There was no artificial lighting on in the apartment, however the lighting provided by the windows provided enough light for responding Officer Joseph Dwyer to be able to see the entire apartment. (R. p. 610).

Mr. Griffin was found lying on his back on the floor. Mr. Dash was found lying on top of Mr. Griffin. (R. p. 537; 569; 590; 591; 592; 611; 653). Mr. Dash received seven (7) gunshot wounds, five (5) of which were "through and through" wounds, along with two (2) blunt force injuries to the head.[5] (R. p. 804-805). Two of the five gunshots wounds struck different sides of Mr. Dash's head. (R. p. 806). Four gunshots were through and through wounds to the left arm, and one was a through and through wound to the right arm. (R. p. 807-808; 811). Mr. Griffin suffered six (6) gunshots wounds: one to the back of the head, one through-and-through gunshot to the inner left arm, one to the right upper arm, two to the right upper back, and one graze to the upper right shoulder. (R. p. 818-819). Doctor Monroe testified that "*depend[ing] on what it hits*", the bullet can begin to lose its spiral and tumble into a subsequent entry of another victim. The tumbling and lack of spiral results in a "irregular" wound as opposed to a "regular" clean entry wound. He testified that none of the wounds provided a clear indication that the bullet had been disrupted prior to entry and there was only one wound on Mr. Griffin that led him to question it as a possible re-entry wound. (R. p. 845-848).

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[4] In total, the firearm was capable of holding a maximum of eighteen (18) rounds of ammunition. (R. p. 771).

[5] Doctor Monroe agreed that the blunt force wounds to Mr. Dash could have come from being hit with the butt of a pistol. (R. p. 842).

Mr. Dash and Mr. Griffin each had gunshot wounds that were of significant forensic focus. The gunshot wound that impacted the back of Mr. Griffin's "upper neck, lower head" was testified to by Dr. Monroe as being a "contact gunshot wound." (R. p. 829; 830). He testified that the wound possessed an abrasion border, partial muzzle imprints, and a contusion; he testified that this type of wound is the result of the gun being placed directly in contact with Mr. Griffin's head when the bullet was discharged. (R. p. 821-823). Mr. Dash's bullet wounds displayed "stippling" which was informative as to the range at which Mr. Dash was shot. According to Dr. Monroe, a gunshot wound displaying stippling could be fired anywhere between 6 inches and 3.5 feet from the victim.

Seven total shell casings were recovered from the crime scene. Two were by the doorway and five were amongst the bodies, but none were in the hallway where Appellant claimed to commit the shooting. (R. p. 710-712). There were no signs of bullet holes in the walls or laminate flooring. (R. p. 708-709). All seven shell casings were matched to the recovered 9-millimeter pistol. (R. p. 757-758). Four of the recovered projectiles were conclusively matched to the 9-millimeter firearm. (R. p. 759-760). Two bullet fragment jackets were consistent with the 9-millimeter cartridge and were matched to the firearm. One fragment was consistent with being ammunition within the "nominal .38 caliber family" (which includes 9-milimeter ammunition) but further detail was not available for a more specific finding. (R. p. 762-763). The remaining fragments were either too small, too damaged, or lacking sufficient markings for analysis. (R. p. 764). None of the ammunition forensic evidence demonstrated that a second firearm was used during the crime. A further search of the apartment led to the discovery of a 3-ounce quantity of a "green leafy plant", as well as .40 caliber ammunition and .380 caliber ammunition. (R. p. 707).

In Appellant's case-in-chief, he presented expert witness Christopher Watkins to discuss the phone data. He testified that the "Apple Health" data from Appellant's phone indicated that

movement by the phone on the morning of February 7, 2019, began at 8:49am and totaled 121 steps by the time Appellant's phone dialed 911. Mr. Watkins agreed that the data was not able to tell the type of movement occurring, only that it was recorded as movement by the inner gyroscopic sensor. (R. p. 857-871). There is no indication that Appellant spoke with the 911 operator. (R. p. 887-888). The phone calls to Ms. Smalls were discussed (R. p. 876), and text message data was also recovered by the expert. One such text thread was discussed by the State during cross examination as pertaining to a stolen gun that Appellant described as being "our gun[]" as opposed to belonging solely to Mr. Dash. (R. p. 873-875; 881-882). The phone also contained photographs of Appellant posing with a number of guns. (R. p. 884-885).

Appellant testified in his own defense and noted that he had been friends with Mr. Dash and Mr. Griffin for a long time, though Mr. Dash appeared to be the closer of the two friends. He provided a detailed accounting of how Sam Thomas borrowed what he then referred to as "Tonio's gun", but that the gun went missing after Sam returned and put the gun on the table in the apartment. He noted the various people who were in the apartment that day, which included: Appellant, Mr. Griffin, Mr. Dash, Samuel Thomas, a lady named Katerra, and a man named Hezekia. (R. p. 892-904). Samuel Thomas believed Mr. Griffin had taken the gun. Appellant called to ask Mr. Griffin about it, but Mr. Griffin denied taking the gun. (R. p. 904-905). Appellant recounted the confrontation on February 6th between Mr. Dash and Mr. Griffin, noting that Appellant interrupted the dispute and took his gun away from Mr. Dash. (R. p. 908-910).

Appellant testified that the next morning he heard a loud boom in the front room. He waited a minute or two to see if he could hear what was happening, but all he could hear was feet moving

around.[6] He believed the boom could have been his door being kicked in and did not think his roommates were home. He next heard what he thought to be the TV falling. He testified that he did not want anyone to reach his room, so he grabbed his gun and walked down the hallway keeping to the wall. When he reached the end of the hallway he turned to start shooting at the area where he was hearing the commotion. He claimed that his body was still moving forward as he began shooting and that he did not see any faces at first. However, after shooting he saw that one of the individuals was Mr. Dash and that the other was Mr. Griffin. (R. p. 913-919).

Contrary to others' testimony, he testified that Mr. Griffin was on top of Mr. Dash. He testified that he was crushed that he had shot his friend Mr. Dash. He next heard knocks at the door. He claimed that he let Ms. Washington and Ms. Griffin inside immediately and does not remember talking to Ms. Washington. (R. p. 922). Appellant next offered contradictory testimony. First, he stated that after the two women came into the apartment, he went back to his room to get his phone and call 911. (R. p. 923). Later, Appellant testified that he was going to get his phone from his room to call the police and used such testimony as an explanation for why it took him so long to respond to Ms. Washington's and Ms. Griffin's knocking. He then testified that they never knocked on the door, he just let them in immediately. (R. p. 923; 976).

He next testified about Ms. Smalls coming into the apartment and snatching his gun out of his hand. He testified that he never asked her to take the gun and did not stop her from doing so.[7]

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[6] Respondent disputes the portions of Appellant's statement of facts indicating that "he did not hear any voices he recognized." (Brief of Appellant, p. 5). Such would imply that he heard *unfamiliar* voices, which is not supported by the record. (R. p. 513; p. 915). Respondent would further dispute Appellant's assertion that Mr. Dash was underneath Mr. Griffin. (Brief of Appellant, p. 5). There is considerable testimony to the contrary. (R. p. 537; 569; 590; 591; 592; 611; 653).

[7] Appellant's statement of facts presents a number of Appellant's assertions, as if they were record *facts*, and implies that Ms. Smalls was not called as a witness by the State due to credibility issues. (Brief of Appellant, p. 6). Respondent would note that the record strongly disputes Appellant's

(R. p. 924-925). Appellant admitted to leaving the apartment, but testified that he immediately identified himself to police. However, in process of identifying himself to the police he *did not* indicate to police that he committed the shooting. (R. p. 928). In the immediate aftermath of the shooting Appellant went to the apartment of his friend Wesley Wright, who was two parking lots over. They later went to get cigarettes from the store. Only after they returned did Appellant turn himself into police as the shooter. (R. p. 929-931).

Part of Appellant's testimony concerns his remorse, emotional state, and nightmares that resulted from his having committed the shooting. On cross examination, Appellant was asked about being a rapper with the alias "Big Hood Lyfe" and some of the lyrics of his songs that directly referenced the shooting and victims in question. Appellant was adamant that the prosecutor had not correctly heard and recited his lyrics. Appellant also admitted the following:

> Q. Yeah. What if there's no danger? What's if it's your friend and roommate who are in the living room and you - - -
> A. Well, at the time you wouldn't be able to know if it was no danger. I was all the way in the back room sleep. So, I wouldn't even know, know if danger was imminent or not. It would be impossible for me to know.
> Q. Okay. Impossible?
> A. Yes, sir.
>
> ...
>
> I didn't take no time to assess the situation. . . I didn't observe nothing. As soon as I got to the hallway, to the end of the hallway and I heard where the noise was coming from, I shot towards that area as I was still moving.

(R. p. 982; 1001-1002).

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version of events, and Appellant fails to note that Ms. Smalls hid Appellant's firearm *under her mattress*. Appellant's assertion that there "is no evidence in the record as to why Smalls took the gun from Appellant" disregards the fifteen (15) phone calls between her and Appellant in the immediate aftermath of the shooting which strongly suggests a cover up or the hiding of evidence from the crime at Appellant's behest. Regardless of "why" Ms. Smalls supposedly "snatched" a murder weapon out of Appellant's hand and hid it under her mattress (a dubious assertion), such a question is subordinate to the proven fact that she did so at all.

Appellant was asked repeatedly about the contact gunshot wound to Mr. Griffin's head. Appellant provided no explanation other than testifying that he did not remember committing that particular shooting. Despite this position, he did not dispute the contact gunshot wound and did not claim that he "black[ed] out" during the shooting. (R. p. 1011-1012; 1038).

Appellant's case-in-chief also included the testimony of Sara Goodman. She testified as to the likelihood ratios of the DNA evidence submitted. In summary, each victim had the other victim's DNA under their fingernails, but she could not rule out that such was the result of the two victims lying on top of one another in their collective blood. Appellant and Ms. Smalls were ruled out as contributors to the DNA results.

Immunity Hearing

Investigator Emmitt Gilliam was called first by the defense.[8] His testimony demonstrated that Appellant and Mr. Samuel Thomas were the leaseholders for the 14G Willow Run apartment and that Mr. Dash was a roommate. He testified that both Mr. Dash and Mr. Griffin were friends of Appellant. (Hearing R. p. 11-19). Mr. Griffin stopped to see Appellant while his wife and mother stayed in their parked car. No testimony is offered demonstrating that Mr. Griffin was seen having difficulty entering the apartment, and they were not alerted to any problems of violence until they heard gunshots. Despite the apparent emergency and their knocking on the door when they went to the apartment to check on Mr. Griffin, it took Appellant a couple of minutes to open the door. His behavior demonstrated that he did not immediately allow the women into the home but instead closed the door behind him. It was only after they opened the door themselves that they found Mr. Griffin and Mr. Dash bleeding on the floor. (Hearing R. p. 20-24). Although Appellant ultimately

[8] Persistent throughout the hearing was Appellant's effort to have the testimony and opinions of witnesses presented via the second-hand accounting of the officers.

admitted that he committed the shooting, he left the premises prior to informing police of his involvement. (Hearing R. p. 26-30). Investigator Gilliam testified that Ms. Smalls received the gun from Appellant, that gun was recovered, and that the seven shell casings found at the scene all matched to the gun. By the leading question of defense counsel to Mr. Gilliam he confirmed that "that not all the projectiles matched this gun." [9] (Hearing R. p. 30-33). Investigator Gilliam testified that Ms. Smalls denied having the gun, but the fact that it was recovered from underneath her mattress demonstrated that she either took the gun or was given the gun by Appellant, and was not honest with law enforcement officers on the topic. (Hearing R. p. 38; p. 40-41; p. 50).

Appellant's version of events is summarized for the court. According to Investigator Gilliam, Appellant believed he was being robbed and heard fighting and tussling going on outside his bedroom. He comes out, sees figures on the ground, and starts shooting. (Hearing R. p. 54-55). However, statements made by Ms. Smalls demonstrated that prior to the shooting she came over to buy weed from Mr. Dash *while Mr. Griffin was already present*, and that Appellant peeked out of his room to see who it was. This negated his assertions of being asleep and believing no one else was rightfully in the apartment. (Hearing R. p. 52-53). Investigator Gilliam confirmed that Appellant presented signs of being upset and emotional, but upon questioning by defense counsel Investigator Gilliam testified that he believed the emotion to be feigned. (Hearing R. p. 105-108). Investigator Gilliam testified further to a possible "gun problem" between Mr. Griffin and Mr. Dash. (Hearing R. p. 121).

Investigator Gilliams' cross-examination from the state addressed the possibility that Mr. Dash might have been sleeping on the pallet beside the bed, and that documents belonging to Mr.

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[9] Such was not a fair characterization of the evidence, as it insinuates that some of the projectiles were found to be *conclusively* not matched to the recovered firearm. The full record of this appeal demonstrates that such is not the case.

Dash were found inside Appellant's room. (Hearing R. p. 131-134). He reiterated that Mr. Thomas, Appellant, and Mr. Dash were all living together and friendly with one another, and that Mr. Griffin was a frequent visitor to the home, having just been there two days prior. (Hearing R. p. 138). There was also evidence of other caliber ammunition in Appellant's room and a receipt showing Appellant had purchased a .40 caliber gun that was not the 9-millimeter pistol used in the crime. (Hearing R. p. 139-141). He confirmed that there was no indication or evidence that the apartment door had been kicked in or forcibly opened. Nor were there any broken windows or other signs of forced entry. (Hearing R. p. 143). Investigator Gilliam testified that they learned Appellant was a marijuana dealer and that he had a large amount of marijuana in the apartment. (Hearing R. p. 147). He then confirmed that he is not qualified to testify as to the ballistics and forensic analysis of projectiles matching weapons. (Hearing R. p. 147-148).

Investigator Gilliam testified that the shell casings were found either by the door or by the bodies, but none were found in the hallway where Appellant supposedly began firing his weapon. (Hearing R. p. 148). Critically, Investigator Gilliam testified that he recalled Appellant indicating that both victims were on the ground when he shot them, that he did not make any statement about the individuals lunging toward him, threatening him, or seeing them armed with a weapon. (Hearing R. p. 152-153). His explanation was simply that he was asleep, believed his roommate had left, heard a loud bang, listened further but could not hear any identifying voices, believed he was being robbed, and immediately started shooting at people on the ground. (Hearing R. p. 154-155). Investigator Gilliam also testified that there was a discrepancy as to whether Appellant changed or washed his clothing, as his shirt was uncharacteristically clean in light of the crime scene he created. (Hearing R. p. 160).

Kevin Archie testified at the hearing. He was on duty as a HVAC handyman for the

apartment complex when he hurried to the location of the gunshots. On direct examination, he testified that Appellant told him he was asleep and awoke confused. He heard people fighting, thought he was being robbed, and came out shooting. (Hearing R. p. 173-175). On cross-examination, he testified that he knocked on Appellant's door shortly after the gunshots. This apparently spurred an aggressively toned "What what what?" from Appellant when he opened the door. Appellant's reaction was enough for him to say, "oh never mind, nothing" and leave. (Hearing R. p. 180-182). He did, however, see inside the apartment and see the victims on the floor. On cross examination he testified in detail that Appellant spoke with him later while outside the apartment and provided him with three separate attempts to explain the shooting. First Appellant stated: "Man, I don't know, I was sleeping. I was like, Come on, man." When he confronted Appellant about the inadequacy of his explanation, Appellant responded with a second explanation: "Man, they tried to rob me, man." When Mr. Archie confronted Appellant about the unlikelihood of such an excuse when one of the victims was his own roommate, Appellant offered a third explanation: "All right, I'm going to tell you the truth, man. They was in there fighting and I just came out the back blasting. I'm going to change my shirt and turn myself in." (Hearing R. p. 183-184).

Samuel Thomas testified next. In summary, he testified that victims and Appellant were all his friends and roommates. He usually provided Dash with a ride to work each morning, but such was not needed that day. He also testified that he was absent at the time of the crime, as he was at the doctor's office. He testified that Mr. Dash slept in their storage closet, not Appellant's room. When he first had an opportunity to speak with Appellant, Appellant gave him the explanation about hearing the commotion and thinking he was being robbed. (Hearing R. p. 190-204; 213).

