

VOLUME TWO OF TWO

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Charleston County

Deadra L. Jefferson, Circuit Court Judge

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S.C. Supreme Court

ROGER RAYNARD PARKER,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-002162

A P P E N D I X

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1 went back up there, what did he do?

2 A. I don't know how you -- you got to kind of
3 -- you've got this kind of twisted.

4 THE COURT: No, sir, you -- if you
5 can answer the question, answer the question.
6 If you don't understand the question, then ask
7 him to repeat the question.

8 DEFENDANT: I understand the
9 question.

10 THE COURT: Then answer it.

11 DEFENDANT: That's not what I meant.
12 He said Roger Parker.

13 THE COURT: No, sir. Answer the
14 question, sir.

15 WITNESS: Repeat the question
16 again?

17 MR. GRIMES: Sorry, Mr. Greene.

18 DIRECT EXAMINATION CONTINUED

19 BY MR. GRIMES:

20 Q. After Emmanuel was swinging the chair and
21 Carlos was coming up towards Roger Johnson,
22 what did Roger Parker do?

23 A. He went in the middle of it and he -- he
24 went there the first time and told everybody
25 that was involved with it, "I never..." ---

1 MS. SHEALY: Objection, hearsay.

2 THE COURT: He is talking about
3 Roger Parker.

4 MS. SHEALY: I'm sorry.

5 THE COURT: Thank you. I assume you
6 don't object to that?

7 MS. SHEALY: No, sir.

8 THE COURT: Thank you, you may
9 proceed.

10 DIRECT EXAMINATION CONTINUED

11 BY MR. GRIMES:

12 Q. You may proceed with your answer. You were
13 talking about the first time.

14 A. Uh, -- (pause). He went to -- the son.
15 His father was being attacked by three people,
16 one with a chair.

17 Q. All right.

18 A. After separating them, he went to walk
19 away, too, and then something else kicked up.

20 Q. When you say that something else kicked up,
21 what kicked up?

22 A. Carlos replied by saying, "If you'all ever
23 put your hands on him again,..." ---

24 MS. SHEALY: Objection, Your Honor.
25 Hearsay.

1 THE COURT: I will allow it.

2 DIRECT EXAMINATION CONTINUED

3 BY MR. GRIMES:

4 Q. What did Carlos say?

5 A. Carlos replied by saying, "If you ever put
6 your hands on him again, I'm going to light
7 this bitch up. In fact, I'd like to light this
8 bitch up right now." That's when it got out of
9 hand.

10 Q. When he said that, what was the tone of
11 voice when he said that?

12 A. Like if I'm going to walk over right now
13 and slap you, what would your tone of voice be?

14 THE COURT: Mr. Greene, ---

15 WITNESS: He was upset.

16 THE COURT: Thank you. Answer the
17 question. Don't ask questions.

18 DIRECT EXAMINATION CONTINUED

19 BY MR. GRIMES:

20 Q. Mr. Greene, ---

21 A. Yes, sir?

22 Q. --- when he said 'I am going to light the
23 bitch up', was he doing anything with his
24 hands?

25 A. At this time, I'm standing right at the

1 back of Roger's -- the trunk of his car.
2 Everybody is doing, everybody is moving. Mr.
3 Parker is standing -- I am standing at the back
4 of Mr. Johnson's car when he started saying
5 that and that's when I looked around. He
6 repeated it the second time with his hands
7 like, you know, he was -- (pause).

8 Q. Like what?

9 A. Like he was reaching for something.

10 Q. Okay. When it looked like he was reaching
11 for something, what did you do?

12 A. I woke up with a face full of sand.

13 Q. What did you do?

14 A. I hit the ground.

15 Q. Why did you hit the ground?

16 A. Because if somebody had said that to you,
17 that means that somebody was getting ready to
18 do something, some damage, to someone. I went
19 for cover.

20 Q. All right, Mr. Greene. When you hit the
21 ground, did you see Roger Parker with a gun?

22 A. No, I -- I mean -- no. He hadn't walked
23 out there carrying.

24 Q. Did you ever hear Roger Parker make any
25 threats towards Carlos?

1 A. No, because he apologized to the mother,
2 the sister and at that particular time he said,
3 his exact words were "I never disrespect none
4 of y'all." I mean, that was a child and this
5 was like -- 'that's my daddy, he's a strong
6 man.' That's as far as he get.

7 Q. Did you see the shooting?

8 A. No, sir.

9 Q. Do you know where Roger Parker went after
10 the shooting?

11 A. No. I heard some things.

12 Q. All right. Well, I can't ask you about
13 that.

14 A. Yeah.

15 Q. Let me just ask you one last question. You
16 said that -- when Carlos was reaching for
17 something, was he saying anything at that time?

18 A. That was between the time, that was between
19 the time that he was saying anything and he was
20 reaching out.

21 Q. And he was reaching at the same time?

22 A. (Affirmative nod).

23 Q. Thank you.

24 MR. GRIMES: Please answer any
25 questions that Ms. Shealy may have.

1 MS. SHEALY: May it please the Court?

2 THE COURT: Yes, you may cross

3 examine.

4 CROSS EXAMINATION

5 BY MS. SHEALY:

6 Q. Mr. Greene, did you wink at Mr. Parker when
7 you walked in the courtroom today?

8 A. Did I do what?

9 Q. Did you wink at him?

10 A. No.

11 Q. Who were you winking at?

12 A. I have a little cousin back there that I
13 hadn't seen, and my sister.

14 Q. Did you wink at Mr. Grimes when he was
15 asking you questions?

16 A. Yes, I did.

17 Q. Excuse me?

18 A. Yes, I did.

19 Q. And I notice that you've been smiling some
20 sitting here. Is there something amusing about
21 this to you?

22 A. Yeah, because it seems like the questions
23 that he was asking, it seems like they wasn't
24 important, seems like he was just throwing
25 things at me.

1 Q. And that was funny?

2 A. No, it's kind of weird because he should be
3 in order.

4 Q. Okay. Let me see if I can get it in order
5 for you. You told us that you saw an exchange
6 earlier in the afternoon between Roger Johnson
7 and Emmanuel Johnson; is that correct?

8 A. Yes.

9 Q. And you had explained that the reason that
10 Mr. Johnson was upset is because he was feeling
11 like he was being disrespected?

12 A. I don't know that.

13 Q. You answered the question ---

14 A. It was what Emmanuel was saying.

15 THE COURT: Please answer "yes" or
16 "no", then you may explain your answer.

17 WITNESS: Yes, ma'am. It was
18 because of what Emmanuel was saying.

19 CROSS EXAMINATION CONTINUED

20 BY MS. SHEALY:

21 Q. Was he using foul language?

22 A. It's what was said, the way that he said
23 it.

24 Q. The way that he said it?

25 A. Roger Johnson's house got broken into.

1 Emmanuel replied by saying that he was lucky
2 that it was his brother and not him because of
3 what he would do to Roger's daughter, uh,
4 garbage in the house.

5 Q. Well, let me ask you this, ---

6 A. Ask the question.

7 Q. I am asking the question, if you will give
8 me the opportunity.

9 A. No, that was not a question.

10 THE COURT: Wait. When you finish
11 answering a question, the solicitor will ask
12 you another question and then you can answer
13 the question. Let's don't have this exchange.
14 Okay, sir?

15 WITNESS: Sure.

16 THE COURT: Thank you, sir.

17 CROSS EXAMINATION CONTINUED

18 BY MS. SHEALY:

19 Q. Mr. Greene, Mr. Johnson didn't get along
20 with Emmanuel because he blamed Emmanuel's
21 brother for taking candy; is that correct?

22 A. No.

23 Q. That is not correct?

24 A. No..

25 Q. Okay. Let me ask you this, you say that

1 when you go back over to Mr. Johnson's later in
2 the day, ---

3 A. Right.

4 Q. --- that Mr. Johnson is on his stoop, the
5 concrete area?

6 A. (Affirmative nod), um-humm.

7 Q. And Emmanuel Johnson is on his stoop?

8 A. Right.

9 Q. And that Mr. Johnson -- did you see him
10 with the bat at that point?

11 A. Yeah.

12 Q. Did you see Emmanuel Johnson pick up a
13 chair?

14 A. Yeah.

15 Q. And you said that what Emmanuel Johnson was
16 doing with his chair was faking.

17 A. (No response).

18 Q. That's what you said, isn't it?

19 A. Yes.

20 Q. And you remember giving a statement to the
21 police in this case, do you not?

22 A. Yes.

23 Q. In fact, it was Detective Elmore that came
24 down to your house and talked to you; is that
25 correct?

1 A. I don't remember his name, it was a
2 detective.

3 Q. Excuse me?

4 A. Yes, it was a detective but I don't
5 remember his name.

6 Q. Okay. Did you know that Roger Parker had a
7 gun that afternoon?

8 A. No, I did not.

9 Q. You did not know that he had a gun?

10 A. I've said that twice.

11 Q. Okay. When you gave your statement to the
12 police, you knew that your cousin had been
13 involved in a shooting, is that correct?

14 A. Yeah.

15 Q. And so it was important for you to tell the
16 police what had happened, is that fair to say?

17 A. The truth.

18 Q. The truth.

19 A. That he went after the bat.

20 Q. I'm sorry?

21 A. I told what I knew, what I saw.

22 Q. Very good.

23 A. Yeah, that's what I told.

24 Q. And isn't it true that what you told them
25 that Carlos had said was, "If you touch him

1 again, I am going to light this motherfucker
2 up."

3 A. No, that is not -- I told them exactly what
4 I said just know. His exact words were, "I am
5 going to light this bitch up."

6 Q. And of course you gave the statement the
7 evening that this had happened?

8 A. Yeah.

9 Q. When things were fresh in your mind?

10 A. Yeah.

11 Q. I will show you your statement,
12 (tendering). Take a minute to refresh your
13 memory if you would like to.

14 THE COURT: Have you had it marked?

15 MS. SHEALY: I'm sorry. I need to
16 get that marked.

17 THE COURT: Hold on just a second,
18 Mr. Greene. Just for the record, we need to
19 have it marked so that the record will reflect
20 what she is handing you.

21 COURT REPORTER: State's Exhibit 121
22 for identification.

23 THE COURT: Okay. Thank you.

24 CROSS EXAMINATION CONTINUED

25 BY MS. SHEALY:

1 Q. Mr. Greene, showing you what has been
2 marked as State's Exhibit 121 for ID purposes,
3 (tendering). I ask you to take a look at the
4 second page of that document and refresh your
5 memory as to what you told the police that day.

6 A. I know what I told the police, it doesn't
7 say what I told them.

8 Q. That is not what you told them?

9 A. It's almost like he wrote what he wanted
10 to.

11 Q. Okay. Well, you signed this document;
12 didn't you?

13 A. Yeah, that's my signature. I signed it.

14 Q. And you would agree that what this document
15 reflects is that you told them that Carlos
16 said, (reading): "If you touch him again, I am
17 going to light this motherfucker up."

18 A. Listen. The last thing that I am going to
19 do is lie on a dead man. I did not say "light
20 this motherfucker up". I said "light this
21 bitch up". That's the exact words.

22 Q. I'm sorry. So it is the word "bitch"
23 instead of "motherfucker"?

24 A. Your -- yes, ma'am.

25 Q. You said that you don't lie on a dead man.

1 A. No.

2 Q. Isn't it true that when you gave this
3 statement you said that you fell to the ground
4 after you hear a gunshot?

5 A. I tell -- listen. You can twist it up any
6 way that you want. I did not fall to no ground
7 after no gunshot. When I heard that man say he
8 was going "to light this bitch up", I was
9 eating dirt.

10 Q. Okay. Taking a look at what I just handed
11 you previously, on the second page would you
12 read to the jury -- let me point out to you.

13 A. I see all that.

14 Q. Right here, "I heard..." -- would you read
15 to the jury what that sentence states?

16 A. (Reading): "I heard somebody yell, 'Oh,
17 shit.' Then a gunshot." You say that I heard
18 a gunshot then I hit the ground.

19 Q. Just read it.

20 A. (Reading): "Then a gunshot. I hit the
21 ground."

22 Q. So you are saying that this also is
23 inaccurate?

24 A. Listen. What I ---

25 THE COURT: Hold on just a second.

1 First answer the question and then you can
2 explain it.

3 WITNESS: "No." No. What I said
4 to that man that day is exactly what I am
5 telling you right now.

6 CROSS EXAMINATION CONTINUED

7 BY MS. SHEALY:

8 Q. You would agree with me that the statement
9 that you signed on the night that this occurred
10 says, "I heard someone yell, 'Oh, shit.' Then
11 a gunshot and I hit the ground."

12 A. Yeah.

13 Q. And Mr. Grimes was asking you about Carlos'
14 hands; is that correct?

15 A. Yeah.

16 Q. Isn't it true that what you tell the police
17 is that "Carlos did pull out his car keys and
18 was walking towards his car before the
19 shooting."

20 A. Ma'am, I did not tell this. No.

21 Q. That is ---

22 A. No.

23 Q. You took time that evening to read this
24 statement, didn't you?

25 A. No. After this happened -- no. After this

1 happened, the family -- the family sent this
2 man to me. After I gave this man my statement,
3 I walked back to my back door. Try to under-
4 stand that these were two people that I knew.

5 Q. Well, I ---

6 A. I never told this man none of this.

7 Q. Mr. Greene, when you say that the family
8 sent him to talk to ---

9 A. Yeah, I ---

10 Q. Which family are you talking about?

11 A. Carlos' family.

12 Q. So Carlos' family knew that you were a
13 witness to what happened; is that correct?

14 A. (No response).

15 Q. You didn't go outside and try to talk to
16 the police that evening?

17 A. For what?

18 Q. Because you watched someone get gunned
19 down.

20 A. I never watched that man get gunned down.

21 Q. Because you were hiding after you heard the
22 shot, is that correct?

23 A. I was hiding after I heard the shot?

24 Q. Yes.

25 A. No. Listen. Stop. You're turning, you're

1 twisting this. When this thing went down, you
2 have to understand. I was there when Mr.
3 Parker told them that he'd never ever
4 disrespected them. I was standing right there.
5 I never saw Mr. Parker shoot this man. I never
6 saw no gun.

7 Q. Okay. You would not deny that there was a
8 lot of activity in the street after the shoot-
9 ing occurred, is that correct?

10 A. Yeah, everybody in the whole neighborhood
11 was out there.

12 Q. Okay, and you knew that Mr. Grant had
13 gotten killed; is that correct?

14 A. Yeah, he was a dead man in the street.
15 What do you want me to do? Walk out there and
16 say that I know who did it?

17 Q. You didn't think it was important to go out
18 there and tell the police what you had seen?

19 A. (No response).

20 Q. It took Mr. Grant's family to tell them
21 that you were out there?

22 A. Listen, lady. Listen. I am from a whole
23 different part of town from where you are from,
24 so -- I mean -- think about it, what you would
25 do.

1 Q. Well, let me ask you this, Mr. Greene, ---

2 A. You act like I am taking sides in this
3 because that's my cousin. Come on, I don't do
4 that.

5 Q. Let me make sure that I do understand the
6 relationship. Mr. Johnson is your cousin and
7 Mr. Parker is your second cousin, or is Mr.
8 Johnson your uncle? What is the family
9 relationship?

10 A. Yes, Mr. Johnson is my first cousin. Mr.
11 Parker was Mr. Johnson's son and he ---

12 Q. And you -- sorry, I didn't mean to
13 interrupt you.

14 A. Mr. Johnson is my first cousin.

15 Mr. Parker is Mr. Johnson's son, so he is
16 he my second cousin.

17 Q. And there was something about that question
18 that you didn't want to answer it for me?

19 A. All I am saying is that that was family.

20 THE COURT: Let's move on.

21 WITNESS: Come on, lady.

22 CROSS EXAMINATION CONTINUED

23 BY MS. SHEALY:

24 Q. Mr. Greene, you would agree, though, that
25 the statement that you signed that afternoon

1 reflects that you saw Carlos leaving with his
2 keys in his hands; is that correct?

3 A. Carlos wouldn't even know.

4 Q. Excuse me?

5 A. Carlos shouldn't have been there, after he
6 called and asked me what was going on.

7 Q. Did you answer my question?

8 A. I said "no".

9 Q. That he didn't have keys in his hands?

10 A. I said -- that's not what I said, lady.

11 Q. You're saying that you didn't see the keys
12 at all?

13 A. No, I didn't see no keys. This that is on
14 this paper, I did not tell that detective that
15 day. I give you my word that I didn't. I
16 don't know where this come from.

17 Q. Are you denying that is your signature?

18 A. I am telling you that man wrote what he
19 wanted to write on that paper.

20 THE COURT: The question was, are
21 you denying that is your signature?

22 WITNESS: No, I do not deny that's
23 my signature. But I do deny that -- he didn't
24 write what I told him, he wrote what he wanted
25 to write.

1 CROSS EXAMINATION CONTINUED

2 BY MS. SHEALY:

3 Q. And did you testify that when Mr. Johnson
4 picked up the bat that he came out of the house
5 with the bat?

6 A. (No response).

7 Q. Did he come out of the house with the bat?

8 A. Yes.

9 Q. Showing you what has been marked as State's
10 Exhibit 106, does that look like the bat that
11 Mr. Johnson brought out?

12 A. I really couldn't tell you.

13 Q. When Mr. Johnson came out with the bat, I
14 think you said that he took the bat and he
15 swung it towards the mother, the sister, Carlos
16 ---

17 A. What I told you was that he swung the bat
18 at Carlos. Emmanuel, the sister and the mother
19 was in the middle of them. That's what I said.

20 Q. Okay. I'm sorry. So he took the bat to
21 Carlos, Emmanuel and the sister. He didn't
22 care who he hit. Is that what you're saying?

23 A. There was three people coming after you,
24 one with a chair, swinging a chair. One with
25 a ---

1 Q. Well, wait a minute. I thought you told me
2 that Emmanuel was on his own stoop, faking it.

3 A. That was in the beginning of the thing.
4 When the activity took place, everybody was
5 coming together. I said it to Mr. Grimes and I
6 say it to you now, that's how it took place.

7 Q. That was after Mr. Johnson gets the bat; is
8 that correct?

9 A. Ma'am, he had the bat when he came out of
10 the screen door.

11 Q. Okay. So when he walked out of the screen
12 door, he's carrying the bat?

13 A. He just came from dialysis.

14 Q. Okay. Did he have the bat with him when he
15 walked out the door?

16 A. He had the bat with him. He didn't went in
17 to get the bat -- you keep saying that he went
18 in the house to get the bat, but he already had
19 the bat in his hand.

20 Q. And I think that you said that someone
21 inside said, 'Let's take this outside.' Is
22 that correct?

23 A. What I told you was, what I told Mr. Grimes
24 as you were sitting over here listening to it
25 is that Roger Parker came and opened the screen

1 door and said, 'Bring it outside.' That's
2 what I told you.

3 Q. Okay. What I what to ask you is, when
4 Carlos Grant heard that from Mr. Johnson (sic),
5 did he walk outside like the gentleman asked
6 him to?

7 A. Not at first. Mr. Parker had to pull him
8 outside.

9 Q. Oh, okay. Okay. Now you've never
10 mentioned that before.

11 A. Nobody ever asked.

12 Q. You didn't put it in your statement, did
13 you?

14 A. I told that man that night but it's not in
15 the statement.

16 Q. Did you tell Mr. Grimes that when he was
17 asking you what happened?

18 A. I told Mr. Grimes that, I told him that the
19 statement wasn't even what I said.

20 Q. When Mr. Grimes was questioning you before,
21 did you tell him that Mr. Parker had to pull
22 him out?

23 A. Mr. Grimes never asked that.

24 MS. SHEALY: Your Honor, we have a
25 matter of law.

1 THE COURT: Ladies and Gentlemen,
2 there is a matter that I need to take up out
3 of your presence. I need for you to go to
4 your jury room. We will probably use this
5 opportunity as well to take a break, so we will
6 probably be with you in about fifteen minutes.
7 Do not begin your deliberations.

8 (JURY OUT @ 11:07 A.M.)

9 THE COURT: Yes, ma'am?

10 MS. SHEALY: Your Honor, at this time
11 I would like to ask him about his prior record.

12 WITNESS: That doesn't have any-
13 thing to do with this.

14 THE COURT: Mr. Greene, I appreciate
15 it. One of the things that you need to
16 understand is that that doesn't come under the
17 heading of your responsibility. You're the
18 witness. I happen to be the trial judge and I
19 have the responsibility of ruling on matters of
20 law. You don't make that call, sir.

21 WITNESS: Yeah, I ---

22 THE COURT: Mr. Greene, I suggest
23 that you be quiet now. Thank you, sir.

24 MS. SHEALY: Your Honor, for the
25 record, he has a 1997 possession of crack. The

1 conviction was in '97, for which he received
2 five years and probation. It is our position
3 that extends into the ten-year period.

4 THE COURT: Okay.

5 MS. SHEALY: And similarly another
6 possession of crack that he got two years and
7 probation; a grand larceny in 1998; then the
8 2007 possession of cocaine that we addressed
9 earlier.

10 THE COURT: When? 1998 was ---

11 MS. SHEALY: The grand larceny.

12 THE COURT: What time was that?

13 MS. SHEALY: September, Your Honor.

14 THE COURT: And then the other would
15 be possession of cocaine?

16 MS. SHEALY: Yes, sir.

17 THE COURT: Mr. Grimes, do you wish
18 to be heard?

19 MR. GRIMES: (No response).

20 THE COURT: If you want to impeach
21 the witness, you need his testimony for some
22 things and you don't want it for some things.

23 MR. GRIMES: On what I've been
24 provided, it ---

25 THE COURT: Mr. Grimes, you've got

1 to slow down and speak distinctly.

2 MR. GRIMES: On the criminal history
3 that I've been provided I don't see a grand
4 larceny.

5 THE COURT: Can you provide him a
6 copy?

7 MS. SHEALY: (Indicates)

8 MR. GRIMES: (Upon review), I believe
9 that is within the ten years and it is a crime
10 of dishonesty.

11 THE COURT: Sir?

12 MR. GRIMES: It is a crime of
13 dishonesty and it is within ten years.

14 THE COURT: I will allow you to ask
15 him about the conviction for the larceny but
16 since he's had two convictions, that doesn't
17 make him more dishonest so I don't think it is
18 necessary to ask him about that.

19 I think that probably -- there is no
20 question -- let me just state this for the
21 record: Under a 403 analysis, we are not
22 required to conduct one at this particular
23 point as to the possession of cocaine.

24 I will let you make the call. I am
25 not going to allow you to use both of them, I

1 don't think that there is a need for both of
2 them. I think that obviously the ten years on
3 the grand larceny is clearly -- it is clearly a
4 crime of dishonesty, so that comes in. That
5 meets the rules.

6 There is no question that this
7 witness' testimony in this case -- the
8 credibility of this witness is central. There
9 has been an indication in the prior statement
10 and changes from that statement, that he didn't
11 say what the statement claims that he said, his
12 observations at the scene are very critical on
13 a number of elements. Therefore, the probative
14 value of his credibility is certainly --
15 obviously we have a rule going to convictions.
16 Whether that affects one honesty or dishonesty,
17 -- of course, I will charge the jury on the
18 fact that it doesn't render his testimony
19 unbelievable or incredible. It's just a fact
20 that they can consider.

21 It meets -- the probative value out-
22 weighs the prejudice of having the conviction.
23 Given that instruction, I don't see that is a
24 real critical problem.

25 So you can pick your poison, so to

1 speak, as to which one that you want to do but
2 I will -- are you going to ask him?

3 MS. SHEALY: Yes, sir.

4 THE COURT: All she is going to ask
5 him is whether or not he has a conviction. As
6 I said, I am going to instruct the jury that
7 doesn't mean that he is not credible, it's just
8 a fact that they can consider. That's the
9 purpose of it.

10 MS. SHEALY: Thank you, Your Honor.

11 THE COURT: Okay, let's take about
12 ten minutes.

13 (BRIEF RECESS)

14 (DEFENDANT PRESENT)

15 THE COURT: Let the record reflect
16 that Mr. Parker is present. Solicitor, are you
17 ready to continue?

18 MS. SHEALY: I am, Your Honor.

19 THE COURT: All right, let's let the
20 jury return.

21 (JURY IN @ 11:21 A.M.)

22 THE COURT: Thank you very much,
23 Ladies and Gentlemen. We are ready to
24 continue. Ms. Shealy, you may resume your
25 examination.

1 MS. SHEALY: Thank you, Your Honor.
2 May it please the court?

3 THE COURT: Yes, ma'am.

4 CROSS EXAMINATION RESUMED

5 BY MS. SHEALY:

6 Q. Mr. Greene, just a couple of other
7 questions. In 1989, you were convicted of
8 grand larceny, is that correct?

9 THE COURT: Rephrase your question.
10 '89.

11 MS. SHEALY: I'm sorry, 1998.

12 CROSS EXAMINATION RESUMED

13 BY MS. SHEALY:

14 Q. In 1998 you were convicted of grand
15 larceny, is that correct?

16 A. Yes.

17 Q. Mr. Greene, isn't it true that on the
18 occasions that my office tried to interview you
19 regarding this incident that you refused to
20 talk to us?

21 A. Yes, ma'am.

22 MS. SHEALY: I have no further
23 questions. Thank you.

24 THE COURT: Redirect?

25 REDIRECT EXAMINATION

1 BY MR. GRIMES:

2 Q. When Detective Elmore interviewed you, did
3 he have a tape recorder?

4 A. No, sir.

5 Q. And your testimony today, are you telling
6 the truth?

7 A. Yes, sir. I have no reason to lie.

8 Q. And Roger is your cousin?

9 A. (No response).

10 Q. Would you lie for him?

11 A. The last thing he needs would be for me to
12 be lying for him. I mean, secondguess me all
13 you want but you are going to get the truth.

14 MS. SHEALY: I object, Your Honor.

15 THE COURT: Sustained. Just answer
16 the question.

17 WITNESS: I did.

18 MR. GRIMES: Thank you. I have no
19 further questions, Your Honor.

20 THE COURT: Recross?

21 MS. SHEALY: Nothing further. Thank
22 you.

23 THE COURT: Thank you, Mr. Greene,
24 you can step down.

25 WITNESS: No cross.

1 (WITNESS STEPS DOWN)

2 THE COURT: Approach, please.

3 (BENCH CONFERENCE)

4 THE COURT: Ladies and Gentlemen, I
5 apologize. There is a matter of law that I
6 need to take up outside of your presence. You
7 didn't know that you were going to get your
8 aerobics today. Thank you very much.

9 (JURY OUT @ 11:27 A.M.)

10 THE COURT: All right. As I under-
11 stand, the next witness is Mr. Roger Johnson.

12 MR. GRIMES: Yes, sir.

13 THE COURT: Prior to our resuming
14 the examination of Mr. Greene, I was advised by
15 Mr. (David) Wolf, who is apparently the
16 attorney of record, that he was scheduled in a
17 Family Court matter at 11:30, I think is what
18 he said. He said it would take about ten
19 minutes, so he asked permission to go attend
20 that hearing. I granted that permission. It
21 is my understanding that you have two witnesses
22 remaining?

23 MR. GRIMES: Yes, sir.

24 THE COURT: In the order, you wish
25 to place the Defendant's testimony last?

1 MR. GRIMES: Yes, sir.

2 THE COURT: All right, we will be
3 at-ease.

4 (BRIEF RECESS)

5 THE COURT: I cited *McGuire*, *McGuire*
6 is the case that dealt with -- I think that it
7 was *Terry* that was being referenced about
8 whether or not a person had to be called to
9 exercise the privilege, personally. So when I
10 used *McGuire*, I misspoke. It's *Terry*.

11 Having said that, this case is very
12 close to the case that you raised, that is the
13 *State v. Hughes* case, because there were
14 charges.

15 MS. SHEALY: Yes, sir.

16 THE COURT: Mr. Wolf advised the
17 court that he did not anticipate his invoking
18 that privilege. I am going to -- when he gets
19 back, I am going to ask Mr. Wolf to have the
20 witness, if he chooses to do so to simply say
21 'may I speak to my lawyer' or whatever he wants
22 to say to trigger that, so that we can excuse
23 the jury and take that matter up outside the
24 presence of the jury.

25 MS. SHEALY: Yes, sir. Thank you.

1 THE COURT: Do you have any
2 objection to that?

3 MR. GRIMES: No, sir.

4 THE COURT: I don't want it --
5 before the jury, it could go either way. In
6 the *Hughes* case, looking at it, it seems that
7 it was a tactic that the defense used to say
8 that somebody other than the defendant was
9 guilty of it. I could see how that would
10 prejudice the state -- I could see how that
11 prejudice could flow either way, realistically.

12 MS. SHEALY: Thank you.

13 (DAVID WOLF, COUNSEL FOR WITNESS

14 ROGER JOHNSON PRESENT)

15 (DEFENDANT PRESENT)

16 THE COURT: Mr. Wolf, you gave me
17 an indication that you do not anticipate your
18 client would not invoke his Fifth Amendment
19 privilege?

20 MR. WOLF: I do not.

21 THE COURT: He is present now in the
22 courtroom, is that correct?

23 MR. WOLF: Yes, Your Honor.

24 THE COURT: He has probably heard
25 what I shared with them. I would ask that you

1 advise him -- whatever you'all choose to do,
2 if he could say, 'I need to speak to my
3 lawyer', whatever, at that point I will excuse
4 the jury.

5 MR. WOLF: Yes, sir.

6 THE COURT: Because I would like him
7 not to invoke the privilege in front of the
8 jury.

9 MR. WOLF: I will make sure that he
10 understands that.

11 THE COURT: Please understand that I
12 am in no way minimizing or restricting his
13 right to invoke his privilege. I want him to
14 clearly understand that.

15 MR. WOLF: Yes, sir. Your Honor,
16 could we step out?

17 THE COURT: Absolutely. Certainly.

18 (BRIEF RECESS FOR COUNSEL WOLF

19 TO CONFER WITH WITNESS, ROGER JOHNSON)

20 THE COURT: Would you ask Mr. Wolf
21 to step in? I think the better thing would be,
22 'Your Honor, I need to take a break' rather
23 than 'I need to talk to my lawyer', because the
24 jury could infer something from that, too.

25 MR. WOLF: Yes, sir?

1 THE COURT: I just thought, if you
2 get to a point that he wants to talk to you, if
3 he would just tell me "I need to take a break",
4 I think that -- "I need to take a break, Your
5 Honor, if I could."

6 MR. WOLF: Yes, sir.

7 THE COURT: Use those terms and that
8 way it doesn't imply anything at all.

9 MR. WOLF: I will instruct him to
10 do that.

11 THE COURT: All right.

12 (BRIEF RECESS)

13 MR. WOLF: Your Honor?

14 THE COURT: Yes, sir.

15 MR. WOLF: I have discussed it with
16 my client and he understand that if at any
17 point that he needs to speak with me ---

18 THE COURT: "I need to take a
19 break"?

20 MR. WOLF: Yes, Your Honor.

21 THE COURT: Okay. Thank you.

22 Is that your understanding, Mr. Johnson?

23 ROGER JOHNSON: Yes, sir.

24 THE COURT: Thank you, sir. I
25 appreciate that. Are we ready, Mr. Grimes?

1 MR. GRIMES: Yes, sir.

2 THE COURT: Is the State ready?

3 MS. SHEALY: Yes, sir.

4 THE COURT: Let the record reflect
5 that the Defendant is present. Bring in the
6 jury, please.

7 (JURY IN @ 11:49 A.M.)

8 THE COURT: Thank you very much,
9 Ladies and Gentlemen. I appreciate your
10 understanding and patience and you'all can
11 remember -- it reminds me of a presentation
12 that I saw one thing about the unusual nature
13 of jury service, in the classic seating of
14 where you are asked to do something but you
15 can't ask any questions. You can't inquire.
16 That is totally inconsistent with everything
17 that we know and deal with in life. That's why
18 I say that I appreciate your patience. I
19 assure you that after you have completed your
20 services, if any of you have any questions
21 about anything that has transpired, I will be
22 delighted to try to answer those. But for the
23 time being, just understand that is that
24 separation that we have to maintain and I
25 appreciate your understanding of that. The

1 parties, as well.

2 Mr. Grimes, do you wish to call any
3 additional witnesses?

4 MR. GRIMES: Yes, sir. At this time,
5 we would call Roger Johnson.

6 THE COURT: Mr. Johnson, please come
7 forward.

8 (WITNESS TAKES STAND)

9 ROGER R. JOHNSON, being duly
10 sworn to tell the truth, the whole truth and
11 nothing but the truth, testified, as follows:

12 DIRECT EXAMINATION

13 BY MR. GRIMES:

14 Q. Good morning, Mr. Johnson.

15 A. Good morning.

16 Q. How old are you, Mr. Johnson?

17 A. I am 45.

18 Q. Are you married?

19 A. Yes, sir.

20 Q. Who are you married to?

21 A. Virginia Johnson.

22 Q. How long have you been married to Ms.
23 Johnson?

24 A. Eighteen (18) years.

25 Q. Do you have any children?

1 A. Three.

2 Q. What are those names?

3 A. Quan (phonetic), Sierra and Roger.

4 Q. Why is Roger's last name "Parker"?

5 A. Well, we were pretty young when we had him,
6 when he was born.

7 Q. Were you married at the time?

8 A. No.

9 Q. What was your wife's maiden name?

10 A. Parker.

11 Q. How old are your children now?

12 A. Twenty-seven (27), 28 and 26 or 25 -- 26.

13 Q. Are those your stepchildren or are they
14 your real children?

15 A. No, those are my real children.

16 Q. Does Roger have a nickname?

17 A. Yes.

18 Q. What is his nickname?

19 A. "Stinka".

20 Q. Tell the jury how he got his nickname.

21 A. Well, there was a aunt that used to -- he
22 used to ---

23 COURT REPORTER: Used to what?

24 WITNESS: Pee out (phonetic) --

25 and when he was small his aunt, she gave him

1 that name.

2 DIRECT EXAMINATION CONTINUED

3 BY MR. GRIMES:

4 Q. So it has stuck with him ever since?

5 A. Yeah.

6 Q. How long have you lived in Charleston?

7 A. All my life.

8 Q. Where did you go to school at?

9 A. I went to Bonds-Wilson High and C.A. Brown
10 High.

11 Q. I want to go to back to April of 2006. At
12 that time, did you have any medical problems?

13 A. Yes, sir.

14 Q. I know that it may be a little personal,
15 but would you please tell the jury about your
16 medical problems?

17 A. Well, I suffer from renal/kidney failure.

18 Q. Mr. Johnson, you have to speak up a little
19 bit so that the court reporter can hear you.

20 A. Kidney failure. Do you want me to explain
21 my medical history to them?

22 THE COURT: Mr. Johnson, I am going
23 to need for you to pull up -- when you turn
24 away from that mic, it is not picking up your
25 voice. If you want to turn, move the mic.

1 WITNESS: (Adjusts microphone).

2 THE COURT: That's perfect. Thank
3 you.

4 DIRECT EXAMINATION CONTINUED

5 BY MR. GRIMES:

6 Q. I believe that you said that you suffer
7 from renal/kidney failure?

8 A. Yeah.

9 Q. Are you receiving treatment for that?

10 A. Yes, sir.

11 Q. What type of treatment are you receiving?

12 A. I am on a dialysis machine three days a
13 week.

14 Q. And have you had any other medical
15 problems?

16 A. Yes, sir.

17 Q. What were they?

18 A. I had a pancreatitis. I had a kidney cancer.
19 I have mine (phonetic) problems, too, once a
20 week probably.

21 Q. How does that affect you day-to-day?

22 A. It varies. I mean, some days I have good
23 days. Some days I have bad days.

24 Q. Mr. Johnson, I want to ask you some
25 questions about the afternoon of April 18th.

1 Had you gone anywhere that afternoon?

2 A. Yes, sir.

3 Q. Where did you go?

4 A. I went to the Amoco that afternoon.

5 Q. What did you do at the Amoco?

6 A. I think I went to buy paper towels.

7 Q. When you -- where did you go after you
8 finished buying paper towels?

9 A. I went back home.

10 Q. When you went back home, what happened?

11 A. When I got out of the car, Emmanuel was on
12 the porch staring, just standing there shaking
13 his head. I asked him, 'why you staring at me'
14 and he ---

15 Q. Don't tell us what he said.

16 A. I can't say what he said?

17 THE COURT: Just answer the
18 question, sir.

19 WITNESS: I can't ---

20 MR. GRIMES: We will get into that.

21 DIRECT EXAMINATION CONTINUED

22 BY MR. GRIMES:

23 Q. When he was staring at you, what kind of
24 stare was it?

25 A. Well, he was just looking at me. Looking

1 at me and shaking his head.

2 Q. How did that make you feel?

3 A. Well, the way that I know him, he got
4 something on his mind, that he wants to say
5 something or do something.

6 Q. Okay. At that time, did he say anything to
7 you?

8 A. I asked him 'what's up', why was he looking
9 at me like that. He say, 'You know why the f'
10 I'm looking at you.'

11 Q. And what happened after he said 'you know
12 why the f' I am looking at you'?

13 A. I just said, 'I don't know what you talking
14 about.'

15 Q. Did you -- was there an argument after
16 that?

17 A. I went in the house right after that.

18 Q. When you went in the house, what did you
19 do?

20 A. I had clothes on the chair where I had just
21 got out of the dryer before I left. I was just
22 folding them.

23 Q. While you were folding the clothes, what
24 did you do after that?

25 A. Well, my door was open and he was on the

1 outside talking, you know, saying something,
2 giving mouth. Ms. Ward pulled up, she was
3 there with him and, you know, he was steady
4 talking about me. I made a phone call, I
5 called William.

6 Q. Okay. What did you tell William?

7 A. I asked him -- when my son get off work, he
8 usually go down there. I asked him if my son
9 was there.

10 Q. Okay.

11 A. He asked me what was going on and I told
12 him that young Emmanuel was being
13 disrespectful.

14 Q. What did you call William for?

15 A. Well, anytime them young kids -- I run a
16 candy store and when those young kids get rude
17 and disrespectful, I can't stand up to them
18 young kids. I can't stand up to those kids
19 physically, you know.

20 Q. Okay. And after you called William, what
21 happened?

22 A. He said that he would be down there.

23 MS. SHEALY: Objection to hearsay.

24 THE COURT: I will allow it.

25 DIRECT EXAMINATION CONTINUED

1 BY MR. GRIMES:

2 Q. Did William come down there?

3 A. Yeah.

4 Q. How long after the phone call did it take
5 him to come down?

6 A. Well, he live right down the street. You
7 know, a minute or two.

8 Q. Okay. Did Roger come with him?

9 A. Yes, he did.

10 Q. When they came, what happened?

11 A. When they came, I walked on the porch with
12 my bat and I -- I was telling my son what was
13 going on. He went to talk to this boy. He
14 said, 'Ma'am, I ain't never disrespected you
15 and I ain't going to start today.' He said
16 'the only thing that I ask you is not have this
17 little boy disrespecting my dad.'

18 Q. Why did you go out on the porch with a bat
19 for?

20 A. Because he already had a chair.

21 Q. What was he doing with this chair?

22 A. He was just holding. He was just holding
23 it in his hand but I had the intention (sic)
24 that he was going to swing it at me.

25 Q. All right. When your son came down there,

1 did he make any threats to anyone?

2 A. No.

3 Q. Was he disrespectful in any way?

4 A. No.

5 Q. Was he rude in any way?

6 A. No, no.

7 Q. What did Ms. Ward say after that?

8 A. She was saying -- I got to get it right
9 now. She ---

10 MS. SHEALY: Objection, hearsay.

11 THE COURT: Sustained.

12 DIRECT EXAMINATION CONTINUED

13 BY MR. GRIMES:

14 Q. Did an argument ensue after your son talked
15 to her?

16 A. Not right -- not right then.

17 Q. What calmed the situation down?

18 A. Well, the cousin was telling him to come in
19 the house. Ms. Ward said that she was ---

20 MS. SHEALY: Objection, Your Honor.
21 Hearsay.

22 THE COURT: Sustained as to what Ms.
23 Ward said.

24 WITNESS: She said ---

25 THE COURT: No, ---

1 MR. GRIMES: Your Honor, may I
2 approach briefly?

3 THE COURT: Yes, you may.

4 (SIDEBAR)

5 THE COURT: Thank you.

6 DIRECT EXAMINATION CONTINUED

7 BY MR. GRIMES:

8 Q. After the situation calmed down, what
9 happened next?

10 A. Well, my son said, 'Daddy, are you all
11 right?' I said yeah.

12 Q. When you told him that you were all right,
13 what did your son and William do?

14 A. They left and I went back in the house.

15 Q. After you went -- how long were you in the
16 house for?

17 A. I don't know. About ten minutes.

18 Q. After the ten minutes passed, what happened
19 next?

20 A. I was on the phone talking to William. I
21 don't know if I called him or if he called me
22 at that time.

23 Q. Okay. When you were on the phone talking
24 to William, what happened?

25 A. Carlos was at the door.

1 Q. When Carlos came to the door, what did you
2 do?

3 A. I let him in. I told William -- when we
4 were on the phone, he was telling me that
5 Carlos was coming.

6 MS. SHEALY: Objection, Your Honor.
7 Hearsay.

8 THE COURT: Overruled. I will allow
9 that.

10 WITNESS: He was telling me that
11 Carlos was coming.

12 DIRECT EXAMINATION CONTINUED

13 BY MR. GRIMES:

14 Q. Did you let Carlos in?

15 A. Yeah, I let him in.

16 Q. How was Carlos acting when he first came in
17 your place?

18 A. When he came to the door, he didn't say
19 nothing. I just asked him to come on in.

20 Q. Okay. Were you holding the bat when he
21 came in?

22 A. No.

23 Q. How were you acting when he, when Carlos
24 first came in?

25 A. I was acting calm. I thought that he came,

1 you know, just to see what was going on.

2 Q. Did things change at any time?

3 A. He changed about thirty seconds before he
4 walked in the door.

5 Q. And what caused it to change?

6 A. Because I said, 'I need to explain some-
7 thing to you.' He just went off. He said, ---

8 Q. What did he say to you?

9 A. He said, "Motherfucker, I'm going to tell
10 you what's up. You..." ---

11 MS. SHEALY: I would object, Your
12 Honor, to hearsay.

13 THE COURT: Sustained.

14 DIRECT EXAMINATION CONTINUED

15 BY MR. GRIMES:

16 Q. When he was talking to you, what was his
17 tone of voice like?

18 A. Well, he was loud.

19 Q. Where was he standing at when he was
20 talking to you?

21 A. He was in my face, came right up to me.

22 Q. How did you feel when he was talking to
23 you?

24 A. Well, I -- he was acting crazy. I mean,
25 you don't come in nobody's house acting like

1 you got a problem. I was trying to solve --

2 I was trying to tell him the problem.

3 Q. What did you tell him?

4 A. I tell him that his little cousin was
5 cursing me out, that he was saying that I paid
6 someone to beat him up.

7 MS. SHEALY: Objection, Your Honor.

8 THE COURT: Sustained.

9 MR. GRIMES: Your Honor?

10 THE COURT: Yes, sir?

11 MR. GRIMES: I believe that under
12 Rule 803 ---

13 THE COURT: No, sir. Approach.

14 (SIDEBAR)

15 DIRECT EXAMINATION CONTINUED

16 BY MR. GRIMES:

17 Q. How long did this conversation last between
18 you and Mr. Greene -- Mr. Grant?

19 A. It might have been ten or fifteen minutes.

20 Q. During this ten or fifteen minutes when --
21 did your son come?

22 A. Yeah.

23 Q. When you son came, what did he do?

24 A. My son told him to get out of his mom and
25 daddy's house, that he can't be cursing his mom

1 and daddy in their house.

2 Q. Okay. When Roger told him to get out, what
3 did Carlos do?

4 A. Nothing. He was still talking, talking at
5 me.

6 Q. Okay. When he was talking at you, what was
7 his tone of voice like?

8 A. He was still loud, saying like he would
9 close my house down.

10 MS. SHEALY: Objection.

11 THE COURT: Overruled. I will allow
12 it.

13 DIRECT EXAMINATION CONTINUED

14 BY MR. GRIMES:

15 Q. What was his tone of voice like?

16 A. Well, it was loud and rude.

17 Q. Where was he standing in relation to you?

18 A. At that time, I was still in my house but I
19 had done backed up.

20 Q. Were you sort of close together or were you
21 far apart?

22 A. We weren't that far apart.

23 Q. And you said that Roger was there at that
24 time?

25 A. Yes, he came.

1 Q. And what was Carlos saying at that time?

2 A. That's when he was still saying -- when
3 Roger came, he was still cursing at me, saying
4 how he would close my house down.

5 Q. When he said that he would close your house
6 down, how did that make you feel?

7 MS. SHEALY: I objection to the
8 relevance.

9 THE COURT: I will allow the
10 question.

11 WITNESS: Well, I was taking that
12 as a threat.

13 DIRECT EXAMINATION CONTINUED

14 BY MR. GRIMES:

15 Q. Why did you take it as a threat?

16 A. Because he was in my house, saying that he
17 would close it down. That mean -- most people
18 around the neighborhood, when they make a
19 threat you know most of the time they carry it
20 out.

21 Q. Okay. So he was saying that he was going
22 to close your house down. What else was he
23 saying at this time?

24 A. He was saying, that he was ---

25 MS. SHEALY: Your Honor, I object.

1 THE COURT: I will allow it.

2 WITNESS: He was saying that he
3 would light my ass up.

4 DIRECT EXAMINATION CONTINUED

5 BY MR. GRIMES:

6 Q. When he said that he would "light your ass
7 up", how did that make you feel?

8 A. Well, I knew what he was saying, that he
9 was definitely going to do some damage to me,
10 that he was going to do some physical harm.

11 Q. What did Roger do when Carlos was saying
12 this?

13 A. Roger pulled him out of the house and told
14 him that he can't be disrespecting his daddy
15 and mom in their house, that he would have to
16 get out.

17 Q. And how long -- when you say that he pulled
18 him out, how did he pull him out?

19 A. He grabbed him by his arm.

20 Q. At that point did Roger make any threats
21 towards Carlos?

22 A. No, sir.

23 Q. Did he have a gun at that time or did you
24 see Roger with a gun?

25 A. I ain't never see him with a gun.

1 Q. He didn't point a gun at Carlos during that
2 time?

3 A. No.

4 Q. Did he say that he might kill Carlos if he
5 didn't get out?

6 A. No.

7 Q. After he went outside, what happened after
8 that?

9 A. He went outside. The mama, the sister,
10 Emanuel and Carlos, we all went outside and
11 Carlos was just saying that he would lay our
12 ass down, that he would light our ass up, that
13 he would close Ashley Shores down, my house
14 down. Just saying stuff.

15 Q. When he was saying this, what was his body
16 language like?

17 A. Well, his hands in his pants or like in his
18 pockets.

19 Q. You mean his hands were like this
20 (gesturing)?

21 A. You know, I couldn't really tell. All I
22 could tell is that his hands -- you know, he
23 had on work pants and they're big, so I
24 couldn't really tell. All I know is that his
25 hands were ---

1 Q. Were his hands like this (gesturing)? Just
2 regular pockets?

3 A. No. See, I couldn't tell. He had on a big
4 shirt over his baggy pants and I couldn't ---

5 Q. Maybe something like (gesturing)?

6 MS. SHEALY: Your Honor, I ---

7 THE COURT: He's answered your
8 question. He doesn't know. That calls for
9 speculation, sir.

10 DIRECT EXAMINATION CONTINUED

11 BY MR. GRIMES:

12 Q. What was Emmanuel doing at this time?

13 A. I don't know what he was saying. All of
14 them was talking, there was just a bunch of
15 cursing going on. I can't tell you exactly
16 what he was saying.

17 Q. Okay. Was he doing anything with the
18 chair?

19 THE COURT: He's answered the
20 question. He doesn't know.

21 WITNESS: No, he -- you asked me
22 that.

23 THE COURT: Sir, rephrase your
24 question. If you want to follow up, you need
25 to ask a question. He told you 'I don't know

1 what he was doing.'

2 DIRECT EXAMINATION CONTINUED

3 BY MR. GRIMES:

4 Q. During the argument, did you look at
5 Emmanuel during the argument?

6 A. Yes.

7 Q. Did you see what he was doing?

8 A. Yeah, he went to pick up the chair.

9 Q. How did he pick the chair up?

10 A. He grabbed the chair -- I can't say what
11 size it was, it was just a little rocking
12 chair, a wooden chair.

13 Q. How did he pick the chair up?

14 A. He snatched it.

15 Q. Did he swing the chair at you?

16 A. I didn't see him swing, I saw him grab it.

17 Q. When he grabbed the chair, how far was he
18 from you?

19 A. You know, our porches are close. I'm on
20 the side, I'm on the walk, like here is his
21 porch. I was on the sidewalk, like right here
22 on the sidewalk.

23 Q. So you were on the sidewalk and he was on
24 his porch?

25 A. (No response).

1 Q. Would you say as close as me and you?

2 A. No, that's too far.

3 Q. Is it as close to me now?

4 A. Yeah.

5 Q. For the record, about ten feet?

6 A. About that. I ain't real sure how many
7 feet.

8 Q. That's fine. What was Demetria doing at
9 this time?

10 A. Well, she was talking down. Like I was
11 saying, I couldn't understand all -- all of
12 them: the mom, Demetria Ward, Emmanuel, all of
13 them was talking. They was saying a bunch of
14 things. If you asked me to tell you what they
15 was saying, I ---

16 Q. I understand.

17 A. --- couldn't tell you. I mean, I know that
18 they were cursing and stuff.

19 Q. Did you have a baseball bat at that time?

20 A. Yeah.

21 Q. Why did you have the baseball bat?

22 A. Because when he come in my house he already
23 told me that he had something for me.

24 Q. When you say that he had something for you,
25 was that Carlos?

1 A. No, that was Emmanuel.

2 Q. Okay. Where was Roger at at this time?

3 A. He was right there. At the time that he
4 came back, you know when he came back at the
5 time that Carlos came, he was outside. My wife
6 was -- my wife was in the door on the porch.

7 Q. Okay. What was Roger doing when Demetria,
8 Cassandra, Carlos and Emmanuel were cursing at
9 you?

10 A. He was standing there.

11 Q. Was he cursing back?

12 A. No.

13 Q. Was he making any threats to anybody?

14 A. No.

15 Q. Was he waving a gun around?

16 A. No.

17 Q. Did he hit anybody?

18 A. Nope.

19 Q. Did the situation escalate any?

20 A. Yes, it did.

21 Q. Please tell the jury how it escalated?

22 A. Carlos kept saying how he would close my
23 house down, how he would shut Ashley Shores
24 down, he was saying that -- we didn't want no
25 part of him, so while he was making the threats

1 my son told me that, 'Daddy, you ought to get
2 in the house.'

3 Q. Did he say -- is that all that he said?

4 "Daddy, you ought to get in the house.'

5 A. No, he said he might kill me.

6 Q. When he said, 'Daddy, you need to get in
7 the house. This man might kill you.' What did
8 you do?

9 A. I tell him that I ain't going to -- I tell
10 him that I ain't going to leave my yard.

11 Q. Where was Carlos at at this time?

12 A. Carlos was on the edge of the yard. You
13 know, the yards aren't that far apart.

14 Q. Was he coming towards you?

15 A. Yeah.

16 Q. How did that make you feel when Carlos was
17 coming towards you?

18 A. I mean, I -- all of them were coming! When
19 he started walking, the mama and the sister and
20 all them started coming towards me; you know, I
21 ain't so big and all of them were coming
22 towards me.

23 Q. Where was your son standing at at that
24 time?

25 A. My son was pushing my wife in the house.

1 Q. Where were you standing at?

2 A. I was still on the sidewalk, right in front
3 of the door.

4 Q. Right in front of your door?

5 A. (Affirmative nod).

6 Q. Okay. What was Carlos doing as he was
7 approaching you?

8 A. He was just standing -- he was still doing
9 what I tell you.

10 Q. Was he doing anything with his hands?

11 A. Well, he still had them in his pocket.
12 Like I said, he had a big shirt on. Wherever
13 he had his hands.

14 Q. Okay. What happened after they started
15 approaching you and Carlos had his hands in his
16 pockets?

17 A. Emmanuel picked up the chair and I took my
18 bat. He coming toward me and I swung.

19 Q. Why did you swing your bat?

20 A. Because I can't have four people beating up
21 on me. I just came off dialysis. I mean, I
22 didn't have enough strength. You know, it
23 takes me -- I have to lay down for three or
24 four hours.

25 Q. Did you swing that bat like you were trying

1 to hit a home run?

2 A. No. I tell you the truth, I don't have
3 enough strength in my arms to swing a bat like
4 that.

5 Q. Did you hit Carlos in the head with the
6 bat?

7 A. No.

8 Q. Did you hit Carlos in the elbow?

9 A. No.

10 Q. Did you hit him in the back?

11 A. No. Like I told the officer, ---

12 Q. We will get to that a little later. When
13 you swung the bat, where were you standing at?

14 A. I was on my -- I was on my step, on the
15 sidewalk.

16 Q. What did your son do after you swung the
17 bat?

18 A. My son he was -- he was putting my wife in
19 the house.

20 Q. Okay. When did he come back outside?

21 A. Afterwards. When I swung the bat and all
22 of them came at me, they coming at me and I'm
23 trying to move to get back in the house, ---

24 Q. Okay. What did Roger do when you were
25 moving to try to get back in your house when

1 all four people were coming at you?

2 A. He came -- he was coming out the door when
3 I was trying to get in.

4 Q. When he came out the door, what did he do?

5 A. I couldn't tell you that.

6 Q. All right. Did you hear any gunshots?

7 A. Yeah.

8 Q. Did you see who fired the gun?

9 A. No.

10 Q. Why didn't you see what happened?

11 A. Because at the time I was running in the
12 house, I fell on the floor. I was getting back
13 up. It didn't last that long.

14 Q. After you heard the gunshots, what did you
15 do?

16 A. When I came back outside, I saw William
17 getting up off the ground. You know, you have
18 people running around, screaming, things.

19 Q. Okay. When you saw William getting up off
20 the ground and all the people running around,
21 what did you do next?

22 A. I ran back in the house after I saw Roger
23 running down the street. I went back in the
24 house and get my wife.

25 Q. When you saw Roger running down the street,

1 was he shooting the gun?

2 A. Not that I could tell.

3 Q. What did you do when you got your wife?

4 A. I got my wife in the car and I ran to my
5 mom's house, drove to my mom's house.

6 Q. How long did you stay at your mom's house?

7 A. About thirty minutes to an hour.

8 Q. What did you do after you left your mom's
9 house?

10 A. Well, my oldest son had called a lawyer,
11 Larue Hensley, and she took me to the police
12 department.

13 Q. Okay. Who did you meet with at the Police
14 Department?

15 A. I think that it was Patrick.

16 Q. This officer over here?

17 A. Yeah, I think that's him.

18 Q. Did you give a statement to Officer
19 Patrick?

20 A. I did.

21 Q. When you gave a statement to Officer
22 Patrick, how were you feeling?

23 A. I mean, I know what just happened, all
24 kinds of things on my mind. You know.

25 Q. Were you upset?

1 A. Yeah. I mean, I am nervous and all.

2 Q. Have you had an opportunity to review your
3 statement in preparing for trial today?

4 A. Yes, sir.

5 Q. Is what you testified to today exactly what
6 is in your statement?

7 MS. SHEALY: Objection, Your Honor.

8 THE COURT: Sustained.

9 DIRECT EXAMINATION CONTINUED

10 BY MR. GRIMES:

11 Q. Was your -- did you read your statement
12 before you signed it?

13 A. Well, I looked at it. I can't read without
14 my glasses.

15 Q. Did you have your glasses at the police
16 station?

17 A. No.

18 Q. Do you recall is Ms. Hensley read your
19 statement before you signed it?

20 A. She looked at it.

21 Q. Okay. Why did you sign your statement?

22 A. Because she told me that it was all right
23 to sign it.

24 Q. And you had not read it at that time?

25 A. I looked at it.

1 Q. All right. When you say that you looked at
2 it, what do you mean by you looked at it?

3 A. Just looked it over. She looked it over
4 and she said that it was all right.

5 Q. Okay. Now, how long did the interview
6 last?

7 A. I don't know. About an hour.

8 Q. Okay. What happened after the interview?

9 A. My lawyer instructed me that they were
10 charging me, that there was a man there and
11 they were charging me.

12 Q. What did they charge you with?

13 A. They charged with assault and battery and
14 accessory after the fact of murder.

15 Q. Okay. Now, when you went back in the house
16 before the shooting, at any point did you hear
17 Roger say that he was going to shoot anybody?

18 A. No.

19 Q. Did you hear him threaten anybody?

20 A. No.

21 Q. You just heard the gunshots?

22 A. Yeah.

23 Q. Who was the only person to make threats to
24 shoot anybody that day?

25 MS. SHEALY: Objection, Your Honor.

1 THE COURT: Sustained. Rephrase
2 your question, properly state it.

3 DIRECT EXAMINATION CONTINUED

4 BY MR. GRIMES:

5 Q. Who was the person making threats that day?

6 A. Carlos.

7 Q. Did your son make any threats?

8 A. No.

9 Q. Who was the person who had a raised voice
10 that day?

11 A. Carlos.

12 Q. Was your son's voice raised?

13 A. No.

14 Q. Who was the person who was on your property
15 -- strike that.

16 MR. GRIMES: I withdraw that
17 question, Your Honor. Mr. Johnson, please
18 answer any questions that Ms. Shealy may have
19 for you.

20 MS. SHEALY: May it please the court?

21 THE COURT: Yes, you may cross
22 examine.

23 CROSS EXAMINATION

24 BY MS. SHEALY:

25 Q. Mr. Johnson, let me ask you a couple of

1 followup questions about giving your statement
2 that evening. As I understand your testimony,
3 your other son called an attorney for you?

4 A. Yeah.

5 Q. Did you meet with her and then go down to
6 the station or did you'all meet at the station?

7 A. No, I met with her and she took me to the
8 station.

9 Q. So you met with your lawyer and then you
10 went to the station?

11 A. (Affirmative nod).

12 Q. When you were interviewed by Sergeant
13 Patrick, was your attorney sitting there with
14 you?

15 A. Yes, ma'am.

16 Q. You indicated to the jury that that process
17 took about an hour; is that correct?

18 A. Yes, ma'am.

19 Q. And then Ms. Hensley looked at your
20 statement after Sergeant Patrick finished
21 writing it?

22 A. Yes, ma'am.

23 Q. And you're indicating that your attorney
24 said "go ahead and sign it"?

25 A. Yeah.

1 Q. You indicated that you did not read it
2 yourself?

3 A. I didn't have my glasses. I looked at it
4 and I could -- some words I could see and some
5 I can't.

6 Q. Okay. But Ms. Hensley said to go ahead and
7 read (sic) it?

8 A. She ---

9 Q. I mean to go ahead and sign it?

10 A. Right.

11 Q. Is that correct?

12 A. Yeah.

13 Q. Do you have a copy of your statement with
14 you?

15 A. No, not with me.

16 MS. SHEALY: I beg the court's
17 indulgence just a moment.

18 THE COURT: Yes, ma'am.

19 MS. SHEALY: May I have this marked,
20 Your Honor, for ID purposes?

21 THE COURT: You may.

22 COURT REPORTER: State's Exhibit 122
23 for identification.

24 CROSS EXAMINATION CONTINUED

25 BY MS. SHEALY:

1 Q. Mr. Johnson, I am going to hand you State's
2 Exhibit 122, marked for identification purpose,
3 and Exhibit 106. Do you want to read it for a
4 minute before I ask you ---

5 A. Read the statement?

6 Q. Well, I can ask you questions and if you
7 want to look at the statement after that, I
8 will certainly give you time to do that.

9 Isn't it true that in your statement that
10 you indicate that "no one came at me to hit
11 me"?

12 A. No, I didn't say that in my statement.

13 Q. Okay. If I could focus your attention on
14 page two of the statement.

15 A. Okay.

16 Q. Here, (indicating).

17 A. I see here that he didn't swing the bat --
18 I mean, he didn't swing the chair.

19 Q. Okay. Do you see in the statement where it
20 says, "no one came at me to hit me"?

21 A. Yeah.

22 Q. "They just got close to me."

23 A. Yeah, they were coming at me but they
24 didn't hit me. That's what I said, they didn't
25 hit me.

1 Q. The way that you phrase it is, "no one came
2 at me to hit me, they just got close to me"; is
3 that correct?

4 A. That's what the statement says, yes.

5 Q. Okay. Let's just -- let me make sure that
6 I've got something straight. You and Emmanuel
7 had had words, ---

8 A. Yes, ma'am.

9 Q. And isn't it true that Emmanuel's family,
10 after you came outside with the bat, told
11 Emmanuel to go back inside?

12 A. Yes, they did.

13 Q. Then things calmed down?

14 A. Yes.

15 Q. Do you admit swinging the bat at Emmanuel?

16 A. I didn't swing it at Emmanuel. I swung it
17 at Carlos.

18 Q. I'm talking about before Carlos got there.

19 A. No.

20 Q. Do you remember swinging the bat at
21 Emmanuel?

22 A. I didn't swing no bat.

23 Q. Now, this is your bat, is it not?

24 A. Yes, ma'am.

25 Q. State's Exhibit 106. You told us about

1 your medical condition, that you came out with
2 the bat to protect yourself; is that what
3 you're saying?

4 A. I have the bat in my house for protection.
5 I mean, if somebody comes in your house and
6 most of the time if they see a weapon or
7 something they will back off or something.
8 People had done broke in my house.

9 Q. So you carry the bat to use it is what
10 you're saying?

11 A. Yes, I carried it for protection in my
12 house. I can't carry the bat around.

13 Q. Well, you're able to use the bat; is that
14 correct?

15 A. (No response).

16 Q. Despite your medical condition, you are
17 able to use the bat?

18 A. I can use it but not enough to hurt nobody.

19 Q. Not enough to hurt anybody?

20 A. No.

21 Q. And you indicated that Stinka and Mr.
22 Greene came up before Carlos was there?

23 A. At first.

24 Q. Now, you don't tell Sergeant Patrick that,
25 do you?

1 A. (No response).

2 Q. You would agree that this statement doesn't
3 anywhere say that ---

4 A. I mean, there's so much things in my mind.
5 I told him they come and what was going on,
6 that's what I could tell him right then with me
7 being upset. When I talked to my lawyer, you
8 know, I was telling her what happened and she
9 said that I didn't have to -- that what was in
10 the statement generally was good enough for
11 right now. She said to don't make another
12 statement.

13 Q. Okay. The answer to my question then is,
14 no, that you didn't tell Sergeant Patrick that
15 Mr. Greene or your son Stinka were there when
16 you were having problems with Emmanuel?

17 A. I might have didn't tell him. I mean, I
18 don't see -- I mean, I didn't read the
19 statement. I don't remember everything that
20 I wrote in the statement.

21 Q. Would you like to take a moment to read it?

22 A. I could.

23 Q. I can either ask those questions or you can
24 take a moment to read it.

25 A. You can ask me the questions.

1 Q. Okay. As I understand your testimony,
2 Carlos comes a bit later, over to your
3 apartment; is that correct?

4 A. Yeah.

5 Q. And he knocks on your door?

6 A. Yeah.

7 Q. And you invite him in?

8 A. Yes.

9 Q. And when he comes in, is it fair to say
10 that he was upset with your having taken a bat
11 to Emmanuel?

12 A. No.

13 Q. That is not fair to say?

14 A. No, because he didn't say nothing about no
15 bat. I mean, he just went off. He just went,
16 uh, went wild, saying a lot of things.

17 Q. Let's talk about that for a second. You
18 indicated that he said things like, "I am going
19 to close Ashley Shores down". And, "I got to
20 tell you what I will do to you." And now
21 you're telling us that he was just acting wild?

22 A. He had already told -- he'd said -- he'd
23 already told me what he would do.

24 Q. Okay. Well, let me ask you this, do you
25 say anything in your statement about those

1 comments that you say that he made?

2 A. I don't see -- I don't think so.

3 Q. And you had spoken with your lawyer.

4 Did you ride with her over to the sheriff's
5 department ---

6 A. Yes, ma'am.

7 Q. --- or the North Charleston Police
8 Department?

9 A. Yes, ma'am.

10 Q. You said that Stinka asked that Carlos go
11 outside, is that right?

12 A. Yeah, he asked him to get out of his mama's
13 and daddy's house.

14 Q. Okay. And you would agree, would you not,
15 that in your statement that you never indicated
16 that he had to be pulled out of the house;
17 isn't that true?

18 A. Like I said, I -- like I said, I was upset
19 when I made the statement. I didn't say that.
20 When I went back, I told my lawyer and I tried
21 to go over everything that happened with my
22 lawyer. She said that the statement was all
23 right for right now, that I didn't have to give
24 another statement right now.

25 Q. Well, let me ask you this, do you recall

1 Detective Patrick that "Stinka asked Carlos to
2 go outside, Carlos went outside"? That's page
3 two.

4 A. (No response).

5 Q. Would you like for me to point it out to
6 you?

7 A. No, I can read it.

8 Q. That Stinka asked Carlos to go outside and
9 that Carlos went outside.

10 A. I don't remember but evidently that's what
11 I said. I'm telling you what I said.

12 Q. So up to this point Cassandra Ward and
13 Demetria Grant, when you and Emmanuel had had
14 words, that got Emmanuel back in the house; is
15 that correct?

16 A. That first time, yeah.

17 Q. When Carlos approaches your house, he
18 knocks on the door; you invite him in; when
19 Stinka asked him to leave, he walked outside;
20 is that correct?

21 A. Stinka grabbed him. He didn't leave.
22 Stinka had to grab him and tug/pull him
23 outside.

24 Q. Would you agree that you didn't say that
25 to Detective Patrick?

1 A. No, I -- like I said, there was a lot of
2 things that I missed. I mean, that I didn't
3 say. Being upset and everything running
4 through my mind, I easily could have -- didn't
5 say a lot of things that were going on at that
6 time.

7 Q. When Carlos was inside, based on what
8 you're testifying to today, did you go to use
9 the phone to call the police?

10 A. No.

11 Q. So even though you are saying that Carlos
12 was threatening you, you didn't go to use the
13 phone and ask for some help?

14 A. The mama said that she was calling the
15 police.

16 Q. Okay. So you don't go call the police, is
17 that correct?

18 A. (Affirmative nod), no.

19 Q. You're saying that Cassandra Ward said that
20 she was going to call the police?

21 A. Yes.

22 Q. Is that because you were using a bat?

23 A. No, she was going to call the police to
24 solve it because -- and my son told her to
25 please call the police, so that we could get

1 this over with right now.

2 Q. That is what you're saying that Stinka
3 said?

4 A. That is what she said, that she was going
5 to call the police.

6 Q. Do you have that anywhere in this
7 statement?

8 A. No, ma'am.

9 Q. Is that the first time you've told anybody
10 that?

11 A. No, I told all my attorneys and everybody
12 who I talked to that knew what happened.

13 Q. Now, when you go outside, you said that you
14 had the bat when you leave the house and Stinka
15 said to take this outside; is that correct?

16 A. Yes, ma'am.

17 Q. And you walk out of your house with the
18 bat?

19 A. Yeah.

20 Q. And isn't it true that you say in your
21 statement that when you walk outside with the
22 bat that that's when Emmanuel picked up the
23 chair; is that correct?

24 A. I already had the bat.

25 Q. Sir?

1 A. I already had the bat when Carlos was
2 threatening me. Emmanuel threatened to pick up
3 the chair again. He'd already had the chair
4 the first time. That's why I had got my bat,
5 because he already say that he had something
6 for me.

7 MS. SHEALY: Beg the court's
8 indulgence just a moment.

9 THE COURT: Certainly.

10 CROSS EXAMINATION CONTINUED

11 BY MS. SHEALY:

12 Q. Would you agree, on page two again of your
13 statement, that when describing what happened
14 is that you came out with the bat and the boy
15 then stood up with the chair but didn't swing
16 it at you.

17 A. No, he didn't swing it at me.

18 Q. So you walked outside with the bat. Is
19 it fair to say that Emmanuel then picks up the
20 chair, seeing you with the bat?

21 A. Yeah.

22 Q. Okay. And he doesn't swing it at you?

23 A. No.

24 Q. Now, when you take your bat and you do
25 swing it -- in fact, you do swing it that

1 afternoon, is that correct?