He testified that Ms. Smalls never just "pops in" and does not visit in the morning hours.

He confirmed that it was customary that they lock their apartment door at night. (Hearing R. p. 211-212). He acknowledged that any knowledge of the shooting he had, came from Appellant. He was not present at the time of the shooting and did not independently know what took place. (Hearing R. p. 218-219).

Chris Watkins testified as an expert in digital forensics who compiled the data from Appellant's phone on behalf of the defense. His testimony showed that Appellant's phone was tracking physical movement through the Apple Health App starting at 8:49am on the morning of the shooting. He testified that Appellant's phone dialed 911 at 8:55:24am, and the call lasted 7 seconds. He further testified that the phone contained text messages concerning a missing firearm. (Hearing R. p. 231-256).

Doctor Daren Monroe testified that Mr. Griffin was shot six times, with one gunshot being a "contact wound" to the back of the upper neck. Mr. Dash was shot seven times, two of which were to each side of his head, and that he also had blunt force trauma wounds. (Hearing R. p. 276-282).

His cross-examination revealed that a contact gunshot wound like the one Mr. Griffin sustained is caused when the tip of the gun barrel is placed against the skin of the victim at the time the gun is fired. He further testified that Mr. Dash had stippling around his gunshot wounds which indicated that the gun was fired between 6 inches and 3.5 feet away Mr. Dash's body. He also acknowledged that bullets which strike one victim could enter the body of an adjacent victim. He believed one such wound could potentially be a "reentry wound." (Hearing R. p. 293-303)

Sara Goodman testified at the hearing as to DNA evidence. Her testimony is consistent with that which was provided at trial. (*Supra*, p. 11); (Hearing R. p. 308-317).

Paul Greer testified at the hearing as to ballistic/firearm evidence. His testimony is likewise

consistent with that which is provided at trial. (*Supra*, p. 8); (Hearing R. p. 331-347).

Bob Tressel testified at the immunity hearing. His expertise in certain fields was successfully challenged by the State. His testimony demonstrated that two of the blood stains came from an object that had blood on it, rather than such being caused by a gunshot impact. (Hearing R. p. 382-384). Another wound was a stellate wound that would potentially be caused by an object like a hammer or a pistol physically striking the body. (Hearing R. p. 385). In review of the photographs and discovery he noted that there was an earring torn off the victim's ear, which is indicative of a physical altercation. (Hearing R. p. 387). He confirmed that there were thirteen distinct wounds between the two victims, the presence of only seven shell casings, but the apparent identification of "eight bullets." (Hearing R. p. 390).

STANDARD OF REVIEW

Pretrial hearings to determine whether a defendant is entitled to immunity under the Protection of Persons and Property Act employ a preponderance of the evidence standard and are reviewed on appeal for an abuse of discretion by the circuit court. *State v. Cervantes-Pavon*, 426 S.C. 442, 449, 827 S.E.2d 564, 567 (2019). Similarly, "[a] trial court's denial of a new trial motion will not be disturbed on review absent a showing of an abuse of discretion which results in prejudice to the defendant." *State v. Kelly*, 331 S.C. 132, 145, 502 S.E.2d 99, 106 (1998) "An abuse of discretion occurs when a trial court's decision is unsupported by the evidence or controlled by an error of law." *State v. Lopez*, 352 S.C. 373, 378, 574 S.E.2d 210, 212 (Ct.App.2002). "In criminal cases, the appellate court sits to review errors of law only" and it is bound by the trial court's findings of fact, unless they are clearly erroneous. *State v. Collins*, 409 S.C. 524, 529–30, 763 S.E.2d 22, 25 (2014) (citing *State v. Baccus*, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006)).

"In reviewing jury charges for error, this Court considers the trial court's jury charge as a whole and in light of the evidence and issues presented at trial. A jury charge is correct if, when read as a whole, the charge adequately covers the law." *State v. Logan*, 405 S.C. 83, 90–91, 747 S.E.2d 444, 448 (2013) (citing *State v. Brandt*, 393 S.C. 526, 549, 713 S.E.2d 591, 604 (2011)) (internal citations omitted). "A jury charge that is substantially correct and covers the law does not require reversal." *Id.* (citing *State v. Foust*, 325 S.C. 12, 16, 479 S.E.2d 50, 52 (1996)). "An appellate court will not reverse the trial judge's decision regarding a jury charge absent an abuse of discretion." *State v. Brandt*, 393 S.C. 526, 550, 713 S.E.2d 591, 603 (2011)

"The admission or exclusion of evidence is a matter addressed to the sound discretion of the trial court and its ruling will not be disturbed in the absence of a manifest abuse of discretion accompanied by probable prejudice." *Collins*, 409 S.C. at 529–30, 763 S.E.2d at 25 (2014) (citing *State v. Wise*, 359 S.C. 14, 21, 596 S.E.2d 475, 478 (2004)). The trial judge is given broad discretion in ruling on questions concerning the relevancy and admissibility of evidence, and his decision will be reversed only if there is a clear abuse of discretion. *State v. Alexander*, 303 S.C. 377, 380, 401 S.E.2d 146, 148 (1991); *State v. Clasby*, 385 S.C. 148, 682 S.E.2d 892 (2009). "A trial judge's decision regarding the comparative probative value and prejudicial effect of evidence should be reversed only in exceptional circumstances." *Collins*, 409 S.C. at 534, 763 S.E.2d at 28 (2014) (quoting *State v. Adams*, 354 S.C. 361, 378, 580 S.E.2d 785, 794 (Ct.App.2003)). An appellate court "review[s] a trial court's decision regarding Rule 403 pursuant to the abuse of discretion standard and is obligated to give great deference to the trial court's judgment." *Id.*

ARGUMENT

I. Appellant has failed to appropriately argue the standard of review of a circuit court's immunity ruling. Moreover, Judge Benjamin did not abuse his discretion in denying immunity to Appellant following his Protection of Persons and Property Act hearing as the evidence strongly contradicts the defense of habitation and self-defense theories proposed by Appellant. The nature of the conflict, the manner in which Appellant alleges he committed the shooting, and the nature of the gunshot wounds received by both victims demonstrates, at minimum, that the preponderance of the evidence weighs against the defense's arguments and demonstrates considerable questions of credibility.

Appellant fails to appropriately argue an abuse of discretion on the part of the circuit court and instead seeks to merely relitigate his immunity hearing evidence to this Court. Such is improper. In any case, Judge Benjamin heard the evidence presented, weighed it in light of Appellant's arguments for immunity under the theories of Defense of Habitation and Self-Defense, and correctly found that the weight of the evidence was not in Appellant's favor. (Order – R. p. 469-483). Appellant failed to present sufficient evidence to satisfy his preponderance of the evidence burden, and in some cases, he failed to provide any evidence in support of certain elements of his defenses. Moreover, the nature of the evidence demonstrates that there are considerable credibility issues relating to Appellant's supposed explanation for the shooting. The circuit court is not obligated to take Appellant's alleged version of the facts at face value and the evidence here demonstrates the weakness of Appellant's theory of the case.

"Section 16-11-450 provides immunity from prosecution if a person is found to be justified in using deadly force under the Act." *State v. Cervantes-Pavon*, 426 S.C. 442, 449, 827 S.E.2d 564, 568 (2019) (citing *State v. Curry*, 406 S.C. 364, 371, 752 S.E.2d 263, 266 (2013)). The Act represents the codification of the "Castle Doctrine," wherein "[o]ne attacked, without fault on his part, on his own premises, has the right, in establishing his plea of self-defense, to claim immunity from the law of retreat, which ordinarily is an essential element of that defense." *State v. Glenn*,

429 S.C. 108, 117, 838 S.E.2d 491, 495-96 (2019). In seeking immunity, the defendant bears the burden of proof and must show that by a preponderance of the evidence that his killing was a justified use of deadly force. *Id.* Stated another way, he must demonstrate all of the necessary elements of his chosen defense theory by the greater weight of the evidence. However, the appellate review of that decision is not conducted *de novo*; on appeal he must instead show an abuse of discretion by the circuit court in denying immunity. "An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law." *State v. Laney*, 367 S.C. 639, 643–44, 627 S.E.2d 726, 729 (2006). Appellant not only fails to satisfy this standard, he has failed to undertake the endeavor entirely.

Appellant relies upon the theories of defense of habitation and self-defense, along with § 16-11-440(A) & (C) as his basis for immunity. And, while Appellant argues that the evidence presented is sufficient to satisfy his preponderance of the evidence burden, he has not identified any erroneous applications of law by the circuit court, nor has he identified any finding of fact by the circuit court that is not supported by record evidence. In fact, Appellant has raised and argued this entire issue on appeal without a single reference to the contents of circuit court's order denying immunity. All he has done is reassert some of the evidence presented and insist that his standard has been met. Appellant's argument on appeal therefore merely seeks to have this Court reverse the circuit court's immunity ruling simply because he disagrees with the court's weighing of the evidence. As this issue is dependent upon proving an *abuse of discretion*, Appellant's arguments are insufficient on their face because he fails to pursue and satisfy the proper burden of proof on appeal.[10] In any case, a review of the Order denying immunity demonstrates that it is not controlled

[10] The nature of Appellant's error here also renders it improper to supplement this argument by way of a Reply, as such would raise new arguments that would deny Respondent an opportunity to contest such by brief. It is axiomatic that an issue cannot be raised for the first time in a reply

by an error of law or an unsupported factual finding. (Order – R. p. 469-483).

For these reasons, this Court should find no basis for appellate relief under Issue I and affirm the circuit court's pretrial denial of immunity.

a. Defense of Habitation and § 16-11-440(A)

Notwithstanding Respondent's position that the entire issue is improperly presented for appellate review, the substantive arguments raised are also without merit. Appellant's first argument asserts that immunity is warranted under the theory of Defense of Habitation. Appellant is mistaken.

"For the defense of habitation to apply, a defendant need only establish that a trespass has occurred and that his chosen means of ejectment were reasonable under the circumstances." In contrast to a self-defense theory, the defense of habitation does not require that a defendant reasonably believe that he or his property was in imminent danger of sustaining serious injury or damage. *Id.* Rather, the defense of habitation provides "where one attempts to force himself into another's dwelling, the law permits an owner to use reasonable force to expel the trespasser." *State v. Rye*, 375 S.C. 119, 124, 651 S.E.2d 321, 323 (2007).

The evidence presented at the hearing failed to establish either element of this defense. In the context of defense of habitation, our Supreme Court has dictated what constitutes a "trespass":

> A man who attempts to force himself into another's dwelling, or who, being in the dwelling by invitation or license ***refuses to leave when the owner makes that demand***, is a trespasser, and ***the law permits the owner to use as much force***, even to the taking of his life, ***as may be reasonably necessary*** to prevent the obtrusion or to accomplish the expulsion.

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brief. *McClurg v. Deaton*, 395 S.C. 85, 87, 716 S.E.2d 887, 888 n.2 (2011) (citing *Chet Adams Co. v. James F. Pedersen Co.*, 307 S.C. 33, 413 S.E.2d 827 (1992)).

State v. Bradley, 126 S.C. 528, 533, 120 S.E. 240, 242 (1923) (emphasis added). First, there is no evidence that Mr. Griffin forced himself into the Appellant's dwelling. Mr. Griffin was a frequent visitor, and while there is evidence that he and Mr. Dash were having a dispute,[11] there is no evidence to demonstrate that Mr. Dash denied him entry or that Mr. Griffin forced his way into the apartment. Nor is there any evidence that Mr. Griffin instigated the supposed violence toward Mr. Dash, *as opposed to Mr. Dash instigating violence against Mr. Griffin after permitting him to enter the home.* Here, Appellant insists that this Court adopt the unsupported premise that Mr. Griffin was the aggressor, when it is just as feasible, perhaps even more feasible, that Mr. Dash was the aggressor. Appellant's argument also insists that this Court disregard the forensic evidence of the shooting which does not corroborate Appellant's version of how he came to kill both Mr. Griffin and Mr. Dash.

Secondly, as it pertains to establishing trespass, there is absolutely no evidence tending to establish that any resident of the home made a demand of Mr. Griffin to leave and then gave him the opportunity to do so. The possibility that Mr. Griffin and Mr. Dash were wrestling, fighting, or otherwise in an altercation does not logically equate to a demand to leave the premises. And, as Appellant makes clear in his alleged version of events, he did not speak to or even determine the identity of the individuals in his home before opening fire multiple times. In light of these facts, Appellant cannot demonstrate that the preponderance of the evidence supports the conclusion that Mr. Griffin became a trespasser following an unheeded demand to leave their apartment.

Appellant similarly cannot prove by a preponderance of the evidence that "the use of deadly

[11] For purposes of the immunity hearing, the evidence of the dispute is based upon what Mr. Griffin's girlfriend heard two weeks later from rumors on the street. (Hearing R. p. 121; p. 125). The result is that her testimony is not corroborative of the inference that Mr. Griffin was harboring ill-will when he went to visit Appellant's apartment on February 7, 2019.

force was reasonably necessary to prevent the obtrusion or to accomplish the expulsion." *Bradley*, 126 S.C. at 533, 120 S.E. at 242. Here, the evidence demonstrates three critical matters: 1) neither victim was armed, 2) no violence, aggression, or even an acknowledgment of his presence had been shown to Appellant prior to his shooting, and 3) all three of these individuals were friends and 4) it is more than reasonably likely that efforts well short of deadly force would have been sufficient to have Mr. Griffin leave the apartment. Appellant's argument for defense of habitation attempts to present its merits for the reasonable use of deadly force when Appellant openly admits that he was not even aware that the person he was supposedly seeking to eject from his home was a close friend who had offered him no violence. Such cannot be deemed "reasonable" under the law.

It is for these same reasons that Appellant's arguments under § 16-11-440(A) fail. Appellant's dwelling was never forcibly entered *and* Appellant never had a legitimate reason to believe such when based *solely* on some unsubstantiated noises. Appellant's theory is simply not supportable under the circumstances of this case.

In summary, Appellant failed to present a viable case for immunity under the theory of defense of habitation and subsection 440(A). The denial of immunity was proper.

b. Self-Defense and § 16-11-440(C)

Appellant's next argument is that he satisfied his preponderance of evidence standard under the theory of Self-Defense. Self-Defense is analogous to defense of habitation, but not identical. *State v. Rye*, 375 S.C. 119, 124, 651 S.E.2d 321, 323 (2007). To prove self-defense Appellant was under the burden of proving 1) that he was without fault in bringing on the difficulty, 2) 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 his defense is based upon actual belief of

imminent danger, a reasonable prudent man of ordinary firmness and courage would have entered the same belief, and 4) 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); *State v. Curry*, 406 S.C. 364, 372, 752 S.E.2d 263, 267 (2013). Appellant cannot satisfy these elements.

The first element is not met because Appellant brought the difficulty onto himself by shooting into a scrap going on between two other individuals who at no time had demonstrated any violence, aggression, or threat against him. The "difficulty" is entirely of Appellant's own making by shooting without gaining even a modicum of knowledge for his situation: no time was taken to look before opening fire, no effort was taken to speak or determine the nature of his circumstances. Appellant *initiated* the only violence that pertained to him. This is especially so given that Appellant knows he lives with two other individuals in the apartments and the layout of the apartment demonstrates that while in the hallway he could see that his door had not been kicked in. (R. p. 698; 1031-1032). Secondly, the evidence is disputable as to whether Appellant ever believed he was in a life-threatening situation. Such is demonstrated by the nature of the shooting itself: the contact gunshot wound, the close-range stippling evidence, and the numerous shots fired striking victims at different angles. The forensics of the shooting simply do not match Appellant's explanation of his actions. They are instead consistent with a purposeful, knowledgeable, and malicious killing. Third, a reasonably prudent man of ordinary firmness and courage would not entertain the belief that his life was in imminent danger when there has been a total absence of threats, aggression, or violence toward him. This is, again, especially so when he lives with other people and has obtained zero insight into what is going on in his apartment. Stated simply, a crash and unobserved sounds of tussling would not spur a man of ordinary courage to simply start

shooting blindly at the sounds he is hearing. Fourth, while Appellant did not have any obligation to flee or retreat (which is usually the context in which the fourth element is considered) the language of the fourth element addresses "other probable means of avoiding the danger. . .than to act as he did in this particular instance." Such is not exclusively a question of the duty to "retreat". As previously stated, no danger had actually presented itself to Appellant and he had other means of handling the situation and learning that there was in fact no danger to his life at all. By failing to take any action to understand his circumstances, he has failed to satisfy the fourth element for self-defense.