2 A. Yes, ma'am.

3 Q. When you swing it, you don't know who
4 you're aiming it at?

5 A. Sure don't. I was aiming it at all four of
6 them gathering around.

7 Q. You say now that they were gathering around
8 you but you said at the time ---

9 A. When I say "gather around me", they was
10 coming at me.

11 Q. Are they coming at you, Mr. Johnson,
12 because you got the bat and you're picking it
13 up, swinging it?

14 A. No, ma'am. I felt they were coming at me
15 'cause they had intention of doing harm to me.

16 Q. You say that now, but in your statement you
17 indicate that nobody ---

18 A. They didn't hit me! They didn't get a
19 chance to hit me.

20 Q. Did ---

21 A. I swung the bat first.

22 Q. Mr. Johnson, in your statement you said "no
23 one came at me to hit me"; is that correct?

24 A. That's in the statement, yes.

25 Q. Okay. But today you're saying that

1 "everyone was coming at me to hit me".

2 A. I told -- what I said was that they did --
3 that they were coming at me.

4 Q. But you do agree that in the statement that
5 you gave that night, after talking to your
6 lawyer and you sat down with the investigator
7 in this case and you said "no one came at me to
8 hit me, they just got close to me"?

9 A. Ma'am, at this time I'm all -- I'm nervous,
10 I'm ---

11 THE COURT: Mr. Johnson, answer the
12 question and then you can explain it.

13 WITNESS: Oh. Yes, ma'am.

14 THE COURT: Now you can explain your
15 answer.

16 WITNESS: At that time I --
17 someone had just died, there was all kinds of
18 things that -- there wasn't nothing going on
19 normal around me. My mind, you know, I'm
20 puzzled.

21 CROSS EXAMINATION

22 BY MS. SHEALY:

23 Q. It is a puzzling thing, is it not, Mr.
24 Johnson?

25 A. Yes, ma'am.

1 Q. It is puzzling that your son took a gun and
2 shot twenty-six (sic) times in front of your
3 house?

4 A. I don't even know how many times that he
5 shot.

6 Q. But you're puzzled by that, are you not?

7 A. I am puzzled by the whole thing.

8 Q. I can understand that, Mr. Johnson. Now
9 let me ask you this, you then say "I swang the
10 bat and hit someone but I don't know who I
11 hit"; is that correct?

12 A. That's right. He asked me and I told him
13 no, that I didn't know who I hit.

14 Q. Mr. Johnson, that afternoon, the first
15 person who inflicted violence is you; is that
16 correct?

17 A. Like I said, I didn't know -- I didn't even
18 know at the time that I'd hit anybody.

19 Q. Well, you say -- excuse me. You say,
20 (reading): "When they got close to me, I swang
21 the bat and hit someone but I don't know who I
22 hit."

23 A. I told them that I don't know if I hit
24 anybody and he said that I had to of. He said,
25 'well, either you did hit someone or you didn't

1 hit someone.'

2 Q. You were pretty furious that you had been
3 disrespected by Emanuel; is that correct?

4 A. Yeah. I mean, anybody would have been.

5 Q. And when you are furious that a child
6 disrespects you, you take a bat to any member
7 of the family that was within your reach?

8 A. No.

9 Q. Well, you agree that you don't know who you
10 hit. Is that correct?

11 A. I mean, four people coming at you ---

12 Q. Coming at you or not coming at you?

13 A. Coming at me.

14 Q. You tell us that after that -- and you gave
15 it your all, did you not, when you swang the
16 bat?

17 A. I can't -- I didn't try to hurt nobody. I
18 just wanted to keep them from bothering me so
19 that I could get in my door.

20 Q. Did your wife take the bat from you or try
21 to grab it after you were going for someone
22 again?

23 A. No.

24 Q. No?

25 A. No.

1 Q. So Virginia -- you're saying -- your wife,
2 did she stay at the door or did she come
3 outside?

4 A. She didn't come outside, she went in the
5 house.

6 Q. Do you know Yvette Choise?

7 A. Yeah.

8 Q. And she is a friend of your family?

9 A. No, she is not.

10 Q. She used to be, didn't she?

11 A. No, my wife was a friend of her aunt's.

12 Q. Okay. And you are testifying then that
13 your wife stayed in the doorway?

14 A. Yeah, she went back in the house after our
15 son pushed her back in the house.

16 Q. That is not the time that I'm talking
17 about. I am talking about when you were
18 swinging the bat at whoever you could hit.

19 A. My wife was not outside.

20 Q. She was not outside?

21 A. No.

22 Q. And you don't know, again with the bat, did
23 she try to get it from you, to calm things
24 down?

25 A. No, ma'am.

1 Q. Did Ms. Ward have to intervene to try to
2 keep you from hitting somebody again?

3 A. No.

4 Q. Now, you said that Stinka then tells
5 you'all to go back in the -- 'go back in the
6 house.' Is that correct?

7 A. He was going in the house, too.

8 Q. He was going in the house, too?

9 A. Yeah.

10 Q. Now, let's see. You don't say that the
11 night of the statement, do you?

12 A. No. Like I said, I missed a lot of things
13 in the statement.

14 Q. And you didn't say that when Mr. Grimes was
15 questioning you, did you?

16 A. Yes, I told him that.

17 Q. Did you tell him that Stinka wanted you and
18 your wife to go in the house?

19 A. He was going in, too.

20 Q. How do you know that he was going in, too?

21 A. (No response).

22 Q. Didn't he say, "I got this."

23 A. He didn't say that.

24 Q. "I got it!"

25 A. He didn't say no such thing.

1 Q. You didn't hear him say it or are you
2 saying that he didn't say it?

3 A. He didn't say it.

4 Q. Well, then he tells you and your wife to
5 go back inside. Tell this jury whether Carlos
6 tries to stop you'all from going inside?

7 A. That is the time -- when he say that,
8 Carlos is saying how he will light our ass up.

9 Q. Okay. Did Carlos pull a weapon on you?

10 A. No.

11 Q. Did Carlos take a bat to you?

12 A. No.

13 Q. Did he take a bat to Virginia?

14 A. No.

15 Q. Did he take a bat to Roger?

16 A. No.

17 Q. So when Stinka tells you'all to go inside,
18 Carlos doesn't do anything towards you, does
19 he?

20 A. He was -- they was coming at me.

21 Q. They're coming at you?

22 A. (Affirmative nod).

23 Q. Other than that, did he pull any type of
24 weapon on you?

25 A. No.

1 Q. And isn't it true that you see Carlos with
2 his keys and his cell phone?

3 A. I didn't see him with no keys or no cell
4 phone.

5 Q. You didn't see those in his hand?

6 A. No, ma'am.

7 Q. So no one in the Grant family stopped you
8 or your wife from going inside the house; is
9 that correct?

10 A. Well, they were coming -- they were coming
11 at me. They were chasing me then, by that
12 time. When the whole thing started, they was
13 chasing me, coming at me.

14 Q. This is after you took the bat to Carlos?

15 A. Yes, ma'am.

16 Q. Okay. Now, they were chasing you, is that
17 what you're saying?

18 A. Yes, ma'am.

19 Q. After that?

20 A. Yes, ma'am. They are coming at me and I'm
21 trying to get into my house.

22 Q. Were they chasing you before you used the
23 bat, were they chasing you afterwards or are
24 you saying now that they were chasing you both
25 times?

1 A. Ma'am, they were approaching me. Anytime
2 that you've got people cursing at you and
3 threatening you, coming towards you, what am I
4 supposed to think?

5 Q. Well, let me ask you this, let me ask you
6 what you were thinking. You didn't think to go
7 in your house and call the police?

8 A. No, ma'am.

9 Q. And it was just moments later that you
10 start hearing gunshots; is that correct?

11 A. Yes, ma'am.

12 Q. Did you see your son with a gun?

13 A. No.

14 Q. Showing you what has been marked as State's
15 Exhibit 111, had you ever seen your son with
16 this gun?

17 A. No, ma'am.

18 Q. Did you hear the sixteen shots?

19 A. I heard a lot of shots. I didn't count
20 them.

21 Q. When you go to grab your wife to leave, did
22 you see the shot-up cell phone on the ground
23 right outside your front door?

24 A. No.

25 Q. Did you see the keys laying in the street?

1 A. No, ma'am.

2 Q. Did you see where Carlos was trying to hide
3 to prevent being shot to death by your son?

4 A. No, ma'am.

5 Q. Do you do around the block and pick up your
6 son?

7 A. No.

8 Q. You don't take him anywhere?

9 A. No, ma'am.

10 Q. Oh, -- you told us today that Stinka said
11 to you, "this man might kill you". Is that
12 your testimony?

13 A. Yeah.

14 Q. You didn't think that would be important
15 to tell Investigator Patrick?

16 A. Ma'am, like I said, I say a lot of things
17 -- that I left out a lot of things. I couldn't
18 think -- I wasn't thinking.

19 Q. And you're telling this jury today that
20 Stinka told you to go inside, "this man might
21 kill you"?

22 A. Ma'am, I am just saying that we didn't know
23 what this man was going to do to us.

24 Q. Okay. And who -- who are the ones with the
25 violent acts that afternoon? It was you and

1 your son. Right?

2 A. No, ma'am.

3 Q. It was not you and your son?

4 A. Not by ourselves.

5 Q. Well, what acts did Carlos do?

6 A. (No response).

7 Q. What acts of violence did Carlos do?

8 A. Well, they were coming at me.

9 Q. They were coming at you.

10 A. (No response).

11 Q. What acts of violence did Emmanuel do?

12 A. (No response).

13 Q. What acts of violence did Demetria do?

14 A. (No response).

15 Q. Did Cassandra Ward commit any acts of

16 violence towards you or your son?

17 A. Like I said, when they were approaching me

18 they were coming to do some harm.

19 Q. They were going to do it with their fists?

20 A. (No response).

21 Q. Demetria Grant with her little fists?

22 A. (No response).

23 Q. Cassandra Ward with hers?

24 A. (No response).

25 Q. Is that what your testimony is?

1 A. And Emmanuel with a chair.

2 Q. And Carlos Grant with keys and a cell
3 phone?

4 A. (No response).

5 Q. They were going to hurt you?

6 A. Ma'am, fists can hurt you.

7 Q. Fists can hurt people. Nine millimeters
8 can hurt people, too. It can hurt anybody down
9 the street when someone is shooting, can't it?

10 A. Yeah.

11 Q. I may have mentioned earlier twenty-six
12 shots. It was sixteen shots. Did you hear
13 sixteen shots that day?

14 A. No, ma'am. Like I said, I couldn't tell.

15 Q. Again, no one hurt you that day; is that
16 correct?

17 A. No, ma'am.

18 Q. And no one hurt your son, is that correct?

19 A. No, ma'am.

20 Q. But Carlise Grant laid there dying, is that
21 correct?

22 A. Yes, ma'am.

23 MS. SHEALY: I have no further
24 questions. Thank you.

25 THE COURT: Redirect?

1 MR. GRIMES: Thank you, Your Honor.

2 REDIRECT EXAMINATION

3 BY MR. GRIMES:

4 Q. Ms. Shealy asked you a few questions about
5 your statement. What did you tell the police
6 about Carlos threatening you?

7 A. I don't know. I don't remember without ---

8 Q. Take a look at page two of your statement.

9 A. (Upon review), okay.

10 MR. GRIMES: May I approach the
11 witness, Your Honor?

12 THE COURT: Yes, you may.

13 REDIRECT EXAMINATION CONTINUED

14 BY MR. GRIMES:

15 Q. What did Carlos say -- what did you tell
16 the police about Carlos threatening you that
17 day?

18 A. That he was going to kill us.

19 Q. And what did you say about how his body
20 language was?

21 A. (No response).

22 Q. Was he standing still?

23 A. (No response).

24 Q. How was he when he was out there?

25 A. No, he was moving towards me.

1 Q. But what did you tell the police?

2 A. (Reviewing statement). I don't know. I
3 can't understand that word.

4 Q. That is not your handwriting?

5 A. No, I -- (pause).

6 Q. Did you tell the police that he was
7 bouncing around, putting his hand under his
8 shirt?

9 A. Oh, yes, sir. I did.

10 Q. What did you tell the police about Carlos'
11 family?

12 A. That when they were gathered around that
13 they were approaching me.

14 Q. What were they doing when they was
15 approaching you?

16 A. They was -- all of them, they was cursing.
17 I mean, all kind of cursing was going on and
18 stuff.

19 Q. Ms. Shealy asked you some questions about
20 you being the first person to cause injury that
21 day.

22 A. (No response).

23 Q. Why did you swing the bat?

24 A. Because they were approaching.

25 Q. Did you -- were you afraid that you might

1 get injured?

2 A. Yeah, I could have been serious injured.

3 MS. SHEALY: Objection to leading
4 nature.

5 THE COURT: Sustained.

6 REDIRECT EXAMINATION CONTINUED

7 BY MR. GRIMES:

8 Q. Now, looking -- you testified or you were
9 asked the question about why you had the bat in
10 your house. Why did you have it in your house?

11 A. Because my house was broken into.

12 MR. GRIMES: May I have a moment,
13 Your Honor?

14 THE COURT: Sure.

15 MR. GRIMES: Thank you.

16 REDIRECT EXAMINATION CONTINUED

17 BY MR. GRIMES:

18 Q. When you gave your statement to Detective
19 Patrick, did you do your best to give him a
20 full and complete picture?

21 MS. SHEALY: Leading.

22 THE COURT: Sustained. Rephrase
23 your question.

24 MR. GRIMES: Yes, Your Honor.

25 REDIRECT EXAMINATION CONTINUED

1 BY MR. GRIMES:

2 Q. How cooperative were you with Detective
3 Patrick?

4 A. I was cooperative. When I gave the
5 statement, she told me to be cooperative with
6 him.

7 Q. How much did you tell Detective Patrick?

8 A. I told him -- I give him a general idea of
9 what was going on at that time when they was
10 approaching, when what take place. You know,
11 in my mind all kind of things were going on.
12 I tried to give him the things he asked me on,
13 what was going on. At a later time, I knew
14 that I'd left a lot of things out.

15 Q. And you've been arrested after that,
16 correct?

17 A. Yes, sir.

18 Q. Did Detective Patrick ever come and ask you
19 to give a supplemental statement?

20 A. To give another statement?

21 Q. Yes.

22 A. No.

23 Q. Did anyone from the Solicitor's office ever
24 ask you to give another statement?

25 A. No.

1 MR. GRIMES: Thank you, Mr. Johnson.

2 THE COURT: Recross?

3 MS. SHEALY: Briefly, Your Honor.

4 THE COURT: Certainly.

5 CROSS EXAMINATION

6 BY MS. SHEALY:

7 Q. Mr. Grimes asked you and you responded that
8 you told the police officers that you thought
9 Carlos was "going to kill us"?

10 A. Yes, ma'am.

11 Q. You don't say that in your statement, do
12 you, Mr. Johnson?

13 A. Still I did. (Upon review of statement), I
14 say he was going to kill us.

15 Q. Could you show me where you are reading
16 from?

17 A. Right here (indicating).

18 Q. What is in your statement, is it not, is
19 "he was going to light us up", "he was saying
20 that he was going to light us up". Is that
21 correct?

22 A. Yes, ma'am.

23 Q. It does not state anywhere in this
24 statement that you feared for your life that
25 night. Is that correct?

26 A. No, ma'am, it is not in the statement that

1 I say that I fear for my life but there was
2 nobody at the house but me and my wife at the
3 time.

4 Q. My question was, Mr. Johnson, does your
5 statement that you gave with advice of counsel
6 state anywhere that you feared for your life?

7 A. No, ma'am.

8 Q. Thank you.

9 MS. SHEALY: Thank you.

10 THE COURT: You may come down, Mr.
11 Johnson.

12 MR. GRIMES: Your Honor, may I ask
13 one question?

14 THE COURT: No, sir, you may not.
15 It is Direct, Cross, Redirect, Recross. Thank
16 you. That is the process.

17 (WITNESS STEPS DOWN)

18 THE COURT: Thank you, Ladies and
19 Gentlemen. We will take our recess at this
20 point and let you go to lunch. Do not begin
21 your deliberations, do not discuss the case.
22 I would ask you to be back in your jury room at
23 2:00 o'clock. Thank you.

24 (JURY OUT @ 12:51 P.M.)

25 THE COURT: Anything further from
26 the State before recessing?

1 MS. SHEALY: No, Your Honor.

2 THE COURT: Anything further from
3 the Defendant?

4 MR. GRIMES: No, sir.

5 THE COURT: Mr. Grimes, still you
6 will have an opportunity to talk with Mr.
7 Parker. Mr. Parker, I assume that you still
8 wish to exercise your right to testify?

9 DEFENDANT: Yes, sir.

10 THE COURT: Very well. Have a good
11 lunch. After that, you will -- will you be
12 presenting any additional witnesses, Mr.
13 Grimes?

14 MR. GRIMES: No, sir.

15 THE COURT: Do you plan to recall
16 any Reply testimony?

17 MS. SHEALY: No, Your Honor.

18 THE COURT: Very well. Thank you.
19 We will try to push this case forward with this
20 jury. This jury will not have to come back, so
21 they will be free after this is completed. I
22 will let them make the call, but if they want
23 to go forward I will be glad to do so. Okay?

24 MS. SHEALY: Yes, sir.

25 THE COURT: Thank you.

26 MR. GRIMES: Your Honor, for

1 scheduling purposes, the next trial ---

2 THE COURT: It won't start until
3 tomorrow at the earliest. Thank you.

4 (LUNCH RECESS)

5 (DEFENDANT PRESENT)

6 (OFF RECORD DISCUSSION RE: JURY NOTE
7 ENTERED AS COURT'S EXHIBIT 2)

8 (OFF RECORD DISCUSSION WITH COUNSEL)

9 MR. GRIMES: Was that for this trial?

10 THE COURT: No, there was no
11 specific record to this trial, *per se*. It was
12 just simply -- and there was no specific
13 connection that was stated on the record. The
14 connection was, 'I buried the grandfather' --
15 but he stopped and we don't know whose
16 grandfather. There was no reference to which
17 side. I don't know if it has any connection or
18 not, but he didn't draw a connection.

19 MR. GRIMES: (Sidebar with
20 Defendant).

21 While they are talking, what is the
22 State's position concerning the juror?

23 MS. SHEALY: We have no further
24 questions that we feel would need to be asked
25 and we are satisfied with the responses?

26 THE COURT: Thank you very much.

1 MR. GRIMES: We have no further
2 questions.

3 THE COURT: You are fine with Mr.
4 Hilton continuing?

5 MR. GRIMES: Yes, sir.

6 THE COURT: Okay. Ask Mr. Hilton to
7 step back in, please.

8 (JUROR NO. 266 ENTERS COURTROOM)

9 THE COURT: Mr. Hilton, thank you so
10 much. I want to state that both sides agree
11 and wish you to continue to serve. You made
12 the statement that you would honor the
13 commitment previously made and in the presence
14 of the parties I want to share with them what I
15 shared with you. Thank you. You are a good
16 example of why I believe so strongly in this
17 system. I think that you're conscientious and
18 that you've done exactly what you should have
19 done. I appreciate it. You may return to your
20 jury room. We will be with you in just a
21 moment.

22 (JURY EXITS COURTROOM)

23 THE COURT: Any objections or
24 additions to what the Court has stated to the
25 juror?

26 MS. SHEALY: No, sir.

1 THE COURT: From the Defendant?

2 MR. GRIMES: No, sir.

3 THE COURT: Thank you very much.

4 Is the State ready to continue?

5 MS. SHEALY: We are, Your Honor.

6 Thank you.

7 THE COURT: Is the Defendant ready
8 to continue?

9 MR. GRIMES: Yes, sir.

10 THE COURT: Mr. Parker, is it your
11 decision to still testify in this matter?

12 DEFENDANT: Yes, sir.

13 THE COURT: Thank you so much, sir.
14 Let's bring in our jury, please.

15 (JURY IN @ 2:19 P.M.)

16 THE COURT: Thank you, Ladies and
17 Gentlemen. Presiding Juror, thank you for your
18 diligence. I explained to Mr. Hilton -- of
19 course that was a conversation that Mr. Hilton
20 chose to share with the court. The fact that
21 Mr. Hilton has had that conversation should not
22 be discussed in your jury room, it should not
23 be considered by any juror. It was all proper,
24 very proper the way that it was handled. Thank
25 you and thank all the jurors for handling that
26 matter in that fashion. Thank you very much.

1 All right, we are ready to continue. Do you
2 wish to call any additional witnesses, sir?

3 MR. GRIMES: Yes, Your Honor. At
4 this time we would call Roger Parker.

5 (WITNESS TAKES STAND)

6 ROGER RAYNARD PARKER, being
7 duly sworn to tell the truth, the whole truth
8 and nothing but the truth, testified, as
9 follows:

10 DIRECT EXAMINATION

11 BY MR. GRIMES:

12 Q. Good afternoon, Mr. Johnson.

13 A. Good afternoon, Mr. Grimes.

14 Q. How old are you?

15 A. Twenty-six (26) years old.

16 Q. Are you married?

17 A. No, sir.

18 Q. Do you have any children?

19 A. Yes, I do.

20 Q. How many children do you have?

21 A. Two daughters.

22 Q. How old are they?

23 A. Six and three.

24 Q. How long have you lived in Charleston?

25 A. All my life.

1 Q. Who are your parents?

2 A. Virginia and Roger Johnson.

3 Q. In April of 2006, where were you living at?

4 A. [REDACTED]

5 Q. Before I ask you that, let me ask you a
6 quick question. There's been a lot of
7 reference to your nickname. Could you tell the
8 jury how you got your nickname?

9 A. I got my nickname from my aunt by using a
10 urinal (phonetic) a lot when I was a kid, and I
11 continued to be a busy kid.

12 Q. What do you mean by being a busy kid?

13 COURT REPORTER: I'm sorry. Please
14 speak into the mic.

15 THE COURT: Please speak -- there is
16 a microphone and if you could speak into it,
17 that should work. Thank you, sir.

18 DEFENDANT: By being very busy,
19 getting into a lot as I was young.

20 DIRECT EXAMINATION CONTINUED

21 BY MR. GRIMES:

22 Q. All right. Who calls you "Stinka"?

23 A. My whole family, friends.

24 Q. Now, let's talk a little bit about what
25 happened on April the 18th. Do you remember

1 that day?

2 A. Yes, sir, I do.

3 Q. Where were you that afternoon?

4 A. I was on Ashley Shores, in the middle of
5 the complex.

6 Q. Say about twelve o'clock, what were you
7 doing about twelve o'clock?

8 A. In the afternoon?

9 Q. Yes, sir.

10 A. I was leaving my daughter's school.

11 Q. After you left your daughter's school,
12 where did you go?

13 A. Home.

14 Q. What did you do when you got home?

15 A. Set inside and watched a little television
16 for a while.

17 Q. What did you watch on TV?

18 A. Sports Center.

19 Q. How long did you stay at your house?

20 A. Maybe for a couple of hours until the
21 afternoon hours arrived.

22 Q. Where did you go in the afternoon?

23 A. In the complex of Ashley Shores.

24 Q. Whose house did you go to?

25 A. I didn't go to anyone's house. I went like

1 in the parking lot area of the middle of the
2 complex.

3 Q. What were you doing out there?

4 A. Standing out there with a couple of the
5 guys.

6 Q. What were you and the guy doing?

7 A. Chatting and carrying on about life.

8 Q. How far as this from William Greene's
9 place?

10 A. Not too far. If you looked out of William
11 Greene's back door, you could have seen us.

12 Q. Did you go to William's house a little bit
13 later that afternoon?

14 A. Yes, I did.

15 Q. Do you recall what time that you got there?

16 A. No, sir.

17 Q. And when you got to William's house, what
18 did you?

19 A. We -- could you repeat the question?

20 Q. When you got to William's house, what did
21 you do there?

22 A. I asked him what was the problem that he
23 called me for.

24 Q. And after you talked to him, what happened
25 next?

1 A. He told me that he was on the phone with
2 Carlos.

3 MS. SHEALY: Objection, Your Honor.
4 Hearsay.

5 THE COURT: I will allow that.

6 DIRECT EXAMINATION CONTINUED

7 BY MR. GRIMES:

8 Q. What did he tell you about being on the
9 phone with Carlos?

10 A. That Carlos was very irate about what was
11 going on.

12 Q. All right. What did you do after that?

13 A. I listened just a little.

14 Q. When you say listened, how did you listen?

15 A. Speakerphone, on William's phone. I was
16 waiting to speak to Carlos on the phone.

17 Q. I may have misunderstood you. Carlos was
18 on a speakerphone?

19 A. (Affirmative nod), of William's cell phone.

20 Q. You were able to hear what Carlos was
21 saying?

22 A. Yes, sir.

23 Q. What was Carlos saying at that time?

24 A. Words that ---

25 MS. SHEALY: Objection, Your Honor.

1 THE COURT: I will allow it.

2 DEFENDANT: The words that I got at
3 the time was that he was on his way to that
4 fucking -- excuse my language, but this is what
5 he said.

6 DIRECT EXAMINATION CONTINUED

7 BY MR. GRIMES:

8 Q. Okay. Let's go back a little bit before
9 that phone call. Had you been at your father's
10 house earlier that day?

11 A. Yes, I was.

12 Q. What happened earlier that day at your
13 father's house?

14 A. My father, when I went there earlier that
15 day my father had told me that Emmanuel was
16 disrespecting him and that he was saying what
17 he had -- what he had in mind, that he said he
18 was ---

19 MS. SHEALY: Your Honor, objection.

20 THE COURT: Sustained.

21 DIRECT EXAMINATION CONTINUED

22 BY MR. GRIMES:

23 Q. Without saying what Emmanuel was saying,
24 what did you observe when you were at your
25 father's house?

1 A. I observed Emmanuel standing on the front
2 porch with a wooden chair.

3 Q. All right. Without saying what Emmanuel
4 was saying, was he saying anything?

5 A. At the time he was.

6 Q. And what was his tone of voice like?

7 A. He doesn't have a very loud voice but he
8 was speaking in a more aggressive manner.

9 Q. Okay. What did you do at that time?

10 A. I spoke to Ms. Cassandra about not
11 disrespecting their home and Emmanuel
12 disrespecting my father.

13 Q. And after you spoke to her, what happened?

14 A. She stated to me ---

15 Q. Roger, ---

16 MS. SHEALY: Objection. Hearsay.

17 THE COURT: Sustained.

18 DIRECT EXAMINATION CONTINUED

19 BY MR. GRIMES:

20 Q. Just what happened after you spoke to her?

21 A. What happened after I spoke to her?

22 Q. Yes, sir. Let me ask you, did the argument
23 continue or did it end?

24 A. After I spoke to her the argument ended.

25 Q. After the argument ended, where did you go?

1 A. Back to where I was in Ashley Shores.

2 Q. Back there hanging out with the fellows?

3 A. Yeah.

4 Q. I am starting to get a little confused.

5 Let's go back. You said before that you were

6 at William's house when Carlos called?

7 A. I was hanging out with the fellows when

8 Carlos called.

9 Q. What did -- and you went into William's
10 house afer that?

11 A. Uh-huh.

12 THE COURT: Was that a "yes"?

13 DEFENDANT: Yes, sir.

14 THE COURT: Thank you.

15 DIRECT EXAMINATION CONTINUED

16 BY MR. GRIMES:

17 Q. Why did you go into William's house?

18 A. Because he opened his back door and called
19 me to come.

20 Q. Okay. After you were went in William's
21 house, did you hear Carlos on the cell phone?

22 A. Yes, I did.

23 Q. What was his tone of voice like on the
24 cell phone at that time?

25 A. He was very irate, and a lot of anger,

1 aggression.

2 Q. Did you hear exactly what he said? Were
3 you able to make out exactly what he said?

4 A. A couple of words that I heard before I
5 walked off before I left to go to my father's
6 house were that he was on his way to, excuse
7 me, to fucking -- to act fucking stupid.

8 Q. How did you feel when you heard that?

9 A. I felt like -- what I didn't -- excuse me.

10 Q. When you heard Carlos say that he was on
11 his way to your father's house to act really
12 f'ing stupid, how did that make you feel?

13 A. Feel like my father was in danger.

14 Q. Explain to the jury why you felt that way.

15 A. Because my father is a very sick man. He
16 has one kidney, stomach cancer and he deals
17 with problems as the weeks and days goes on,
18 months, and years goes on.

19 Q. What about Carlos' statement made you fear
20 for your father?

21 A. Words that he made about 'wiping this
22 motherfucker up', doing this, doing that.

23 Q. Did you hear Carlos say that on the phone?

24 A. No, I didn't heard (sic) him say that on
25 the phone but when he arrived ---

1 Q. Well, before -- let's go back to William's
2 house.

3 A. Okay.

4 Q. At that point when you heard Carlos saying
5 that he was on his way to your father's house
6 to act really f'ing stupid, how did that make
7 you feel?

8 A. That made me worry.

9 Q. Why were you worried?

10 A. Because I didn't know what his capability
11 was.

12 Q. Okay. What did you do after you heard
13 that?

14 A. I left there and went to my mother's and
15 father's house, where I lived.

16 Q. I am going to ask you some questions here.
17 Okay? When you were at William's house, did
18 you have a gun?

19 A. No, sir. I didn't.

20 Q. When did you get the gun that day?

21 A. After I left out the back door to go home.

22 Q. Why did you get a gun?

23 A. Because I felt like the life of my father
24 and my household members was put in danger.

25 Q. Explain to the jury why you believed the

1 lives of your father and your household were in
2 danger at that time?

3 A. Because he said he was on his way to my
4 father's house.

5 Q. All right. How did he say that?

6 A. How did he say that?

7 Q. What was his tone of voice like?

8 A. Anger.

9 Q. Who did you get the gun from?

10 A. I got it out of a car. It belonged to one
11 of the guys that I was chatting with.

12 Q. Okay. And after you got the gun, where did
13 you go?

14 A. I went home.

15 Q. And when you got home, what did you see?

16 A. Carlos and my father standing in the living
17 room, like right in the front door.

18 Q. How far apart were they?

19 A. They could have kissed each other.

20 Q. Basically face to face?

21 A. Yes, sir.

22 Q. Was your father holding anything at the
23 time?

24 A. No, sir.

25 Q. What was Carlos doing at that time?

1 A. Standing there, raising his voice.

2 Q. Was he saying anything?

3 A. Yes.

4 Q. What was he saying?

5 A. He was commenting about how he would wipe
6 the motherfucker up, how he would shut our
7 household down.

8 Q. When he said that he would light the MF'er
9 up and shut your household down, how loud was
10 his voice at that time?

11 A. It was loud.

12 Q. After he was saying that, was he saying
13 anything else?

14 A. Yes.

15 Q. What else was he saying?

16 A. He made a comment about how he "would light
17 this motherfucker up", then how he would "shut
18 our household down."

19 Q. When he said that he would light this MF'er
20 up and shut your household down, how loud was
21 his voice at that time?

22 A. It was loud enough.

23 Q. Was it louder than my voice now?

24 A. Yes, it was.

25 Q. (Raising volume of voice), was it louder

1 than this?

2 A. Yes, sir.

3 Q. And he was saying in that tone of voice, "I
4 am going to light the MF'ing up"?

5 A. Yes, sir.

6 Q. And when he said that he was going to light
7 this MF'er up, what was -- he was talking
8 about, basically, your home?

9 A. Yes, sir, he was.

10 Q. What was he doing with his hands at that
11 time?

12 A. He was moving his hands a lot.

13 Q. Where was he moving his hands around at?

14 A. Side to side.

15 Q. And when you got in there, how did -- what
16 did you believe was going on?

17 A. What did I believe was going on?

18 Q. Yes, sir.

19 A. I didn't believe what I saw. He was up in
20 my father's face, carrying on as I said before,
21 saying things and me and my father, and that
22 Emmanuel was a child, and then he started
23 making threats.

24 Q. What did you do when you saw this?

25 A. After he made the threat, I told him

1 'Alright, I can't have you disrespecting my
2 mother and father.'

3 Q. Now, let's back up a little. When you got
4 the gun from your friend, what was your
5 intention for the gun at that time?

6 A. What was my intention?

7 Q. (Affirmative nod).

8 A. My intention was just to have it.

9 Q. Why did you want to have it?

10 A. Because I don't know Carlos, I didn't know
11 what Carlos was bringing with him.

12 Q. When you got into your father's house, did
13 you take the gun out and point it at him?

14 A. No, I didn't.

15 Q. Did you threaten Carlos in any way?

16 A. No, I didn't.

17 Q. Did you hit him in any way?

18 A. No, I didn't.

19 Q. And how did you end getting him out of the
20 house?

21 A. I pulled him out.

22 Q. How did you pull him out?

23 A. I gently grabbed him by his arm, after I'd
24 told him once before that he needed to leave,
25 that he wasn't going to carry on in my father's

1 face. I gently grabbed him by his arm and
2 pulled him towards the front door.

3 Q. Did he go with you?

4 A. As I pulled him, (affirmative nod). I pulled
5 him.

6 Q. After you pulled him towards the front
7 door, what happened?

8 A. I finally got him out of the door.

9 Q. And after you got him out of the door, what
10 was going on at that time?

11 A. He still was carrying on, talking about how
12 we don't know him, what he's going to do to us.
13 His mother was out there. Emmanuel was out
14 there carrying on. His sister was carrying on.

15 Q. What was Emmanuel doing?

16 A. Standing there holding a wooden chair.

17 Q. How was he holding this wooden chair?

18 A. By the back part of it, because it was a
19 small kiddie sort of chair and it wasn't all
20 that hard for him to pick up. It was like for
21 a two or three-year old.

22 Q. Okay. Was Emmanuel saying anything?

23 A. Yes, he was carrying on also.

24 Q. What was he saying?

25 MS. SHEALY: Objection. Hearsay.

1 THE COURT: Sustained.

2 DIRECT EXAMINATION BY MR. GRIMES:

3 Q. What did Carlos do at this time?

4 A. What did he do?

5 Q. Yes, sir.

6 A. He was still carrying on, being very irate
7 about everything, kept carrying on with his
8 threats.

9 Q. Where was he standing at when he was
10 carrying on with the threats?

11 A. He was standing inbetween the yards.

12 Q. And how far from your house was it?

13 A. How far?

14 Q. Yes, sir.

15 A. Maybe five feet, four feet.

16 Q. All right. What were you doing?

17 A. My mother made an attempt to came (sic)
18 out?

19 Q. What did you do when she made the attempt
20 to come out?

21 A. I went over and told her not to, because of
22 the threats that Carlos was making. I didn't
23 know when he was going to react. I didn't know
24 what his capability was. Excuse, I didn't. I
25 didn't know when he was going to act on what he

1 was saying.

2 Q. Where was your father at during this time?

3 A. My father was standing near the -- he was a
4 feet (sic) or two off the porch.

5 Q. Okay. So your father is near the porch and
6 Carlos was about four or five feet away?

7 A. Well, my father, he may have been two feet
8 away. From the porch, he was about four or
9 five feet.

10 Q. Okay. And what happened at that time?

11 A. At that time, I pushed my mother and told
12 her to go back in the house because of the
13 words that Carlos was leaving.

14 I turned around and saw my father was
15 coming towards the house. And as my father is
16 coming towards the house, and I'm watching from
17 the porch, Carlos goes to reach under his
18 shirt.

19 Q. When Carlos went to reach under his shirt,
20 what did you think that he was reaching for?

21 A. A weapon.

22 Q. Why did you think that he was reaching for
23 a weapon?

24 A. Because of the threats that he made, and he
25 made them over and over again.

1 Q. What did you do when you saw him reach
2 under his shirt?

3 A. I went and pulled out -- (pause).

4 Q. And you pulled out the gun?

5 A. Yes, sir.

6 Q. What did you do with the gun?

7 A. I started shooting the gun.

8 Q. Do you remember all the details of how this
9 incident happened?

10 A. It happened so fast. I'm trying to
11 remember to the best of my knowledge.

12 Q. Roger, when did you stop shooting at
13 Carlos?

14 A. When Carlos ran between the cars.

15 Q. At any time, did you shoot him while he was
16 laying on the ground?

17 A. No, I didn't.

18 Q. At any time, did you stand over him and
19 shoot him?

20 A. No, I didn't.

21 Q. When you saw him running, why did you keep
22 shooting?

23 A. Repeat that question again for me, please.

24 Q. When you saw Carlos running, why did you
25 keep shooting at him?

1 A. Because of the threats that he made. He
2 could have been running to get behind the car
3 to shoot back at me.

4 Q. And do you recall seeing Carlos fall down?

5 A. To my knowledge, yes.

6 Q. And did you keep shooting at him after he
7 fell down?

8 A. No, sir, I didn't.

9 Q. What did you do after he fell down?

10 A. I ran.

11 Q. Where did you run to?

12 A. I ran towards William Greene's house, but
13 that is not where I went.

14 Q. Where did you go?

15 A. I ran around the loop where I was hanging
16 out with the fellows.

17 Q. What did you do at that time?

18 A. I left.

19 Q. Roger, let me ask you this: You were
20 arrested in January of 2007?

21 A. Yes, sir.

22 Q. Why didn't you turn yourself in between
23 April 2006 and January of 2007?

24 A. Because I panicked.

25 Q. Why did you panic?

1 A. Because I was scared.

2 Q. Why were you scared?

3 A. Because I never -- I'd never used a gun
4 before. I never had a gun before. No one had
5 ever threatened me.

6 Q. Roger, why did you shoot Carlos?

7 A. Because of the threats that he made towards
8 my father and also my household.

9 MR. GRIMES: Thank you, Roger.

10 Please answer any questions that Ms. Shealy may
11 have for you.

12 MS. SHEALY: May it please the court?

13 THE COURT: Yes.

14 CROSS EXAMINATION

15 BY MS. SHEALY:

16 Q. Mr. Parker, ---

17 A. Yes, ma'am?

18 Q. Where did you go on April 18th after you
19 shot and killed Carlise Grant?

20 A. (No response).

21 Q. Where did you go?

22 A. I left and went to a friend's house of
23 mine.

24 Q. What was your friend's name?

25 A. (No response).

State of South Carolina v. Roger Raynard Parker, Jr.
Case No. 07-GS-10-4293
Jury Trial of February 25-27, 2008
before The Honorable R. Markley Dennis, Jr.

1 THE COURT: Answer the question.

2 WITNESS: Latasha.

3 CROSS EXAMINATION CONTINUED

4 BY MS. SHEALY:

5 Q. Natasha?

6 A. Latasha.

7 Q. What was Latasha's last name?

8 A. I don't know her last name.

9 Q. Where did she live?

10 A. She lives at [REDACTED] (phonetic).

11 Q. [REDACTED] what?

12 A. [REDACTED].

13 Q. How long did you stay with Natasha?

14 A. I didn't stay there no longer than five
15 minutes.

16 Q. Well, why don't you tell this jury, please,
17 where you were in May, June, July, August,
18 September, October, November, December and
19 until January 17th? Were you hiding?

20 A. No, I was just sitting in the house.

21 Q. What house?

22 A. The house that they got the tip that I was
23 at.

24 Q. That they got the tip?

25 A. Yes, ma'am.

1 Q. Do you know who provided them with the tip?

2 A. No, ma'am.

3 Q. Do you think that it was your brother?

4 A. Maybe. I don't know.

5 Q. Who owned the house where you were staying?

6 A. My brother's baby mother.

7 Q. Sir?

8 A. My brother's kids' mama.

9 Q. Your brother's kids' mother?

10 A. Yes, ma'am.

11 Q. Okay. Are you telling this jury that you
12 were panicked for over eight months?

13 A. Yes, ma'am, I was scared.

14 Q. You were scared, were you not, Mr. Parker,
15 because you took a nine millimeter weapon and
16 unloaded it on [REDACTED]; is that correct?

17 A. Yes, ma'am.

18 Q. Okay. Now, I want to understand where it
19 is that you said that you got that gun. You
20 told us that you were hanging out with some
21 fellows that afternoon; correct?

22 A. Yes, ma'am.

23 Q. Which fellow did you get the gun from?

24 A. I don't know his government name, 'cause I
25 know him by his nickname.

1 Q. You don't have a government name for him?

2 A. No, sir. No, ma'am.

3 Q. Okay. Well, -- what was his nickname?

4 A. Hard Rock.

5 Q. Hard Rock?

6 A. Yes, ma'am.

7 Q. And that was one of the fellows?

8 A. Yes, ma'am.

9 Q. Did you load the weapon?

10 A. No, ma'am, I didn't.

11 Q. It came loaded?

12 A. Yes, ma'am.

13 Q. I am showing you what has been marked as
14 State's Exhibit 111, (tendering). Is this the
15 weapon that you -- are you going to look at the
16 weapon or are you going to stare?

17 A. (No response).

18 Q. Is this the weapon?

19 A. Yes, ma'am, it is.

20 Q. That you got from Hard Rock?

21 A. Yes, ma'am.

22 Q. Did Hard Rock live over in the apartments?

23 A. No, ma'am, not that I know of.

24 Q. Hard Rock ---

25 A. He lived in some apartments in the Ashley

1 Shores area.

2 Q. Did Hard Rock hang out with William Greene?

3 A. No, ma'am.

4 Q. You told us that you have children. Did
5 you know if Carlos had children, as well?

6 A. I ---

7 MR. GRIMES: Objection, Your Honor.
8 Involves hearsay.

9 THE COURT: I will allow it.

10 CROSS EXAMINATION CONTINUED

11 BY MS. SHEALY:

12 Q. Did you know that Carlos had children?

13 A. I had seen him with kids.

14 Q. Were you worried about his children when
15 you put two bullets in him that afternoon?

16 MR. GRIMES: Object, Your Honor, as
17 to relevance?

18 THE COURT: Overruled.

19 CROSS EXAMINATION CONTINUED

20 BY MS. SHEALY:

21 Q. Were you worried about Carlise Grant's
22 children when you ---

23 THE COURT: I will sustain the
24 objection to that question. Rephrase your
25 question.

1 CROSS EXAMINATION CONTINUED

2 BY MS. SHEALY:

3 Q. You told us that you got into a lot as a
4 child; is that correct?

5 A. Yes, ma'am.

6 Q. You got into a lot on April 18th, as well;
7 didn't you?

8 A. If that's the way you see it.

9 Q. And you told us that when you were
10 listening to Carlise Grant on the speaker phone
11 that William Greene had, that he was irate. He
12 was irate, was he not, because your father had
13 taken a bat to his younger cousin?

14 A. He wasn't irate about that. That is not
15 what he mentioned on the phone.

16 Q. When you say that he said that he was going
17 to come over there and act F'ing stupid -- is
18 that correct?

19 A. Yes, ma'am, that's what he say.

20 Q. And you knew from going over there earlier
21 in the afternoon to your father's house that
22 your father was upset that Emmanuel was
23 disrespecting him; is that correct?

24 A. Yes, ma'am.

25 Q. And when you had the occasion to talk with

1 Carlos, Carlos was upset with your father
2 because he didn't think that he should be
3 treating a child the way that he was treating
4 a child. Is that correct?

5 A. Yes, ma'am.

6 Q. And you knew that when you were over there
7 earlier with your father that he had the bat;
8 is that correct?

9 A. Yes, ma'am.

10 Q. Now, you've told this jury that you heard
11 what Carlos was saying on the phone?

12 A. Yes, ma'am, I did.

13 Q. Did Carlos indicate to you that he was
14 going to bring a nine millimeter over there?

15 A. No, ma'am.

16 Q. Did he arrive with a nine millimeter?

17 A. I don't know.

18 Q. Did he arrive with a bat?

19 A. No, ma'am.

20 Q. Did he arrive with a shotgun?

21 A. No, not that I know.

22 Q. So you're telling this jury that when your
23 father and Emmanuel were exchanging words
24 earlier in the day that you thought that it was
25 necessary to seek out Hard Rock and take a nine

1 millimeter over there?

2 A. No, ma'am.

3 Q. You told Mr. Grimes, did you not, that you
4 did not know Carlos Grant's capability; is that
5 correct?

6 A. Yes, ma'am. But you heard what you just
7 said?

8 THE COURT: Sir, just answer the
9 questions.

10 WITNESS: Repeat the question.

11 CROSS EXAMINATION CONTINUED

12 BY MS. SHEALY:

13 Q. Did you tell Mr. Grimes that you told --
14 that you did not know what Carlos Grant's
15 capability was?

16 A. Yes, ma'am. I did.

17 Q. So are you, Mr. Grant (sic), the type of
18 person who thinks that when people exchange
19 words that someone is going to bring a weapon
20 to it?

21 A. From where I lived for twenty-six years of
22 my life, I've seen it happen.

23 Q. You've seen it happen?

24 A. (No response).

25 Q. Is that what you're saying?

1 A. That's what I just said, (affirmative nod).
2 I've seen it happen.

3 Q. When you overheard the conversation in
4 William Green's house, why didn't you call the
5 police instead of going to Hard Rock?

6 A. Because when I go to my house earlier,
7 before Carlos called, Ms. Cassandra told me
8 that she was going to call the police. That
9 was the reason for me leaving my house, because
10 I figured that Ms. Cassandra said "Stinka, I'm
11 gonna call the police." I said, "Fine". So I
12 left.

13 Q. Okay. But my question is, that when you
14 say that you overhear Carlos calling William
15 Greene, you and William Greene are tight; is
16 that correct?

17 A. Say that again.

18 Q. You and William Greene are tight.

19 A. We family.

20 Q. You're kin?

21 A. But you -- let me ask you a question.

22 THE COURT: No, sir. Answer the
23 questions, then you may explain your answer.

24 WITNESS: "Yes." But all family
25 members are not tight.

1 CROSS EXAMINATION CONTINUED

2 BY MS. SHEALY:

3 Q. Would you say that you and Mr. Greene are
4 both family members and tight?

5 A. We spoke to one another.

6 Q. Well, you were hanging out with him that
7 afternoon; weren't you?

8 A. No, I wasn't. I was hanging out with the
9 fellows in the back of the complex. William
10 Greene was in his house.

11 Q. But you were in his house when he got the
12 phone call; is that correct?

13 A. Because he called me from where I was.
14 That's why I was in his house.

15 Q. Were you outside when Carlos approached
16 your father's house?

17 A. No, I wasn't.

18 Q. So you didn't see him knock on the door?

19 A. No, I didn't.

20 Q. And you didn't see Mr. Johnson, your
21 father, invite him into the house?

22 A. No, I didn't.

23 Q. When you were walking over from where you
24 and the fellows were, tell me where you put the
25 gun?

1 A. I put in my waist.

2 Q. In your waistband, in your waist area?

3 A. Yes, ma'am.

4 Q. Now, you were telling us that when the
5 argument inside takes itself outside, you're
6 asking Carlos to leave the house; is that
7 correct?

8 A. Yes, ma'am.

9 Q. And I think that you said that you gently
10 grabbed his arm and pulled him towards the
11 door.

12 A. Yes, ma'am.

13 Q. And when Mr. Grimes was asking you what the
14 volume was like when you'all went outside, ---

15 A. What was that question? Repeat your
16 statement.

17 Q. Mr. Grimes, your attorney, asked you today,
18 did he not, about the volume, how loud Carlos
19 was when he went outside?

20 A. He did.

21 Q. And you know Yvette Choise, do you know?

22 A. No, I don't know her personally. I know
23 her from association -- from living across the
24 street from us.

25 Q. You know where she lived?

1 A. Yes, ma'am.

2 Q. And the volume that you say Carlos was
3 speaking at, you would agree, would you not,
4 that Yvette Choise should have been able to
5 hear that from her yard?

6 A. From where I was hanging out with the
7 fellows, they should have been able to hear him
8 also.

9 Q. The fellows should have been able to hear
10 him, too?

11 A. Yes, ma'am.

12 Q. Would that be Hard Rock?

13 A. Yes, ma'am.

14 Q. Who else was out there with Hard Rock?

15 A. Tim.

16 Q. What is Tim's last name?

17 A. I don't know his last name. These are not
18 people that I know five and ten years, I know
19 these people maybe a year or maybe lesser than
20 that because I didn't hang out in the Ashley
21 Shores area right then.

22 Q. Okay. Now, you told us that Carlos was
23 doing his hand side to side; is that correct?

24 A. I told Mr. Grimes about that when he was in
25 the house, that he was moving his hands side to

1 side.

2 MS. SHEALY: Beg the court's
3 indulgence just a moment.

4 THE COURT: Certainly.

5 CROSS EXAMINATION CONTINUED

6 BY MS. SHEALY:

7 Q. Didn't you see Carlos Grant with a set of
8 keys in one hand and a cell phone in the other?

9 A. No, ma'am, I didn't.

10 Q. Showing you what has been previously marked
11 as State's Exhibit 101, did you see once you'd
12 started shooting that it was knocked out of his
13 hand?

14 A. No, ma'am.

15 Q. You didn't see the bullet strikes this cell
16 phone?

17 A. No, ma'am.

18 Q. You didn't see his hands up with the cell
19 phone in one hand and his keys in the other?

20 A. No, ma'am.

21 Q. You saw our dad take a bat and starts
22 swinging?

23 A. No, ma'am, I didn't.

24 Q. You didn't see your father swing at anyone?

25 A. No, ma'am, because I was pushing my mother

1 in the house.

2 Q. Okay. Did you see Carlos take out any
3 weapon before you started shooting him?

4 A. No, ma'am, because when he went to reach my
5 first reaction was that he was about to pull
6 out a gun.

7 Q. Besides a person getting their keys or
8 their cell phone, you think that they are going
9 for a gun?

10 A. When they be making a threat -- they could
11 have been going for their keys or a cell phone
12 but Carlos was making a threat, that he made
13 several times, over and over again.

14 Q. Well, when he was saying what you say that
15 he was saying, did he say, 'I've got a gun on
16 me and I'm going to shoot you'?

17 A. In so many words, (affirmative nod).

18 Q. Did he say, 'I have a gun and I'm going to
19 shoot you'?

20 A. In so many words.

21 MR. GRIMES: Asked ---

22 THE COURT: Hold on.

23 MR. GRIMES: Asked and answered.

24 THE COURT: Overruled.

25 WITNESS: In so many words, he

1 did.

2 CROSS EXAMINATION CONTINUED

3 BY MS. SHEALY:

4 Q. Did he at any point tell your father that
5 he was going to shoot your father?

6 A. Yes, ma'am, he did.

7 Q. He said, "I am going to shoot you"?

8 A. He told him that he would light his ass up.

9 Q. You saw Carlos Grant with his uniform from
10 work on, didn't you?

11 A. Yes, I did.

12 Q. Did you know that he was at work while you
13 were hanging out with the fellows?

14 A. No, ma'am, I didn't.

15 Q. When you take that nine millimeter out, did
16 it make you feel powerful?

17 A. No, ma'am, it didn't.

18 Q. Where did you aim?

19 A. I aimed at the person whom appeared to be
20 reaching for something.

21 Q. And did you -- was he then walking back to
22 his sister, Demetria Grant?

23 A. No, ma'am, not that I can remember.

24 Q. Well, did you take the time to look and see
25 whether or not he was standing right beside

1 her?

2 A. No, ma'am, because if I had took the time
3 to look and he'd got into his shirt and pulled
4 out what he was pulling out, maybe I would have
5 been the one dead.

6 Q. Do you mean, Mr. Parker, that when he
7 dangled his keys or touched his cell phone that
8 you wouldn't have been able to shoot him?

9 A. What I said is maybe I would have been the
10 one dead if I sat and waited on him.

11 Q. Did you see his body react -- well, you
12 shot once and the cell phone came out, but
13 you're saying that you didn't see that?

14 A. No, ma'am, I didn't.

15 Q. Come out of his hand?

16 A. No, ma'am, I didn't.

17 Q. Did you notice that you struck him with a
18 bullet when it hit his shoulder area?

19 A. No, ma'am, I didn't.

20 Q. He was running, wasn't he, Mr. Parker?

21 A. Yes, ma'am.

22 Q. He was running for cover, was he not, Mr.
23 Parker?

24 A. Yes, ma'am.

25 Q. He was running for his life, was he not,

1 Mr. Parker?

2 A. No, ma'am.

3 Q. He wasn't running for his life?

4 A. No, ma'am.

5 Q. He lost his life, didn't he, Mr. Parker?

6 A. He was threatening about taking someone's
7 life.

8 Q. You never indicated though that he ever
9 said anything about taking someone's life.

10 A. He was saying that he was going to light my
11 father's ass up. Didn't I just say that? I
12 was here when I said that.

13 Q. Mr. Parker, how many times is it going to
14 satisfy you to see him hit with a bullet?

15 A. It wouldn't satisfy me at all.

16 Q. Is that why you shot sixteen times? You
17 couldn't get satisfaction?

18 A. No, ma'am, I didn't.

19 Q. How did you feel when you hit the Saturn
20 with the bullet?

21 A. How did I feel when I hit the Saturn?

22 Q. (Affirmative nod).

23 A. I didn't even know that I hit the Saturn.

24 Q. How did you feel when you hit the Durango's
25 tire with a bullet?

1 A. I didn't even know that I hit that.

2 Q. So you were just shooting and shooting and
3 shooting, not even watching what you were
4 doing?

5 A. I was shooting at the threat. That is what
6 I was ---

7 Q. You were shooting at the threat?

8 A. Yes, ma'am, and the threat was Carlos.

9 Q. Now, you're telling us that you lived with
10 your father and mother at this time?

11 A. Yes, ma'am.

12 Q. And you know that area has a basketball
13 goal that keeps moved from place to place for
14 the little kids to play with; is that correct?

15 A. No, ma'am. I very seldom saw a basketball
16 goal. When those kids were playing basketball,
17 they had it where I was hanging out at, the
18 majority of the time. Because I was in Ashley
19 Shores that day, no traffic comes through
20 there. There are no cars that come there, so
21 that's where they put the basketball goal out
22 there. So that they can play, because there is
23 no park or recreation center -- or any place
24 safe for them to put the court except in the
25 middle of that complex.

1 Q. Mr. Parker, ---

2 A. Yes, ma'am?

3 Q. --- did you see Demetria's children when
4 you were shooting/unloading that nine
5 millimeter?

6 A. Demetria's children was not out there.

7 Q. Did you see Yvette Choise's child and his
8 friends?

9 A. Yvette Choise's kids were in front of her
10 door, back behind where I live.

11 Q. What about Angel Suitt, did you see those
12 children playing? Right across the street from
13 your father's house?

14 A. No, ma'am.

15 Q. Did you care that there were children
16 outside?

17 A. Yes, I did.

18 Q. You did care?

19 A. (No response).

20 Q. Not enough to stop shooting, did you?

21 A. I did.

22 Q. You did stop shooting?

23 A. I did stop shooting.

24 Q. You stopped shooting when you'd unloaded
25 the gun, is that correct?

1 A. That was in the air.

2 Q. Mr. Parker, do you deny that you held that
3 gun and you shot into Carlos Grant's head with
4 his mother standing nearby, watching ---

5 A. Yes, I deny --

6 Q. --- that happen ---

7 A. Yes, I deny.

8 MS. SHEALY: Beg the court's
9 indulgence.

10 THE COURT: All right.

11 MS. SHEALY: Mr. Parker, I have no
12 further questions.

13 THE COURT: Redirect?

14 MR. GRIMES: Thank you, Your Honor.

15 REDIRECT EXAMINATION

16 BY MR. GRIMES:

17 Q. Roger, ---

18 A. Yes, sir?

19 Q. --- when you were running down the street
20 here, were there any children over here?

21 A. No, sir, there wasn't.

22 Q. Were you shooting at any houses when you
23 were ---

24 A. Was I shooting at any houses?

25 Q. (Affirmative nod).

1 A. No, sir, I wasn't.

2 Q. Where were you shooting when you were
3 running down the street?

4 A. In the air.

5 Q. Now, I believe on cross-examination that
6 you said that Carlos may have been running for
7 cover?

8 A. Yes, sir, I did.

9 Q. And where was he running for cover at?

10 A. He ran inbetween the cars.

11 Q. What did you think that he might do once he
12 got inbetween the cars, got cover?

13 A. He may return fire, to carry out his
14 threat.

15 Q. Now, on cross examination you said that you
16 didn't see him with a shotgun or a gun, did
17 you?

18 A. Not physical.

19 Q. Do you know if there was a shotgun in his
20 car?

21 A. No, sir, I don't know.

22 Q. Do you know if there was a gun in his car?

23 A. No, sir, I don't.

24 Q. Earlier you talked about the childhood
25 mischief, that you got into a lot of childhood

1 mischief. Was that regular childhood mischief?

2 A. Repeat that again?

3 Q. On cross examination, Ms. Shealy asked you
4 about the trouble you'd get into as a child.

5 What kind of trouble did you get into as a
6 child?

7 A. I mean, as being -- the family knowing me
8 as a child, it was just getting into things
9 around the house and -- (pause).

10 Q. Were you an active child?

11 A. Active, very busy child, just like I told
12 you at first.

13 Q. Now, on April 18th, you said that you got in
14 trouble, too?

15 A. Yes, sir.

16 Q. Did you do anything to bring that trouble
17 on?

18 A. No, sir, I didn't.

19 Q. Did you go to Carlos Grant's house?

20 A. No, sir, I didn't.

21 Q. Whose house did Carlise Grant come to?

22 A. He came to my father's house.

23 Q. Did you ask him to leave?

24 A. Yes, sir, I did.

25 Q. Did Carlise Grant leave?

1 A. No, he didn't.

2 Q. If Carlise Grant had left, would you have
3 shot him that day?

4 A. No, sir.

5 Q. If Carlos had never reached under his
6 shirt, would you have shot him?

7 A. No, sir, I wouldn't have.

8 Q. Why did you shoot Carlos that day?

9 A. Because Carlos made threats and he appeared
10 to stand up to them.

11 MR. GRIMES: Thank you, Mr. Parker.

12 THE COURT: Recross?

13 RECROSS EXAMINATION

14 BY MS. SHEALY:

15 Q. Mr. Parker, ---

16 A. Yes, ma'am?

17 Q. --- did you tell us earlier that you asked
18 Carlos to "take it outside"?

19 A. No, I didn't say that.

20 Q. You're saying that you asked him to leave?

21 A. That's what I asked him.

22 Q. And are you telling this jury that because
23 he didn't leave that you shot and killed him?

24 A. No, I didn't. No, I am not saying that.

25 MS. SHEALY: I don't have any further

1 questions.

2 THE COURT: All right. Thank you.

3 You may step down, sir.

4 (DEFENDANT STEPS DOWN)

5 THE COURT: You may call your next
6 witness?

7 MR. GRIMES: No, sir, Your Honor.

8 THE COURT: very well. Does the
9 State have any reply testimony?

10 MS. SHEALY: No, sir, Your Honor.
11 Thank you.

12 THE COURT: Ladies and Gentlemen, at
13 this point that would conclude the evidentiary
14 portion of the proceedings. There still
15 remains, however, the closing arguments of the
16 attorneys and of course my charge on the law.

17 There are matters of law now that I
18 must take up out of your presence. I need
19 probably a little bit longer than -- we will
20 be with you as quickly as we can. I'd think
21 probably about twenty minutes or so.

22 Please do not -- while you will hear
23 no more evidence, it still would be
24 inappropriate for you to begin your
25 deliberations. Do not make any decisions,

1 remember the commitment that you made.

2 We will be with you shortly. You may
3 retire to your jury room.

4 (JURY OUT @ 3:06 P.M.)

5 THE COURT: Anything from the State?

6 MS. SHEALY: Nothing, Your Honor.

7 THE COURT: Mr. Grimes?

8 MR. GRIMES: Thank you, Your Honor.

9 At this point we would move again for a
10 directed verdict, on one additional ground to
11 the previous.

12 THE COURT: Okay.

13 MR. GRIMES: At this time, we would
14 move for the court to dismiss the case under a
15 defective person property act, Section 16-11-
16 410 of the South Carolina Code, which includes
17 that that Act requires the court to dismiss the
18 case if someone comes on the property and
19 forces their way and a person is acting in
20 self-defense, protecting themselves.

21 THE COURT: Mr. Grimes, if you want
22 to tell me how he came on the property and
23 forced his way, I'll be happy to consider the
24 request. Please tell the court the evidence in
25 this record that you've referred to that he

1 forced his way into ---

2 MR. GRIMES: We don't consider that
3 he forced his way in, but in Mr. Johnson's
4 testimony he said that he was coming after him
5 and that he was pulled out of the house.

6 THE COURT: Well, your recollection
7 is different from mine. I don't think that it
8 is sufficient that as a matter of law that I
9 could grant the Motion. The record speaks for
10 itself as to whether or not that is reasonably
11 inferable from the facts.

12 MR. GRIMES: Thank you, Your Honor.

13 THE COURT: Anything else?

14 MR. GRIMES: Again, we would renew
15 our previous Motion that we do not believe the
16 evidence is sufficient to show that Roger acted
17 with malice aforethought.

18 THE COURT: Denied. Thank you, sir.
19 Any requests to charge from the State?

20 MR. SIMPSON: No, Your Honor.

21 THE COURT: Requests to charge from
22 the Defendant?

23 MR. GRIMES: Yes, sir. We would ask
24 the court to charge on self-defense, ---

25 THE COURT: I am going to charge

1 self-defense in the defense of another, not
2 self-defense for himself.

3 MR. GRIMES: Sir?

4 THE COURT: Are you asking that I
5 charge self-defense of himself or self-defense
6 of another?

7 MR. GRIMES: Self-defense of himself
8 and self-defense of others.

9 THE COURT: All right. What else?

10 MR. GRIMES: As to the self-defense
11 charge, we would like to charge that Mr. Parker
12 did not have to wait until ---

13 THE COURT: That is in the general
14 charge.

15 MR. GRIMES: That he had the right to
16 act on appearances.

17 THE COURT: That is in my general
18 charge.

19 MR. GRIMES: That the jury should put
20 itself in the defendant's position of ---

21 THE COURT: No, I don't do that.
22 That gets into the -- there is no way that I am
23 going to do that. One has the right to act on
24 appearances, to make an assessment of what is
25 reasonable -- what a reasonably prudent person

1 would do if faced with that scenario. That's
2 the language, that's the text. Ordinary
3 person. Not some special situation, that does
4 not apply. A reasonably prudent person.

5 MR. GRIMES: Yes, sir. We would act
6 for a charge on prior incident of violence.

7 THE COURT: Violence -- please tell
8 me what prior incident of violence that I have
9 in the record that justifies that, and I will
10 be happy to include it.

11 MR. GRIMES: Including Emmanuel
12 Johnson taking a chair ---

13 THE COURT: But that is not Mr.
14 Parker. That's Emmanuel Johnson. That's
15 somebody totally separate from that.

16 MR. GRIMES: We would submit that
17 when you look at it that you can look at all
18 four people.

19 THE COURT: Thank you, sir. Do you
20 have any case law that says that? Any
21 decision on self-defense that says I can rely
22 on somebody else's acts to shoot you, not to
23 shoot Emmanuel but to shoot ---

24 MR. GRIMES: I do not have the names
25 of any case, Your Honor, but ---

1 THE COURT: Sir?

2 MR. GRIMES: I don't have the names
3 of any of the cases but we believe that you can
4 look at numbers of persons ---

5 THE COURT: You can look at the
6 total circumstances. But as to prior acts of
7 violence, that's specific as to the victim. I
8 don't believe that there is an charge that says
9 that prior acts of violence of people in the
10 world. It says the person themself.

11 MR. GRIMES: Yes, sir. We would ask
12 the court to consider charging that Mr. Parker
13 had a right to judge the decedent more harshly
14 because he had just used marijuana.

15 THE COURT: He had the right to
16 judge the decedent more harshly because of the
17 use of marijuana?

18 MR. GRIMES: (Affirmative nod).

19 THE COURT: How did he know he'd
20 used marijuana?

21 MR. GRIMES: Mr. Parker started the
22 process ---

23 THE COURT: No. How did this man,
24 at the time that he pulled the trigger, know
25 that he'd used marijuana?

1 MR. GRIMES: There is -- I don't have
2 any evidence.

3 THE COURT: Thank you, sir. Isn't
4 that required?

5 MR. GRIMES: (Affirmative nod).

6 THE COURT: Then why are you asking
7 me?

8 MR. GRIMES: I apologize, Your Honor.

9 THE COURT: Yes, sir.

10 MR. GRIMES: We would ask for a
11 charge that there were words about hostile
12 acts?

13 THE COURT: In order to charge that,
14 where is the evidence of hostile acts?

15 MR. GRIMES: I think that the
16 reaching under his jacket could be a hostile
17 act.

18 THE COURT: All right, I will charge
19 it. The jury, I guess, could conclude that may
20 be a hostile act.

21 MR. GRIMES: Thank you.

22 THE COURT: Maybe.

23 MR. GRIMES: We would ask for a
24 charge of -- if -- do you want me to hand up
25 the charges?

1 THE COURT: Sir? What?

2 MR. GRIMES: Let me just hand up some
3 of the charges, Your Honor.

4 THE COURT: Okay, hand them up.

5 MR. GRIMES: (Tenders).

6 THE COURT: In the future, how about
7 giving them to me before we are prepared to
8 charge?

9 MR. GRIMES: Yes, sir. This is my
10 third copy, (tenders to Solicitor).

11 THE COURT: All of these?

12 MR. GRIMES: Looking at page
13 nine, ---

14 THE COURT: Are you asking me to
15 charge Number 7?

16 MR. GRIMES: Yes, sir.

17 THE COURT: You want me to charge as
18 an issue of fact that Mr. Parker was presumed
19 to have a reasonable fear of imminent death?
20 Imminent peril?

21 MR. GRIMES: Yes, Your Honor.

22 THE COURT: Based on ---

23 MR. GRIMES: --- the statute, Your
24 Honor.

25 THE COURT: Thank you, sir. That's

1 noted and denied. As I previously said, I
2 don't believe that statute has any application
3 whatsoever in this case.

4 MR. GRIMES: Yes, sir.

5 THE COURT: Thank you, sir. Let me
6 respond, because it is a relatively new
7 statute. Every situation that I've seen that
8 statute, it deals with a home where there has
9 been an invasion, a shooting occurs within the
10 home, within the confines of the house, not
11 just the yard. Do you have anything that
12 applies to premises? Is there any case in
13 which that statute has been applied that
14 applies to the premises?

15 MR. GRIMES: I believe the language
16 includes "porch", the definition of, and there
17 is testimony showing that they were on the
18 porch.

19 THE COURT: There was testimony
20 saying that at one time they were on the porch.
21 There is no testimony at this point that they
22 were on the porch. The testimony of Mr.
23 Johnson is that Mrs. Johnson, at least, was in
24 the house.

25 MR. GRIMES: Yes, sir. And the

1 testimony was that Mr. Grant and the other
2 people were on the porch at that time.

3 THE COURT: Prior to his leaving?

4 MR. GRIMES: Well, ---

5 THE COURT: Sir, I note the charge
6 and I -- I don't think that statute ever was
7 intended to be, that I could just shoot you
8 down, that there is a presumption that you --
9 that there is some imminent peril or death.
10 Solicitor, do you think that it is appropriate
11 in this case?

12 MR. SIMPSON: No, sir, Your Honor.

13 THE COURT: You have to defend it on
14 appeal, so ---

15 MR. SIMPSON: No, sir, we do not
16 think that it ---

17 THE COURT: I don't believe that it
18 is applicable at all. I don't believe that
19 statute applies to this situation, it was a
20 self-defense case.

21 MR. GRIMES: I am not sure about
22 number ten, same charge?

23 THE COURT: (Upon review), not
24 specifically that language. One is entitled to
25 continue until a threat has been alleviated or

1 removed.

2 MR. GRIMES: We would ask that you
3 charge number eleven, twelve, ---

4 THE COURT: I am not going to charge
5 -- twelve is specifically a factual charge, it
6 violates the Constitution. I am going to
7 charge that the defendant must not be -- that a
8 defendant must be without fault in bringing on
9 the difficulty. I am not going to charge
10 whether that act was reasonable. They make the
11 determination of what was reasonable.

12 MR. GRIMES: And we would ask that
13 you charge under the defense of habitation.

14 THE COURT: Defense of habitation?
15 He wasn't defending his habitation, he was
16 defending himself. Why is that appropriate?

17 MR. GRIMES: Again, I would rely on
18 Mr. Johnson's testimony that he came in and
19 that he ---

20 THE COURT: Are you going back to
21 the statute?

22 MR. GRIMES: No, sir. The case that
23 I cited is *State v. Rye*.

24 THE COURT: I will look at that case
25 to see whether it applies.

1 MR. SIMPSON: Your Honor, may I
2 address that?

3 THE COURT: Briefly.

4 MR. SIMPSON: We believe that the
5 Defendant's own testimony, even if you assume
6 that to be true, he described it as a "gentle
7 pull".

8 THE COURT: I understand that.

9 MR. SIMPSON: And the victim was
10 outside ---

11 THE COURT: I don't quarrel with you
12 that that is probably the most reasonable one.
13 I just simply -- there was recent decision in
14 the *Cottrell* case that if there is any
15 possibility that it comes in, that it comes in.
16 I think that it is kind of -- I always wonder
17 that myself, how do you make that call that a
18 lawyer argues that to the jury when everything
19 is inconsistent with any reasonable inference,
20 but it is certainly the jury's prerogative to
21 do that; if they want to do it, they create
22 their own dilemma. I will consider that
23 charge, Mr. Grimes.