It is for these same reasons that Appellant's arguments under § 16-11-440(C) fail. Appellant's admissions demonstrated that he used his apartment for on-going unlawful activity and that such contributed to his supposed fear. The record demonstrated that Appellant was never attacked. Nor was he "meeting force with force" as no aggression or violence had been shown toward him. The record does not support the finding that Appellant reasonably believed deadly force was necessary. (See Order – R. p. 469-483). Appellant's theory is simply not supportable under the circumstances of this case.

Appellant's self-defense theory for immunity was not satisfied by the evidence presented at the hearing. The circuit court's denial of immunity was proper and it should be affirmed.

c. Lack of Credibility to Appellant's Theory of the Case

It should be noted that Appellant's entire theory of the case – that he awoke to a loud boom, mistakenly believed he was being robbed, and blindly fired at the two men fighting each other on the floor – is starkly contrasted by the nature of the injuries that both Mr. Dash and Mr. Griffin received. The immunity hearing record demonstrates that Mr. Griffin sustained a contact gunshot wound to the back of the head, i.e. a wound that could only be inflicted by putting the end of the

gun barrel against Mr. Griffin's skin and pulling the trigger. That is tantamount to an execution style shooting and renders the credibility of Appellant's version of events severely strained, if not impossible. A similar argument arises in relation to Mr. Dash's wounds. His gunshot wounds displayed stippling, which would require the gun to be discharged no more than 3.5 feet away. Since Appellant claims that he fired at the men while they were on the ground, the distance from the gun to the floor would use up most of the allotted 3.5ft distance. Logically speaking, it would mean that Appellant was nearly standing right in front of the two men when he shot Mr. Dash. Such forensic facts run contrary to the explanation he provides for the shooting.[12]

Appellant has failed in both process and substance to demonstrate an abuse of discretion in this matter. Appellant's first issue is without merit and the circuit court's denial of immunity should be affirmed.

II. The trial court did not err in its jury instruction regarding defense of habitation.

Issue as it was presented at trial

After hearing arguments of both parties and reviewing the relied upon case law, the trial court concluded that the facts and circumstances of the case warranted an instruction on the law of defense of habitation. Following his instructions of the law of self-defense, the trial court then gave

[12] Though not specific to the question of immunity, Appellant also substantially damaged his credibility when he lied to police about not having Ms. Small's phone number. This is the same woman that he is claiming snatched the murder weapon from his hand without request or provocation, and she proceeded to hide that weapon under her mattress in her apartment. Such facts already strain the bounds of credibility, but Appellant oversold the lie. He claimed to not really know Shakeila and to not have her number for officers when being interviewed. (State's Exhibit 71). However, the data dump from his phone demonstrates that the two individuals shared 15 phone calls between them in a matter of just 19 minutes, just an hour and a half after the shooting and mere minutes before Appellant came to the police with his story of the shooting. Respondent argues that this was a glaring and verifiable demonstration that Appellant was not being honest with police officers, was covering up his efforts to dispose of the murder weapon, and that the credibility for his entire explanation is consequently destroyed.

the following instruction:

> If the defendant or a member of defendant's household is attacked in the defendant's own home, the defendant may use the force which appears to be needed to protect himself or his household from death or serious bodily injury. If a trespasser refused to leave the home when asked to leave, the defendant may use the necessary force to eject the trespasser. If in the effort to eject the trespasser the life or safety of the defendant or member of the defendant's household is jeopardized, the defendant may take the life of the trespasser. The kind and degree of force which are justified depend on the conduct of the trespasser. If a person entered the dwelling at the invitation of a member of the household, the person becomes a trespasser if the person refused to leave when asked.
> If while legitimately exercising in good faith the right to eject a trespasser the defendant is assaulted by the trespasser and fears death or serious bodily harm, the defendant would be entitled – the defendant would be without fault in bringing on the difficulty. Whether the defendant was acting in good faith in attempted to eject the victim or victims and was assaulted in the process is a question for you to determine.

(R. p. 1204-1205). At the conclusion of the jury instructions defense counsel raised the following objection to the defense of habitation charge:

> I know this is kind of more of a last-minute one, but it did omit – was a very critical part of that was that unlike defense of self-defense, the defense of habitation does not require that a defendant reasonably believe that he or his property was in imminent danger of sustaining serious injury or damage. Rather, defense of habitation provides when one attempts to force himself into a dwelling, the law permits an owner to use reasonable force to expel the trespasser. I did hear the language about invitees becoming transformed into trespasser and what it means, but I did not hear that critical distinction about not requiring an attack or imminent threat. So, I just - - to be complete, I think it would be that, Your Honor.

(R. p. 1212-1213). The trial court responded that it was satisfied that the instruction was proper and denied to further instruct the jury.

Discussion

The trial court correctly and fully instructed the jury as to the law of defense of habitation. Appellant's argument, in large part, is not preserved for appellate review because trial counsel's

objection was not to any alleged error of the language used by the trial court, but for what he believed to be an incomplete instruction or an omission. The instruction was given fully and it accurately instructed the jury on the law. Appellant's other arguments to the contrary are legal errors that read portions of the charge language in isolation, rather than collectively, and otherwise insist on his preferred verbiage. Lastly, the language demanded by Appellant would be an incorrect statement of the law and/or a charge upon the facts.

First and foremost, the bulk of Appellant's argument under Issue II are procedurally defaulted. Appellant's first argument insists that "the instruction given incorrectly told the jury that Appellant had to show he or a member of his household was attacked in Appellant's home and that the 'life and safety' of Appellant or member of his household was 'jeopardized.'" He goes on to argue that "[t]he charge incorrectly implied that habitation requires a defendant to establish that his person or property was in some danger of inquiry or harm. It also incorrectly informed the jury that in order for the defense to apply, the defendant or a member of his household had to be attacked or assaulted." (Brief of Appellant, p. 21; p. 22). These arguments were not raised to the trial court. Instead, defense counsel argued that he believed the instruction omitted language that reasonable belief of imminent danger is unnecessary. As such, Appellant's objection is strictly limited to whether the court erred in not giving the additional specific language requested. "The objection should be addressed to the trial court in a sufficiently specific manner that brings attention to the *exact error*." *State v. Johnson*, 363 S.C. 53, 58–59, 609 S.E.2d 520, 523 (2005) (citing *State v. Prioleau*, 345 S.C. 404, 411, 548 S.E.2d 213, 216 (2001)). "If a party fails to properly object, the party is procedurally barred from raising the issue on appeal." *Id.* Trial counsel did not contest the language used, nor did he argue that the instruction as given inferred or improperly instructed the jury. He argued that a portion of the charge he wanted was omitted. The

court disagreed, finding that his charge sufficiently covered the law. The above-mentioned arguments are therefore procedurally defaulted.

"In reviewing jury charges for error, this Court considers the trial court's jury 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). "A jury charge is correct if, when read as a whole, the charge adequately covers the law. *Id.* A jury charge does not require reversal if it is substantially correct and covers the law in question. *Id.* "The substance of the law must be charged to the jury, not any particular verbiage." *State v. Burkhart*, 350 S.C. 252, 261, 565 S.E.2d 298, 303 (2002).

Appellant's view of the charge violates each of these maxims. First, it is an accurate statement of law that "[i]f the defendant or a member of defendant's household is attacked in the defendant's own home, the defendant may use the force which appears to be needed to protect himself or his household from death or serious bodily injury." However, Appellant appears to read this portion of the charge in isolation of the other jury instruction language, and presumes that the use of force (the degree of which is not specified) is only available if the defendant or a member of the household is attacked within his home. Such is a clear misreading of the text, and is clearly not the instruction of the court, given the other language. The key *additional portions* of the charge are as follows:

> If a trespasser refused to leave the home when asked to leave, the defendant may use the necessary force to eject the trespasser. If in the effort to eject the trespasser the life or safety of the defendant or member of the defendant's household is jeopardized, the defendant may take the life of the trespasser. The kind and degree of force which are justified depend on the conduct of the trespasser.

This language demonstrates that force for ejection is dependent upon the presence of a trespasser, that an invitee can become a trespasser if he refuses to leave when asked, and that the *degree* of force to be used is dependent upon the circumstances of the situation – i.e. the conduct of the

trespasser. Collectively, the language used covers the verbiage that defense counsel referenced and the charge is complete. What Appellant is demanding is a charge that would insinuate that if a trespasser is present Appellant need not harbor reasonable beliefs of danger or experience an attack or imminent threat *before using deadly force*. The law does not stand for such; the law demands reasonableness based upon circumstance and that is what was charged to the jury.

Appellant's argument is also in error because the requested charge language ventures into the forbidden arena of charges upon the facts. Here, the critical issue in the case is the complete lack of violence demonstrated toward Appellant and the unreasonableness of his blind use of deadly force regardless of the circumstances and actions of his victims. Appellant's demand for phrases like "defense of habitation does not require that a defendant reasonably believe that he or his property was in imminent danger of sustaining serious injury or damage" and "not requiring an attack or imminent threat" are charges upon the facts that are 1) improper, and 2) fully covered by the appropriate language that the degree of force used is dependent upon what is necessary based upon the conduct of the trespasser in question. See *State v. Brown*, 443 S.C. 196, 199, 904 S.E.2d 448, 450 (2024) (noting that jury charges as to "particular facts" is an "improper court-sponsored emphasis of a fact in evidence" and cannot be permitted.).

Appellant relies upon the holding of *State v. Rye* to suggest that defense of habitation instruction error arose from the implication that the defense "required the defendant to establish that his person or property was in some danger of injury or harm." (Brief of Appellant, p. 23). In *Rye*, the trial court differentiated self-defense from defense of habitation solely on the basis that defense of habitation does not require a duty to retreat. The Court found that such a limited instruction implied that habitation required a defendant to establish some danger of injury or harm. The distinction being, again, that some force can be used whether danger exists or not, and the

escalating degree of force that may be viewed as reasonable is dependent upon the circumstances. Appellant here again insists that the trial court's instruction to the jury here was more egregious because it "requires" the defendant to show the presence of an attack. A *fair* and *complete* reading of the charge does not present or insinuate such a requirement. Critically, the Court in *Rye* noted that the charge given was not inherently incorrect, it was simply incomplete as it did not instruct on scenarios where "the occupant is the slayer and stands upon habitation apart from self-defense." Here, the trial court's instruction covers such circumstances addressed in *Rye*, *in addition* to the lack of duty to retreat. (R. p. 1203).

For the above stated reasons, Appellant's arguments do not demonstrate error on the part of the trial court in instructing defense of habitation. This Court should therefore affirm Appellant's convictions.

III. The trial court did not abuse its discretion in admitting the evidence of his sale and use of marijuana and his possession of unrelated firearms and ammunition.

Issue as it was presented at trial

Appellant sought to suppress any mention of marijuana and other firearms and ammunition from the trial via pretrial motion. The motion was heard, but the court did not issue a ruling and instead waited to hear arguments in the context of the trial.

When the issue came to the forefront of trial, Appellant attempted to argue that the evidence was not relevant because the solicitor had failed to present any evidence that there was a drug deal going on and that this was not a matter of a drug deal gone bad. He followed with the presumption that the solicitor would argue Appellant's propensity for selling drugs is demonstrative that he acted in bad character in committing the shooting. In response, the solicitor argued the marijuana is part of the reason Appellant claimed he believed he was being robbed: that people are in and out of the apartment all of the time and that someone had come to rob him of his weed. The solicitor

argued that the evidence does not address whether Appellant was of bad character, but because Appellant admitted that the drug dealing leads to a lot of traffic in and out of his home, and that such fueled his mistaken shooting.[13] (R. p. 638-641)

The issue of firearms and ammunition arose later, when Officer Potash was dealing with the items collected from the apartment during the investigation. He began to discuss ammunition found in the back of the apartment, and Appellant reiterated his pretrial motion under 402, 403, and 404(b). (R. p. 713). In-camera testimony was offered wherein Officer Potash listed finding a quantity of green plant with baggies and a rifle scope from the first bedroom, and a container of green plant material from the second bedroom as well. In the back walk-in closet, they also located green plant material, small clear bags, and ammunition of the .40 caliber and .380 auto caliber variety, and a shoebox containing documents bearing Mr. Dash's name. In the kitchen they found a copy of a firearms purchase receipt for a Smith & Wesson SD40 VE pistol, a digital scale, and .22 rifle ammunition. (R. p. 713-715). Appellant argued a lack of relevance since such constitutes evidence of unrelated firearm ownership. Appellant then argued that even if it were deemed relevant, the prejudicial effect would substantially outweigh the probative value, and that the evidence serves no other purpose than to portray Appellant "as a gun-toting thug who has guns, likes guns, shoots people." The State reiterated that Appellant has already stated to police that he is a drug dealer and that such spurred his concern of robbery. Regarding the firearms, the State noted that there has already been insinuation through cross-examination of victim having been known to carry a gun, that there has been considerable testimony regarding a gun going missing,

[13] Appellant's assertion is key. In his brief, Appellant asserts that "there was no evidence, direct or circumstantial, that Appellant was attempting to sell marijuana on the morning of the shooting." (Brief of Appellant, p. 31). Such an assertion overlooks the fact that he and others in the apartment apparently did so regularly, which impacted the frequency that they experienced visitors in connection with marijuana sales.

and that later testimony would potentially include references to "a mysterious other gun."[14] The State argued that it was already clear that there was more than one gun in this apartment at certain times and the "cat is out of the bag" as it relates to possession of multiple firearms by the apartment's residents. (R. p. 715-719). In response, the court noted that given the nature of the crime scene, the nature of the shooting, what was in the mind of defendant at the time of the shooting, and the State's various burdens of proof, he found that relevant and more probative than prejudicial. (R. p. 720).

Lastly, the issue arose again during Chris Watkins' testimony about the contents of the data dump from Appellant's phone. This included texts demonstrating concern over a gun that was missing or taken. The testimony then proceeds to the issue of photographs of Appellant holding various firearms. Appellant argues that such is not relevant evidence. Appellant then raised the issue of such being bad character evidence[15], but does not assert such after the court asks how he knows what the State intends to do. The solicitor responded first by noting that the text message thread refers to the missing weapon as "our" gun, which demonstrated a claim of ownership over the weapon. The missing weapon in question might well be pictured in photographs. Ultimately, the solicitor indicated that it would not attempt to admit the photograph and would instead only question Mr. Watkins as to his recognition of the photos and his recognition of Appellant posing with various guns in those photos. Following the arguments, the court overruled the objection. (R. p. 877-885).

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[14] This is a well-founded argument in light of the content of the immunity hearing and the defense's focus upon the potential involvement of an unknown revolver. (R. p. 781-782; p. 798). Appellant now attempts to reverse course from his defense tactics and suggest that "the evidence of firearms and ammunition had absolutely no connection to the case" despite his efforts to make such inferences *appear* feasible at trial. (Brief of Appellant, p. 33).

[15] Despite claiming the evidence to be "bad character" evidence, counsel for the defense even acknowledged that such is not unlawful. (R. p. 879)

Discussion

The trial court did not abuse its discretion in admitting the marijuana and other firearm evidence because the nature of Appellant's arguments for how this shooting came about are both directly tied to marijuana and other firearms. Appellant's theory of the case, his explanation to officers, and the overall facts of this case rendered the evidence relevant, highly probative in comparison to only minor prejudice, and not indicative of bad character to prove conformity therewith. There is no abuse of discretion in the court's applications of Rules 402, 403, and 404(b) and the evidence was properly admitted.

a. Relevancy

"Trial courts are given broad discretion in ruling on questions of relevancy of evidence, and his decision will be reversed only if there is a clear abuse of discretion." *State v. Alexander*, 303 S.C. 377, 380, 401 S.E.2d 146, 148 (1991). Evidence is considered relevant if it has any tendency to establish, or otherwise make more or less probable, some disputed issue upon which the evidence relates. *Id.*

Among many other litigated disputes, Appellant placed two distinct issues in dispute in his case that relate to the marijuana and other firearm evidence. The first is that Appellant presented a set of circumstances to law enforcement when explaining his actions as being based in self-defense. His explanation was that given the loud boom and the lack of identifying noises, he believed he was being robbed. *Moreover, he readily confessed to dealing marijuana and believed that the robbery was intended to rob him of his weed.* (State's Exhibit 71). By making that confession and linking his marijuana to his assertion of self-defense, and to the basis for which he attempts to portray his conduct as reasonable, he has made the marijuana highly relevant to contesting the key issue of self-defense. As demonstrated by the State, the evidence cuts both ways.