24 MR. GRIMES: Thank you. And one
25 final charge, that Mr. Parker ---

1 MR. SIMPSON: Your Honor, I would
2 also like to address the previous requests to
3 charge, if possible.

4 THE COURT: All right.

5 MR. SIMPSON: The State would
6 strenuously contest the self-defense charge on
7 the grounds that there is no evidence, even in
8 the extreme, in favor of the Defendant. None
9 of the evidence suggests that is reasonable in
10 the case.

11 THE COURT: I appreciate that.
12 Whether it is reasonable or not isn't my call.

13 MR. SIMPSON: Yes, sir.

14 THE COURT: Do you really -- I
15 understand that you strenuously point that out.
16 I would urge you to strenuously read these
17 decisions that get reversed because the court
18 didn't charge something because it was
19 strenuously objectionable and unreasonable.
20 That's precisely what juries decide every
21 single day. We don't make the call. I would
22 love to hear, 'absolutely, Judge, charge it all
23 because this is a case' -- to me, to be honest
24 with you, I hadn't even thought about it until
25 right now. I probably better not say anything,

1 but to me that is what "beyond a reasonable
2 doubt" means. You can consider anything that
3 you want to and it just simply doesn't fly
4 'because this man murdered this person.' You
5 can say anything else that you -- you can
6 consider everything, including the kitchen
7 sink, and it's not going to change your mind
8 if it is not reasonable. So, thank you.

9 I don't know that it really warrants
10 a charge on self-defense; but given the light
11 most favorable to the defense, yes, in my
12 opinion.

13 MR. GRIMES: Thank you, Your Honor.

14 THE COURT: Thank you.

15 MR. GRIMES: We have nothing further.

16 THE COURT: Thank you, sir. Let's
17 take about, let's say, ten minutes. Thank you.

18 (BRIEF RECESS)

19 (DEFENDANT PRESENT)

20 THE COURT: I have reviewed the
21 Defendant's requests to charge, Mr. Grimes.
22 Number seven requested -- if I charge number
23 fourteen, I will charge concerning trespass in
24 that charge. Again, of course that statute
25 says that "a person who refuses to leave the

1 premises of another after being asked to leave
2 is guilty of being a trespasser." If he was
3 leaving when he was asked to leave, he was not
4 trespassing but that is a question that the
5 jury will have to decide.

6 Because of the problem that I had with
7 the premises -- there hasn't been any evidence.
8 I have to assume certain things. Was this a
9 rental unit?

10 MR. SIMPSON: Yes, Your Honor.

11 THE COURT: What did they rent? Did
12 they rent just the interior portion or -- if
13 there was testimony about the outside being a
14 common area, that would be a different story.
15 I don't have that. I have to, in the light
16 most favorable to them, say that it could be
17 from the stoop out to the street would be part
18 of your rental property. For that reason,
19 where people were once he started, you've got
20 -- you've got pictures to show where the shot
21 was fired. Assuming that they believe that he
22 fired the shot, assuming that they believe that
23 the cell phone was struck -- there are some
24 things that you can argue, but the jury has to
25 make that call. That's the reason I am

1 considering that trespass charge. Okay?

2 MR. SIMPSON: Yes, sir.

3 THE COURT: Thank you, we will be
4 at-ease for a moment. Number seven, I will
5 mark as Court's Exhibit 3. That's the one that
6 you wanted me to charge and I declined to
7 charge.

8 (SO ENTERED AS COURT'S EXHIBIT 3)

9 MR. GRIMES: Could we mark number
10 fifteen as an exhibit, too, Your Honor?

11 THE COURT: I will mark the whole
12 packet, because I am going to ask you -- you
13 are going to have to be specific -- I am going
14 to put the entire packet, which will be
15 included. When you deal with exceptions or
16 additions, you need to be specific and not just
17 say 'note my packet' because the reviewing
18 court, assuming that it has to be reviewed, and
19 I am not suggesting that it would be, but
20 assuming that it has to be reviewed the
21 reviewing court needs you to be as specific as
22 to what I didn't charge. Okay? Court's
23 Exhibit 3 will be requests for charges, one
24 through whatever they are.

25 MR. GRIMES: Thank you, Your Honor.

1 THE COURT: We'll take a minute.

2 (BRIEF RECESS)

3 (DEFENDANT PRESENT)

4 THE COURT: I have read *State v.*
5 *Rye*, where Judge Cottingham was reversed. The
6 facts in that case were much more egregious
7 than what we have here, insofar as the shooting
8 goes. There was tons of acts of prior
9 violence. However, in the analysis -- again,
10 given apparently what the position is going to
11 be on some of these cases, it -- it talks about
12 this offense and it says, the following
13 (reading): 'To establish this defense
14 application, the defendant must establish that
15 the offense happened in a violent manner with
16 the intent to commit a felony or an attempt --
17 or the habitation itself, or an attempt of
18 forcible entry. Where the defendant admitted
19 the use of deadly force against the trespasser,
20 there is no duty for the defendant to retreat
21 before taking the life of the trespasser.'

22 Of course, no duty to retreat from the
23 premises, I will charge that. Clearly --
24 whether you were on the premises or not, that
25 is another issue.

1 But it also goes with the initial
2 charge on this that there was no other
3 reasonable means to avoid a confrontation,
4 which is a part of the general charge. Again,
5 back to the reasonable person.

6 However, in the light most favorable
7 to the Defendant, I am going to charge eleven;
8 fourteen and thirteen; which are the charges
9 that have to do -- now, whether the jury agrees
10 with that. You will see the language, that it
11 appears to be a direct quote.

12 The second element, which I think is
13 very critical that I have to pass judgment --
14 that I can't pass judgment on is that there
15 must be evidence that the chosen means of
16 ejectment were unreasonable under the
17 circumstances. Now, again, shooting may not
18 necessarily be reasonable. But I'll make a
19 distinction as to this defense, that it does
20 not have the same elements of self-defense.
21 It's a separate defense, by itself; it is not
22 incorporated in self-defense. The evidence is
23 that Mr. Parker lived at this apartment, that
24 it was his house.

25 All right. So you can chose to

1 address that. I am sure that you will have a
2 chance to follow because, as I understand, the
3 State is waiving the opening on the law.

4 MS. SHEALY: Yes, sir.

5 THE COURT: You will have a chance
6 to hear what he says, so you'll ---

7 MS. SHEALY: Yes, sir.

8 THE COURT: Is the State ready?

9 MS. SHEALY: Yes, Your Honor.

10 THE COURT: Is the Defendant ready?

11 MR. GRIMES: Yes, sir.

12 THE COURT: Okay. Invite the jury
13 to return.

14 (JURY IN @ 3:55 P.M.)

15 THE COURT: Thank you, Ladies and
16 Gentlemen. As you recall, the next phase is
17 the second opportunity that the attorneys have
18 to speak to you. Unlike the previous, you've
19 heard the evidence. It is that evidence that
20 you will consider every shortly when you begin
21 your deliberations. The evidence, as you know,
22 consists of the testimony of the witnesses and
23 exhibits that have been introduced. The
24 exhibits introduced will, of course, accompany
25 you to your jury room for your study and review

1 when you begin your deliberations.

2 While the attorneys' remarks are not
3 evidence, their remarks will be helpful both in
4 analyzing the evidence and in applying the law.
5 Please give them your attention, as I know that
6 you will.

7 Following the closing arguments, I
8 will give you instruction on the law. I am
9 cognizant of the hour. I have assumed some-
10 thing because the -- the jury pool may have to
11 come back tomorrow for the next case. To
12 complete this case, we will complete it today.
13 If you desire to -- you're not going to be in
14 that pool. Normally -- we have enough jurors.
15 Normally you would go back in, but I instructed
16 the clerk that your names are not to be put
17 back in the pool. You will have concluded your
18 services. For that reason, I assume that you
19 all prefer to move forward today and have this
20 matter concluded so that you then will not have
21 -- so that you will have tomorrow to be your
22 day.

23 If at any point, Mr. Presiding Juror,
24 you want to take a moment -- if someone objects
25 to that, I just need to know. Nobody knows how

1 long it is going to take to decide the case
2 and, of course, we deal with that as it comes.
3 But you probably get the case before -- it will
4 be after 5:00, I would think, before you get
5 the case.

6 PRESIDING JUROR: May I speak, Your
7 Honor?

8 THE COURT: Yes. Do you have a
9 juror that is concerned about going late
10 tonight?

11 PRESIDING JUROR: Not concern, just if
12 we could have time to make arrangements ---

13 THE COURT: Absolutely.

14 PRESIDING JUROR: There are some that
15 need to make phone calls.

16 THE COURT: Most definitely, you
17 will be allowed to make the calls necessary,
18 for certain. And, you know, I am not going to
19 say that you have to deliberate into the wee
20 hours. At some point after you've made an
21 attempt, if the jury hasn't resolved it, then
22 I will entertain a request to cease and return
23 tomorrow. That's -- that, I will leave to your
24 judgment.

25 Obviously that means that you don't go

1 back in five minutes and say, 'we would like to
2 come back tomorrow.' That is not what I am
3 talking about.

4 PRESIDING JUROR: Sure.

5 THE COURT: But I will be reasonable
6 in that request. You will certainly be given
7 an opportunity to make any calls that are
8 necessary.

9 PRESIDING JUROR: Thank you, Your
10 Honor. I don't see any other ---

11 THE COURT: Thank you all. Thank
12 you, Ladies and Gentlemen. Please give your
13 attention now to the attorneys as they give
14 their closing arguments. Mr. Grimes?

15 MR. GRIMES: Thank you, Your Honor.
16 May it please the court?

17 THE COURT: Yes, sir.

18 MR. GRIMES: Good afternoon, Ladies
19 and Gentlemen of the jury. Now is the time for
20 us to make our closing arguments and soon the
21 hard part of the case is going to begin, and
22 that's when you go back to your jury room and
23 deliberate about what happened on April 18th,
24 2006.

25 What you have to decide is whether

1 Roger is a cold-blooded killer or whether he
2 acted in self-defense on April 18th, 2006.

3 I submit to you that the key piece of
4 evidence to make that determination is where
5 was Carlise Grant when he was shot. He was
6 standing up when he was shot. That
7 corroborates the claim that Roger acted in
8 self-defense. It shows that the State's
9 witnesses were wrong about how Carlos was shot.

10 If you believe that Carlos was shot
11 while he was lying on the ground, that Roger
12 stood over him and shot him, then he is
13 obviously guilty of murder.

14 Ladies and Gentlemen, in making that
15 decision, I will remind you of what I said in
16 my opening, that the physical evidence in this
17 case is going to be key.

18 Perhaps there is a lot that could be
19 argued or, you know, interpreted one way. An
20 example is the gunshot residue. You can have
21 defensive wounds or you can be someone
22 shooting. There is a variety of ways that
23 gunshot residue can get on one's hands.

24 Shell casings, they don't lie. Roger
25 admits, clearly admits, that is the gun that he

1 used, those are the bullets that he fired.

2 There's no dispute about that.

3 Physical evidence doesn't get confused
4 when they give a statement to the police.

5 Physical evidence is not upset after
6 the incident.

7 We've heard a lot of testimony, from
8 when I cross-examined witnesses or Ms. Shealy
9 has cross-examined witnesses, about the
10 differences in their statements to the police
11 and their testimony in court the last few days.
12 Some of that is perfectly understandable.

13 Physical evidence doesn't forget
14 things, memories don't fade.

15 In this case, you heard from Cassandra
16 Ward, the mother of Carlise Grant, and she
17 described how the shooting happened. When I
18 was cross-examining her, at the end, I asked
19 her a series of questions about where was Roger
20 when he fired the last shot, that she saw. I
21 said, 'Are you a hundred percent sure? Do you
22 realize that you're under oath, subject to the
23 penalty of perjury?' I wanted to make sure
24 that there was no confusion. She gave definite
25 answers. She didn't equivocate in any way, she

1 was not confused in any way. She was a hundred
2 percent sure. She testified that there was an
3 argument, that Roger pulled a gun out and
4 started shooting her son. Her son started to
5 run, that at some point he fell down, and I
6 asked her if that's when Roger walked up behind
7 him, that Roger extended his arm to shoot
8 Carlos. She said 'yes', every time.

9 We heard Dr. Kim Collins, who has no
10 interest in this case at all. She is not
11 related to Carlise Grant. She is not related
12 to Roger. She probably doesn't care whether
13 Roger goes home tonight or if he loses his
14 liberty. She said that the physical evidence
15 would not support the finding that Roger shot
16 Carlos from behind. That's because the bullet
17 went in this way (indicating). There is no
18 question about her testimony on that.

19 How, there may be questions about
20 where Roger was at the time. From her
21 testimony, she can't tell where he was. She
22 said that. She is not a detective, she didn't
23 go out to the crime scene, she didn't interview
24 any witnesses, she wasn't in court or heard
25 other witnesses talk. She was just looking at

1 the medical records, looking at the x-rays,
2 doing her work, which is autopsies, and made
3 her findings.

4 People who were there, who testified
5 in court, said that Roger was standing behind
6 him when he shot the bullets.

7 I don't know if it was Ms. Choise or
8 Ms. Ward said that Roger kind of hopped over
9 the body. Well, if he is shooting up front,
10 why is he going to hop over the body and go the
11 other way? We know which way that he ran.

12 I mean, it was like -- I mean, he left
13 little shell casings, so people could follow
14 him. If he hopped over the body, I mean that
15 way -- they said that they hopped over the
16 body, so they would be lying to come that way.

17 Dr. Collins in her report says it was
18 questionable whether Carlos was on the ground
19 when he was shot. I believe that would be a
20 reasonable doubt.

21 As Judge Dennis will charge you, and
22 as he stated in his preliminary instructions,
23 reasonable doubt is essentially a doubt that
24 would cause a reasonable person to hesitate to
25 act. If a doctor, an expert called by the

1 State says that it is basically impossible for
2 something to have happened the way a witness
3 testifies to, when the witness is a hundred
4 percent sure of how she saw it happen, ask
5 yourselves would that give you a reason to
6 hesitate to act. If it would, then you know
7 that the State has failed to show that Carlos
8 was on the ground when he was shot. That means
9 that Roger did not act with malice or
10 aforethought. He is not a cold-blooded killer.

11 The State has the burden of proof in
12 this case. It has to convince each of you
13 beyond a reasonable doubt that Roger shot
14 Carlise Grant with malice aforethought.

15 It is undisputed that Roger shot him.
16 You heard that from Roger's own mouth. We've
17 never disputed that at all. What we do dispute
18 is that he acted with malice aforethought.
19 Judge Dennis will tell you that malice is sort
20 of an evil heart, an evil frame of mind.

21 "Aforethought" is planning. For example,
22 that would be a hit man with instructions to go
23 kill somebody, planned it for months and carry
24 it out. You don't need that type of evidence
25 to find aforethought. Judge Dennis will tell

1 you that it can be very quick, like ten seconds
2 or something.

3 And there are two types of malice.
4 There is express malice and implied malice.
5 Express malice would be a type of threats.
6 Now, every time that I've asked a witness if
7 Roger made any threats, what has their answer
8 been? It was no, he never made any threats.
9 He didn't raise his voice, he wasn't rude, he
10 didn't come out there waving a gun around.
11 No.

12 I want you to use your common sense,
13 as Judge Dennis has said. If someone is cold-
14 blooded enough to stand over a helpless person
15 and shoots them, is that kind of mean, nasty
16 person, wouldn't you expect them to make some
17 threats to someone? If he walks in the house
18 and sees Carlise Grant right in his father's
19 house, 'I am going to light your ass up', 'I am
20 going to shut this place down', if he is the
21 type of person that shoots someone cold-
22 bloodied, why wouldn't he just shoot them right
23 there? I mean, that would be the best place to
24 shoot somebody. You wouldn't have any of those
25 eyewitnesses.

1 They could have said, 'Well, Carlos
2 broke into my house.' They could have put a
3 knife on him or something. They could have
4 said 'Carlos came in here and started fighting
5 with us.' There is an old saying, I think in
6 the country, that if you shoot somebody
7 outside, 'drag them in your house.' If he had
8 malice aforethought, that's probably what he
9 would have done.

10 I am sure that the State will argue
11 that when he got a gun from Hard Rock that he
12 was planning on coming to kill somebody, that
13 he was planning to use it. If he was going to
14 use it, why not use it in the house? Why not
15 come out there waving it around? He didn't do
16 any of that. There is no testimony of him
17 waving it around or making threats.

18 Now, as part of their burden of proof,
19 the State has called various experts: Agent
20 Roberts, Agent Thrower about the gunshot
21 residue, and you heard from Dr. Collins.

22 Now, ask yourselves who you haven't
23 heard from. The State has introduced a lot of
24 pictures -- and I am not very good with
25 computers, so I am probably not going to show

1 them in my closing but when you get back to
2 your jury room, I want you to look at the
3 picture of the Saturn, the blood spatter. I
4 think that you heard some testimony that there
5 was blood spatter, sort of, on the hood, and
6 it's on the windshield. Now, we heard from Dr.
7 Collins that the wound to the shoulder sort of
8 entered here, and came out. Use your common
9 sense, if someone is coming this way, would
10 there be any blood -- if he was going through
11 the cars, his shoulder would have been on that
12 side. Would there have been any blood coming
13 from his shoulder?

14 We heard about the blow on the elbow,
15 but we don't know how that happened. It could
16 have been from when he fell on the ground. It
17 could have been from a baseball bat.

18 Interestingly, Dr. Collins testified
19 that the wound to the head was sort of coming
20 in this way (indicating). What if the blood on
21 the Saturn came from the head? That would show
22 that Carlise Grant was standing up when he was
23 shot.

24 We heard from Yvette Choise, I
25 believe, how he was sort of slipping as he came

1 around the car. This morning we heard from
2 Emmanuel Johnson saying how he was ducking and
3 dodging.

4 Again, we go to the evidence chart and
5 it is kind of hard to tell where the shots were
6 fired from, but from the shell casings but
7 Agent Thrower testified that you have shell
8 casings coming this way, they've got bullets
9 here going into the car. We don't know, maybe
10 shooting coming out this way. Kind of shooting
11 at the threat. But as he came around, if he
12 was ducking and dodging, maybe it was to the
13 side. It's here, blood is on the Saturn.
14 There has been no testimony about how the blood
15 got on the Saturn. We can't answer those
16 questions.

17 Now, you saw some mapping, something
18 from Officer Morgan from North Charleston.
19 You know, had it been anywhere else they
20 certainly would have put it on the diagram; you
21 know, everything to scale.

22 Well, what about the entry wound --
23 well, not "wound" but the entry point of the
24 bullet to the Saturn? Did it come in right-to-
25 left, left-to-right, straight? Is it possible

1 to tell? There's been no testimony about that.

2 What about the Durango? What was the
3 entry point there?

4 Would that be helpful to you in making
5 your decision? If it is helpful, why didn't
6 the State call other witnesses? There may be
7 no proof. We will never know.

8 In this case, you also answer the
9 question whether Roger's actions were
10 reasonable. Judge Dennis is going to charge
11 you on self-defense. He will also charge you
12 on the defense of others and defense of
13 habitation.

14 I am going to focus mostly on self-
15 defense. There are four elements of self-
16 defense that the State has to prove in this
17 case:

18 First is that Roger must be
19 without fault bringing on this difficulty. I
20 think the evidence is pretty clear that there
21 was some ongoing dispute between Emmanuel
22 Johnson and Roger Johnson; we don't know as to
23 why the dispute arose, why Carlos came in
24 there, then Roger came in. There's been
25 testimony at all that Roger did anything to

1 provoke the argument. No one said that he made
2 any threats, hit anybody, disrespected anybody.

3 Secondly, that Roger was in imminent
4 danger of losing his life or sustaining bodily
5 injury or that he believed that he was in
6 imminent danger; that a reasonably prudent man,
7 or person, would entertain the same belief.

8 In making that determination, Judge Dennis is
9 going to tell you that someone doesn't have to
10 wait for the other person to get the drop on
11 them. I think Roger put it best, he didn't
12 know if the guy was going to pull a gun and
13 that if he had taken time to look around that
14 he might be the one that was shot. In making
15 that determination, you've heard a lot of
16 evidence about what kind of neighborhood that
17 Ashley Shores is. We know that it is not
18 downtown Charleston, the Battery. It is
19 obviously a rougher area of the county. You
20 heard Yvette Choice and Angela Suitt say that
21 there is gunfire all the time there, that there
22 is nothing unusual about that. You're going to
23 have four or five shell casings that were found
24 kind of off to the side from prior shootings.
25 William Greene testified that's how -- that in

1 that neighborhood that things are different
2 than some other places.

3 Judge Dennis will also tell you
4 that Roger had the right to act on appearances.
5 That means that Carlos did not have to be
6 armed. If he appeared to have a weapon, was
7 reaching for a weapon, that he can act on that;
8 that that belief is reasonable. A lot of cases
9 that we handle, we get cases where a kid uses a
10 water pistol. You know, that is not a real gun
11 but if someone pulls a water pistol out, they
12 can get themselves shot like that because you
13 have the right to act on appearances. You
14 don't want to say, 'Is that a water pistol or
15 is that a real gun?' If you do that, you're
16 dead.

17 In this case, the evidence is disputed
18 whether Carlos was making threats or not.
19 Carlos' family says no, that he wasn't.
20 Roger's family says yes, that he was. There is
21 no physical evidence to support it one way or
22 the other, it's just verbal. You get to decide
23 who you believe.

24 We've heard a lot about statements and
25 seen witnesses sort of get -- got into each on

1 cross-examination about their prior statements.

2 You can consider that.

3 You can also consider how they
4 testified, what kind of demeanor they had.

5 Today we had someone unexpected coming in.

6 Mr. Greene is a fine example of that. Even
7 the first question that I started asking him,
8 he had an attitude with me and I called him as
9 a witness.

10 In judging credibility, I am not going
11 to say that Mr. Greene is the most credible guy
12 in the world, I am not going to say that the
13 police officers made this whole thing up, that
14 they were falsifying anything. I don't know
15 what happened, I wasn't there, the statement
16 wasn't recorded. But if they want to come in
17 and lie, they could have made it a lot bigger
18 lie. They could have said that they saw Carlos
19 with a weapon.

20 Now, Mr. Greene said something that
21 kind of bothered me. He said, you know, 'Mr.
22 Grimes you're not asking the right questions,
23 you're not doing it the right way.' He was
24 probably right, but I ask that you not hold
25 that against Roger.

1 For the longest time in the trial, I
2 was trying to show that there was another
3 weapon was out there. That's why I asked them
4 about gunshot residue; about some of the
5 projectiles, whether they were sent to SLED for
6 testing; why I asked Agent Thrower about the
7 one method that tested the lead. But, you
8 know, Roger was quite honest. He said, never
9 said anything about seeing a weapon.

10 He could have easily come in there and
11 said that there was a weapon, that Carlos'
12 family came and took that weapon. I think that
13 Officer Moore testified that there was one
14 person over the body and he said something
15 about two people -- that he saw Demetria
16 Grant's flip-flops out there, they were in the
17 pictures. His testimony is that she was on the
18 porch. So they very easily could have said,
19 'well, she went up there, grabbed the weapon,
20 took it back to her house, hid it.' The police
21 never searched their house, they never searched
22 the car. We don't know what was in either one.

23 But we are saying that there was a
24 weapon but it kind of reminds me of what Judge
25 Dennis did in jury qualification. You know,

1 someone stood up and said that they have a
2 five-year-old child, and he took their word.
3 You know, Roger could have easily come in and
4 said something like, 'I saw a gun'. William
5 Greene could have said the same thing. Roger
6 Johnson himself said, 'I didn't see the
7 shooting, my back was turned around.' That's
8 his father. His father doesn't want him to go
9 to jail. He was trying to be as honest as he
10 could.

11 Now, Ms. Shealy did a good job on
12 cross examining him, talking about his prior
13 statements that didn't match with his testimony
14 today. Got him flustered. There is one thing
15 that kind of stood out, though, to me. Some of
16 the words that she was asking about, you know,
17 did he say that he would kill you, did he say
18 this, did he say that, if we were in English
19 class I would agree one hundred percent with
20 Ms. Shealy. You know, if you say that you're
21 going to light someone's ass up, that's not
22 saying that you are going to kill somebody.
23 If you've been living in Ashley Shores and you
24 come in there saying that you're going to light
25 someone's ass up, that saying that you're going

1 to kill somebody. I am just asking you to keep
2 the witness' background in mind when you are
3 considering that.

4 Yeah, you saw Roger. He spoke to you.
5 He tried to look everybody in the eye. He
6 didn't take the Fifth Amendment, try to hide
7 behind that. He got up there and you get to
8 judge his credibility. You know, I can't tell
9 you how to judge someone's credibility but
10 that's common sense stuff that you do every
11 day. When you meet someone on the street and
12 they ask you something or tell you something,
13 you size them up right away and decide whether
14 you believe them or not. It is nothing new to
15 you, use your everyday experiences to determine
16 if you believe that Roger is telling the truth.

17 Now, you heard some testimony about
18 the cell phone being shot out of Carlise
19 Grant's hand. That's a little confusing to me.
20 Obviously if a cell phone was shot out of
21 there, I don't know if anyone ever said whose
22 cell phone that it was. Then Yvette Choise
23 comes up and testifies that she took a cell
24 phone off of Carlos' body to call 911, and gave
25 it to the sister. Well, she obviously didn't

1 use the cell phone that was shot.

2 If the cell phone was shot out of his
3 hand, and you've seen some pictures of wounds
4 to his hand but there was no testimony that
5 those wounds came from a bullet.

6 You heard Dr. Collins testify, and she
7 was very thorough. She diagramed all the
8 injuries everywhere. You know, she was looking
9 for gunshot wounds. That's why she thought the
10 elbow might have been a gunshot wound. When
11 she talked about the injuries to the hand she
12 said that it was a "nonspecific abrasion". She
13 didn't say anything about a gunshot wound.

14 On cross-examining William Greene, Ms.
15 Shealy was giving him a hard time about him
16 about not coming forward to the police.

17 But did she give Angela Suitt a hard
18 time about not coming forward to the police?
19 She came forward after William Greene did. I
20 think that she gave her statement on the 20th.

21 What about Emmanuel Johnson? He waits
22 until January of 2007.

23 I am sure that Ms. Shealy is going to
24 argue that Roger is guilty because he ran. She
25 is going to argue that flight is evidence of

1 guilt. Flight can be evidence of guilt, you
2 know. You see people charged like the guy that
3 got charged in Ravened is off to Europe now.
4 To me, I am a defense attorney. I think,
5 'well, he is probably guilty, he ran off and
6 went to Europe.'

7 Roger had never been involved in a
8 shooting before, never fired a weapon. He was
9 scared. I am sure that he wasn't scared the
10 whole nine months, but the State had already
11 made its mind up. Arrest warrants had been
12 issued. They were a hundred percent sure that
13 he'd killed Carlos in cold blood.

14 Now, -- and this is something that
15 Judge Dennis told you during jury qualifica-
16 tion. And I try to do the best that I can but
17 I am sure that when I go back and read the
18 transcript I will say, 'Well, why did I ask
19 that? Why did I do that?' You know, I
20 probably won't feel like I did my best job.
21 Mrs. Shealy and Mr. Simpson have done their
22 job. Judge Dennis has done his job. Mrs.
23 Cross (court reporter) is doing her job.

24 Now it is time for you to do your job,
25 to do the best that you can. It is going to be

1 a hard job. I am confident that if you go back
2 and do the best that you can, consider all the
3 evidence in this case, evaluate the credibility
4 of each witness, whether each witness'
5 statement is corroborated by other witnesses'
6 statements, if they are corroborated by the
7 physical evidence, I think that you will find
8 that Roger is not guilty of murder and that he
9 acted in self-defense on April the 18th, 2006.
10 Thank you.

11 THE COURT: Ms. Shealy?

12 MS. SHEALY: May it please the court?

13 THE COURT: Yes, ma'am.

14 MS. SHEALY: There are sixteen
15 reasons this is a murder and certainly not
16 self-defense.

17 There were sixteen shots in an
18 apartment complex, all from the same gun, the
19 gun given to Roger Parker, "Stinka", by Hard
20 Rock. These sixteen shots clearly show malice.
21 I have to prove to you, the State has to prove
22 to you, that malice was involved for there to
23 be a murder. There is a deadly weapon and
24 there are sixteen shots fired.

25 There are two additional reasons this

1 is a murder and not a case of self-defense, and
2 that's because Carlise Grant was stuck not once
3 but twice with bullets from the deathly weapon
4 that Roger Parker armed himself with when
5 walking into his father's house. One to the
6 shoulder, going back. One to the head, going
7 forward and down.

8 There has been eyewitness testimony
9 that Roger Parker took a stance like this
10 (indicating) and fired the gun, that the injury
11 to his brain.

12 Dr. Collins told you that the injury
13 to his brain, that the injury to his head, was
14 consistent with that bullet. Now she has
15 explained to you that it is hard to tell about
16 the position when the bullet was fired because
17 either the shooter or the victim could be a
18 variety of positions.

19 So not only does Dr. Collins'
20 testimony show you that that is consistent, but
21 you hear it from the victim's mother, Cassandra
22 Ward, that her child was down in the road after
23 having been chased and shot at. That for one
24 final moment of power, Roger Parker takes that
25 weapon and shoots down at a man who is injured.

1 But you know what's interesting? Two
2 witnesses who have absolutely no bias, no
3 reason at all to come in here and say for one
4 side or the other -- Angela Suitt and Yvette
5 Choise. What did Yvette Choise tell you? She
6 sees Roger Parker with the gun down at Carlos
7 when he is down on the ground. There's no
8 question about that.

9 Malice. That's using a weapon in an
10 apartment complex. You have a total disregard
11 for everything and everyone around you. You're
12 going to take that weapon out when there are
13 children who are outside playing? Small
14 children. And you're going to shoot and shoot
15 and shoot and shoot, until the rush is gone?
16 Until the bullets are gone. Malice.

17 Mr. Grimes wants to dispute that
18 Carlos had a cell phone in one hand and his
19 keys in the other. Cassandra Ward tells you
20 that the last posture of her son's body while
21 he was alive, before he starts running for his
22 life, is his hands are up with the keys in one
23 and a cell phone in the other.

24 You are going to have the evidence
25 back in your jury room. You are going to be

1 able to look at that cell phone.

2 What is interesting about that is that
3 John Roberts from SLED, when he asked -- and I
4 don't remember if I asked him, or Mr. Grimes
5 may have asked him the question, or maybe I
6 did. When he was telling you the possible
7 positions of the hands of the victim for his
8 hands to have had so much metal on them, it was
9 likely a defensive position. Why is that so
10 relevant? Because his hands weren't under his
11 shirt. He had already gathered what he needed,
12 his keys, and he was leaving. Leaving.

13 There is another reason that this is
14 murder and not self-defense and that's
15 something that I cannot put a number on, and
16 that is how many people were outside that day
17 in the apartment complex. Roger Parker told
18 you that he didn't take the time to even look
19 at who else was around. He was shooting and
20 shooting and shooting and shooting. He struck
21 a car, the Saturn. He struck a Durango tire.

22 When you go back and you look at this
23 diagram, this is like a canvas. It paints a
24 picture of what happened out there that day.
25 Look at where the shell casings are. He was

1 shooting everywhere. He was shooting towards
2 Carlos. He had complete abandonment for the
3 safety of anybody out there that day. His own
4 friend, William Greene, was down in the dirt
5 trying to take cover.

6 When you are looking back at Dr.
7 Collins' testimony, I want you to take the
8 opportunity to look at the diagram, because not
9 only is it important where the two shots go but
10 it is important how many abrasions there are,
11 and lacerations that there are, where it
12 indicated that it went to the bone, the one to
13 the elbow that looked like it could have been a
14 bullet wound. This guy is balled up, having
15 run for his life away from Roger Parker with
16 that gun. Even Roger Parker told you that he
17 was seeking cover. Carlise Grant was trying to
18 defend himself at that time and tried to duck
19 somewhere so that those bullets wouldn't hit
20 him.

21 Let's revisit the testimony for a
22 moment. We started off with Tony Coreas, the
23 supervisor at work. The reason that he is
24 important -- there are a number of reasons.
25 Number one, he tells you that Carlos has worked

1 that day and he and Carlos are leaving at the
2 same time. The reason that I asked him about
3 what Carlos had on is Carlos was just going
4 over to his sister's house to try to talk to
5 Mr. Johnson after a day at work.

6 But what else that is important about
7 that? Two other things. One was, did Mr.
8 Coreas in any way indicate that Carlos appeared
9 to be upset? That Carlos appeared to be
10 frustrated? That Carlos appeared to be mad and
11 that he was going to go do something? Quite
12 the opposite. He says they'er walking out,
13 they are leaving their day, they shake hands,
14 talk about how it was a successful day, they
15 had so many banquets. That is what Carlos
16 Grant had been doing earlier that day.

17 The other thing that is significant
18 is this: Remember how he told you that how he
19 got home and that by the time he gets in his
20 house that he gets a call from Carlos' mother
21 that Carlos is gone and he thinks that she is
22 teasing him. He cannot believe that in that
23 quick amount of time that Carlos is dead. It
24 was unbelievable to him, so much so that he
25 went over to the scene.

1 The judge will instruct you when we
2 finish our argument about the law and about
3 your role and about how it is each of you that
4 gets to look at the witnesses who come and
5 testify, that you from a variety of walks of
6 life come in and decide who you believe, who
7 you don't believe.

8 Our next witnesses were Carlos' two
9 family members, Demetria Grant and Cassandra
10 Ward. They paint a picture for you of Emmanuel
11 maybe mouthing off at Mr. Johnson; and, frankly
12 he shouldn't have done that but he thought that
13 Mr. Johnson had paid some people to jump him.
14 So Emmanuel was upset with Mr. Johnson, and Mr.
15 Johnson was upset with Emmanuel for using bad
16 language on him and being disrespectful. The
17 problem was between those two.

18 But what else does Demetria tell you?
19 She tells you that Mr. Johnson walked in that
20 house and comes back outside with a metal bat
21 and that he was going to take a swing at a
22 sixteen-year-old for mouthing off at him. And
23 they intervene, she and her mother.

24 Do they threatened Mr. Johnson? No.
25 What did they do? They calmed him down and they

1 send Emmanuel inside.

2 Demetria's flip-flops in the road, I
3 am not sure that I understand what Mr. Grimes'
4 point about that was, but her flip-flops in the
5 road just show you the absolute chaos that
6 happened once everyone learns that Carlos is
7 laying in the road dead. She's out of her
8 shoes. She is screaming, her mother is
9 screaming. It just adds a little more paint to
10 the picture of what happened out there.

11 When you look at Demetria, you're
12 entitled to look at what she does. She's a
13 mother, she has taken Emmanuel in; she had a
14 boyfriend; she was working at Head Start.
15 And what does she do after the shooting occurs?
16 She responds like a mother. Her concern was
17 her own children, she gets them inside.

18 But before we get to the actual
19 shooting with Demetria, remember this, that
20 when they all come outside and they are all in
21 that area -- the two apartments are right
22 beside each other, the are out in the front
23 yard -- when they come outside and see who is
24 getting loud again, what does Roger Johnson do?
25 He takes that bat and he swings it, and he

1 strikes Carlos.

2 What does Roger Parker do? "I've got
3 this, I got this", and that gun comes out and
4 the shooting starts.

5 Now, she doesn't try to tell you that
6 she saw the whole shooting going down because
7 she does respond like a mother and gets her
8 children inside. But what she does tell you is
9 that she was standing so close to her brother
10 that when she sees the fire, the firing of the
11 weapon she thinks "maybe I was shot." Why is
12 that significant? It's significant because
13 Roger Parker is shooting so close to someone
14 else. It shows you malice, it shows you the
15 use of a deadly weapon with no regard to what
16 he strikes.

17 Cassandra Ward. Well, -- back to
18 Demetria for just a second. She indicated to
19 us that she hears Carlos knock on the door.
20 Mr. Johnson tells you that he invites him in.
21 There is absolutely nothing on the part of
22 Carlise Grant that indicates that he was going
23 over there for trouble. He knocks on the man's
24 door. He wants to talk to him, he wants to
25 talk to him about 'When you have a problem with

1 Emmanuel, will you come to an adult? Don't
2 take a bat to a child. Let's let the adults
3 handle it.'

4 Cassandra Ward. She had worked at
5 Head Start for twenty-five years. I tell you,
6 it's rare these days to find someone who has
7 kept the same job for that long. You were able
8 to factor all that in when you looked at her on
9 the stand and you tried to determine her
10 believability. She is mild woman, she is a
11 woman who endured a very, very difficult thing
12 that afternoon. She is a mother that held her
13 son as he lay dead in the road.

14 She described to you what happened,
15 what happened out there earlier between Mr.
16 Johnson and Emmanuel, what happened when they
17 came out of the apartment.

18 Going back to Demetria one more time,
19 for a second, it is also interesting that she
20 tells us that she looked down the road near
21 where William Greene lives and what does she
22 see when Roger Johnson and Virginia Johnson get
23 in that car to get the heck out of there? She
24 hears them say, 'Come on, Stinka' and he gets
25 in the car with them. The apple doesn't fall

1 far from the tree. Roger Johnson and Roger
2 Parker, they flee. They flee when they are in
3 trouble.

4 I don't want to lose sight of the fact
5 that the initial problems that day are not
6 between Roger Parker and Carlise Grant. They
7 were between Emmanuel and Mr. Johnson.

8 Regarding both Angel Suitt and Yvette
9 Choise, let's take Yvette Choise first. She is
10 the one -- and you will have all of these
11 photographs in the back with you. She is the
12 one that if you're standing at the Johnson and
13 Grant's apartment building, she lives over here
14 behind the tree. She starts hearing some loud
15 noises and she walks outside. The first thing
16 that she sees is the Whack! Of the bat on
17 Carlos. Now, remember, she's friends with Mr.
18 Parker's family members. She didn't even know
19 Carlos Grant. She came in and she told you
20 that the first acts of violence that happened
21 that night, that afternoon was with this bat
22 and Carlos Grant. She told you how he took
23 this bat and how he swung it.

24 But what else is important is, did she
25 hear any threats -- any threats made on the

1 part of Carlos Grant? No. These threats that
2 they are telling us about, they are telling us
3 about them today. "I am going to close down
4 Ashley Shores." I never heard that before.

5 What else does Yvette tell us? She
6 tells us about the posture of Roger Parker when
7 he shoots Carlos Grant when he is down. She had
8 absolutely, absolutely, no reason to come in here
9 and tell you that if it were not true. You can
10 remember her demeanor. She didn't act like she
11 was very happy to be here. In fact, I think that
12 I may have asked her that. She didn't want to
13 come. She didn't want to put herself in all of
14 this. But she came in and she told you because
15 that's what she saw. Then what did she see? She
16 sees Mr. Parker going down the street, still
17 shooting.

18 Angel Suitt. The woman had just gotten
19 home from work, she'd let her child outside and
20 they were playing. Where were they playing?
21 They were playing in front of Mr. Johnson's and
22 Mr. Parker's apartment. She tells you that she
23 hears the shot and she comes outside. And what
24 does she tell you? She sees Roger Parker
25 standing where Carlos was on the ground. Then he

1 starts walking down the street. I think she
2 actually tells us that she doesn't know exactly
3 who it is. She sees a man who is standing to
4 where Carlos is on the ground and he turns and he
5 walks down the street.

6 She told us that her instinct, as a
7 mother, was to get those kids out of the way.
8 They start scurrying off and running. Again, Mr.
9 Parker with that weapon, those kids were so close
10 to where Stinka was, so close to where that
11 Saturn was, and so close to where Mr. Parker
12 (sic) was shot -- Mr. Grant was shot.

13 The other thing that Yvette Choise
14 told us was that when she saw him shoot, when
15 she saw Stinka shoot that she yells out to him,
16 "Don't shoot again! Stinka, don't shoot
17 again!" This is terror on that street.

18 She does tell us that she gets a cell
19 phone off of Mr. Grant and uses it. But
20 remember what Tony Coreas told us. He had two
21 cell phones, because he had the one that he had
22 at work that they gave to the supervisors, and
23 you're on-call when you're in a supervisory
24 position.

25 You can get a mental image of Carlos

1 Grant running, running for safety, because
2 Roger Parker was hunting him down like a dog.

3 The officers came in and testified.
4 We had the officers, the first responding
5 officer, the officers who interviewed people,
6 the crime scene technicians that came in and
7 collected evidence. They weren't jumping to
8 any conclusions. When they looked up and saw
9 -- and you will have those pictures that we
10 have -- the window that had been struck with
11 something, they wanted to see if that had been
12 involved with that afternoon's activity. They
13 called the fire department to come out. They
14 get a search warrant. They go to Mr. Johnson's
15 home, they get his bat. They go upstairs to
16 look and see was there anything else going on
17 that we need to know about. They saw no broken
18 glass, no projectiles.

19 Todd Morgan, who came out and mapped
20 the whole scene. You will have this (exhibit)
21 back there with you. As he indicated to you,
22 this shows you what is where. You can see the
23 shell casings, the spent projectiles. We had
24 some of the officers testify about the whole
25 shell casing and projectile, and what happens

1 with shell casings after you shoot. You can
2 see that [REDACTED] was littered with shell
3 casings and spent projectiles.

4 We have already discussed John
5 Roberts' testimony, the SLED agent who told us
6 that was gun powder residue on the hands; and
7 what is interesting about that is that there
8 was so much that it was consistent with being
9 shot at and not shooting; the likely position
10 of Carlos Grant when those metals got on his
11 hands.

12 You also are going to have the
13 opportunity to evaluate the credibility of the
14 Defendant's witnesses. William Greene. You
15 saw his demeanor when he was testifying. He
16 was winking at the Defendant and counsel when
17 he was talking to them. He doesn't remember if
18 he had that conviction for grand larceny. You
19 can judge whether or not he was believable.

20 Roger Johnson. Wow! Sure were a lot
21 of threats that neither he nor his attorney
22 felt were necessary to be in that statement. I
23 will tell you why -- because he didn't tell his
24 attorney that, he didn't tell the investigator
25 that, because it did not happen. They have had

1 since April the 198th, 2006, to create all this
2 stuff about all these threats. If there were
3 any threats, why didn't Roger Parker do what a
4 reasonable person would do and call the police
5 after this supposed cell phone conversation
6 that he overheard? Why didn't Mr. Johnson call
7 the police when he went into his house?

8 You are asked to judge this case on
9 what a reasonable person would do. You saw
10 Roger Parker's face, he completely turned
11 toward you'all. You can decide whether or not
12 he was talking to the police, you decide
13 whether in any way you believe that he feared
14 for his life that night or that he feared for
15 his father's life. The only two biased people
16 on April 18th, on South Casway Lane, were Roger
17 Johnson and his son, Roger Parker.

18 Carlos never indicated to anyone that
19 he had a gun, that he was coming with a weapon,
20 that he had a weapon anywhere. Never.

21 No one said that Carlos Grant pulled
22 out a weapon or said that he was going to get
23 weapon or anything like that.

24 The violent ones were the ones with
25 bats and the nine millimeter. Those were the

1 ones who were violent.

2 The judge, when I finish up, is going
3 to instruct you'all as to what the law is
4 because you are going to apply the facts, as
5 you find them, to the law. Mr. Grimes has
6 mentioned self-defense. The judge will explain
7 to you when self-defense is appropriate. For
8 self-defense to be appropriate, the defendant
9 must be without fault in bringing on the
10 difficulty. He was with fault in bringing on
11 this difficulty. He didn't call the police, he
12 walked outside, he gets from one of his fellows
13 a loaded weapon and goes over to his father's
14 house. The defendant must have been in actual
15 imminent danger of losing his life or
16 sustaining serious bodily injury or he must
17 have actually believed that he was in imminent
18 danger of losing his life or sustaining serious
19 bodily injury. There is nothing in this record
20 that would suggest to you that Roger Parker
21 thought his life was in danger; that Roger
22 Johnson thought his life was in danger.

23 Remember what Cassandra and Demetria
24 said: Carlos Grant was leaving. He was
25 leaving. He came out there to talk and they

1 kept arguing with him and he was leaving.

2 Emmanuel Johnson told you the same thing.

3 Was the defendant acting like a
4 reasonably prudent person of ordinary firmness
5 and courage when a reasonable person would have
6 believed that their life was in danger? He
7 wants to explain it, 'Oh, uh, I was just out in
8 Ashley Shores'. Would a reasonable person
9 believe, based on the testimony in this case,
10 that they were in danger of losing their lives?
11 And would a person who was defending someone
12 shoot out onto a street with other people, and
13 shoot, and shoot, shoot, and stand over the
14 victim and shoot?

15 You will be asked to look as to
16 whether the defendant had any other probable
17 means to avoid the danger. Absolutely!
18 Absolutely. He didn't need to go out there and
19 get this nine milliner from Hard Rock, no-
20 Government-name. Nothing, nothing mandated
21 that. He had a phone, obviously he could have
22 called the police. If he preferred the
23 Johnson's house, they could have called the
24 police. They chose not to.

25 It is an unfortunate thing that when

1 holding one of these things -- he grabbed it
2 from his fellow and goes down there and
3 shooting someone makes you feel powerful, it
4 gives you a rush, like playing video games?
5 It's ridiculous.

6 You will have all of the pictures, you
7 will have all of the evidence back in the back
8 with you. You see that the blood on the Saturn
9 is Carlos Grant's blood. Look at where the
10 blood spatter is, completely consistent with
11 having been shot, blood gushing, gushing as you
12 are running for your life. You are running so
13 fast, you're running so far that you fall, not
14 once but twice. While laying down there, shot,
15 this man -- this man, who chooses to resolve
16 conflicts about respect with a nine millimeter
17 shoots you right in the head.

18 He wasn't defending his father.

19 He wasn't defending himself.

20 He wasn't defending his home.

21 He was enjoying the rush.

22 There is absolutely no evidence of any
23 violent attempts on the part of Carlise Grant,
24 no hostile acts on the part of Carlise Grant.

25 Thank you.

1 THE COURT: Ladies and Gentlemen,
2 that concludes now the closing arguments. It
3 now becomes my responsibility as the judge of
4 the law to give you the law which, of course,
5 you have promised that you will accept and
6 apply fairly and impartially to those facts
7 that you will determine very shortly when you
8 begin your deliberations to decide this case.

9 Each of you is expected to evaluate
10 and determine the effect, the value, the weight
11 and the truth of the evidence. To that extent
12 and of course when you do that, Mr. Parker and
13 the State have a right to expect that -- once
14 you do that, you conscientiously do that and
15 you apply the law, then from that end the
16 parties in this matter, the State and Mr.
17 Parker, will obtain a fair and impartial
18 determination. That's what we talked about
19 when we started.

20 You were selected to apply your common
21 sense, your sense of logic and reasoning.
22 Everyone expects that you will do that, very
23 shortly.

24 Now, during this instruction you may
25 hear me use, in referring to Mr. Parker, the

1 term "defendant." "Defendant" is typically a
2 term that we use to designate a party. A
3 defendant is simply the party against whom a
4 claim is made. In this case, that is Mr.
5 Parker. It has no other meaning or
6 significance. You're not to imply anything
7 from that term. Please understand that if I
8 use that word that I am referring to Mr.
9 Parker.

10 As I mentioned to you when we started,
11 he is accused by the document I hold in my
12 hand. It is what it appears to be to you, it
13 is a piece of paper. It's called an
14 "indictment". It will not accompany you to
15 your jury room because it is not evidence.
16 By this accusation, he is accused of committing
17 the offense of, with malice aforethought,
18 killing of Carlise Grant by shooting him. That
19 occurred, allegedly, on April 18th, 2006. That
20 as a result of the shooting that Mr. Grant
21 died.

22 To that indictment, Mr. Parker has
23 rendered a plea of not guilty, which places
24 then upon the State the burden of proving his
25 guilt beyond a reasonable doubt.

1 As you will recall, I mentioned to you
2 when I was qualifying you that persons accused
3 of committing a criminal offense, such as Mr.
4 Parker here today, those persons are never
5 required to come in and prove themselves
6 innocent. They are not required to prove
7 anything at all because the law says that you
8 must presume that the party accused is
9 innocent. That presumption is an active
10 presumption. It remains throughout and it is
11 removed only when and if, after considering the
12 evidence, you are persuaded that the State has
13 established guilt beyond a reasonable doubt
14 before that may be removed. That is true of
15 Mr. Parker, it is true of everyone. The only
16 party that has a burden of proof is the State.

17 I mentioned to you that the State has
18 to prove the elements beyond a reasonable
19 doubt. What is a reasonable doubt? A
20 "reasonable doubt" is a doubt which would make
21 an honest, sincere, conscientious juror who is
22 searching for the truth in a case to hesitate
23 to act.

24 Now, proof beyond a reasonable doubt
25 is proof that leaves you firmly convinced of

1 the defendant's guilt. I would further
2 instruct you that there are very few things in
3 this world, in this life, that we know with
4 absolute certainty. In criminal disputes such
5 as this, the law does not require proof that
6 overcomes every possible doubt.

7 If based on your consideration of the
8 evidence you are firmly convinced that the
9 defendant in this case, Mr. Parker, is guilty
10 of the crime charged, then of course you must
11 return a verdict of guilty.

12 If, on the other hand, you feel that
13 there is a possibility that he is not guilty,
14 then you must give him the benefit of that
15 doubt and return a verdict of not guilty.

16 A reasonable doubt may arise from the
17 evidence which is in a case or from the lack or
18 absence of evidence in a case. It is up to you
19 to determine whether or not a reasonable doubt
20 exists to this defendant's guilt.

21 I charge you, Ladies and Gentlemen, in
22 that regard that he is entitled to every
23 reasonable doubt arising in the whole case.
24 That simply means this: if upon any issue of
25 fact that is essential to a conviction and a

1 verdict of guilty you should have a reasonable
2 doubt as to how that issue should be resolved,
3 I would instruct you that it would be your duty
4 to resolve that reasonable doubt in favor of
5 Mr. Parker.

6 Now, Ladies and Gentlemen, in these
7 types of dispute there are two types of
8 evidence that you may consider. Quite often
9 you have both in a given case, it is not
10 necessary that you have but you can have and
11 most of the time you do have. One is called
12 direct evidence and the other indirect.
13 Another name for "indirect" is circumstantial
14 evidence.

15 Direct evidence, as that name would
16 imply, is generally dealing with evidence which
17 deals with one's sensory perception: 'I saw
18 something', 'I heard something', or the like.
19 If you believe that beyond a reasonable doubt,
20 then of course that would establish that
21 particular fact or circumstance.

22 Circumstantial evidence is really when
23 you consider a number of circumstances that
24 when linked point to some other fact, or even
25 the commission of a crime. Again, if you

1 believe all of those circumstances beyond a
2 reasonable doubt, if you believe that is -- if
3 you reach that conclusion beyond a reasonable
4 doubt, then it has established that particular
5 fact or circumstance.

6 Our law makes absolutely no
7 distinction between the weight or the value to
8 be given to direct or circumstantial evidence,
9 nor is there any greater degree of certainty
10 required of circumstantial evidence than direct
11 evidence. Rather, are instructed to weigh all
12 the evidence in the case and decide what you
13 find to be credible and believable and what you
14 find to be beyond a reasonable doubt, as
15 established by that evidence.

16 I would charge you in that connection,
17 however, that the mere fact that a circumstance
18 is brought out in a case that is strongly
19 suspicious of guilt or the circumstances are
20 such that one's guilt is probable, that is not
21 enough. The defendant's guilt in this type
22 case must be more than probably guilty or more
23 than suspicious. It has to be proof that
24 convinced you beyond a reasonable doubt of his
25 guilt.

1 Now, you know that the evidence
2 consists of the testimony of the witnesses and
3 exhibits, nothing else. Please remember that.
4 Remember my discussion with you earlier during
5 the trial that generally rulings on matter of
6 law, which were taken up out of your hearing,
7 and there were certain occasions when you heard
8 one of the attorneys, or the other, make an
9 objection and I ruled. I usually sustained the
10 objection or I overruled the objection.

11 Probably the greatest example that I could
12 give to you or how you and I work together is
13 really contained in one of those rulings. In a
14 situation where I overruled the objection and
15 allowed the question to be asked or the witness
16 to answer, it is my responsibility to make
17 determinations on matters of law as to a
18 question. Generally we are applying the rules
19 of evidence. If I overruled an objection, I
20 made a determination that it was proper
21 pursuant to those rules. That's as far as it
22 goes.

23 Now it shifts to you and you decide
24 whether you believe it or not and, if so, how
25 strongly you believe it. By that I mean, for

1 instance in any of my rulings you should think,
2 'Well, the judge allowed it. I have to believe
3 it.' If so, then you've let me step over into
4 your area of responsibility. It has nothing to
5 do with that. Likewise, if I excluded evidence
6 from your consideration, you shouldn't infer
7 anything from that either. If you do, then
8 you've stepped over into my area of
9 responsibility.

10 Rather, we work together. You
11 consider that evidence presented in the
12 courtroom and you presented that evidence and
13 evaluate that evidence and find what you
14 believe to be credible and believable.

15 Remember, the attorney's remarks are
16 not to be considered evidence. If you've
17 heard an attorney's remark, either in opening
18 statement or closing arguments, which differs
19 from your recollection of the evidence,
20 remember that you are the sole judge of the
21 facts in this dispute. You are to go with your
22 recollection.

23 Now, I would remind you -- let's talk
24 about your notes again. If there is a dispute
25 about what a witness said or didn't say and you

1 can't resolve that to your satisfaction, please
2 remember that the person who is keeping the
3 actual record in this case is Mrs. Cross. We
4 can replay that for you, should that become
5 necessary. But I would remind you that you and
6 you alone are the sole finder of the facts.

7 Likewise, if an attorney's remarks
8 should differ from any instruction that I give
9 you during this charge, you are to disregard
10 their remark(s) and take the instruction as I
11 give it to you, because for the purposes of
12 this dispute I am the sole judge of the law.

13 Now, how does one decide what they
14 find to be credible and believable? You all
15 know that. You've done it many, many times in
16 your lives. We do it every day of our lives,
17 most probably. Most of the time it is a
18 subconscious process. But it is clearly a
19 process with which you are familiar. You apply
20 your life's experiences, your common sense,
21 your sense of logic and reasoning, and make a
22 decision.

23 For you see, Ladies and Gentlemen,
24 that you have to evaluate all of witnesses
25 because the fact that testimony in a case is

1 not contradicted directly wouldn't necessarily
2 render that testimony undisputed, because there
3 is always and would always remain the inherent
4 credibility, believability of what one is
5 saying. That is precisely what you decide.

6 There are many factors that one may
7 consider in making this type of decision. I
8 am going to discuss several factors that you
9 may want to consider but if I don't mention a
10 method or factor that you have used in your
11 life, that you have found it to be reliable,
12 please use it when you begin your delibera-
13 tions, because that is exactly what you are
14 expected to do.

15 Some of the factors that one may want
16 to consider:

17 One would be the appearance of the
18 witness. How did they appear to you?
19 Straightforward or hesitant in answering
20 questions?

21 Was the testimony of a witness
22 consistent or was it inconsistent?

23 Was it strengthened or weakened by
24 other evidence in the case.

25 How did a witness come to know the

1 facts that he or she testified to, and what was
2 the ability of that witness to know those
3 particular facts and circumstances?

4 Was there a reason for them to
5 give testimony that would be beneficial to one
6 side or the other, or detrimental to one side?
7 In other words, was the witness biased or
8 prejudiced in any way?

9 There was also testimony during the
10 trial of this case concerning a prior
11 conviction. I would tell you that the only
12 purpose for which you may consider that
13 testimony is in evaluating the credibility of
14 that particular witness. I would instruct you
15 that the fact that a person may have a prior
16 conviction does not necessarily render
17 testimony believable or unbelievable. It is
18 just simply a fact that you consider with all
19 other facts in determining whether or not you
20 believe or not for certain, and assess the
21 weight or value given to that particular
22 testimony.

23 In making this decision, our law gives
24 you extremely broad discretion. For, you see,
25 you have the right to believe many witnesses

1 against one; one witness against many. You
2 have a right to believe all of a witness'
3 testimony, parts of a witness' testimony or
4 none of a witness' testimony. Now, of course
5 you don't make those decisions arbitrarily but
6 if there is a reason in the record of this case
7 for taking that position -- and when I say the
8 record of this case, I mean testimony of the
9 witnesses and exhibits that you will be
10 considering. You have that prerogative because
11 your mission, your task, the promise that you
12 made when you started this was that you would
13 decide this case considering all the evidence
14 and would consider all the evidence to make
15 that determination.

16 Now, while you have very broad
17 latitude with respect to the credibility and
18 believability of witnesses, what you find to be
19 credible and believable, remember that you
20 don't enjoy the same with the law.

21 During qualification, you will recall
22 that I asked you the question about whether or
23 not you had a driver's license, a Highway
24 Department identification card, or a voter's
25 registration. I knew that you did but I asked

1 the question. Why? Because the law says that
2 I have to, notwithstanding that I -- I think
3 'okay, that's fine', but that's probably the
4 best example that I can give to you. I have my
5 own personal feelings about that, but that
6 doesn't change what I do. Why? Because it is
7 the law, and I took an oath just like you did
8 to follow the law and apply that law fairly and
9 impartially, just like you did. Notwithstanding
10 your personal opinions, you've promised the
11 parties that you will set those aside, that you
12 will take the law as I give it to you, accept
13 that law, and apply that law to the facts that
14 you determine. I am confident that you will do
15 that.

16 Please remember something. The order
17 of my instruction means absolutely nothing. I
18 had to put it in some order. The fact that I
19 gave you an instruction on a particular issue
20 is certainly not to suggest or to be considered
21 by you as a suggestion or an indication of how
22 you are to resolve the factual issues. That is
23 your job, that is your responsibility.

24 Let's look now at the charge contained
25 in the indictment. I mentioned to you that Mr.

1 Parker is accused of committing the offense of
2 Murder. I would like to talk with you a moment
3 now about murder. Section 16-3-10 of our South
4 Carolina Code of Laws defines "murder" as the
5 "killing of any person with malice afore-
6 thought, either express or implied."

7 The State must prove beyond a
8 reasonable doubt that Mr. Parker killed another
9 person with malice aforethought.

10 "Malice" is hatred, ill will,
11 hostilities toward another person. It is the
12 intentional doing of a wrongful act without
13 just cause or excuse and with an intent to
14 inflict an injury under the circumstances that
15 the law will infer an evil intent. Malice
16 indicates a formed purpose and a desire to do a
17 wrongful act under circumstances that would
18 exclude any legal right to do it.

19 The use of a deadly weapon permits you
20 to infer malice but it does not require you to
21 infer malice. If facts are proved beyond a
22 reasonable doubt sufficient to raise an
23 inference of malice to your satisfaction, this
24 would be simply an evidentiary fact to be taken
25 into consideration by you along with all other

1 evidence in this case and you may give it such
2 weight as you find that it should receive. You
3 are free to accept or reject a permissive
4 inference depending on your view of the facts.

5 Further, there must be malice
6 aforethought, which means that the malice must
7 have been conceived in the mind of the
8 defendant prior to the act accusing the fatal
9 result. The word "aforethought" is used or
10 understood to refer to the time that the evil
11 is conceived. The law does not require,
12 however, that malice must exist for any
13 appreciable time before the commission of the
14 acts. It may be conceived at the very moment
15 in which the action is taken which results in
16 the death of another.

17 If malice is present in the mind of
18 one doing the killing, it is considered to be
19 malice aforethought.

20 Reasonable doubt. If you have a
21 reasonable doubt after considering all of the
22 evidence, including any evidence of self-
23 defense, then you must find the Defendant not
24 guilty.

25 On the other hand, if you have no

1 reasonable doubt of the Defendant's guilt after
2 considering all the evidence, including the
3 evidence of self-defense, then you must return
4 a verdict of guilty.

5 The following elements are required to
6 establish self-defense:

7 First, the defendant must be
8 without fault in bringing on the difficulty.
9 The defendant's conduct -- if the defendant's
10 conduct was of the type that was reasonably
11 calculated to, and did, provoke a deadly
12 assault, the defendant would be at-fault in
13 bringing on the difficulty and would not be
14 entitled to an acquittal based on self-defense.

15 The second element of self-defense
16 is that the defendant was actually in imminent
17 danger of death or serious bodily harm, or that
18 the defendant actually believed that he was in
19 imminent danger of death or serious bodily
20 harm.

21 If the defendant was actually in
22 imminent danger, it must shown that the
23 circumstances would have warranted a person of
24 ordinary firmness and courage to strike a fatal
25 blow or to have fired a fatal shot to prevent

1 death or serious bodily injury to himself.

2 If the defendant believes that he was
3 in imminent danger of death or serious bodily
4 harm, it must be shown that a reasonably
5 prudent person of ordinary firmness and courage
6 would have had the same belief.

7 In deciding if the defendant was or
8 believed that he was in danger of imminent
9 death or serious bodily injury, you should
10 consider all the facts and circumstances
11 surrounding the crime, including the physical
12 conditions and the characteristics of the
13 defendant, the victim and any other
14 circumstances which you find pertinent and
15 germane in considering all the evidence in this
16 case.

17 I would further instruct you that the
18 defendant does not have to show that he was in
19 actual -- actually in danger. It is enough if
20 the defendant believed that he was in imminent
21 danger and a reasonably prudent person of
22 ordinary firmness and courage would have had
23 the same belief.

24 The defendant has the right to act on
25 appearances, even though the defendant's

1 beliefs may have been mistaken. It is for you
2 to decide whether the defendant's fear of
3 imminent danger of death or serious bodily
4 injury was reasonable and would have been felt
5 by an ordinary person in the same situation.

6 I would further instruct you, Ladies
7 and Gentlemen, that words accompanied by
8 hostile acts may, depending on the circum-
9 stances, establish self-defense. Threats made
10 by the victim may be considered in determining
11 whether the defendant actually was or believed
12 that he was in imminent danger.

13 The final element of self-defense
14 is that the defendant had no other way to avoid
15 the danger of death or serious bodily injury
16 and, thus, to act as the Defendant did in this
17 particular instance.

18 I would further instruct that if the
19 defendant was on his own premises, that the
20 defendant had no duty to retreat before acting
21 in self defense.

22 Also, a person cannot be required to
23 make an exact calculation as to the degree of
24 force which would be needed to avoid death or
25 serious bodily harm. Therefore, in self

1 defense a defendant has the right to use the
2 force needed to avoid death or serious bodily
3 harm. The force used in self defense does not
4 have to be limited to the degree or the amount
5 of force used by the victim. The defendant has
6 the right to use as much force as appears to be
7 necessary for the complete self-protection,
8 which a person of ordinary reason and firmness
9 would have believed to be necessary to be used
10 to prevent death or serious bodily harm.

11 If the defendant is justified in
12 defending himself or others, and in firing the
13 first shot, then the defendant is also
14 justified in continuing to shoot until it is
15 apparent that the danger of death or serious
16 bodily harm has completely ended.

17 Also, under the law of self defense,
18 the defendant may take another's life in
19 defense of others. The right to intervene to
20 protect another person is subject to the same
21 rights and limitations that I've just discussed
22 with you. The defendant may take the life of a
23 person who assaults a friend, relative or
24 bystander if that friend, relative or bystander
25 has the right of self-defense for himself or

1 herself.

2 To show that the person being defended
3 has the right of self-defense, of course it
4 must be shown that that person being defended
5 was without fault in bringing on the
6 difficulty. If the conduct of the person
7 defended -- or the threat to the defendant was
8 reasonably calculated to, and did, provoke a
9 deadly assault, a person would be at-fault in
10 bringing on the difficulty and would not have
11 the right of self defense. Therefore the
12 defendant would not have the right to use
13 deadly force in defending such person who was
14 guilty of being at-fault in bringing on the
15 difficulty.

16 The defense of another is excusable
17 if the defendant had reasonable grounds to
18 believe, and in good faith did believe, that
19 the person he was defending was in imminent
20 death or serious bodily harm. In deciding
21 whether that person was, or the defendant
22 actually believed was, in imminent danger, you
23 should consider all the facts and circumstances
24 surrounding the crime, just as you do in this
25 claim of self defense, including the physical

1 conditions and characteristics of the parties.

2 Ladies and Gentlemen, the Defendant
3 has offered evidence of having acted in defense
4 of habitation. I charge you that defense of
5 habitation is a complete defense to the charge
6 of murder. I charge you that in deciding
7 whether the defendant is guilty or not guilty,
8 the State has the burden of proving beyond a
9 reasonable doubt that the Defendant did not act
10 in defense of his habitation. In other words,
11 if you have a reasonable doubt about whether
12 the Defendant was acting in defense of his
13 habitation, you must resolve that reasonable
14 doubt in favor of Mr. Parker.

15 There are two elements required by law
16 to establish a defense of habitation. First,
17 there must be evidence that the victim
18 committed a trespass. "Trespass" is defined by
19 Section 16-11-20 of our Code of laws as "a
20 person who refuses to leave the premises of
21 another after being asked to leave." If they
22 do not leave after being asked to leave, then
23 that would constitute a trespass.

24 Secondly, there must be evidence that
25 shows that the means of ejectment were

1 reasonable under the circumstances. I further
2 charge you that the defense of habitation is
3 not required that the defendant reasonably
4 believed that he was in imminent danger of
5 sustaining death or serious bodily harm, unlike
6 the defense of self-defense, -- this, again,
7 deals solely with the defense of habitation.
8 In other words, the defense of habitation
9 provides that when one attempts to force
10 himself into another's dwelling, the law
11 permits an owner to use reasonable force to
12 expel that trespasser.

13 Ladies and Gentlemen, you are not
14 advocates for the parties, you are not
15 advocates for either side. You don't have any
16 friends or enemies in this process. There is
17 no one to reward, nor to punish. That doesn't
18 have anything to do with being a judge in this
19 situation. You've taken an oath to be a fair
20 and impartial judge of the facts in this case.

21 In doing so, one of the requirements
22 that I think applies to you and applies to me
23 is that in our decision we can never be
24 motivated or be influenced by human emotion.
25 We have to set it aside, it has no place in

1 this process. We have to be very careful and
2 deliberate to set aside human emotion to
3 carefully perform the tasks assigned to us.
4 That is what you will do in just a moment, I
5 am confident.

6 When you go back, apply your common
7 sense, your sense of logic and reasoning fairly
8 and impartially analyzing and assessing the
9 evidence, decide the true facts, take the law
10 as I give it to you -- as I have given it to
11 you -- and apply that law fairly and
12 impartially to those facts and then report your
13 decision.

14 Mr. Presiding Juror, to assist in
15 reporting that decision, I have prepared a
16 verdict form which I will send back with the
17 evidence for you to use. I would like to
18 discuss it now with you and the other jurors.

19 You will note that there are two
20 choices. The order of the choices means
21 absolutely nothing. I had to put them in some
22 order.

23 The caption is of no significance to
24 you, that is simply to facilitate the filing of
25 the document.

1 It says, "As to Indictment 07-GS-10-
2 4293", and that is the indictment number of
3 this case which charges Mr. Parker with the
4 offense of murder, "We, the jury, find the
5 Defendant" -- the first choice is guilty of
6 murder or not guilty.

7 What will you be saying? Let's talk
8 about that, but again I am not suggesting
9 either one -- I just want to discuss it with
10 you.

11 Obviously if you find him guilty of
12 murder, then you will have considered the
13 evidence and each one of you, twelve to zero,
14 -- that's the vote, it has to be unanimous,
15 have concluded that the Defendant -- that the
16 State has proved beyond a reasonable doubt that
17 Mr. Parker, with malice aforethought, killed
18 the victim in this case. That being your
19 decision, having considered all the evidence
20 required of the State, including disproving the
21 defense of self defense and disproving the
22 defense of habitation. If that the case, then
23 that would be your verdict and I would ask you
24 to please check the line provided, and if you
25 would also circle it so that we can be certain

1 that is your choice. Sign it, and that will
2 complete the form.

3 Now, what if it is "not guilty"?
4 What does that mean? Simply this: In your
5 analyses of the evidence, either you are not
6 convinced beyond a reasonable doubt that the
7 State has met its burden of proof in
8 establishing that the Defendant committed the
9 offense of murder, in that it failed to
10 establish those elements required which I
11 discussed with you -- the killing of another
12 with malice aforethought.

13 Or, you are not convinced beyond a
14 reasonable doubt that they disproved self-
15 defense or the defense of habitation.