While Appellant asserted that his marijuana dealing made him fear the prospect of someone robbing him of his weed, the State wished to demonstrate that Appellant's confession to dealing marijuana and the consistent flow of people in and out of their apartment for that purpose rendered his version of the shooting to be an entirely unreasonable action, even if true.

The second issue placed into dispute at trial was that the two victims were disputing the theft of a gun from the apartment, a gun that later is described as being "ours" by Appellant in his text messages. Additionally, the solicitor had already witnessed the defense attempt to draw doubt toward the evidence by referencing the limited number of shell casings recovered in comparison to the number of bullet wounds sustained by the victims and the lack of complete "matches" of all fired projectiles to the 9-millimeter weapon. While Respondent would argue that the through-and-through nature of Mr. Dash's arm wounds and his *close* proximity to Mr. Griffin provide a reasonable argument for Mr. Griffin sustaining reentry wounds from the same bullets, the alternative insinuation is that more than one gun was used – and the defense sought to convey to the jury that such might potentially be a revolver. (R. p. 781). Appellant has already admitted to committing the shooting, this evidence becomes relevant to demonstrate to the jury that if they believed more than one gun was used, Appellant was an owner of or potentially in possession of other guns which might have been the missing gun in dispute, or if Appellant's red herring is entertained, could potentially have been used. For these reasons, the additional gun receipt, ammunition, and photographs all became relevant evidence.

b. Rule 403 Balancing

Appellant next argued that if the evidence was deemed relevant, it should be deemed inadmissible as being substantially more prejudicial than probative. Appellant is again mistaken.

Trial courts are afforded great deference in deciding the admissibility of evidence under

Rule 403. *State v. Collins*, 409 S.C. 524, 534, 763 S.E.2d 22, 28 (2014). Relevant evidence "may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury. . ." *State v. Hopkins*, 431 S.C. 560, 571, 848 S.E.2d 368, 373 (Ct. App. 2020) (citing Rule 403, SCRE). "All evidence is meant to be prejudicial; it is only unfair prejudice which must be avoided." *Id.* (quoting *State v. Gilchrist*, 329 S.C. 621, 630, 496 S.E.2d 424, 429 (Ct. App. 1998)). "Evidence is unfairly prejudicial if it has an undue tendency to suggest a decision on an improper basis, such as an emotional one." *Id.* (quoting *State v. Wilson*, 345 S.C. 1, 7, 545 S.E.2d 827, 830 (2001).

Appellant seemingly fails to raise a balancing objection to the first reference to marijuana, as it relates to Appellant's explanation for his actions to police. Regardless, as previously argued, the subject matter is highly probative of one of the key disputes of this case: were Appellant's actions reasonable? Given Appellant's admission that people are often in and out of his apartment for the purpose of buying marijuana, introduction of the subject matter was immensely probative to the topic of reasonable fear of imminent danger in comparison to minimal prejudice. Once the jury is aware that Appellant was dealing drugs, the fact that marijuana was found in the apartment during the investigation becomes inconsequential.

Appellant attempts to liken this case to other cases like *State v. Coleman*, *State v. Smith*, or *State v. Bolden* is unconvincing. Here there is a direct connection between Appellant's marijuana, his professed reasoning for believing and acting upon the possibility of a robbery, and the State's right to challenge that reasoning as unreasonable given the admission of what the traffic in and out of their apartment can often entail.

Regarding the firearms, it should first be noted that contrary to Appellant's arguments the photographs of Appellant holding other firearms was not admitted into evidence. Second, by

counsel's own admission the topic involves conduct that is neither illegal nor immoral; Appellant was legally permitted to own and carry firearms. (R. p. 1048). Thus, the record demonstrates that even defense counsel acknowledged that the evidence is not inherently prejudicial. Third, the evidence is highly probative because it: 1) provides tangible evidence related to the previously admitted testimony that other guns were owned by the residents of this apartment; 2) the discontinuity as to who might have owned the missing weapon – which would be highly probative toward explaining Appellant's execution style shooting of Mr. Griffin; 3) evidence that would counter the red herring arguments of the defense regarding the potential consistency of "Item 22 fired bullet jacket fragment" as being potentially fired by a revolver (so as to not leave a shell casing at the scene and suggest to the jury that another gun was involved in the crime). (R. p. 781-782). This argument about "another weapon" also takes the form of suggesting that the 9-millimeter weapon did not have the correct remaining amount of ammunition to match the number of bullet wounds sustained by the victims.[16] (R. p. 791). The evidence in question was probative because it permitted the State to prove the existence of other weapons relative to their involvement in the case, that Appellant claimed some ownership over the missing gun, and that a "second firearm theory" would not necessarily prove Appellant's innocence of the shooting.

The trial court did not abuse its discretion in admitting the evidence under Rule 403. The evidence in question is of considerable probative value in comparison to its minimal prejudice.

c. Rule 404(b) analysis

Appellant's arguments fall woefully short of successfully invoking and arguing a violation of Rule 404(b) by the trial court. First, the arguments for admission presented by the State make

[16] It seemed a persistent effort by Appellant to both challenge the admission of certain evidence but also rely upon the nature of that same evidence to make certain legal arguments.

clear that neither the marijuana nor the firearms are being admitted to demonstrate Appellant's bad character and his conformity therewith. They are being admitted because they relate directly to the explanations offered by Appellant and his defense counsel at trial on the subject of reasonable fear, use of force, sources of tension between the victims, and the potential (albeit unlikely) use of other weapons in the crime. Additionally, the exclusion of evidence relating to marijuana and other firearms would prevent the state from presenting the res gestae of its case. Those two evidentiary matters provide considerable background to the case that would be extremely difficult to make sense of without.[17] Regardless, while specific exceptions under Rule 404(b) were seldom discussed – due to the lack of clear applicability here – the purposes of the evidence discussed above would constitute evidence of motive, intent, absence of mistake or accident, and the res gestae of the case. Rule 404(b), SCRE; *State v. King*, 334 S.C. 504, 512, 514 S.E.2d 578, 582 (1999) (noting that "the *res gestae* theory recognizes evidence of other bad acts may be an integral part of the crime with which the defendant is charged, or may be needed to aid the fact finder in understanding the context in which the crime occurred"). Lastly, the nature of the evidence disputed simply lacks prejudice to Appellant under the circumstances of the case. He has admitted to being the shooter, the question before the jury was whether the shooting was consistent with his theory of self-defense. The fact that he deals marijuana and has been lawfully in possession of firearms is insignificant.

There is no abuse of discretion by the trial court in admitting the disputed evidence. Appellant's conviction should be affirmed.

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[17] Of note, most of the referenced items that are disputed in the appeal were not found in Appellant's bedroom and are presumably the property of either Sam Thomas or Mr. Dash. A 404(b) bad character evidence argument does not flow from personal property that does not belong to the Appellant.

IV. The trial court did not abuse its discretion in permitting cross examination of Appellant's rap lyrics.

Issue as it was presented at trial

This matter was addressed first during the immunity hearing, and subsequently in a pretrial motion in limine hearing. The arguments by Appellant and the solicitor are both presented to the court. (R. p. 495-96). However, key to Appellant's later supposed dispute over Rule 5 disclosure, the solicitor explicitly noted that there are multiple rap songs in question and that one such song "specifically references him killing his two – the victims in this case. Other ones, he, he kind of – you've seen it from the bench, Your Honor. Some, some people seek a certain amount of clout from saying they've killed people." (R. p. 496). Here, the solicitor has made Appellant aware that he is in possession of more than just the one rap video that was discussed during the immunity hearing, he has made Appellant aware of its contents, and the trial court chose to reserve judgment on the issue until it arose in the context of the trial.

On direct examination, Appellant went into detail about his remorse, emotions, and nightmares that had resulted from this shooting. The solicitor began his cross-examination by confirming that Appellant's "rap name" was Big Hood Lyfe, and whether Appellant wrote a rap song about this shooting. Objection was raised and the matter was addressed outside the presence of the jury. (R. p. 940-944)

Appellant raised objection on the basis of Rule 5 discovery obligations, SCRE 402, 403, and 404(b), and First Amendment rights to free speech. The solicitor asserted that the song in question, along with 21 other songs, were found published on YouTube by Appellant between December of 2018 and August of 2022. The State argued that the lyrics he is creating and posting are explicit articulations of his thinking and mindset, and that such goes to proving malice. The solicitor acknowledged that the lyrics are prejudicial, but that the relevancy and probative value

outweigh such. In support of his argument, the solicitor provided some excerpts of the lyrics, which included:

> T.O.[18] Was like my brother. When the time comes, everybody freeze but I'm cold with that cut.
>
> I heard you trying to jack. I heard you trying to rob me. I'm scared to take a loss. I'm a business thread your cross.
>
> My heart is as black as a kettle. No, I'm not a grave digger. Grave filler, that's my name.

(R. p. 944-947).

In response, Appellant first asserted that the rap lyrics should have been disclosed pursuant to discovery obligations under Rule 5 and cited to *State v. Lawton*. Appellant goes on to argue that such would include reports, documents, written materials, or any information that they intend to use at trial that is material to the defense or is something they intend to introduce in their case-in-chief. Appellant next argued that the art behind rap lyrics is not tantamount to biographical information, and that the subject matter of killing and robbing is prevalent across the music genre. (R. p. 947-951). Appellant then cited to *State v. Cheeseboro* as a basis for excluding the lyrics. (R. p. 951-953).

The solicitor responded by noting that the lyrics' connection to this crime is clear, given that Appellant references one of the victim's by his nickname, T.O. and that the lyrics appear to reference this case. He further noted that these rap videos were not the result of searching some law enforcement database or other limited access system; he found them simply by typing in "Big Hood Lyfe" into a google search. (R. p. 953-954). He argues that the lyrics are appropriate impeachment evidence in light of his testimony regarding his supposed remorse. (R. p. 958).

[18] T.O. is the nickname that Appellant uses for Mr. Dash.

The matter was reconvened after lunch, and the trial court noted the arguments that Appellant had made in memorandum to the immunity hearing. It further noted that the *Cheeseboro* ruling was essentially that the rap lyrics were too vague and minimally probative to qualify as admissible in the state's case-in-chief. (R. p. 960-961). The trial court issued a ruling that the lyrics for which the defense had been provided notice were admissible for purposes of impeachment, in light of the distinguishing facts from *Cheeseboro*. This caused further dispute about which lyrics were being argued for admission and which had been noticed, and prompted a full recitation of the lyrics he had pulled from the video of Appellant's song "Let Me Explain":

> Nobody know what happened. But everybody got something to say. But if the shoe was on the other foot, would you feel the same way? An N word talking about robbing me. An N word run into my house and try to harm me. You know I fuck with both of y'all. But T.O. is like a brother to me. Everybody say what they going to do but they freeze. I'm cold with that cutter. Watch him fall. It don't matter if it's T.O. I'm going to stand on business forever and always. That gangster shit be making me shoot these N words. I swear to God --- Well, I might not mention this, but he says: I swear to God I'll beat the trial. I'm a soldier. I don't mean no truces. It's me against the rest of y'all. I'm a barber with a cutter. Watch me burn like alcohol.

(R. p. 962-964). Though the record is limited, it was also demonstrated that the solicitor and defense counsel had, to some extent, discussed the existence of Appellant's various rap videos and that such were found by a simple google search. (R. p. 964). After hearing this, the trial court interrupted the dispute and noted that it was sticking with its ruling. (R. p. 965).

When cross-examination resumed, the solicitor questioned Appellant about the lyrics and whether they pertained to his having killed the two victims. Appellant denied such and noted that what the solicitor had written down was incorrect. (R. p. 966). The Solicitor then proceeded to ask Appellant about the accuracy of each stanza, and Appellant testified that the solicitor's recitation of certain lines was incorrect or that other lines were omitted:

- "An N word talking about robbing me. An N word run into my house and try to harm me" was corrected to state: "My life was on the line. People plotting and talking to rob me. Can't let nobody run into my house and try to harm me."
- Appellant added a couple of lines that he stated were omitted by the solicitor: "Once my dawg says it's up, they ain't no picking sides." He then explained that the line means that "[i]f they have a problem with you, it's not going to pick a side."
- Appellant explained that the "I'm cold with that cutter. Watch him fall" lyric is a reference to when it gets cold the leaves fall. The solicitor asked if the line was a double entendre, but Appellant did not understand what that meant.
- Appellant denied having lyrics that say: "It don't matter if it's T.O" or "That gangsta shit be making me shoot these N words." He corrected counsel by stating that his lyrics say: "Long live T.O.;" "They don't know what's going on;" and "That gangsta shit you make believe. . . You shoot a nigga, he going to call the twelves. That shit not real to me."

(R. p. 966-974). After these various exchanges, Appellant then says that his little brother actually wrote the lyrics, he merely sang it and posted it to YouTube.[19] (R. p. 974).

Discussion

At trial the State sought to cross-examine Appellant on rap lyrics discovered from a YouTube video that Appellant had personally produced and published. Appellant argued that the evidence was not properly disclosed under Rule 5, and that it would be irrelevant, unduly prejudicial, and inadmissible as bad character evidence. The trial court heard the arguments of the parties and correctly permitted the cross examination on the accuracy and meaning of the lyrics.

[19] The prospect of playing the actual video was discussed, but ultimately such was not admitted and published to the jury.

a. Rule 5

First the record demonstrates that defense counsel was put on notice of the lyrics and that access to them was as simple as running a google search. This is borne out by the record from the motion in limine hearing where the solicitor disclosed its knowledge and access to Appellant's multiple rap videos and made the defense aware of the general subject matter believed to be relevant.[20] The record then demonstrates that both defense counsel and the solicitor had some discussions regarding these videos. While defense counsel argued that this was insufficient, under the circumstances of this case, it is sufficient for establishing disclosure under the rule and for satisfying the purpose of Rule 5 discovery.

Rule 5 "is intended to enable a defendant to obtain prior to trial any of his own statements relevant to the crime charged against him so that he will be able to prepare properly to face the evidence that may be introduced against him at trial." *Earley v. State*, 418 S.C. 255, 266, 792 S.E.2d 226, 232 (2016) (quoting *United States v. Gleason*, 616 F.2d 2, 24 (1979) (discussing the underlying purpose of the similar federal rule). Appellant was already on notice that his rap videos may present an evidentiary problem for his case, as the subject of such was argued extensively during his immunity hearing. In light of that fact, he was likewise aware of and on notice that his other videos may present similar evidentiary problems. He failed to heed such concerns, or he chose to testify despite the risk of being cross-examined on these videos.

Also, unlike statements to police officers, or statements recorded by law enforcement surveillance footage, or any other number of means in which recordings are obtained where knowledge of and/or access to the statements is not conveyed to the defendant, these recordings were recorded and published by Appellant himself to the public domain. Moreover, as they are *his*

[20] Appellant's own brief acknowledges this reality. (Brief of Appellant, p. 36).

YouTube posts, he would also have the ability to access and remove these videos had he wished to do so. The record demonstrates that Appellant was not blindsided by this evidence; he was made aware of its existence and its nature, and he (or his counsel) clearly had access to the videos in question.[21] This is not tantamount to a *Brady* argument where it is the defendant's constitutional right to possess all material exculpatory evidence or evidence of impeachment value. The lyrics in question do not trigger *Brady*, and they exist solely as a discovery dispute between the parties that was disclosed and discussed by counsel from both parties before trial.

Lastly, as the cross-examination reveals, Appellant was well prepared to discuss the text and meaning of his own lyrics, and he provided innocuous explanations for the meanings of his songs and at times demonstrated that the solicitor was mishearing or misquoting his lyrics. In light of this fact, and in light of the fact that the video was never admitted as evidence, it can be said that no undue prejudice arose from the admitted lyrics.

b. Rule 402, 403, and 404(b)

Appellant's other grounds for exclusion simply fail to present compelling arguments. These lyrics contained an explicit reference to T.O. as the victim, the fact that two victims were involved,[22] and clear references to his belief that a robbery was taking place. The lyrics were therefore specific, relevant, highly probative, and admissible as evidence of impeachment concerning Appellant's remorse, mindset, lack of mistake, motive, and intent regarding the shooting. Such fully satisfies the relevancy, probative value, and legitimate evidentiary purposes

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[21] Rule 5 states that the prosecution "shall permit the defendant to inspect and copy or photograph: any relevant written or recorded statements by the defendant. . ." Rule 5(a)(1)(A), SCCrimP. Applying such directives to publicly accessible videos for which Appellant has ultimate authority to publish or remove from YouTube demonstrates that he was given adequate disclosure for this issue.

[22] Reasonably apparent from the line: "You know I fuck with *both* of y'all. But T.O. is like a brother to me."

required by the respective evidentiary rules. As was apparent with Appellant's arguments concerning the marijuana and other firearms issue (*supra*), there is a notable friction to the application of Rule 404(b) in this case. The reason for such is that Appellant is the admitted shooter. Where 404(b) evidence disputes are commonly a question of bad character evidence that the defense believes would improperly sway a jury to believe that the defendant is correctly identified as the culprit (i.e. his conformity there with), here Appellant's arguments devolve into disputing any evidence that Appellant believes challenges his motives or reasoning in committing what he argues was a self-defense shooting. The circumstances of this case, and the lack of dispute as to the identity of the shooter, present a paradigm where practically all evidence that Appellant believes risks portraying "bad character" goes to the question of his motive, intent, or absence of mistake or accident.

Additionally, the trial court provided a proper application of *Cheeseboro's* guidance to the facts of this case. First, the trial court in *Cheeseboro* admitted the rap lyrics in the State's case-in-chief as a statement against interest, demonstrating that they were being offered for the truth of the matter asserted. Moreover, in *Cheeseboro* the question of whether the defendant was the culprit to the murders was in dispute. Here, Appellant had confessed to the shooting and the lyrics were not being offered for purposes of truth of the matter asserted, but for impeachment of the supposed remorse and emotions Appellant had testified to on direct examination. The Court in *Cheeseboro* also noted that the references were too vague in context to support admission. Having referenced T.O. specifically, noted the existence of two victims, and referenced the issue of a robbery, Appellant's lyrics were clearly related to this crime. That specificity, and the fact that the evidence was being offered to explore Appellant's supposed remorse distinguish this case from a like-for-like application of the Supreme Court's analysis in *Cheeseboro*. The trial court did not abuse its

discretion in finding the evidence admissible despite objection pursuant to SCRE Rules 402, 403, and 404(b).

V. The trial court did not abuse its discretion in refusing to admit Defendant's Exhibit 108 as a prior consistent statement under Rule 801(d)(1)(B), where the evidence in question was both improper under the rule.

Issue as it was presented at trial

During redirect examination, Appellant sought to introduce video footage during his time at the police station wherein he was videotaped making phone calls to friends and family. Appellant argued under 801(d)(1)(B) that the evidence should be admissible as a prior consistent statement, noting that cross-examination "had brought his remorse into play" and that the State had "attacked his consistency about what he told people." (R. p. 1050-1051). Appellant equated such cross-examination as constituting an "express[ed] or impl[ied] [ ] charge against the declarant of recent fabrications or improper influence." The solicitor noted that the defense had addressed Appellant's supposed remorse on direct examination and that he had cross examined him on the topic, but he argued that he raised no additional issues on the matter and that Appellant was rehashing covered ground. The trial court sustained the objection.

Discussion

Appellant argued an inapplicable evidentiary rule for the admission of his desired exhibit. The trial court was fully within its discretion to deny the admission of Defendant's Exhibit 108, as it in no way constituted a prior consistent statement under Rule 801(d)(1)(B).

Appellant's argument for admitting the exhibit as a prior consistent statement fails because the circumstances of the case and the prior testimony do not satisfy the "*recently*" fabricated statement or improper motive, nor can Appellant demonstrate the necessary timing elements of the rule. Appellant was not accused of a *recent* fabrication of his version of the shooting, he is accused

of fabricating his story for the improper motive of avoiding prosecution of his crime from the very beginning. Under the State's argument, the alleged prior consistent statement was made after he had already fabricated his story and told it to the police, this rendered it repetition, not a prior consistent statement absent the taint of the same motive to lie.

Our Supreme Court in *State v. Saltz* set forth the roadmap for what constitutes a proper use of prior consistent statements. Prior consistent statements require a showing of four elements:

> (1) the declarant must testify and be subject to cross-examination,
> (2) the opposing party must have explicitly or implicitly accused the declarant of recently fabricating the statement or of acting under an improper influence or motive,
> (3) the statement must be consistent with the declarant's testimony, and
> (4) the statement must have been made prior to the alleged fabrication, or prior to the existence of the alleged improper influence or motive.

State v. Saltz, 346 S.C. 114, 121, 551 S.E.2d 240, 244 (2001). Appellant Michael Saltz was charged with the murder of twelve-year-old victim, Joseph Barefoot. Certain testimony arose that suggested a friend of Appellant's, Charlie Mengedoght, may have been involved. During the defense's case-in-chief, Tina Ashford testified that Charlie had confessed to participating in the crime, which was consistent with her affidavit. The prosecution's cross-examination highlighted the fact that her affidavit was signed just thirteen days before her trial and impeached her on the motive of making that affidavit only after becoming the defendant's girlfriend. In response, Tina testified that she had told her father of the confession long before the affidavit or her romantic relationship. The defense sought to call Tina's father, Buddy Hancock, but the trial court would not permit him to testify to the jury concerning Tina's prior consistent statement made to him. *Id.* at 243-47. The South Carolina Supreme Court identified this scenario as "precisely what Rule 801(d)(1)(B) was designed to address" because the prior consistent statement followed an

accusation of *recent* fabrication (signing an affidavit thirteen days before trial) and improper motive for that fabrication (her new romantic relationship with the defendant). *Id.* at 247. Since Tina's prior consistent statement was made prior to the suggested fabrication and/or motive, it was admissible.[23]

In its discussion of rule 801(d)(1)(B) the Court also cited to *Tome v. United States*, 513 U.S. 150, 157, 115 S.Ct. 696, 130 L.Ed.2d 574 (1995) for the premise that "[p]rior consistent statements may not be admitted to counter all forms of impeachment or to bolster the witness merely because she has been discredited... The rule speaks of a party rebutting an alleged motive, not bolstering the veracity of the story told." This sentiment has found its way into other South Carolina cases, such as *State v. Fulton*, 333 S.C. 359, 374, 509 S.E.2d 819, 826 (Ct. App. 1998). Therein, this Court identified several fundamental barriers to the use of prior consistent statements:

> Rule 801(d)(1)(B), SCRE does not address the use of prior consistent statements solely for rehabilitation. However, we fail to see how a prior statement made *after* a motive to fabricate arose can be relevant to rebut a charge of improper motive, since the same motive to fabricate would have existed at the time the prior statement was made.
>
> . . .
>
> The prior consistent statement cannot be said to carry any greater indicia of trustworthiness merely by repetition.
>
> . . .
>
> Accordingly, we hold when a prior consistent statement is offered for the purpose of rebutting an express or implied charge that the witness's testimony is the result of a recent fabrication or improper influence or motive, the statement must predate any alleged improper influence or motive. Because Fulton's post-motive statement is inadmissible under Rule 801(d)(1)(B), SCRE as substantive evidence, it is also inadmissible for "rehabilitative" purposes.

[23] The Supreme Court was also tasked with determining whether other reasons, such as a potential violation of the sequestration of the witnesses, would have permitted the trial court to exclude the evidence, given that its reasoning for doing so was not set forth clearly on the record. However, such does not detract from the clear demonstration of how this Rule is used.

Id. at 826-27.

Appellant's suggested evidence is in no way connected to our courts' clear articulation of the limited utility of 801(d)(1)(B). His exhibit contains nothing more than the same reassertion of his story given to police two hours after the crime was committed and the same feigned remorse. Moreover, this recording was taken *after* the alleged inconsistent stories were told to Mr. Archie. It cannot satisfy the second third, or fourth elements for admission of a prior consistent statement.

To the extent Appellant argues that he wanted to present the jury the video as a prior consistent *demonstration of emotion* – there is no basis in law to utilize the rule in such a way. For that reason, the trial court's refusal to admit the evidence was correct and the specifics need not be addressed. However, even if this unfounded utilization of the rule were to be examined, the elements for timing, fabrication, and motive would still not align. First, in comparison to *Saltz*, the solicitor did not insinuate or accuse Appellant of a "recent" fabrication. The State's theory (at least in part) is that Appellant's supposed remorse and emotion had been feigned from the very beginning. Second, the motive for feigning emotion existed from the moment the crime was committed, there was no new intervening motive, as there was in *Saltz*. Third, and in keeping with the State's general theory, the desired statement must have been made prior to the alleged fabrication or improper motive. Here, the motive has always been the same: feign remorse to sell the bunk theory of self-defense. Rule 801(d)(1)(B) was wholly inapplicable and the trial court was entirely within its discretion to deny the admission of Defense Exhibit 108.[24]

---

[24] Appellant references the fact that after recross-examination by the State, Appellant renewed its request to admit the video evidence because the solicitor "directly attacked [Appellant's] remorse again." (Brief of Appellant, p. 45). The trial court rightfully denied Appellant the opportunity to admit the evidence as such was not admissible for that purpose (*supra*), and Appellant is not entitled to further examination or the introduction of evidence after the witness has been so

VI. The trial court did not err in denying Appellant's motion for a new trial as there are no errors for which the cumulative error doctrine can be applied. Moreover, in light of the evidence and testimony presented, even if error did exist to the matters raised by Appellant, they are harmless in light of the evidence presented at trial.

As set forth above, there are no errors or abuses of discretion on the part of the trial court and consequently there can be no application of the cumulative error doctrine. In review of the record, it is clear that Appellant received his constitutionally guaranteed full and fair trial. In the alternative, the evidence presented at trial demonstrates that any particular combination of errors from the above disputed issues is rendered harmless because Appellant's testimony is demonstrably lacking in credibility, and the forensic evidence cannot support Appellant's explanation of the shooting.

"The cumulative error doctrine provides relief to a party when a combination of errors, insignificant by themselves, has the effect of preventing the party from receiving a fair trial, and the cumulative effect of the errors affects the outcome of the trial." *State v. Beekman*, 405 S.C.

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examined and excused. Appellant also attempts to rely on his right to present a "full and fair" defense.

> However, "[i]n the exercise of this right [to present a defense], the accused, as is required of the State, must comply with established rules of procedure and evidence designed to assure both fairness and reliability in the ascertainment of guilt and innocence." *Chambers*, 410 U.S. at 302, 93 S.Ct. 1038. "The right to present a defense is not unlimited, but must 'bow to accommodate other legitimate interests in the criminal trial process.'" *Hamilton*, 344 S.C. at 359, 543 S.E.2d at 594 (quoting *Rock v. Arkansas*, 483 U.S. 44, 55, 107 S.Ct. 2704, 97 L.Ed.2d 37 (1987) (quoting *Chambers*, 410 U.S. at 295, 93 S.Ct. 1038)). "'The accused does not have an unfettered right to offer [evidence] that is incompetent, privileged, or otherwise inadmissible under standard rules of evidence.'"

State v. Lyles, 379 S.C. 328, 342, 665 S.E.2d 201, 209 (Ct. App. 2008). Appellant's fails to present any basis for why these maxims should not likewise apply to his improper arguments.

225, 237, 746 S.E.2d 483, 490 (Ct. App. 2013), aff'd, 415 S.C. 632, 785 S.E.2d 202 (2016). "Respondent must demonstrate more than error in order to qualify for reversal on this ground. Instead, the errors must adversely affect his right to a fair trial. . . 'As we have stressed on more than one occasion, the Constitution entitles a criminal defendant to a fair trial, not a perfect one.'" *State v. Johnson*, 334 S.C. 78, 93, 512 S.E.2d 795, 803 (1999) (quoting *Delaware v. Van Arsdall*, 475 U.S. at 681, 106 S.Ct. at 1436, 89 L.Ed.2d at 684)) (internal citations omitted).

Appellant has failed to present sound and convincing arguments that any of his alleged issues on appeal constitute error or abuse of discretion on the part of the trial court, let alone multiple such errors that would trigger the ability to consider cumulative error.

While the presence of error is lacking in this case, the evidence presented renders Appellant's claim for self-defense untenable. First, the general theory of the State's case was a sound one: Appellant's description of the events leading up to the shooting cannot satisfy the elements that must be met for self-defense. If his story is to be believed, his friends were involved in a fight that did not include deadly weapons, he introduced a deadly weapon to a nondeadly circumstance. Moreover, there is no showing of threat, aggression, or violence toward Appellant that would satisfy any actual or reasonably believed fear of severe injury or death. Appellant's argument is that he is permitted to act upon appearances, but Appellant specifically admits that he did not take any measures to assess appearances and he did not take any other measures to ascertain whether his initial fear was appropriate. These facts represent the staunch inadequacies of Appellant's own theory of the case, notwithstanding the evidence the state presented. The record demonstrates that Appellant received a fair trial.

When the evidence provided by the State is considered in combination with the weaknesses of Appellant's defense, it takes what is already an inadequate explanation for his actions and

renders it an impossible explanation. "Whether an error is harmless depends on the particular circumstances of the case. No definite rule of law governs this finding; rather the materiality and prejudicial character of the error must be determined from its relationship to the entire case. Error is harmless when it could not reasonably have affected the result of the trial." *State v. Reeves*, 301 S.C. 191, 193–94, 391 S.E.2d 241, 243 (1990).

First, Appellant claims that Ms. Smalls simply walked into his apartment, snatched the murder weapon away from him, and proceeded to hide it under her mattress. No one who has genuinely acted in self-defense would permit such actions to take place, and this is especially true when the shooter is still at the scene of the crime while surrounded by witnesses. Appellant either requested Ms. Smalls to hide the weapon or accepted her offer to do so, and both circumstances are demonstrations of guilt. In combination with these facts, it is also established that Appellant left the scene of the crime for nearly two hours before returning to inform the police of a self-defense shooting. The purpose being that he needed time to construct the details of his lie and determine what actions he would need to take before confessing to the shooting.

While such is a strong inference stemming from indisputable evidence, the little feasibility and credibility that might have existed for Appellant's explanation is removed when the phone data demonstrated Appellant clearly lied to police officers about his familiarity with Ms. Smalls and his not having her phone number. Additionally, the nature of the wounds sustained by the victims cannot be squared with Appellant's story. Mr. Griffin suffered an execution style "contact gunshot wound" to the back of the head. There is no other way for that injury to take place, Appellant offered no explanation for it, and it is irrefutable evidence of malice. The impact of that forensic evidence is bolstered by the fact that the other gunshot wounds were inflicted from different angles and Mr. Dash was shot at close range that would require Appellant to be essentially

standing over the bodies of both victims when he chose to start shooting. When that evidence is added to the testimony about his demeanor, behavior, and inconsistencies in explanation, his self-defense theory cannot endure, and he was rightfully convicted.

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that the judgments, convictions, and sentences of the trial court should be affirmed.

Respectfully submitted,

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General

W. JOSEPH MAYE
Assistant Attorney General
S.C. Bar No. 100851

HON. Byron E. Gipson
5th Circuit Solicitor's Office
1701 Main Street
Columbia, SC 29202

BY: *s/ W. Joseph Maye*
W. Joseph Maye

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211-1549
(803) 734-6305

April 29, 2025

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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Richland County
The Honorable Clifton Newman, Circuit Court Judge

THE STATE,

RESPONDENT,

v.

ANTONIO VASHON BARNES, JR.,

APPELLANT.

Appellate Case No. 2023-001390

PROOF OF SERVICE

I, **Donna D'Alessio**, an employee of the Respondent and legal assistant to W. Joseph Maye, of counsel for the Respondent, hereby certify that as per the March 20, 2020 Order of the Chief Justice, the Final Brief of Respondent has been forwarded to Appellant's counsel, Lara M. Caudy, Esq., via email today, April 29, 2025 to lcaudy@sccid.sc.gov, and to her assistant at smcinnis@sccid.sc.gov.