16 Because if it is one, any one of those
17 that I have discussed, you must return a
18 verdict of not guilty, because the State has to
19 prove each element, including disproving self-
20 defense and the defense of habitation.

21 Whatever your verdict, that it is all
22 of you, every one -- and I know that you're
23 anxious to get started, and you're almost to
24 that point. I mentioned to you that the last
25 instruction that I would give to you before you

1 retired is when you may start. As you have
2 already seen and observed in this proceeding,
3 I have to excuse you to discuss matters of law.
4 I've got to discuss my charge now with the
5 attorneys. In order to do that, I need to
6 excuse you from the courtroom.

7 If there are any additions or
8 exceptions or clarification that need to be
9 given, then I will return you to the courtroom
10 to further instruct you.

11 If there aren't any additions or
12 exceptions, then we will gather the exhibits,
13 deliver them to you.

14 When you receive your exhibits, then
15 you may begin your deliberations. The only
16 restriction on the deliberation is this: if at
17 any time any juror has to leave the table, for
18 any reason, you must stop deliberating until
19 all twelve of you are together. Other than
20 that, you proceed as you deem fit and proper.

21 I want to thank you again for your
22 attention throughout this case. It is an honor
23 to serve with each one of you. I ask you now
24 to -- well, before I do that.

25 Alternate jurors. The first twelve

1 of you selected, is there any juror that feels
2 that they would be unable to continue? If so,
3 raise your hand. (No response). Thank you.
4 No hands were raised.

5 At this point when you exit the
6 courtroom, I am going to ask that the
7 alternates not return to the jury room. They
8 will take you to another room. If we need to
9 bring the jury back, we will bring you back, as
10 well. If there aren't any exceptions, then I
11 will come in and speak to you as to how long
12 that you need to remain with us, but please do
13 not rejoin the jury in their jury room.

14 Thank you again. Retire to your jury
15 room and please await the exhibits before
16 commencing your deliberations.

17 (JURY OUT @ 5:25 P.M.)

18 THE COURT: Any exceptions or
19 additions from the State?

20 MS. SHEALY: No, sir, Your Honor.

21 THE COURT: Any exceptions or
22 additions from the Defendant?

23 MR. GRIMES: Two, Your Honor.

24 THE COURT: Yes, sir?

25 MR. GRIMES: As to the charge ---

1 COURT REPORTER: Sorry?

2 THE COURT: Slow down.

3 MR. GRIMES: I'm sorry. As to the
4 charges seven, eight and nine that were in my
5 packet that dealt with charges of protection of
6 persons or property, I would ask that ---

7 THE COURT: Other than that, is that
8 the only exception?

9 MR. GRIMES: I did have a small
10 exception on the self-defense ---

11 THE COURT: Okay.

12 MR. GRIMES: I believe that you used
13 the word "victim" about three times in
14 describing Mr. Grant. I believe that violates
15 the presumption of innocence. I would want to
16 clarify that the victim -- that -- the charge
17 talks about "victim" and the ---

18 COURT REPORTER: Your Honor, ---

19 THE COURT: Mr. Grimes, you need
20 to slow down. You need to slow down for the
21 record, ---

22 MR. GRIMES: There was one charge
23 that defined -- that you referred to the
24 "victim". And there was another charge that
25 discussed the force needed, that appeared to be

1 necessary and "victim" was used in that charge.
2 There was another charge where the term
3 "victim" was used, but I don't recall which one
4 that it was.

5 THE COURT: Do you have any case law
6 that supports that position?

7 MR. GRIMES: No, sir.

8 THE COURT: Thank you, sir. That
9 charge is one that has been developed and used
10 by our courts since -- prior to Judge Floyd
11 leaving and Judge Cleary leaving, I think it
12 was in 2000, they are the ones who drafted that
13 charge. That's the charge that we have been
14 giving and I think that it is given across the
15 state. Do you (Ms. Shealy) wish for me to
16 clarify that?

17 MS. SHEALY: No, sir.

18 THE COURT: I don't think "victim"
19 applies. Do you want me to bring them back and
20 focus attention on that? I'll be happy to do
21 that.

22 MR. GRIMES: No, sir.

23 THE COURT: And tell them that they
24 are not to imply or infer anything from
25 "victim", that I used that -- I could say "the

1 deceased person".

2 MR. GRIMES: Right.

3 THE COURT: I don't know how else
4 you would refer to somebody. What would you
5 suggest that I call him? Do you want me to
6 call him the perpetrator?

7 MR. GRIMES: No, sir. If you could
8 use the term "decedent", we wouldn't object to
9 that.

10 THE COURT: That's fine. Do you
11 want me to call them back and say that when I
12 used the term "victim" that "you are not to
13 infer anything from that", that I was referring
14 to the person deceased, or the decedent?

15 MR. GRIMES: (No response).

16 THE COURT: I will be happy to do
17 that.

18 MR. GRIMES: Yes, sir.

19 THE COURT: Okay. Bring the jury
20 back, please, and the alternates. Thank you.

21 (JURY IN @ 5:30 P.M.)

22 THE COURT: Thank you, Ladies and
23 Gentlemen. First of all, I would remind you to
24 consider the charge as a whole. Don't put
25 focus on any one part. What I am about to

1 share with you is to be added and considered
2 with all other aspects of my charge.

3 During my charge, I may have used the
4 term "victim". The only purpose of using that
5 term was to designate or to identify Mr. Grant.
6 It in no way is to infer -- you are not to
7 infer anything by the use of that term
8 whatsoever. We are talking about the deceased
9 individual. It is simply to denote the person
10 who is deceased, and that was the sole
11 significance of that term. Please do not infer
12 anything else from the use of that term. Thank
13 you very much. You may return.

14 PRESIDING JUROR: Your Honor, may we
15 make ---

16 THE COURT: Absolutely. I
17 understand that some jurors may need to make
18 calls. You may do that before deliberating.
19 Absolutely. Thank you, you certainly may.

20 (JURY OUT @ 5:35 P.M.)

21 THE COURT: Any exceptions or
22 additions from the State?

23 MS. SHEALY: No, Your Honor.

24 THE COURT: Any additional
25 exceptions from the Defendant?

1 MR. GRIMES: No, sir.

2 THE COURT: Did that correct and
3 cure the problem?

4 MR. GRIMES: Yes, sir.

5 THE COURT: Thank you, sir. Thank
6 you. We will be at-ease.

7 (COUNSEL REVIEW OF EXHIBITS & VERDICT FORM)

8 (JURY IN DELIBERATION @ 5:42 P.M.)

9 (RECESS)

10 (NOTIFIED OF VERDICT @ 6:41 P.M.)

11 (DEFENDANT PRESENT)

12 THE COURT: All right. The
13 Defendant is present, please let the record
14 reflect that the Defendant is present. I'm
15 advised that the jury has reached a verdict.
16 Is the Defendant ready to receive the verdict,
17 Mr. Grimes?

18 MR. GRIMES: Yes, sir.

19 THE COURT: Is the State ready to
20 receive the verdict, Ms. Shealy?

21 MS. SHEALY: Yes, Your Honor.

22 THE COURT: Let me tell all the
23 persons that have been present throughout this
24 trial, I appreciate the fact that you are here.
25 I understand that for some of you it may have

1 been a bit of an emotional experience. I am
2 sorry for that, the problems and stuff that you
3 have had to deal with thus far.

4 This jury has deliberated. They have
5 been very attentive during this process, they
6 have given their attention throughout this
7 process and they've now indicated by their
8 announcement of the verdict that they have
9 fulfilled their obligations to this court, Mr.
10 Parker and to the State. I believe that this
11 is a process that is worthy of respect and
12 proper decorum. That means that I will not
13 tolerate any outburst from anyone when the
14 verdict is announced. If for some reason you
15 feel that because of your emotional state or
16 because of the tension or pressure involved in
17 this, and I certainly understand that, if you
18 feel that you will not be able to follow the
19 court's instruction, then I am going to ask
20 that you exit the courtroom now.

21 If you remain and anyone does -- if
22 there is an outburst from anyone, I will deal
23 with that after the jury is excused because I
24 will consider that to be a direct contempt of
25 court. We will have a hearing concerning your

1 response. Direct contempt, willful, willfully
2 disobeying the court's order. I am telling you
3 now what we will have to do. I acknowledge
4 that you are human, but you need to remove
5 yourself now if you can't control yourself.

6 Have the alternates been excused
7 already? They were supposed to have been.

8 BAILIFF ROBINSON: Yes, sir.

9 THE COURT: Thank you, Mr. Robinson.
10 I appreciate that. Please ask the jury to
11 return.

12 (JURY IN @ 6:37 P.M.)

13 THE COURT: Thank you, Ladies and
14 Gentlemen. Mr. Presiding Juror, I understand
15 that the jury has reached a verdict. Is that
16 correct, sir?

17 PRESIDING JUROR: Yes, Your Honor.

18 THE COURT: If you would, pass the
19 verdict form to the bailiff, please.

20 PRESIDING JUROR: (Complies)

21 BAILIFF: (Tenders form to judge).

22 THE COURT: (Upon review), the
23 verdict form has been properly completed. Mr.
24 Wilson, if you would publish the verdict for
25 me.

1 CLERK WILSON: Yes, sir.

2 THE COURT: I ask that the Defendant
3 please rise.

4 DEFENDANT: (Standing).

5 CLERK WILSON: The State of South
6 Carolina versus Roger Parker, Indictment Number
7 07-GS-10-4293, (reading): "We, the jury, by
8 unanimous consent find the Defendant guilty of
9 Murder." Signed by Daniel Bluemstock,
10 Foreperson, dated February 28th, 2008. Ladies
11 and Gentlemen of the jury, if this is your
12 verdict, please reply by raising your right
13 hand. (All jurors raise right hand in
14 response).

15 THE COURT: Thank you, you may put
16 your hands down. Let the record reflect that
17 each juror in response to the clerk's question
18 raised their right hand.

19 Is there anything further from the
20 jury panel from the State?

21 MS. SHEALY: No, sir, Your Honor.

22 THE COURT: Anything further from
23 Mr. Parker?

24 MR. GRIMES: We would request that
25 the jury be polled, Your Honor.

1 THE COURT: Very well. Ladies and
2 Gentlemen, a request to poll the jury has been
3 made. What will happen now is that the clerk
4 will call your name. He will ask you two
5 questions:

6 *Is this your verdict?*

7 *Is it still your verdict?*

8 You will simply follow his instructions and
9 respond to the questions.

10 CLERK WILSON: Juror Number 257,
11 Daniel Blumenstock. Is this your verdict?

12 JUROR: Yes.

13 CLERK WILSON: Is it still your
14 verdict?

15 JUROR: Yes.

16 CLERK WILSON: Juror Number 25,
17 Anita Bouani, is this your verdict?

18 JUROR: Yes.

19 CLERK WILSON: Is it still your
20 verdict?

21 JUROR: Yes.

22 CLERK WILSON: Juror Number 58,
23 Annalee Cromwell, is this your verdict?

24 JUROR: Yes.

25 CLERK WILSON: Is it still your

1 verdict?

2 JUROR: Yes.

3 CLERK WILSON: Thank you. Juror
4 Number 122, Hashana Jenkins, is this your
5 verdict?

6 JUROR: Yes.

7 CLERK WILSON: Is it still your
8 verdict?

9 JUROR: Yes.

10 CLERK WILSON: Thank you. Juror
11 Number 160, Elizabeth Parker. Is this your
12 verdict?

13 JUROR: Yes.

14 CLERK WILSON: Is it still your
15 verdict?

16 JUROR: Yes.

17 CLERK WILSON: Juror Number 161,
18 Dinesh Patel. Is this your verdict?

19 JUROR: Yes, sir.

20 CLERK WILSON: Is it still your
21 verdict?

22 JUROR: Yes.

23 CLERK WILSON: Juror Number 192,
24 David Shea. Is this your verdict?

25 JUROR: Yes.

1 CLERK WILSON: Is it still your
2 verdict?

3 JUROR: Yes.

4 CLERK WILSON: Thank you. Juror
5 Number 193, Rebecca Shull. Is this your
6 verdict?

7 JUROR: Yes.

8 CLERK WILSON: Is it still your
9 verdict?

10 JUROR: Yes.

11 CLERK WILSON: Thank you. Juror
12 Number 155, Joanne Nelson. Is this your
13 verdict?

14 JUROR: Yes.

15 CLERK WILSON: Is it still your
16 verdict?

17 JUROR: Yes.

18 CLERK WILSON: Thank you. Juror
19 number 166, Hilton Coakley. Is this your
20 verdict?

21 JUROR: Yes.

22 CLERK WILSON: Is it still your
23 verdict?

24 JUROR: Yes.

25 CLERK WILSON: Juror Number 270,

1 Rena Lasch. Is this your verdict?

2 JUROR: Yes.

3 CLERK WILSON: Is it still your
4 verdict?

5 JUROR: Yes.

6 CLERK WILSON: Juror Number 273,
7 Deborah McKelvey. Is this your verdict?

8 JUROR: Yes.

9 CLERK WILSON: Is it still your
10 verdict?

11 JUROR: Yes.

12 CLERK WILSON: Is there anyone's
13 name that I have missed? (No response). Your
14 Honor, the verdict stands.

15 THE COURT: Thank you very much.
16 The verdict stands. Anything further for the
17 jury from the Defendant?

18 MR. GRIMES: No, sir.

19 THE COURT: Thank you so much,
20 Ladies and Gentlemen. I mentioned to you, as
21 said throughout, that it is an honor and it has
22 been my honor to serve with each one of you. I
23 appreciate your diligent in performing your
24 duties, the manner in which you performed your
25 duties, and I can't thank you enough for that.

1 You're now excused from further
2 participation in any trial this week.

3 You are now free to talk about this
4 case if you wish. That's your choice. If
5 someone should ask you questions and you choose
6 not to talk about your decision or talk about
7 what you heard, that is your right as well. If
8 that person should persist in asking you
9 questions, please let -- and that's against
10 your wishes, please make that known to Mrs.
11 Armstrong. She can call that to my attention
12 and we will be happy to assist you.

13 You are now free to leave. If there
14 are any questions that any juror has, any
15 concerns that you may have, I will be happy, as
16 I mentioned to you, to answer any of those. I
17 know that it is a late hour. But if you do,
18 just wait for a few minutes in the jury room
19 and I will be in to speak with you. If there
20 are not any, goodnight, have a safe trip home.
21 Good luck to each one of you for the balance of
22 the evening, the week and the year.

23 (JURY EXCUSED)

24 THE COURT: All right, anything from
25 the State at this point?

1 MS. SHEALY: Your Honor, I believe
2 that Mr. Grant's mother wants to address the
3 court when ---

4 THE COURT: Okay. Before I get to
5 that part of it, I want to deal with anything
6 concerning the verdict and then I will ---

7 MS. SHEALY: (Affirmative nod), I'm
8 sorry.

9 THE COURT: No, no. I didn't make
10 myself clear. That's not a problem, Ms.
11 Shealy. From the Defendant?

12 MR. GRIMES: For the record, we would
13 renew our Motions for directed verdict.

14 THE COURT: I do not -- considering
15 the evidence, totally, in this case I find that
16 the evidence supports the verdict. There is
17 nothing about this case that would warrant my
18 feeling that the jury has not accurately and
19 consistently, both with the instruction of the
20 court, evaluated the evidence and made a
21 decision on what they found to be the true
22 facts; which was their responsibility, so I
23 have no basis for ordering a new trial in this
24 case. Are we ready for sentencing?

25 MS. SHEALY: The State is ready, Your

1 Honor.

2 THE COURT: Okay.

3 MS. SHEALY: Your Honor, would it be
4 your preference to ---

5 THE COURT: Just one second. Hold
6 on just one second. I want to address any
7 concerns of the jury.

8 MS. SHEALY: Yes, sir.

9 (JUDGE EXITS COURTROOM)

10 (PARTIES & COUNSEL REMAIN PRESENT)

11 (JUDGE REENTERS COURTROOM)

12 THE COURT: Thank you. Ms. Shealy,
13 you had indicated that Ms. Grant wishes to be
14 heard?

15 MS. SHEALY: Yes, Your Honor. I
16 believe that it is actually Mr. Grant's brother
17 that will speak on behalf of the family.

18 THE COURT: I will be delighted to
19 hear from any of the family members that wish
20 to speak. I would ask -- can you (court
21 reporter) hear them from behind the rail? I
22 tell you what, why don't you let them at the
23 appropriate time come forward. That way they
24 can step up to the podium and speak into the
25 mic, and that way the court reporter can hear

1 them. Good evening, sir. I thank you for
2 being here. I would ask that for the benefit
3 of the record that you give me your full name,
4 please, sir, before you make your statement.

5 DAMIEN GRANT: My name is Damien
6 Grant.

7 THE COURT: Mr. Grant, I will be
8 delighted to hear from you.

9 DAMIEN GRANT: On behalf of my
10 family, we would like to say thank you for the
11 law and we would like to say that it's been
12 hard for the family. Carlos had three kids and
13 they are crying and asking questions. It's
14 hard to answer those questions at the age that
15 they are right now. We also have nieces and
16 nephews that are asking questions, and it's
17 hard to answer. It is so hard to understand
18 why, but -- even though we both lived in the
19 Ashley shores complex, and we thought that we
20 knew him. I would hang out with him, we played
21 basketball together. My mom would socialize
22 with his mom. The question is, like, why? You
23 know what I mean?

24 THE COURT: Yes, sir.

25 DAMIEN GRANT: It's just going to

1 be really tough for us right now at the moment.
2 We have all the memories, all we can do is tell
3 the children how much they were loved.

4 I hope that you (Defendant) will
5 please think about what you did. Please. We
6 have no bad judgments -- we ain't going to be
7 the final judge. God will. Thank you.

8 THE COURT: Absolutely. Thank you,
9 sir.

10 MS. SHEALY: Your Honor, I believe he
11 is the only person that was going to speak on
12 behalf of the family.

13 THE COURT: Thank you.

14 MS. SHEALY: Your Honor, I recognize
15 that it is unnecessary for me to go back over
16 the facts.

17 THE COURT: That is not necessary.

18 MS. SHEALY: I don't know whether we
19 fully introduced his record into evidence or in
20 one of our discussions. He has a trespassing
21 in 2000, a criminal domestic violence in 2002,
22 a use of vehicle without permission of the
23 owner in 2004, and then a subsequent criminal
24 domestic violence in 2005.

25 THE COURT: Okay. Thank you.

1 MS. SHEALY: Yes, sir. Do you have
2 the sentencing sheet?

3 MS. SHEALY: I do, Your Honor.
4 (Tenders to judge).

5 THE COURT: Thank you. Mr. Grimes,
6 I will be delighted to hear from anyone now on
7 your behalf -- I mean on Mr. Parker's behalf.

8 MR. GRIMES: Your Honor, I am sure
9 that his family -- if you would just state your
10 name for the court reporter, please.

11 THE COURT: Okay.

12 YVETTE WEISS: Your Honor, my name
13 is Yvette Weiss. I am Roger Parker's aunt.

14 THE COURT: Yes, ma'am?

15 YVETTE WEISS: It just really
16 bothers me a lot that what happened, and I can
17 understand for both parties that someone's life
18 was lost. Stinka has never been in trouble,
19 he's never had any dealings with guns, so I
20 don't understand what happened. I just wish
21 that you could be a little lenient on him. I
22 know that it is difficult for him to be
23 speaking but I am sure that he feels bad that
24 someone was harmed. But he is not a bad child.
25 I was actually the one that gave him that name.

1 He's never been -- he plays basketball, he's
2 done everything, so it was not like he was just
3 -- he was -- in a split second, he could have
4 been dead. I just hope that you can take some
5 of that into consideration. Thank you, Your
6 Honor.

7 THE COURT: Yes, ma'am.

8 MR. GRIMES: Anyone else? (No
9 response). I believe that you've heard most
10 of the facts about Mr. Parker. He's got three
11 children: Roger, Quan and Sierra.

12 You've heard his criminal record. He
13 has nothing that involves guns, no ABHAN's.
14 There are the two CDV's but no felonies.

15 He was working at the Hampton Inn at
16 Mount Pleasant, when he was about sixteen at
17 Kentucky Fried Chicken, Hughes Lumber.

18 Since I've represented him, he's
19 always been very polite, soft spoken. I find
20 it hard to believe that someone who is that
21 soft spoken, who is that polite, could do
22 something like this.

23 Like a lot of my clients that have
24 been in jail and they become very frustrated,
25 Mr. Parker has never done anything like that.

1 I don't believe that there have been any
2 disciplinarian problems at the jail. We would
3 ask that the court consider everything and be
4 merciful. Thank you, Your Honor.

5 THE COURT: Thank you. Does Mr.
6 Parker wish to make any statement at this
7 point?

8 MR. GRIMES: No, sir.

9 THE COURT: Okay. Anything else?

10 MR. GRIMES: No, sir.

11 THE COURT: Thank you very much.

12 Will the Defendant please rise?

13 DEFENDANT: (Standing)

14 THE COURT: Mr. Parker, I've heard
15 all the facts in this case. I know that there
16 were some statements made, I think that you
17 made some and that Mr. Greene made some, and I
18 don't profess to have any knowledge or
19 understanding or appreciation of living in some
20 of the situations talked about. But that
21 doesn't change the obligation of all citizens
22 -- there are lots of people in this courtroom,
23 I assume some of whom live there who are not
24 guilty of what took place.

25 That is what separates us from the

1 rest of the world. We are a society of laws.
2 Those laws are important when they are in
3 place. They keep us from doing things, and I
4 don't think -- I think that generally, for the
5 most part, that there is a very fine line that
6 separates people who commit crimes and people
7 who don't commit crimes. I don't think that it
8 is always so clear that people would like --
9 that it is some times very obvious, but
10 sometimes it is not.

11 This particular case, though, the
12 concern that I have, while your record is
13 minimal or what seems to be minimal as to
14 violence, CDV is a crime that probably raises
15 the biggest red flag of anything that I know,
16 because it indicates to me and to the rest of
17 society, to some extent, that 'I am a person
18 that takes charge. I determine what a person
19 says and doesn't say.' Generally that is what
20 happens, how it all happens. You have a
21 disagreement and you're the man that says, 'I
22 am going to have the last say.' Ends up in
23 some violent act.

24 That is furthered by what I heard,
25 because instead of doing what was suggested by

1 the solicitor -- suggested by society, in fact
2 we have had a classic example of that just
3 recently, someone accused of an offense who
4 happened to work in the solicitor's office.
5 The response to that person's actions is the
6 response that we all have. You do what a
7 person who is accused -- the person who was
8 alleged to be the victim in this case -- what
9 they did, they called the police. They didn't
10 take a gun. In that case, accordingly to what
11 is alleged, this person presented a firearm.
12 Unlike what we have here, presented a firearm.
13 Everybody could see it. If they have a weapon,
14 that may be cause to say 'I better shoot'. You
15 heard me charge the law. 'I don't have to wait
16 until they shoot me before I react.' That
17 person didn't do that. They called the police.
18 That's what they did.

19 Your actions, whether the actions of
20 Mr. Grant were right or wrong, whether he went
21 over the top, whether he was rude or
22 disrespectful as you said, whether the younger
23 individual was rude or disrespectful, and I am
24 suggesting that was okay but that doesn't
25 justify somebody getting a gun.

1 Your testimony in this case and what
2 the facts are in this case points to something
3 that really concerns me the most, and probably
4 is the reason for the sentence. Yes, your past
5 history does not support it but the act of
6 shooting somebody on the ground -- and there is
7 clearly evidence of that. You said that you
8 didn't do it, but there is an abundance of
9 evidence that supports that: the wound itself,
10 the shell casing that was there.

11 Then the act after that, the one that
12 really -- what is it with going down the street
13 shooting the firearm? What was that? Is that
14 celebration? Is that letting everybody know
15 what a bad guy you are? How tough you are? I
16 don't know. It makes no sense to me.

17 One shot may be a mistake in
18 judgement. Okay, you made a bad call.

19 You made a bad decision by getting the
20 gun.

21 When you pulled it and shot, you made
22 a bad decision. If you stopped there, okay,
23 that's close. Yeah, it's an unfortunate
24 situation but you still -- according to the
25 jury, the jury found no evidence of self-

1 defense; which I don't argue with their
2 assessment of that, I think that the facts
3 clearly reasonably support that.

4 But to do what you did following
5 shooting this individual, when the danger was
6 clearly gone, clearly gone, totally. No. You
7 go around and start shooting, continue to
8 shoot, then continue to shoot? No.

9 Statements have to be made. Sentences
10 have some part of that, they punish you for
11 your crime and hopefully they serve to deter
12 others. In that location, they need to -- the
13 word needs to get out that people don't have
14 the right to shoot -- that's not self-defense,
15 I don't care where you live, it doesn't matter,
16 the law applies to people equally everywhere.

17 The sentence of the Court on 07-4293
18 is life imprisonment.

19 Anything further?

20 MS. SHEALY: No, sir.

21 THE COURT: Thank you.

22 (TRIAL CONCLUDED)

23

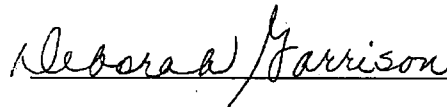
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25

CERTIFICATE OF REPORTER

I, the undersigned, Deborah Garrison,
official court reporter for the 9TH Judicial
Circuit of the State of South Carolina, do
hereby certify that the foregoing is a true,
accurate and complete transcript of the jury
trial held before The Honorable R. Markley
Dennis, Jr., on February 25-27th, 2008, as
captured by Vivian Cross, Court Reporter;

I further certify that I am neither kin
nor counsel to any of the parties and have no
interest in the outcome of this action.



Deborah Garrison

Circuit Court Reporter

9th Judicial Circuit

Charleston, South Carolina

May 28, 2008

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Charleston County

R. Markley Dennis, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ROGER RAYNARD PARKER,

APPELLANT

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the court erred by refusing to instruct on defense requests to charge seven, eight, and nine on the "protection of a person's and property act," S.C. Code § 16-11-410 et. seq., since these were correct presumptions under this statute which provides that a person is presumed to have a reasonable fear of imminent peril of death or great bodily harm to himself or another person where another person is unlawfully and forcibly in their dwelling, or has to be forcefully removed from the dwelling, since appellant had to forcibly remove the decedent to protect his father from harm?

STATEMENT OF THE CASE

Appellant was indicted by the Charleston County grand jury for the offense of murder. R. 599. His case was called to trial on February 25, 2008 before the Honorable R. Markley Dennis, Jr., and a jury. Andrew Grimes and Jason Mikell represented appellant. Jennifer Shealy and Chad Simpson were the solicitors. R. 1.

At the conclusion of the trial on February 27, 2008 the jury found appellant guilty. R. 597, ll. 5 – 14. Judge Dennis sentenced appellant to life imprisonment. R. 598, ll. 17 – 18.

This appeal follows.

ARGUMENT

The judge erred by refusing to instruct defense requests seven, eight, and nine on the “protection of persons and properties act,” S.C. Code § 16-11-410 *et. seq.* since they were correct statements of the law. Under the statutes appellant was presumed to be in reasonable fear of imminent peril where the decedent unlawfully came onto his property, and had to be forcefully repelled. The “porch” immediately outside appellant’s apartment was a protected area. Appellant was entitled to the same protection as a homeowner where he ordered the decedent to leave his apartment after he became rude to his father, where appellant had good reason to think the decedent was armed, and where he had to forcefully repel the decedent.

Relevant Facts

Demetria Grant was the sister of the decedent, Carlise “Carlos” Grant. She lived in the Ashley Shores apartment complex in North Charleston with her two young children. R. 9, l. 1 – 10, l. 20. Emmanuel Johnson, who was fifteen years old on April 18, 2006, continued his ongoing dispute that day with appellant’s father, Roger Johnson, by “disrespecting” him. Johnson and appellant shared an apartment. R. 11, ll. 13 – 14.

While appellant’s father thought the teenaged Emmanuel was again “disrespecting” him, Emmanuel conversely allegedly thought Johnson had earlier sent some young men to “beat him up” because he thought Emmanuel’s brother had broken into his apartment.

Demetria testified that her mother was visiting her apartment at Ashley Shores on April 18, 2006. She remembered that Johnson and Emmanuel “said some little words” to each other. Demetria said Johnson eventually came out of his apartment and was he swinging a baseball bat in Emmanuel’s direction. Johnson apparently had health problems that limited his mobility. Demetria recalled her mother, Cassandra Ward, got between

Emmanuel and Johnson and broke up the dispute. R. 15, l. 5 – 16, l. 25. Everyone then went back inside their respective apartments.

Demetria testified that when the decedent arrived home from his work at a local hotel, he knocked on Johnson's door to talk about the tension, and he was invited inside. R. 18, ll. 19 – 22. At this point the testimony of the government's witnesses and appellant's witnesses differed greatly.

Demetria said the decedent and Johnson were having a civil conversation inside Johnson's apartment after she explained to the decedent "what was going on." R. 20, ll. 1 – 13. Demetria said there were no threats made by either man, and that everything was civil until appellant came home. Demetria claimed Johnson then "started acting totally different," when they were outside the apartment. Demetria recalled that Johnson got his baseball bat and hit the decedent with that bat while they were standing outside their apartment. R. 22, l. 21 – 24, l. 16. Demetria maintained at this point appellant "pulled the gun" and shot the decedent. R. 26, ll. 20 – 22.

Demetria said she "hurriedly got them" -- her children -- into the apartment. When she next looked outside she "saw my brother on the ground and Stinka [appellant] was running down the street shooting the gun in the air." R. 28, ll. 4 – 8.

On cross-examination, Demetria acknowledged that the decedent had a temper, but she now claimed the decedent only "used to have a temper." R. 33, ll. 12 – 13. Demetria also admitted when the decedent came home from work that day he told everyone they were going to "resolve this today." R. 36, ll. 16 – 20. Demetria at trial claimed that she did not tell the police that the decedent said they were going to "resolve this today" even though that information was included in her statement.

Demetria's mother, Cassandra Ward, also testified about this dispute between Roger Johnson and fifteen-year-old Emmanuel. R. 52, l. 19 – 53, l. 11. Ward remembered that when Johnson came outside with a bat, Emmanuel grabbed a chair. Ward said he told appellant's father: "This is a child and I'm not going to allow you to hit this child." R. 53, l. 12 – 54, l. 9.

Ward claimed the decedent was calm when he came home from work that April afternoon. She remembered appellant's mother asking the decedent: "How would you feel if somebody had broken in your house and you were afraid for yourself?" This was regarding the accusation that Emmanuel's brother had broken into their apartment. R. 56, l. 21 – 58, l. 10.

Ward also claimed that appellant's father, Roger Johnson and the decedent were able to talk calmly until appellant arrived. R. 58, ll. 13 – 23. Ward testified that appellant's father hit the decedent with a bat outside of his apartment, and that appellant then shot the decedent. She said the decedent ran after the decedent was shot in the shoulder, and that appellant ran after him shooting his gun. Ward maintained that when her son fell to the ground: "I watched him [appellant] stand over my child and he shot him in his head." R. 63, l. 10 – 68, l. 20. Ward also claimed that after appellant shot the decedent "he ran down the street, shooting up in to the air." R. 69, ll. 19 – 22.

Detective Keith Elmore said appellant was arrested as a result of an anonymous tip on January 17, 2007 in Charleston. Both sides stipulated to this fact. R. 131, l. 25 – 133, l. 14.

SLED agent John Roberts testified that the decedent had a high "quantity of metals to be detected on the right palm and the left palm [that] may be associated with gunshot

residue.” R. 229, ll. 14 – 17. However, agent Roberts opined that the quantity of metal was so high on the decedent’s palms that it indicated “to me that it is someone who is being fired at,” rather than having fired a gun.¹ R. 230, ll. 17 – 24.

The pathologist, Dr. Kim Collins, testified that the decedent had a wound on his arm consistent with him being with being hit by a baseball bat. R. 265, l. 19 – 266, l. 4. The decedent had been shot in the shoulder and the head. The shot to the head was the fatal shot. R. 266, l. 5 – 271, l. 8.

On cross-examination, Dr. Collins acknowledged that marijuana was found in the decedent’s bloodstream. However, she claimed the positive match for cocaine was a “false positive.” R. 272, l. 2 – 278, l. 12.

The defense case

Emmanuel Johnson testified on that fatal day that the decedent warned: “If I have to come back around here it won’t be pretty.” Emmanuel said he took that as a threat. R. 344, l. 17 – 345, l. 6.

Conversely, Emmanuel recalled that appellant was “just standing there, listening to them [the decedent and appellant’s father] argue.” R. 338, ll. 6 – 10. Emmanuel testified his decedent cousin “had his two fists up” at the point appellant shot him. R. 340, ll. 1 – 15.

William Greene also testified that the decedent was the one making threats that afternoon, not appellant. Greene said that the decedent told appellant’s father: “If you ever put your hands on him [Emmanuel] again, I’m going to light this bitch up. In fact, I

¹ Appellant proffered an incident report which indicated “there was a shootout.” R. 239, l. 4 – 240, l. 22. The judge refused to allow agent Roberts to cross-examine about this

[would] like to light this bitch up right now.” R. 372, l. 4 – 374, l. 6. Greene said that appellant was apologetic that afternoon to Emmanuel’s family, saying “I never disrespected none of ya’ll.” R. 373, l. 24 – 374, l. 6.

Appellant’s father testified that the decedent was loud and rude that afternoon stating “he would close my house down.” R. 416, l. 17 – 418, l. 20. Johnson said he was very concerned for his safety because the decedent was in his home making these threats, and the decedent also threatened that he would “light my ass up.” At that point, Johnson said appellant “pulled him [the decedent] out of the house and told him that he can’t be disrespecting his daddy and mom in their house [and] that he would have to get out.” R. 419, ll. 6 – 16.

It was based upon this testimony that defense counsel asked for the jury instructions 7-9, pursuant to S.C. Code § 16-11-440, which state that a person is presumed to have a reasonable fear of imminent peril of death or great bodily injury to himself or another person if he “is attempting to remove another person against his will from the dwelling or residence.” See S.C. Code § 16-11-440 (A)(1)(2). Defense counsel’s argument was that the shooting, which occurred immediately outside the apartment, was still within the purview of the “protection of persons and property act” because the attempt to repel continuing was on appellant’s porch. See S.C. Code § 16-11-410 et. seq.