I further certify that all parties required by Rule to be served have been served.

This 29th day of April, 2025.

s/ Donna D'Alessio
Donna D'Alessio, Legal Assistant to
W. Joseph Maye,
Assistant Attorney General
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211-1549
(803) 734-6305

The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

CATHERINE S. HARRISON
CHIEF DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211

1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201

TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

August 5, 2026

Ms. Lara Mary Caudy, Esquire
PO Box 11589
Columbia SC 29211-1589

Mr. William Joseph Maye, Esquire
1000 Assembly St.
Capital And Collateral Litigation Div.
Columbia SC 29201

Re: The State v. Antonio V. Barnes, Jr.
Appellate Case No. 2023-001390

Dear Counsel:

Enclosed is the decision of the Court. The remittitur will be sent as provided by Rule 221(b) of the South Carolina Appellate Court Rules.

Very truly yours,

Jasmine D. Smith, Deputy
CLERK

cc: Alan McCrory Wilson, Esquire
Melody Jane Brown, Esquire
Donald J. Zelenka, Esquire
The Honorable Clifton Newman

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.

Antonio Vashon Barnes, Jr., Appellant.

Appellate Case No. 2023-001390

Appeal From Richland County
Clifton Newman, Circuit Court Judge

Unpublished Opinion No. 2026-UP-393
Heard April 7, 2026 – Filed August 5, 2026

AFFIRMED IN PART AND REVERSED IN PART AND REMANDED

Senior Appellate Defender Lara Mary Caudy, of Columbia, for Appellant.

Attorney General Alan McCrory Wilson, Deputy Attorney General Donald J. Zelenka, Senior Assistant Deputy Attorney General Melody Jane Brown, and Assistant Attorney General William Joseph Maye, all of Columbia, for Respondent.

PER CURIAM: Antonio Vashon Barnes, Jr. appeals his convictions and concurrent sentences of thirty-five years' imprisonment for murder and five years' imprisonment for possession of a weapon during a violent crime. On appeal, Barnes argues the trial court (1) erred by denying him immunity from prosecution under the Protection of Persons and Property Act[1] (the Act); (2) erred by failing to properly instruct the jury on the defense of habitation; (3) abused its discretion by admitting evidence of Barnes's possession and distribution of marijuana and possession of firearms and ammunition; (4) abused its discretion by admitting lyrics from a song Barnes rapped and posted online; (5) abused its discretion by refusing to admit certain video footage of Barnes as a prior consistent statement; and (6) erred by refusing to grant a new trial based on cumulative error. We reverse and remand for a new trial.

FACTS/PROCEDURAL HISTORY

In 2022, Barnes was indicted for murder and possession of a weapon during the commission of a violent crime in connection with the killing of his roommate, Antonio Dash, and Eric Griffin. Barnes moved for immunity from prosecution under the Act, and the trial court held an immunity hearing. The trial court denied Barnes immunity from prosecution, and a jury found Barnes guilty in December 2022 on both charges. Barnes subsequently filed a motion for a new trial, which the trial court denied. This appeal followed.

ISSUES ON APPEAL

I. Did the trial court err by denying Barnes immunity from prosecution under the Act?

II. Did the trial court abuse its discretion by admitting lyrics from a song Barnes rapped and posted on YouTube under Rules 402, 403, and 404(b), SCRE, and when the State failed to disclose the evidence to Barnes in violation of Rule 5 of the South Carolina Rules of Criminal Procedure?

III. Did the trial court abuse its discretion by refusing to admit Barnes's Exhibit No. 108 (a prior consistent statement) pursuant to Rule 801(d)(1)(B), SCRE?

IV. Did the trial court abuse its discretion by admitting evidence of Barnes's marijuana possession, prior marijuana distribution, and possession of unrelated

[1] S.C. Code Ann. § 16-11-410, et. seq. (2015).

firearms and ammunition under Rules 402, 403, and 404(b) of the South Carolina Rules of Evidence?

V. Did the trial court err in instructing the jury on the defense of habitation as requested by Barnes?

VI. Did the trial court err by refusing to grant a new trial based on the cumulative effect of the trial errors?

LAW/ANALYSIS

I. Immunity Hearing

Barnes argues the trial court erred in denying him immunity because he proved by a preponderance of the evidence that he was entitled to immunity under the Act. He contends the evidence showed he was immune under (1) the common law defense of habitation, (2) the common law defense of self-defense, (3) section 16-11-440(A) of the South Carolina Code, and (4) section 16-11-440(C) of the Code. We disagree.

"A defendant's entitlement to immunity from prosecution under the [Act] must be decided pretrial using a preponderance of the evidence standard." *State v. Glenn*, 429 S.C. 108, 116, 838 S.E.2d 491, 495 (2019). "This court reviews an immunity determination for abuse of discretion." *Id.* "A trial court abuses its discretion when its ruling is based on an error of law, or when grounded in factual conclusions, is without evidentiary support." *Id.* "In determining the validity of an immunity hearing's outcome, 'this court cannot reweigh the evidence or second-guess the [circuit] court's assessment of witness credibility.'" *State v. Rosenbaum*, 438 S.C. 91, 102, 882 S.E.2d 180, 186 (Ct. App. 2022) (alteration in original) (quoting *State v. Oates*, 421 S.C. 1, 17, 803 S.E.2d 911, 920 (Ct. App. 2017)).

Self-defense

"A person who uses deadly force as permitted by the [Act] or another applicable provision of law is justified . . . and is immune from criminal prosecution . . . ." § 16-11-450(A). Our supreme court has recognized that "'another applicable provision of law' includes the common law of self-defense." *Glenn*, 429 S.C. at 117, 838 S.E.2d at 496. "Accordingly, a trial court should first consider whether the defendant has proved the elements of self-defense by a preponderance of the evidence." *Id.* at 118, 838 S.E.2d at 496. "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.*

To establish a case of self-defense, a defendant must establish 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. Douglas, 411 S.C. 307, 318, 786 S.E.2d 232, 238–39 (Ct. App. 2014). "[T]he last element, i.e., the duty to retreat, need not be shown when seeking immunity under the Act." *Id.* at 318, 786 S.E.2d at 239.

We hold the trial court did not abuse its discretion in finding Barnes did not establish self-defense. We agree with the trial court that Barnes failed to establish he was in actual imminent danger or reasonably believed he was in imminent danger because no evidence shows that the men attacked, threatened, or even noticed Barnes. We acknowledge that this incident occurred inside Barnes's apartment and that the testimony indicated Barnes believed both his roommates were gone that morning and it was their habit of being gone at that time. We further acknowledge testimony that Barnes believed he was being robbed and "getting smoked." However, the hearing testimony conflicted as to whether Barnes believed both his roommates were gone or if he may have actually seen Griffin and Dash in his apartment that morning when Griffin first arrived. Additionally, there

was no evidence that officers found another weapon at the scene or that either Griffin or Dash had one at the time.[2]

We also agree with the trial court that a reasonable person would not have entertained the same belief as Barnes. The evidence at the hearing indicated Barnes saw the men on the ground and began shooting.[3] There was no evidence he tried to stop the men, tell them to leave, or pause any longer than to observe them on the ground. We also highlight that the evidence demonstrated that both men were shot at close range and sustained fatal gunshot wounds, with Griffin sustaining a contact wound to his neck indicating the muzzle of the gun contacted his skin. The evidence further showed that Griffin was shot six times and Dash was shot seven times. Based on the foregoing, we hold the trial court did not err in finding Barnes did not establish self-defense.

Section 16-11-450(A)

"Section 16-11-440(A) may, under appropriate facts, replace the reasonable fear element of self-defense by providing a presumption that the person's fear was reasonable under certain circumstances." *Glenn*, 429 S.C. at 118, 838 S.E.2d at 496.

> 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 . . . 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, . . . or if he removes or is attempting to remove another person against his will from the dwelling . . . and (2) who uses deadly force knows or has reason to believe that an unlawful and forcible act is occurring or has occurred.

---

[2] Testimony indicated two of the projectiles found on the scene could have come from a different type of gun; however, the results were inconclusive and one of the expert witnesses explained that the projectiles could also have been shot by the weapon Barnes used.

[3] The hearing testimony indicated that Barnes did not recognize the men until after he shot them.

§ 16-11-440(A). The presumption does not apply however "if the person [] against whom the deadly force is used has the right to be in" the dwelling. § 16-11-440(B)(1). The presumption also does not apply "if the person [] who uses deadly force is engaged in an unlawful activity or is using the dwelling . . . to further an unlawful activity." § 16-11-440(B)(3).

We hold the trial court did not err in finding Barnes failed to establish immunity under § 16-11-440(A) based on the lack of evidence that Griffin forcefully and unlawfully entered the apartment. The testimony at the hearing indicated Griffin, Thomas, and Dash all knew each other, had a history as friends, and that it was normal for Griffin to visit the apartment. While the hearing testimony demonstrated Griffin and Dash were fighting, there was no evidence or testimony that Griffin forced entry into the apartment, nor is there evidence that Barnes or Dash asked or told Griffin to leave. Additionally, we note that the evidence demonstrates that Barnes was not involved with Griffin's entry into the apartment. We also highlight that there was testimony, while disputed, that Barnes may have seen Griffin and Dash together in the apartment earlier that morning. Taking this evidence together with the lack of evidence of forceful and unlawful entry, we hold the trial court did not abuse its discretion by denying Barnes statutory immunity under this section.[4]

Section 16-11-440(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 . . . 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 . . . .

§ 16-11-440(C).

"[A] proximate cause analysis must also be applied to the unlawful activity element of subsection (C)." *Glenn*, 429 S.C. at 120, 838 S.E.2d 497.

[4] Because we conclude this situation fails to meet the elements in § 16-11-440(A), it is not necessary to analyze the trial court's findings that Griffin was a social guest or that Barnes was engaged in an unlawful activity.

We hold the trial court did not err in finding Barnes was not entitled to immunity under § 16-11-440(C). First, there was no evidence presented that Barnes was attacked by Griffin or Dash. As stated previously, there is no evidence that Griffin or Dash even acknowledged Barnes. Therefore, further analysis regarding whether Barnes was engaged in an unlawful activity or the reasonableness of his use of force is not necessary.

In sum, we hold the trial court did not abuse its discretion in denying Barnes immunity under either common law or the relevant statute, and we affirm the trial court's order denying Barnes immunity.[5]

II. Rap Lyrics Evidence

Barnes argues the trial court erred in admitting evidence of lyrics from a song he rapped and posted online when the State failed to disclose the evidence pretrial and when the evidence violated Rules 402, 403, and 404(b), SCRE. We agree.

"The admission or exclusion of evidence is a matter addressed to the sound discretion of the trial court and its ruling will not be disturbed in the absence of a manifest abuse of discretion accompanied by probable prejudice." *State v. Collins*, 409 S.C. 524, 530, 763 S.E.2d 22, 25 (2014) (quoting *State v. Wise*, 359 S.C. 14, 21, 596 S.E.2d 475, 478 (2004)).

Rule 5 Violation

> Upon request by a defendant, the prosecution shall permit the defendant to inspect and copy or photograph: any relevant written or recorded statements made by the defendant, or copies thereof, within the possession, custody or control of the prosecution, the existence of

[5] We acknowledge Barnes's arguments that he was immune from prosecution based on the common law habitation defense; however, Barnes did not argue this defense during the immunity hearing, and the trial court did not rule on the defense in its order. Therefore, this question is not preserved for our review. *See State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 693 (2003) ("In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial [court]."); *id.* at 142, 587 S.E.2d at 693–94 ("Issues not raised and ruled upon in the trial court will not be considered on appeal.").

> which is known, or by the exercise of due diligence may become known, to the attorney for the prosecution . . . .

Rule 5(a)(1)(A), SCRCrimP.

> Upon request of the defendant the prosecution shall permit the defendant to inspect and copy books, papers, documents, photographs, tangible objects, buildings or places, or copies or portions thereof, which are within the possession, custody or control of the prosecution, and which are material to the preparation of his defense or are intended for use by the prosecution as evidence in chief at the trial, or were obtained from or belong to the defendant.

Rule 5(a)(1)(C), SCRCrimP.

In *State v. Lawton*, this court found the trial court erred by admitting a letter written by the appellant to his ex-wife in which he stated "my story is full of lies" when the letter was not disclosed to defense counsel prior to trial under Rule 5(a)(1)(A), SCRCrimP. 382 S.C. 122, 125–26, 675 S.E.2d 454, 456 (Ct. App. 2009). Although the letter was used for impeachment purposes on cross-examination of the appellant by the State, this court found the letter was "clearly relevant" and that its disclosure "was clearly material to [the appellant]'s defense because it likely would have affected his decision to testify, a fundamental right." *Id.* at 127, 675 S.E.2d at 457. However, this court noted that it was not issuing a ruling on whether the State's use of the letter violated subsection (a)(1)(C) because the trial court did not rule on that argument. *Id.* at 126 n.5, 675 S.E.2d at 456 n.5.

We hold the trial court abused its discretion in admitting the rap lyrics evidence over Barnes's Rule 5 objection pursuant to subsection (a)(1)(A) and *Lawton*. We first note that the trial court stated in its ruling that it was admitting the lyrics "that were disclosed to the defense"; however, the lyrics that were admitted were not those disclosed to Barnes prior to trial that came from his cellphone but were instead from YouTube. Although the rap lyrics were introduced by the State to impeach Barnes based on his testimony that he was remorseful for the shooting and having "nightmares," we find the lyrics were material to his defense because his decision to testify would likely have been affected, as in *Lawton*. Barnes sought to prove at trial that he acted in self-defense, and we find his remorse or lack thereof for the shooting was a critical component for the jury to make its determination.

C.f. State v. Bryant, 369 S.C. 511, 518–19, 633 S.E.2d 125, 156 (2006) (holding the State's use of prior convictions to impeach petitioner accused of murder but claiming self-defense was improper and not harmless, highlighting petitioner's defense "hinged entirely on his own testimony" and noting "the State should not be allowed to attack the defendant's credibility with inadmissible prior convictions; especially where the [p]etitioner's credibility was essential to his defense"). The rap lyrics directly refuted Barnes's remorse, calling into question his self-defense theory. Additionally, while the State disclosed Barnes's Instagram rap video prior to trial, that video was posted prior to the shooting, and we did not find any indication in the record of what was said in that video aside from that Barnes "rapped about potentially killing someone if he was the victim of a theft." We also did not find anywhere in the record indicating when the YouTube video at issue was posted, leaving that speculation up to the jury. Therefore, we hold the YouTube lyrics impacted Barnes's theory of the case, affecting his defense and resulting in prejudice.[6] *See Lawton*, 382 S.C. at 128, 675 S.E.2d at 457 ("There is a reasonable probability [appellant] would not have testified had he known the State possessed such strong impeachment evidence. The State's strategy in failing to disclose the letter and instead surprising [appellant] with it during cross-examination clearly prejudiced [appellant].").

We find this error warrants a remand to the trial court. Barnes primarily relied on a self-defense theory at trial along with his explanation that he thought he was being robbed at the time of the shooting. There was no evidence presented apart from his own testimony at trial and accounts of what he told others to corroborate his account of why he shot Griffin and Dash. *See State v. Black*, 400 S.C. 10, 27–28, 732 S.E.2d 880, 890 (2012) ("In determining harmless error regarding any issue of witness credibility, we will consider the importance of the witness's testimony to the prosecution's case, whether the witness's testimony was cumulative, whether

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[6] We acknowledge the State's argument that because it alluded to there being more than one rap song during the pretrial hearing on the motion to exclude, this somehow constituted disclosure under Rule 5. We do not find this argument convincing as the State did not mention YouTube videos or clearly disclose additional evidence at this stage. We also acknowledge the State's argument that Barnes was on notice of the YouTube videos because he posted the video himself on YouTube; however, we find nothing in Rule 5 that would substantiate this argument. *See Earley v. State*, 418 S.C. 255, 268, 792 S.E.2d 226, 233 (2016) (stating in dicta that a Facebook message written by the respondent should have been disclosed by the State prior to trial in compliance with Rule 5 because the statement was relevant as evidence of witness intimidation).

other evidence corroborates or contradicts the witness's testimony, the extent of cross-examination otherwise permitted, and the overall strength of the State's case." (quoting *State v. Fossick*, 333 S.C. 66, 70, 508 S.E.2d 32, 34 (1998))); *id.* at 28–30, 732 S.E.2d at 890–91 (applying the factors to determine whether the State's use of prior convictions to impeach a defense witness constituted harmless error); *see also State v. Bryant*, 369 S.C. 511, 518–19, 633 S.E.2d 152, 156 (2006) (holding the State's use of prior convictions to impeach petitioner accused of murder but claiming self-defense was improper and not harmless, highlighting petitioner's defense "hinged entirely on his own testimony" and noting "the State should not be allowed to attack the defendant's credibility with inadmissible prior convictions; especially where the [p]etitioner's credibility was essential to his defense").[7]

Based on the foregoing, the orders of the trial court are

AFFIRMED IN PART and REVERSED IN PART AND REMANDED.

WILLIAMS, C.J., and KONDUROS and VINSON, JJ., concur.

[7] We find this issue is dispositive. Therefore, aside from the immunity hearing, we decline to address the remaining issues on appeal. *See State v. Sweet*, 374 S.C. 1, 9, 647 S.E.2d 202, 207 (2007) (declining to address remaining issue when resolution of a different issue was dispositive).

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STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Horry County
The Honorable Clifton Newman, Circuit Court Judge

THE STATE,

RESPONDENT,

v.

ANTONIO VASHON BARNES, JR.,

APPELLANT.

Appellate Case No. 2023-001390

PETITION FOR REHEARING

Pursuant to Rule 221(a), SCACR, counsel for Appellant petitions this Court for rehearing.[1] The ruling of this Court was essentially that the trial court abused its discretion in permitting the State to cross examine Appellant on his own rap lyrics, because Rule 5 and *State v. Lawton* required the specific song in question be provided to defense counsel in advance of trial, and that such was prejudicial as opposed to harmless error. Counsel respectfully submits that this Court has erred in arriving at its holding and reversing Appellant's conviction. Respondent would respectfully argue:

Lawton is plainly distinguishable

In *Lawton*, the facts demonstrated that "the State produced a letter Lawton had allegedly written to his ex-wife" essentially admitting that his explanation of the crime was not truthful. The defense objected and argued that the letter should have been disclosed prior to trial under

[1] A Petition for Rehearing is required before a party can seek a Writ of Certiorari from the South Carolina Supreme Court. Rule 242, SCACR.

subsection (a)(1)(A) of Rule 5, SCRCrimP. The defense's argument correctly asserted that it was a relevant written statement "within the State's control." The trial court ruled it was admissible because it was being used for impeachment rather than the State's case-in-chief. On appeal, this Court found that the letter was relevant and that the lack of disclosure prejudiced Lawton in changing the calculus of whether he would testify at trial. For four separate reasons, Appellant Barnes did not face the same circumstances and *Lawton* was improperly applied to this case.

First, the clear distinction is that in *Lawton*, the State was in *sole and exclusive control* of the one and only letter. Consequently, there was no way for defense counsel to find the letter and review its contents other than to receive it via discovery. Here, the State exercised *zero* possession, custody, or control over the video content in question. It was merely a publicly accessible piece of artwork created by Appellant and exclusively controlled by Appellant on his own Youtube channel.

Second, in *Lawton* the State did not disclose their possession of the letter, nor did they make their intent to use the letter for impeachment known to the defense. It is clear that Lawton was caught off guard by the existence of the letter and the State's use of it on cross-examination. Neither of these facts are consistent with this case. It is perfectly clear from the record that the defense knew the State was aware of Appellant's rap videos, his rap name, and by way of the immunity hearing and pretrial discussions, the State's anticipation that his rap lyrics would provide impeachment material. It is also clear from the record that the solicitor told defense counsel that their knowledge of Appellant's rap videos was not limited to the phone dump data; they explicitly told Appellant how they discovered the other publicly accessible materials – a simple Google search of Big Hoodlyfe. Defense counsel concedes that this conversation took place but complained that they had not explicitly *provided* these videos and that such was a trial by ambush.

(R. p. 955-956). Instead of raising their supposed concern for Rule 5 inadequacies to the court in advance of trial, they claimed ambush for substance they admittedly knew existed.

Third, the purpose of Rule 5 is to inform the defense as to what the State has at its disposal so as to ensure a fair trial – the state did so and Appellant and his counsel were freely able to review his posted rap content in preparation for trial. Possession, custody, or control is required to trigger Rule 5, but this Court has confused those requirements as being equivalent to awareness and accessibility, and it has excused the defense of any dutiful obligation of preparation for known matters.[2] See *Hyman v. State*, 397 S.C. 35, 47, 723 S.E.2d 375, 381 (2012), abrogated on other grounds *Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836 (2018) (noting that compliance with Rule 5 is a fact-based inquiry, and *disclosure of the existence* of a drug sale videotape and making such *available for inspection* satisfied Rule 5)(emphasis added). The State can be fairly said to have done the same.

Fourth, following the immunity hearing Appellant would have been legally permitted and fully capable of removing every single video from Youtube, leaving the State with no means of further investigation and no right to the content in question – *that* is demonstrative of possession, custody, and control. Instead of rightfully charging the defendant with having the knowledge,

[2] "Rule 5(a), SCRCrimP requires disclosure of documents within the possession, custody, or control of the prosecution; it does not require production of documents in the possession, custody or control of a third person. *State v. Gulledge*, 321 S.C. 399, 468 S.E.2d 665 (Ct. App. 1996), aff'd as modified, 326 S.C. 220, 487 S.E.2d 590 (1997). In fact, the majority of state and federal courts which have interpreted similar rules have held if the prosecution does not have the material or evidence sought by the defense actually in its possession, disclosure is not required; the only exception is where the evidence is in the possession of another governmental agency. *State v. Gulledge*, 321 S.C. 399, 468 S.E.2d 665 (Ct. App. 1996), aff'd as modified, 326 S.C. 220, 487 S.E.2d 590 (1997) (Supreme Court's opinion)." § 25:3. Criminal cases: State's duty of disclosure, Trial Handbook for South Carolina Lawyers § 25:3 (5th ed.)

access, and expectation that his rap videos[3] (which he left available to the prosecution, his own attorneys, and the public at large *after* learning of the State's interest in their impeachment potential) would *likely* become part of the case against him in relation to his mental impressions regarding the crime, this Court has awarded him with a new trial under the premise that he was somehow surprised by these materials and the State's approach on cross-examination. To the extent that it relates to the preparation of his defense, and his decision on whether to testify, it is rewarding a purposeful lack of diligence and a *willful* ignorance on the part of defense counsel.

Lawton does not apply because at the heart of the *Lawton* decision is the lack of knowledge of the disputed impeachment evidence and the State's sole control over such. Appellant knew of his videos, knew of their content, knew the State was aware of his videos and would attempt to use them against him at trial, knew where to find these videos, knew how to direct his attorneys to find them, and knew how to take them down if he wished. Discovery rules are a shield to ensure fairness, not a sword to wield when one's own inaction can conveniently serve as a flawed basis for reversal.

Lack of authority to constitute error on the part of the trial court

This Court's error in the application of law and fact does not stop with *Lawton*. The Court also took mere footnote notice of the State's argument that Appellant was on notice as to his Youtube videos, but found nothing to suggest that Rule 5 substantiates the argument. However, the

[3] Rights under *Brady* and Rule 5 emanate from different places, but they are joined the purpose of ensuring that a defendant receives a fair trial (*State v. Kennerly*, 331 S.C. 442, 454, 503 S.E.2d 214, 220 (Ct. App. 1998), aff'd, 337 S.C. 617, 524 S.E.2d 837 (1999)), and *Brady* has the commonsense limitation that it only applies to evidence which the prosecution has, but which is unavailable to the defendant. *Anderson v. Leeke*, 271 S.C. 435, 438-39, 248 S.E.2d 120, 122 (1978). *Brady* insists on a diligent defender and it relieves the state of producing evidence equally available to the accused. *Id*. The possession, custody, and control language of Rule 5 hinges upon the same sentiment.

Hyman Court's reference to disclosure and opportunity for review would demonstrate otherwise. In refuting the State's argument, the only referenced authority from this Court was dicta in *Early v. State*, 418 S.C. 255, 268, 792 S.E.2d 226, 233 (2016). Dictum is not the law (*Gordon v. Lancaster*, 425 S.C. 386, 395, 823 S.E.2d 173, 177 (2018) (Few, J. concurring), and the Court's attempt to distinguish a lack of mention of "Youtube" *specifically*,[4] willfully disregards the fact that the precise manner in which the State found *Appellant's videos* was to google *Appellant's* rap name, a fact made known to defense counsel in advance of trial.[5] This Court has mistakenly treated the materials in question as some buried or obscure content that Appellant and/or his counsel could not find without precise instructions, when the reality is substantially different. The State was able to find these materials, easily, without knowing they even existed. The defendant could certainly find them, knowing precisely where, how, and why they exist. *This Court does not articulate a factual error on the part of the trial court*, it construes the facts in an unreasonably narrow manner in order to cradle the supposed logic of its own ruling. Moreover, in the absence of a clear prohibition against applying Rule 5 in the manner the trial court did here, there is no precedent to articulate that trial court *abused its discretion* by committing an error of law. Appellant's rap

[4] The Court is free to take judicial notice that a google search of "Big Hoodlyfe" immediately produces a Youtube link as its top results for the same. "A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." *State v. Odom*, 412 S.C. 253, 266, 772 S.E.2d 149, 155 (2015).

[5] This Court also attempts to suggest that the lack of knowledge for *when* the disputed lyrics were written would have been important for the jury's deliberation. However, the solicitor tells the jury that the video in question came *before* the crime occurred, and Appellant argued the same in brief. (R. p. 945; Brief of Appellant p. 36). The jury potentially questioning the timing of the rap video was not undisclosed nor was it in dispute – the solicitor flatly admitted told the jury that it was created before the crime and the record also contained reference to a prior robbery that T.O. had experienced in the weeks before his death. (R. p. 91; 651; 669; 905-906). The Court's factual basis for its ruling is in error.

content was collectively disclosed by the Solicitor and it was available for review by the defense. Whether the failure to review such evidence was by way of tactic, indifference, or mistake, the defense *chose* not to explore the content readily available to them and chose not to bring the pretrial disputed issue to the court's attention. The law does not reward failures in diligence .

Lack of prejudice resulting from the lyrics

The Court also erred in its application of the harmless error doctrine. By its own account, this Court stated: "Barnes primarily relied on a self-defense theory at trial along with his explanation that he thought he was being robbed at the time of the shooting. There was no evidence presented apart from his own testimony at trial and accounts of what he told others to corroborate his account of why he shot Griffin and Dash." In citing to *State v. Black* as support of finding against harmless error, this Court set forth the factors established for addressing harmless error in circumstances where disputed evidence impacts credibility. However, those factors were then ignored and the Court's rationale for harmless error appears to rely upon Appellant's lack of supporting evidence for his own defense. One's lack of evidence to support their defense is not equivalent to a heightened risk of prejudice to credibility, and a weak case is not a crutch that a defendant can lean on to gain advantage in harmless error analysis – a weak case is simply a weak case, and the potential for prejudice is *less* where there is so little support for a defendant's position.

When the totality of the evidence is taken into consideration, which this court should have done, it is clear that there was no basis for the jury to find him credible well before Appellant's cross-examination. The record showed the following:

- Rather than yell or plead for help, Appellant attempted to conceal his shooting of Victims from Ms. Washington and Ms. Griffin by carefully stepping outside his bloody apartment; (R. p. 530-536; 563-564)

- Appellant behaved similarly, and in truth, somewhat aggressively with the apartment's HVAC technician (Mr. Archie) who responded to hearing gunshots and knocked on Appellant's door out of concern; (R. 586-589)
- Appellant did not dial 911 after committing the shooting, despite learning that he had shot and killed his own supposed *friends;*
- Appellant did not inform police of his involvement in the shooting, he instead fled the scene for two hours before returning and claiming self-defense in what he allegedly thought was a robbery of his home; (R. p. 569; 635-636; 929-931)
- In quick succession, Appellant gave three conflicting stories to Mr. Archie after leaving his apartment. The changes in story came when Mr. Archie expressed doubt as to the prior story's plausibility; (R. p. 593-596)
- Appellant's version of the story told to Javontae Davis varied yet again; (R. p. 622-626)
- Appellant lied about his connection with Ms. Smalls, who he claims simply walked in and took his gun from him and then hid it under her mattress, despite no instruction or request for her to do so.
- The record shows that despite his insistence that he barely knew Ms. Smalls and did not have her number – there were 15 phone calls shared between the two of them in the hours immediately following the shooting. Despite having been caught in this lie, Appellant still denied knowing Ms. Small's phone number to police despite having his phone with him while being questioned; (R. p. 650-654; 876)
- Contrary to Appellant's version of events, there were no signs of forcible entry into the apartment, the apartment was not dark which belied the possibility of confusing

his own friends' identities, and each victim sustained at least 6 gunshot wounds each. Victim Dash's wounds displayed stippling, indicating they were fired no more than 3.5 feet away. Appellant offered no explanation as to how these gunshots were so close in proximity, if the victims were on the ground. (R. p. 699; 610; 804-819)

- Appellant's version of events provided no explanation for how a supposedly hasty and panicked shooting of two people on the ground with numerous rounds of ammunition, could result in no bullet holes to the floors or walls of the apartment; (R. p. 708-709)
- Victim Griffin sustained a contact gunshot wound to the lower head, indicating that Appellant had not hastily fired at Griffin while he was on the floor, but had pressed the pistol into contact with Victim Griffin's head when he fired. Appellant did not contest this evidence and he offered *no explanation* for how this could possibly have happened in his version of events; (R. p. 821-830)
- Appellant's testimony on direct is self-contradictory, where he in one instance claims that he went to get his phone to call 911 after Ms. Griffin and Ms. Washington entered the apartment, he then claimed that he had already retrieved his phone and that this was why it took him so long to respond to the ladies' knocking at his door, and he then claimed that the ladies never knocked at all, he just let them in immediately. (R. p. 922-923; 976)

Credibility is not a question reserved solely for evaluating how one presents himself on the stand. It is an evaluation of the believability of a witness's testimony in light of the totality of the evidence presented at trial. Respondent contends that no error exists, but in considering harmless error, "'our jurisprudence requires us not to question whether the State proved its case beyond a reasonable

doubt, but whether beyond a reasonable doubt the trial error did not contribute to the guilty verdict.'" *State v. Reyes*, 432 S.C. 394, 406, 853 S.E.2d 334, 340 (2020). (quoting *State v. Tapp*, 398 S.C. 376, 389-90, 728 S.E.2d 468, 475 (2012). "Put simply, the harmless error rule embodies a commonsense principle our appellate courts have long recognized—'whatever doesn't make any difference, doesn't matter.'" *Id*., (quoting *McCall v. Finley*, 294 S.C. 1, 4, 362 S.E.2d 26, 28 (Ct. App. 1987)). Appellant put the muzzle of his gun to the back of his own friend's head and pulled the trigger, and simultaneously wanted the jury to believe he did not know who he was shooting, that he did not have a hand in hiding the weapon, that he did not provide conflicting stories to bystanders in the complex, that he did not flee the scene for hours until he could get his story straight, and that his failure to call 911 for the lives of his own friends is not at all contrary to self-defense. Credibility was not reasonably in dispute. This court clearly failed to take into consideration any of the dozen reasons for why Appellant and his supposed story were entirely lacking credibility. Such was in error in considering the harmless error that his rap lyrics were prejudicial at trial.

Prejudice is also lacking when considering the practical impact on Appellant personally. Appellant was able to respond and correct the Solicitor's dictation of his lyrics. Appellant also had more than enough notice that his rap lyrics may be raised during trial and therefore could adequately gauge whether he wished to risk testifying at trial in light of that possibility. Contrary to this Court's rationale, Appellant's weak case made testifying on his own behalf practically mandatory if he were to have any chance of presenting a case in self-defense. Rap lyrics would have had no impact on that reality and would not have changed his decision. Prejudice therefore does not arise, and the logical and practical implications of Appellant's defense demonstrate that

this Court gave no more than cursory thought to whether his rap lyrics actually changed anything about Appellant's lack of credibility or the trajectory of the jury's deliberations.

CONCLUSION

Based upon the above arguments, Respondent asserts that this Court has misapprehended certain facts and law that led to an improper result in this case. Appellant respectfully petitions for rehearing on this matter, and that for all the foregoing reasons, the ruling of the trial court be reversed.

Respectfully Submitted,

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General

W. JOSEPH MAYE
Assistant Attorney General
S.C. Bar No. 100851

HON. BYRON E. GIPSON
5th Circuit Solicitor's Office
1701 Main Street
Columbia, SC 29202

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211-1549
(803) 734-6305

By: *s/W. Joseph Maye*
ATTORNEYS FOR RESPONDENT

August 19, 2026

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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEAS

APPEAL FROM RICHLAND COUNTY
The Honorable Clifton Newman, Circuit Court Judge
Appellate Case No. 2023-001390

THE STATE……RESPONDENT

v.

ANTONIO VASHON BARNES, JR., …….. APPELLANT.

PROOF OF SERVICE

The undersigned certifies that pursuant to Rule 262(c)(3), SCACR and the Supreme Court Order of April 24, 2024, the Petition for Rehearing, along with the Proof of Service, have been forwarded to Appellant's counsel, Lara Caudy via email today, August 19, 2026, to LCaudy@sccid.sc.gov and to Ms. Caudy's assistant, Sara McInnis, SMcInnis@sccid.sc.gov .

I further certify that all parties required by Rule to be served have been served.

This is the 19th day of August 2026.

s/W. Joseph Maye
W. Joseph Maye
S.C. Bar No. 11644
Post Office Box 11549
Columbia, South Carolina 29211

ATTORNEY FOR RESPONDENT

Brandy Rankin

From: Brandy Rankin
Sent: Wednesday, August 19, 2026 2:49 PM
To: Caudy, Lara
Cc: Mcinnis, Sara; Joe Maye
Subject: Petition for Rehearing and Proof of Service - The State v. Antonio V. Barnes - Appellate Case No. 2023-001390
Attachments: Petition for Rehearing - Antonio Barnes.pdf; Proof of Service - Petition for Rehearing.pdf

Dear Ms. Caudy,

Please find attached the Respondent's Petition for Rehearing and Proof of Service. These documents will be filed with the South Carolina Court of Appeals today, August 19, 2026 along with a copy of this email. Thank you.

Sincerely,

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Aug 19 2026
SC Court of Appeals

Brandy Rankin

Brandy Rankin, Legal Assistant to W. Joseph Maye
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
803-734-6305

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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

ANTONIO VASHON BARNES, JR.

APPELLANT

APPELLATE CASE NO. 2023-001390

Appeal from Richland County
Honorable Clifton Newman, Circuit Court Judge

Opinion No. 2026-UP-393 (Filed August 5, 2026)

RETURN TO PETITION FOR REHEARING

On August 5, 2026, this Court reversed Appellant's convictions and remanded the case for a new trial. The State v. Antonio Vashon Barnes, Jr., 2026-UP-393 (S.C. Ct. App. filed August 5, 2026). Pursuant to Rule 221(a), SCACR, the state filed a petition for rehearing on August 19, 2026. On August 31, 2026, this Court requested Appellant file a return to the petition for rehearing within ten days. This return follows.

Appellant argued on appeal that the trial court abused its discretion by admitting lyrics from a song Appellant rapped and posted on YouTube when the state failed to disclose the evidence to the defense in violation of Rule 5, SCRCrimP, and where the rap lyrics should have been excluded because any probative value of the evidence was outweighed by the danger of

unfair prejudice pursuant to Rule 403, SCRE, and the evidence constituted bad character evidence in violation of Rule 404, SCRE.

This Court correctly held the trial court abused its discretion in admitting the rap lyrics evidence pursuant to Rule 5(a)(1)(A), SCRCrimP, and State v. Lawton, 382 S.C. 122, 675 S.E.2d 454 (Ct. App. 2009). The Court noted that the lyrics were not disclosed to the defense before trial. The Court correctly concluded that the lyrics were material to Appellant's defense because the evidence likely would have affected Appellant's decision to testify. The Court found that the lyrics directly refuted Appellant's remorse and called into question his self-defense theory. In holding the error was not harmless, this Court emphasized that there was no evidence presented apart from Appellant's own testimony at trial and the accounts of what he told others to corroborate his account of why he shot the decedents.

In its petition for rehearing, the state argued that State v. Lawton, 382 S.C. 122, 675 S.E.2d 454 (Ct. App. 2009) is "plainly distinguishable" from this case. Pet. at 1. The state first asserted that this case is different than Lawton because in Lawton the state "was in sole and exclusive control of the one and only letter" the state used to impeach Lawton with during cross-examination. Pet. at 2. However, in this case, the state claimed it "exercised zero possession, custody, or control over the video content in question." Pet. at 2. Respectfully, this is blatantly false. The state was absolutely in possession of the lyrics it intended to impeach Appellant with if Appellant testified. The state knew before trial what the lyrics were and how it intended to use them. However, the state chose not to disclose the lyrics to the defense even upon request and instead surprised Appellant with the lyrics during cross-examination.

Second, the state asserted that this case differs from Lawton because in Lawton, the state did not disclose its possession of the letter nor make its intent to use the letter for impeachment

purposes known to the defense. Pet. at 2. The state argued that Lawton was clearly "caught off guard by the existence of the letter." Pet. at 2. However, in this case, the state argued, "It is perfectly clear from the record that the defense knew the State was aware of Appellant's rap videos, his rap name, and by way of the immunity hearing and pretrial discussions, the State's anticipation that his rap lyrics would provide impeachment material. It is also clear from the record that the solicitor told defense counsel that their knowledge of Appellant's rap videos was not limited to the phone dump data; they explicitly told Appellant how they discovered the other publicly accessible materials – a simple Google search of Big Hoodlyfe."[1] Pet. at 2. Notably, despite the state maintaining it is "clear from the record," the state provided no citations to the record in support of these arguments, which, respectfully, are not supported by the record.

The record demonstrates that Appellant was only aware of one rap video—the video uploaded to Instagram on January 18, 2019, that was discovered as part of the extraction of Appellant's phone. This video was discussed during Appellant's pretrial immunity hearing. See R. 259, l. 15 – 270, l. 22. Anticipating that the state may seek to admit this rap video during trial, Appellant filed a motion pretrial to exclude the rap lyrics. See R. 1235-1242. Notably, the motion only refers to "the rap video" in the singular. See R. 1235-1242.

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[1] Respectfully, this is simply not true. The state did not "explicitly" tell Appellant how it discovered the other rap videos. During Appellant's objection to the admissibility of the rap lyrics, the assistant solicitor asked, "which one of the Shealeys [defense counsel] asked me which rap song we were going to be talking about?" Luke Shealey answered, "That was me. I was trying to get you to disclose some evidence and you were generally pretty vague about it." The solicitor stated, "I told you it was on Google, right?" Luke Shealey responded, "You just said something about the Google machine. But you refused to answer my direct question - - on the matter." R. 962, l. 24 – 965, l. 2. Appellant strongly disagrees with the state's characterization that the solicitor "explicitly" told defense counsel how they discovered the lyrics or what the lyrics were. Rather, the solicitor was purposefully "hiding the ball." This Court correctly found this falls wholly short of proper disclosure pursuant to Rule 5, SCRCrimP.

At the beginning of Appellant's trial, defense counsel orally raised the motion before the trial court. Counsel argued the rap video downloaded from Instagram on January 18, 2019, and discovered on Appellant's phone extraction, should be excluded, as it was during the pretrial immunity hearing, because the state could not authenticate it, the rap video was not relevant, any probative value of the video was outweighed by its prejudicial effect, and it was inadmissible "bad character evidence." R. 494, l. 1 – 496, l. 10. In response, the assistant solicitor maintained the lyrics "would be fodder for cross-examination should he [Appellant] take the stand." The solicitor claimed, "Some of these lyrics are going to his [Appellant's] state of mind. *At least one of his rap songs specifically references him killing his two - - the victims in this case.*" R. 496, ll. 12-22 (emphasis added). The trial court indicated it would address the objection later in the trial. R. 496, ll. 23-24.

This was the first time the existence of more than one rap video was disclosed to Appellant. Notably, this occurred *during Appellant's trial*. At most, Appellant was now aware that more than one rap video *may* exist and be in the possession of the state. However, despite the state's argument in its petition for rehearing, the defense was not aware of Appellant's rap name as this was not disclosed during the early trial discussions. It was not until cross-examination when the assistant solicitor began questioning Appellant about "Big Hood Lyfe" and his rap videos that the defense learned of Appellant's rap name and the existence of additional rap videos posted to YouTube.

When defense counsel objected, the solicitor told the court that the state had *twenty-two* rap videos Appellant posted on YouTube between December 16, 2018, and August 31, 2022. Despite initially stating the videos were discovered on Appellant's phone, the solicitor later clarified that *only one song* was obtained from the extraction of Appellant's phone. The others

the state found on YouTube. The solicitor stated "as early as last week, we typed in Big Hood Lyfe in Google" and discovered Appellant's rap videos. R. 944, l. 24 – 947, l. 3 (emphasis added). Defense counsel correctly argued that if the state intended to use any other rap videos or lyrics as impeachment, besides the one video discovered on Appellant's phone, the state was required to provide the evidence to Appellant pursuant to Rule 5, SCRCrimP. Counsel clarified that she was not claiming a Rule 5 violation as to the video discovered on Appellant's phone. However, any additional rap videos the state "found somewhere on the internet that they intend to impeach him [Appellant] with" should have been provided to the defense pursuant to Rule 5. R. 947, l. 5 – 950, l. 2.

Back to the point, this case is no different than Lawton. Appellant did not learn of the state's possession of the rap lyrics until the state's use of them on cross-examination. Accordingly, unlike the state argued in its petition for rehearing, Appellant could not have raised his "concern for Rule 5 inadequacies to the court in advance of trial" because he was unaware the state had violated Rule 5 until the middle of Appellant's trial. Pet. at 3.

Third, the state argued this case is distinguishable from Lawton because the state made Appellant aware of the rap lyrics. More specifically, the state maintained, "The purpose of Rule 5 is to inform the defense as to what the State has as its disposal so as to ensure a fair trial – the state did so and Appellant and his counsel were freely able to review his posted rap content *in preparation for trial*."[2] Pet. at 3. Apparently, the state argues that it complied with Rule 5 by informing defense counsel *midtrial* about "the Google machine." See R. 964, l. 13 – 965, l. 1. This Court correctly held that this falls wholly short of complying with Rule 5. Pursuant to Rule

[2] Appellant and his counsel were not able to review the rap lyrics *in preparation for trial* because the state failed to disclose the lyrics. As argued above, the defense only learned of the potential existence of additional rap videos during trial when counsel first argued the rap lyrics from the video discovered during the extraction of Appellant's phone should be excluded.

5, the state was required to inform Appellant prior to trial about the rap lyrics its intended to use to impeach Appellant if he were to testify. As defense counsel asserted at trial, "Your Honor, if they had these lyrics last week, why didn't they produce them? . . . It is a Rule 5 violation."

The state cited to Hyman v. State, 397 S.C. 35, 47, 723 S.E.2d 375, 381 (2012), in support of its argument. See Pet. at 3. In Hyman, our Supreme Court held the state complied with Rule 5 when it allowed defense counsel to view the videotape of a controlled drug buy and provided the defendant with still shots from the video while the parties were engaged in plea negotiations. In short, as the state summarized in its petition for rehearing, the state in Hyman disclosed the existence of the drug sale videotape and made the videotape available for inspection by defense counsel. The state argued, "The State can be fairly said to have done the same" in this case. Pet. at 3. Appellant strongly disagrees with this assertion. At no point did the state make the defense aware of the existence of the additional rap videos and make the videos available for inspection. When defense counsel directly asked the assistant solicitor which rap lyrics the state intended to use as impeachment, the solicitor admitted he merely told counsel "it was on Google." See R. 964, l. 13 – 965, l. 1. This is hardly disclosing the existence of the additional rap videos and making them available for inspection. Moreover, the assistant solicitor admitted during arguments on Appellant's objection that there were twenty-two rap videos posted to YouTube, much unlike one video of a controlled buy in Hyman.

Fourth, and finally, the state distinguishes this case from Lawton, by arguing that, after the pretrial immunity hearing, Appellant should have known "of the State's interest in their [the rap lyrics'] impeachment potential." Pet. at 3-4. Respectfully, after the pretrial immunity hearing, which occurred roughly eight months before trial, Appellant was only aware of the state's interest in using the lyrics from the rap video found during the extraction of his phone as

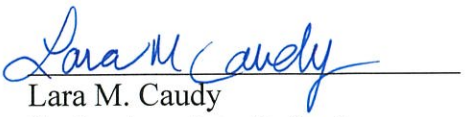
impeachment, which is why Appellant filed the written pretrial motion to exclude this rap video. This was the only rap video disclosed to Appellant before trial.

The state also complains that this Court only mentioned our Supreme Court's opinion in Early v. State, 418 S.C. 255, 792 S.E.2d 226 (2016), in a footnote, and that Early is only dicta. Pet. at 5. Appellant disagrees that the Supreme Court's holding in Early that the state violated Rule 5, SCRCrimP, by failing to disclose Early's "See ya" message on the victim's Facebook page is dicta. The Supreme Court concluded that the PCR court in Early correctly found that the state should have disclosed the "See ya" message Early posted to the victim's Facebook page prior to trial pursuant to Rule 5 because it was relevant as evidence of witness intimidation. Early, 418 S.C. at268-69, 792 S.E.2d at 233. Just like in Early, in this case, the state was required to disclose the rap videos it discovered on YouTube to the defense prior to trial pursuant to Rule 5.

Finally, unlike the state argues, this Court properly applied the harmless error doctrine. The rap lyrics were used by the state to refute Appellant's remorse and call into question his self-defense case. Appellant's credibility was essential to his defense. This Court correctly concluded that there was no evidence presented apart from Appellant's own testimony and accounts of what Appellant told others to corroborate his account of why he shot the decedents.

Based upon the above argument, Appellant respectfully requests this Court deny the state's petition for rehearing. This Court correctly held the trial court erred by admitting the rap lyrics evidence when the state failed to disclose the evidence before trial pursuant to Rule 5, SCRCrimP.

Respectfully Submitted,



Lara M. Caudy
Senior Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR APPELLANT

This 10th day of September, 2026.

RECEIVED
Sep 10 2026
SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

ANTONIO VASHON BARNES, JR.

APPELLANT

APPELLATE CASE NO. 2023-001390

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies that a true copy of the Return to Petition for Rehearing in the above referenced case has been served upon W. Joseph Maye, Esquire, at his primary email address listed in the Attorney Information System (AIS), this 10th day of September, 2026.

Lara M. Caudy

Lara M. Caudy
Senior Appellate Defender

ATTORNEY FOR APPELLANT

RECEIVED
Sep 10 2026
SC Court of Appeals

From: Mcinnis, Sara
To: SC - MAYE WILLIAM
Cc: Brandy Rankin; Caudy, Lara
Subject: 2023-001390 The State v. Antonio V. Barnes Jr. Return to Petition for Rehearing
Date: Thursday, September 10, 2026 10:14:00 AM
Attachments: 2023-001390 The State v. Antonio V. Barnes Jr. Return to Petition for Rehearing.pdf

Good morning Mr. Maye,

Attached for service in the above-referenced case is the return to the petition for rehearing, which will be filed with the Court of Appeals today, September 10, 2026, via email filing.

Thank you,

Sara McInnis
Administrative Assistant
South Carolina Commission on Indigent Defense
Appellate Division
(803) 734-1330

The South Carolina Court of Appeals

The State, Respondent,

v.

Antonio Vashon Barnes, Jr., Appellant.

Appellate Case No. 2023-001390

ORDER

After careful consideration of the petition for rehearing, the court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

C.J.

J.

J.

Columbia, South Carolina

cc:
Alan McCrory Wilson, Esquire
Melody Jane Brown, Esquire
Lara Mary Caudy, Esquire
William Joseph Maye, Esquire
Donald J. Zelenka, Esquire
The Honorable Clifton Newman

FILED
Sep 15 2026