Further, Roger Johnson had specifically testified he knew the decedent “was definitely going to do some damage to me that he was going to do some physical harm.” R. 419, ll. 6 – 10.

report because he did not prepare it, and allegedly did not rely on it, and he told appellant

Appellant then took the stand in his own defense. Appellant testified he was at William Greene's apartment when Greene told him that the decedent "was very irate about what was going on [between his father and Emmanuel]" Appellant said he heard the decedent telling Greene on the speaker phone that he was on his way over to the apartment complex. Appellant recalled that his father had earlier told him "that Emmanuel was disrespecting him." R. 465, l. 6 – 468, l. 12. Appellant said he also spoke to Ms. Ward about Emmanuel "disrespecting my father." R. 468, ll. 9 – 12.

Appellant testified that he got his gun "because I felt like the life of my father and the household members were put in danger." R. 471, ll. 20 – 24.

Appellant said when he got to his father's apartment his father and the decedent were standing face to face. R. 472, ll. 15 – 24. Appellant recalled that the decedent was yelling that he "would wipe the mother fucker up, how he would shut our household down." R. 473, ll. 4 – 24.

Appellant testified the decedent was moving his hands from side to side as he made these threats, and that he told the decedent: "Alright, I can't have you disrespecting my mother and father." R. 474, l. 24 – 475, l. 7. Appellant testified he pulled the decedent towards the front door, and that the decedent "still was carrying on about . . . what he was going to do to us." R. 475, l. 22 – 476, l. 23.

Once outside appellant remembered the decedent "was standing in between the yard carrying on." Appellant told his mother not to come outside because of the threats the decedent was making. R. 477, l. 9 – 478, l. 4.

he could "bring in your own expert." R. 244, ll. 2 – 22.

Appellant testified that the decedent reached under his shirt. Appellant thought he was going for a weapon because of the threats he was making at the time. Appellant pulled out his gun and shot at the decedent. R. 478, l. 19 – 479, l. 11. Appellant said he stopped shooting at the decedent when the decedent ran between some parked cars, and he strongly denied that he stood over the decedent and shot him. R. 479, ll. 8 – 20.

Appellant explained that he was totally reasonable in thinking Grant had a weapon because guns and gunshots at Ashley Shores Apartments were the norm, not the exception. Other witnesses had also testified that gunfire at the apartment complex was a common occurrence, and that gunfire alone was not a cause for concern. R. 481, ll. 12 – 24.

Following the defense case counsel moved to dismiss under the protection of persons and property act, S.C. Code § 16-11-410 et. seq. because the decedent had come onto appellant's property and because appellant was acting in self-defense. The judge asked defense counsel to explain how these statutes applied to him. R. 505, l. 13 – 506, l. 1.

Defense counsel argued that appellant's father's testimony was "that he [the decedent] was coming after him and that he [appellant] was pulling out of the house." The judge responded, "Your recollection is different from mine. I don't think that is sufficient as the matter of law that I could grant the motion." R. 506, ll. 2 – 11.

The judge then agreed to charge self-defense, defense of others and defense of habitation. However, the judge refused to charge appellant's request to charge numbers seven, eight, and nine pertaining to S.C. Code § 16-11-440 on the presumption that a person is presumed to have a reasonable fear of imminent peril of death or great bodily

injury to himself or another if the decedent was unlawful and forcefully entering, or who had unlawfully and forcefully entered a dwelling or residence. See Request to Charge 7-9. R. 603 - 605. Defense counsel correctly pointed out that S.C. Code § 16-11-440(A)(1)(2) also covered the situation of a person -- as here -- who must remove "or is attempting to remove another person against his will from the dwelling, residence, or occupied vehicle." R. 511, l. 14 - 512, l. 3. Defense counsel correctly argued the statute also provided protection for the occupant of the dwelling where the self-defense occurs on the porch. See S.C. Code § 16-11-430(1).

However, the judge stated: "Every situation that I've seen that statute, it deals with a home where there has been invasion, a shooting occurs within the home, within the confines of the house, not just the yard. Do you have anything applies to premises? Is there any case in which that statue has been applied that applies to the premises?" R. 512, ll. 7 - 14.

Defense counsel responded that the language of the statue included the porch. The judge ruled the statutes did not apply to the present situation, and that he would give these jury instructions. The judge apparently reasoned they were not on the porch when the shooting occurred. R. 512, l. 5 - 519, l. 24.

After the judge charged the jury on self-defense, defense of others, and defense of habitation defense counsel took exception to the judge's refusal to charge requests number seven, eight, and nine -- "the charges of protection of persons or property" requests. R. 590, ll. 3 - 10. See Requests to Charge. R. 603 - 605.

Discussion

Defense counsel correctly argued that the protection of persons and property act, S.C. Code § 16-11-410 et. seq. applied to him. In stating its intent and findings of the General Assembly in S.C. Code § 16-11-410 the General Assembly stated its intent was to “codify the common law Castle doctrine which recognizes that a person’s home is his castle . . .” See S.C. Code § 16-11-420.

The General Assembly found that it was proper for “law-abiding citizens to protect themselves, their families, and others from intruders and attackers without the fear of prosecution.” The legislature also noted the right of citizens to bear arms. See S.C. Code § 16-11-420.

S.C. Code § 16-11-440(A)(1) covers the present situation where appellant “removes or is attempting to remove another person against his will from the dwelling, residence . . . and who uses deadly force.” See S.C. Code § 16-11-440.

The requested jury instructions correctly stated that appellant was presumed to have had a reasonable fear of imminent peril of death or great bodily injury where the decedent’s hostile’s actions occurred on the property where appellant lived. While the judge observed that he had only seen the statute applied to situations where “homes” were invaded, appellant was respectfully entitled to no less protection because he lived in a housing project in North Charleston.

Further, S.C. Code § 16-11-430(1) is similar to the burglary statute, and the legislature meant to codify the common law of burglary. In State v. Evans, 18 S.C. 137 (1882), this Court noted that the common law extension of what constitutes “burglary” applies to certain structures within the curtilage. The structure must be somehow

connected with or contributory to the dwelling and it cannot be separate from it and have a distinct use. State v. Evans, 18 S.C. at 410; State v. Ginns, 1NMcC 583 (1819).

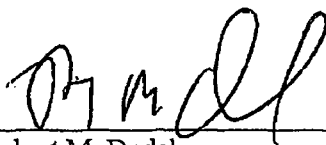
Appellant respectfully submits that because the General Assembly intended to codify the common law of burglary, and because a dog house, a smoke house, and a hen house have qualified as being within the protection of the burglary statute, that the area immediately in front of appellant's apartment also was protected against uninvited intrusion under these statutes. See State v. Langford, 55 S.C. 322, 33 S.E.2d 370 (1899); State v. Branham, 13 S.C. 389 (1879); State v. Johnson, 45 S.C. 483, 23 S.E.2d 619 (1895).

The requested jury instructions, defendant's seven through nine, were proper statements of the law, and the jury should have been instructed on the presumptions applicable under the protections of persons and property act. S.C. Code § 16-11-430 et. seq. Finally, penal statutes are construed against the state, and in favor of the defendant. Hair v. State, 305 S.C. 77, 406 S.E.2d 332 (1991).

CONCLUSION

Appellant should be granted a new trial.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'R M Dudek', written over a horizontal line.

Robert M. Dudek
Deputy Chief Appellate Defender for Capital Appeals

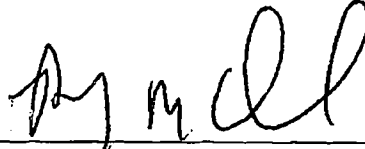
ATTORNEY FOR APPELLANT

June 30, 2009

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

June 30, 2009



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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County

R. Markley Dennis, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

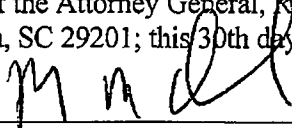
V.

ROGER RAYNARD PARKER,

APPELLANT

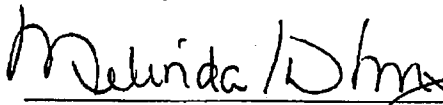
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon S. Creighton Waters, Esquire, Assistant Attorney General, Office of the Attorney General, Rembert Dennis Building, 1000 Assembly Street, Rm. 519, Columbia, SC 29201; this 30th day of June, 2009.


Robert M. Dudek
Deputy Chief Appellate Defender for Capital Appeals

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 30th day of June, 2009.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: October 30, 2018

**IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals**

Appeal from Charleston County
Honorable R. Markley Dennis, Jr., Circuit Court Judge

STATE OF SOUTH CAROLINA,

Respondent,

v.

ROGER RAY PARKER,

Appellant.

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STATEMENT OF THE ISSUE ON APPEAL

DID THE TRIAL COURT COMMIT REVERSIBLE ERROR IN REFUSING REQUESTED INSTRUCTIONS BASED IN THE PROTECTION OF PERSONS AND PROPERTY ACT, WHERE THE ACT IS PROSPECTIVE ONLY, AND THE ACT WAS INAPPLICABLE UNDER ANY VERSION OF THE FACTS IN THIS CASE?

STATEMENT OF THE CASE

Appellant, Roger R. Parker, was indicted by the Charleston County Grand Jury for murder (07-GS-10-04293). Specifically, the indictment alleged that, on April 18th, 2006, Appellant with malice aforethought killed Carlise Grant by shooting him. {R. p. 599-600}.

The Honorable R Markeley Dennis, Jr., conducted a jury trial from February 25th to 27th, 2008. At trial, Applicant was represented by Public Defenders Andrew Grimes and Jason Mikell, and Assistant Solicitors Jennifer Shealy and Chad Simpson prosecuted the case for the State. On February 27th, 2008, the jury found Appellant guilty of murder, and Judge Dennis sentenced Appellant to life. {R. 598}.

A timely Notice of Appeal was filed with the South Carolina Court of Appeals. This appeal follows.

STATEMENT OF FACTS

It is undisputed that Appellant killed the victim, Carlise or "Carlos" Grant, by shooting him down in the street at the Ashley Shores apartment complex. Appellant raised a claim of self-defense. The issue on appeal concerns refusal to charge portions of the recent Protection of Persons and Property Act ("the Act").

Given that the issue on appeal is a claim of entitlement to a jury charge based on the facts presented, in this situation of differing versions the best way to handle the statement of facts is to take it one witness at a time.

A. Fredys Coreas

Coreas was the culinary director at the Sheraton Hotel where the victim Carlos was the kitchen manager. When they left work, Carlos was happy, and did not appear to be in a rush. Some 15 minutes or so later Coreas got a call that the Carlos had been murdered. {R. 2-6}.

B. Demetria Grant

Demetria was Carlos's younger sister, and was living in the Ashley Shores complex next door to Appellant's father Roger Johnson. Carlos and Demetria's mother is Cassandra Ward, and their cousin Emmanuel Johnson stayed with them. {R. 8-10}.

Demetria testified that when Roger Johnson came up to his door, Emmanuel said some "little words" to him. Roger Johnson went into his apartment and returned with a baseball bat, which he started swinging at Emmanuel. Emmanuel grabbed a chair to defend himself, but Cassandra got in the middle and calmed everyone down. Everyone went back into their adjacent apartments. {R. 14-17}.

When Carlos arrived, he knocked on Roger Johnson's door and Roger Johnson invited him inside. Demetria did not hear any loud voices from inside the apartment, and eventually Carlos, Roger Johnson, and Roger Johnson's wife Virginia came outside. Carlos did not have a weapon and was not making threats, but when Appellant arrived, Roger Johnson started acting differently. Roger Johnson went inside, and got his bat. Carlos was saying to Roger Johnson that Emmanuel was only a child and Roger Johnson should come to him, Demetria, or Cassandra with any issues. Roger Johnson took offense at Carlos telling him what to do. {R.18-25}. Roger Johnson swung the bat and hit Carlos, who then started after Roger Johnson. Cassandra moved in between them and Virginia grabbed Roger Johnson. However, Appellant then came outside, said "I got this", pulled out a gun, and shot Carlos. Demetria grabbed the kids and ran inside, and when she came back out she saw Carlos lying dead on the ground being held by his mother Cassandra, and Appellant running down the street firing the gun in the air. {R. 25-29}. Demetria saw Roger Johnson and Virginia get in their car, drive down the street, and pick up Appellant. {R. 32}.

C. Cassandra Ward

Carlos's mother Cassandra Ward testified that she was at the apartment when Roger Johnson pulled up, went inside, got a bat, and came out swinging at Emmanuel. Emmanuel grabbed a chair, but Cassandra got in between them, and both sides went into their respective apartments. {R. 52-55}.

When Carlos arrived, he calmly went and knocked on Roger Johnson's door to talk about the problem, and was invited inside. After a while, Carlos, Roger Johnson, and

Roger Johnson's wife Virginia came outside, talking about the disagreement. {R. 54-58}. However, when Appellant arrived, Roger Johnson's demeanor changed, and Roger Johnson went back inside and got his bat. Carlos was walking back to his car when Roger Johnson struck him in the shoulder. Carlos turned around, but Cassandra, Virginia, and Appellant got in between them. {R. 58-63}.

Appellant told Roger Johnson and Virginia to go in the house, and Cassandra was taking Carlos to his car when Appellant said "come here, I want to talk to you". Carlos threw up his hands and said "that's it", but did not have a weapon and did not strike or threaten Appellant. Indeed, he had his cell phone and keys in his hand. {R. 63-66}.

Appellant then shot Carlos, who took off running. Appellant was chasing him while firing the weapon. Carlos fell between two cars, and Appellant stood over him and shot him in the head. Appellant then ran down the street, firing the gun in the air. {R. 66-69}.

D. Yvette Choise

Yvette Choise also lived in the apartment complex and had stepped out to call her kids in for dinner when she saw Roger Johnson swing the bat and hit Carlos. She then saw Appellant start shooting the gun. Yvette also saw Carlos fall between the cars, and watched as Appellant stood over him and shot him on the ground. Appellant then ran away, shooting in the air. {R. 87-94}.

E. The investigation

An officer who arrived at the scene to find Cassandra cradling her son testified Cassandra wailed, "he was already down, he didnt have to shoot him again". {R. 114-115}. Police recovered a slug that was underneath the victim when he was rolled over.

{R. 133-134; 193-194}. A damaged cell phone was found nearby, and a projectile hole and blood spatter matching the victim was found on a Saturn parked nearby in the parking lot. {R. 151; 155-159; 280-281}. A SLED expert found gunshot residue (GSR) on Carlos's palms but not the backs of his hands, which indicated a defensive posture, since a shooter would have GSR found on both sides of the hand. Further, the amount of GSR on Carlos was greater than one would expect to find on a shooter. {R. 229-231}. The pathologist found a through-and-through gunshot wound to the shoulder and a fatal head wound, as well as a bruise that could have been caused by a bat and a number of abrasions consistent with a fall. {R. 250-271}. Sixteen of the casings found at the scene matched a firearm police later recovered during a traffic stop. {R. 280-281; 294-295}.

Appellant was not arrested that night; it took about a year to locate him and he was finally apprehended after an anonymous tip. {R. 131-133; 280-281; 480-483}.

F. Defense case: Emmanuel Johnson

The defense first called Emmanuel, who testified that there was nothing physical about the argument until Roger Johnson swung the bat and hit Carlos. Carlos then brought his two fists up to defend himself, but he did not have a weapon and had not threatened Roger Johnson. Appellant then opened fire, and Carlos took off running trying to duck and dodge the shots from Appellant's gun. After the shooting, Appellant went walking down the street. Emmanuel did say Carlos said "if I have to come back around here it won't be pretty", but that was nothing which would have led him to be shot. {R. 337-353}.

G. Defense case: William Greene

Appellant called his relative William Greene, who lived nearby at the time. Greene stated that Carlos was inside Roger Johnson's house arguing about the situation with Emmanuel when Appellant arrived and told Carlos to "bring it outside". They continued to argue. Greene claimed he and Appellant were leaving when Emmanuel swung the chair and Roger Johnson retaliated by swinging the bat. Appellant waded in to the middle of the fray because his father was being attacked by three people. Once separated, Carlos supposedly reached for something while saying "if you ever put your hands on him again, I'm going to light this bitch up. In fact, I'm going to light this bitch up right now". Greene said he hit the dirt because Carlos looked like he was about to "do damage", and then he heard gunshots. {R. 365-374}. On cross, Greene changed his story and added that Appellant had to pull Carlos out of the house by the arm before the altercation continued. {R. 389-390}.

H. Defense case: Roger Johnson

Appellant's father Roger Johnson testified that Carlos came to the door calmly and Roger Johnson let him inside, but that once inside Carlos "went off", loudly arguing and acting crazy. After about 10-15 minutes, Appellant arrived, and told Carlos to get out of the house. Carlos supposedly did nothing, continuing to threaten to "close [Roger Johnson's] house down" and to "light [Roger Johnson's] ass up", which were considered serious threats in the neighborhood. Appellant then pulled Carlos out of the house by the arm. {R. 414-420}.

Once outside, Carlos continued to threaten them, and had his hands down by his

pockets. Appellant told Roger Johnson to get in the house as Carlos might kill him, and was taking Virginia in the house when Emmanuel came at Roger Johnson. Roger Johnson said they were all coming at him, so he swung the bat. He claimed he was trying to get in the apartment when Appellant came out. Roger Johnson went inside and stated that while he heard the gunshots, he did not see them. {R. 420-429}. On cross, Roger Johnson admitted Carlos did not try to stop them from going in the house, and did not take a bat to them or pull a weapon. However, Roger Johnson claimed Carlos was coming at him and they were "chasing" him after he took a bat to Carlos. {R. 450-458}.

I. The defense case: Appellant

Appellant finally testified. He claimed that he had earlier been advised that Emmanuel had disrespected his father. {R. 464-467}. When he got to the apartment, Emmanuel had the wooden chair and was speaking aggressively. Appellant said he asked Cassandra to stop Emmanuel from disrespecting his father, and the argument ended. Appellant left and went to hang out. {R. 467-469}.

William Greene called out to Appellant and he went inside Greene's house. Carlos had called him on the phone and was angry and irate, and said he was on the way to Roger Johnson's house to "act fucking stupid". Appellant felt his father was in danger, so he got a gun from a friend and went home. {R. 469-472}.

When he arrived, Carlos and Roger Johnson were in the living room and arguing face to face. Carlos was threatening to "wipe [or "light"] the motherfucker up", and "shut the household down". Appellant told Carlos he could not insult his father, and gently grabbed him and pulled him towards the door. Carlos went with Appellant. {R. 472-476}.

Appellant claimed that outside, Carlos, his mother, his sister, and Emmanuel kept "carrying on". Appellant's mother starting coming outside but he pushed her back inside because he was worried as to what Carlos might do. Appellant testified Roger Johnson was coming back towards the house when Carlos reached under his shirt. Believing that Carlos was reaching for a gun, Appellant pulled out his gun and fired. He stated he only stopped shooting when Carlos ran between the cars, and denied shooting Carlos while he was on the ground. Appellant also admitted Carlos was running for cover once he started shooting, but stated he was concerned that Carlos might return fire once he got to the car. {R. 476-480; 495-501}. On redirect and recross, Appellant testified he asked Carlos to leave but Carlos did not, and stated that had Carlos not reached under his shirt he would have never fired. However, on recross, Appellant testified he was NOT saying he shot Carlos because Carlos did not leave. {R. 502-503}.

ARGUMENT

THE TRIAL COURT DID NOT COMMIT REVERSIBLE ERROR IN REFUSING REQUESTED INSTRUCTIONS BASED IN THE PROTECTION OF PERSONS AND PROPERTY ACT, WHERE THE ACT IS PROSPECTIVE ONLY, AND THE ACT WAS INAPPLICABLE UNDER ANY VERSION OF THE FACTS IN THIS CASE.

Appellant contends trial court erred in refusing to charge three requests he asserts are necessary after the passage of the Protection of Person and Property Act ("the Act"), S.C. Code Ann. § 16-11-410, *et. seq.* However, the Act is prospective only and inapplicable to Appellant's case. Even if the Act was retroactive, it is inapplicable to the facts of this case.

A. The Act

Aside from some intent and definitional provisions, the substance of the Act is in S.C. Code Ann. § 16-11-440 and -450 (Supp. 2007). Subsection 16-11-440(A) first provides for presumptions that one has a reasonable fear of imminent peril if: (1) another person is unlawfully and forcefully entering "a dwelling, residence, or occupied vehicle", or is attempting to remove someone against his will from "a dwelling, residence, or occupied vehicle"; or (2) if the person using deadly force knows or has reason to believe an unlawful and forcible entry or act is occurring or has occurred.

Subsection -440(B) has exclusions for the presumption in subsection (A), including where the person who uses deadly force is engaged in an unlawful activity or is using the dwelling, residence, or occupied vehicle for an unlawful activity.

Subsection -440(C) seems to have a significant effect on the duty to retreat in South Carolina. It provides that one not engaged in unlawful activity "who is attacked in a place where he has a right to be, including, but not limited to, his place of business", has no duty

to retreat. Such a person may use deadly force if he reasonably believes it to be necessary to prevent death or great bodily injury to himself "or another person", or to prevent the commission of a violent crime.

Subsection -440(D) provides that a person who unlawfully and forcefully attempts to enter another's dwelling, residence, or occupied vehicle is presumed to be doing so with the intent to commit an unlawful act involving force or a violent crime.

Subsection -440(E) provides that a person who forcefully enters or attempts to enter a dwelling, residence, or occupied vehicle in violation of an order of protection, restraining order, or bond condition is presumed to be doing so with the intent to commit an unlawful act.

B. Events at trial

At the close of evidence, Appellant moved to dismiss the case based on the Act, arguing it protects someone who defends himself against another forcing his way on the former's property. The judge inquired as to the existence of evidence Carlos forced his way on the property, to which Appellant responded that while Carlos had not forced his way inside, he did have to be pulled out, and Roger Johnson testified Carlos was coming at him. The judge denied the motion. **{R. 505-506}**.

During the charge conference, Appellant first asked for Defense Request No. 7, which asked the judge to charge that "Mr. Parker is presumed to have had a reasonable fear of imminent peril of death or great bodily harm to himself or another person if you find that the decedent was in the process of unlawfully and forcefully entering, or has unlawfully and forcibly entered a dwelling or residence". **{R. 511; 603}**. The judge found the statute

inapplicable to these facts, at which point Appellant argued that the language includes a “porch” and there was testimony the events took place on the “porch”. The judge stated he did not believe the statute stood for the proposition that one could just shoot someone down in these circumstances. {R. 511-513}.

Defense counsel had also submitted Request Eight, which stated that a person who “unlawfully or by force attempts to enter a person’s dwelling, residence, or occupied vehicle is presumed to be doing so with the intent to commit an unlawful act involving force or a violent crime as defined in Section 16-1-60.” Request Nine tracked the definitions of “dwelling” and “residence” in the statute. {R. 604-05}.

The judge charged on self-defense, defense of others, and defense of habitation. {R. 578-584}.

After the charge, the defense renewed the request for charges seven, eight, and nine. {R. 590}.

C. The trial court committed no reversible error in refusing the charges proposed by Appellant under the Act, since the Act’s effective date was after the commission of the crime in this case.

As an initial matter, as this Court has already held on two occasions, the Act is prospective only. Thus, it does not apply to Appellant’s case. State v. Bolin, 381 S.C. 557, 673 S.E.2d 885 (Ct. App. 2009); State v. Dickey, 380 S.C. 384, 669 S.E.2d 917 (S.C. Ct. App. 2008).

Generally, statutory enactments are presumed to be prospective rather than retroactive, unless the statute is remedial or procedural – such as a statute of limitations or a statute allowing change of venue. See Jenkins v. Meares, 302 S.C. 142, 394 S.E.2d

317 (1990) (mentioning the statute of limitations as such a procedural rule, and holding Tort Reform Act was not retroactive); State v. Davis, 309 S.C. 326, 422 S.E.2d 133 (1992) (new statute allowing change of venue was procedural and retroactive), overruled on other grounds by Brightman v. State, 336 S.C. 348, 520 S.E.2d 614 (1999). However, those are rules of statutory construction and the paramount consideration is the intent of the Legislature. Meares, supra (finding dispositive the act's express statement that it would only apply to actions arising or accruing after the effective date of the act).

Here, not only is this statute clearly substantive in its expressed intent to codify and expand the castle doctrine, but the General Assembly in the Act's savings clause clearly expressed the intent that it not be applied to criminal and civil actions, and rights, liabilities or duties, in existence prior to the Act's effective date. Section 4 of 2006 South Carolina Laws Act 379 reads as follows:

The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, *does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of the act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.*

(Emphasis added). The General Assembly could not have been clearer. And, indeed, this makes sense, as one is presumed to know the law when one acts. Appellant could not have been relying on the Act when he opened fire as it did not exist yet. See generally Morehead v. Doe, 324 S.C. 559, 479 S.E.2d 817 (Ct. App. 1996) (person presumed to know the law).

Appellant's crimes were committed on April 18th, 2006, and the arrest warrant was issued on that date **{R. 601}**. The Act took effect on June 9th, 2006. It is inapplicable to Appellant's prosecution for a crime that took place before the Act's effective date. Thus, Appellant's jury requests did not reflect the proper law of South Carolina and the judge was not in error for refusing them. Floyd v. Country Squire Mobile Homes, Inc., 287 S.C. 51, 336 S.E.2d 502 (Ct. App. 1985) (where charge, if given in exact language of request, would be incorrect, it is not error to refuse it).

D. Even if the Act were retroactive, the facts of this case do not trigger application of the Act.

Moreover, the facts of this case simply do not trigger the Act, as the trial court correctly concluded there was no evidence of forcible entry or attempt to enter Appellant's home. It is of course true that the common law of self defense includes the curtilage of a home when addressing where one has no duty to retreat. See, e.g. State v. Wiggins, 330 S.C. 538, 500 S.E.2d 489 (1998). However, we are dealing here not with the common law and its judicial interpretation, but a specific and express statutory definition. "Dwelling" is defined by the Act as:

[A] building or conveyance or any kind, including an attached porch, whether the building or conveyance is temporary or permanent, mobile or immobile, which has a roof over it, including a tent, and is designed to be occupied by people lodging there at night.

S.C. Code Ann. § 16-11-430(1) (Supp. 2007). Tellingly, this is distinguishable from the statutory definition of "dwelling" for purposes of burglary, which includes appurtenant structures 200 yards from the main house. See S.C. Code Ann. § 16-11-10 (Rev. 2003). Thus, nothing about the specific and unequivocal language of the Act would support a

conclusion that the more expansive definition of "dwelling" from burglary was intended. Thus, for the Act to apply, the unlawful and forcible entry would have to be to the house itself or an attached porch.¹

In the present case, there was no evidence that the victim at any time forcibly entered or attempted to enter the dwelling as defined by the Act. This crime took place at adjacent apartments in a housing project, where each apartment had a small concrete "stoop" or "porch" in front of each door. {R. 13-14; 17; 369-371; 422-424}. Demetria testified that Roger Johnson was "in the walkway" when he hit Carlos with the bat while Carlos was leaving, and Carlos turned to retaliate. {R. 25-26}. Cassandra testified Carlos was going to his car when Appellant stated "come here I want to talk to you", at which point Appellant stopped and faced him. {R. 64-66}. Emmanuel stated the altercation took place in his front yard, but also seem to imply of course that they shared a front yard being in such close proximity. {R. 337-339}. Nothing from these witnesses could be construed as a forcible entry on the part of Carlos.

While William Greene ultimately testified Appellant had to pull Carlos outside after Carlos had initially been invited inside {R. 367-369; 389-390}, the physical altercation did not start until everyone was outside. Greene's version was that Emmanuel was standing on his own porch when he swung the chair, and that Appellant broke up the fight before going to leave. It was not until Carlos allegedly reached for something that gunshots rung

¹ Indeed, it does not appear that such a small unenclosed stoop at issue here would qualify as a dwelling under the burglary statute anyway. See State v. Stone, 350 S.C. 442, 567 S.E.2d 244 (2002) (screened porch did qualify as part of the dwelling). Further, for similar reasons as discussed in Stone, it cannot be concluded that the Legislature intended the "attached porch" under the Act to include a small unenclosed stoop.

out. {R. 365-374}. Nothing in this version supports a conclusion that Carlos was trying to forcibly enter Roger Johnson's house, as everyone was outside, the fight had been separated, and William did not even see what happened when Appellant opened fire – he only saw Carlos reach for something, not attempt to break into the house.

Roger Johnson's testimony likewise does not get Appellant there. He also noted that Carlos had to be pulled outside after initially being invited in, but stated he was on the sidewalk and Emmanuel was on Emmanuel's porch – about ten feet away – when Emmanuel picked up the chair. {R. 421-423}. Roger stated that Carlos was on the edge of the yard and Carlos, Carlos's mother, and Carlos's sister all started approaching him. Roger stated when Emmanuel picked up the chair, he swung his bat, and then went into the house as they were approaching or "chasing" him. He heard the gunshots but did not see what happened. {R. 424-428; 451-453}. While Roger testified Carlos and his family was approaching him as he was going inside, at no point did he testify they were on the stoop or trying to break into his apartment. Indeed, he did not even see what happened at the moment deadly force was used. This simply is not actual evidence that Carlos was in the process of unlawfully and forcibly entering the dwelling, such that Appellant could be presumptively said to meet both the actual fear and the reasonable fear elements of self-defense.

Finally, Appellant's testimony is insufficient as well. He testified he only had to gently pull Carlos outside, and that he only fired because Carlos reached under his shirt – not because Carlos was trying forcibly enter the apartment again or otherwise break into it. {R. 476-480; 495-501}.

The facts of this case do not support application of the presumption in the Act.

CONCLUSION

For the foregoing reasons, the conviction and sentence should be affirmed.

Respectfully submitted,

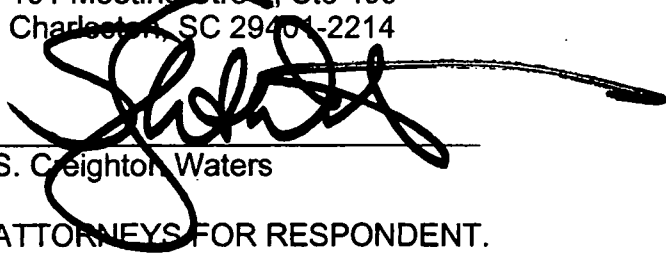
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ATTORNEYS FOR RESPONDENT.

July 9, 2009.

**IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals**

Appeal from Charleston County
Honorable R. Markley Dennis, Jr., Circuit Court Judge

STATE OF SOUTH CAROLINA,

Respondent,

v.

ROGER RAY PARKER,

Appellant.

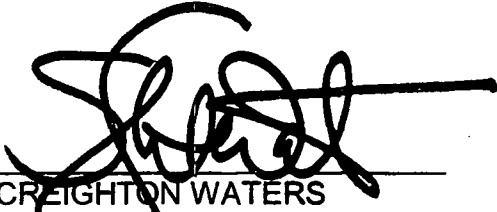
PROOF OF SERVICE

I, S. Creighton Waters, Counsel for Respondent, certify that I have this date served the ***Final Brief of Respondent and Designation of Matter***, dated July 9, 2009, on Appellant by depositing three (3) copies of the same in the United States mail, first class postage prepaid, addressed to his attorney of record:

Robert M. Dudek, Esquire
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I further certify that I have served all parties required by Rule to be served.

This 9th day of June, 2009.



S. CREIGHTON WATERS
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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.

Roger Raynard Parker,

Appellant.

Appeal From Charleston County
R. Markley Dennis, Jr., Circuit Court Judge

Unpublished Opinion No. 2010-UP-378
Submitted May 3, 2010 – Filed August 2, 2010

AFFIRMED

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Creighton Waters, of Columbia; Solicitor Scarlett
Anne Wilson, of Charleston, for Respondent.

PER CURIAM: Roger Raynard Parker appeals the trial court's refusal to charge portions of the Protection of Persons and Property Act (the Act), section 16-11-440 of the South Carolina Code (Supp. 2009), in his trial for murder. We affirm¹ pursuant to Rule 220(b)(1), SCACR, and the following authorities: State v. Bolin, 381 S.C. 557, 561, 673 S.E.2d 885, 887 (Ct. App. 2009) (concluding the Act was intended to apply prospectively and affirming the refusal to charge when crime occurred four months prior to the effective date); State v. Dickey, 380 S.C. 384, 404-05, 699 S.E.2d 917, 928 (Ct. App. 2008) cert. granted Nov. 10, 2009 (holding the Act was intended to apply prospectively and affirming the refusal to charge when offense took place two years prior to effective date); Futch v. McAllister Towing of Georgetown, Inc., 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (stating an appellate court need not address remaining issues when a decision on a prior issue is dispositive).

AFFIRMED.

KONDUROS, GEATHERS, and LOCKEMY, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

ROGER RAYNARD PARKER,

PETITIONER

Appeal from Charleston County

R. Markley Dennis, Jr., Circuit Court Judge

Opinion No. 2010-UP-378

PETITION FOR REHEARING

Petitioner Roger Parker requests rehearing pursuant to Rule 221(a), SCACR, because this Court may have overlooked the fact that penal statutes are construed against the state, and in favor of the defendant. Hair v. State, 305 S.C. 77, 406 S.E.2d 332 (1991). Second, this Court has may have overlooked the fact that a criminal defendant is entitled to the benefit of a new rule, where the matter was properly raised at trial and on appeal *while he is on direct appeal*, but not while he is he is on collateral challenged such as post-conviction relief. See Danforth v. Minnesota, 522 U.S. 264, 298 (2008); Wright v. West, 505 U.S. 277 (1992).

This Court held that the Protection of Persons and Property Act only applied prospectively.

Fundamental fairness dictates that the Act apply retroactively. It was as much the policy of the General Assembly that citizens had the right to defend themselves against attackers in their home at the time of petitioner's trial as it is today. The retroactive application of this Act in no way prejudices the state, and certainly it will not lead to a flood of litigation since the matter had to be raised at trial for the defendant to have the benefit of the change in the law on direct appeal. Rehearing should be granted.

The factual basis for the Act's application as raised by the evidence and argument

As this Court will recall, SLED agent John Roberts testified that the decedent had a high "quantity of metals to be detected on the right palm and the left palm [that] may be associated with gunshot residue." R. 229, ll. 14 – 17. However, agent Roberts opined that the quantity of metal was so high on the decedent's palms that it indicated "to me that it is someone who is being fired at," rather than having fired a gun. R. 230, ll. 17 – 24.

Emmanuel Johnson testified on that fatal day that the decedent warned: "If I have to come back around here it won't be pretty." Emmanuel said he took that as a threat. R. 344, l. 17 – 345, l. 6.

Conversely, Emmanuel recalled that petitioner was "just standing there, listening to them [the decedent and petitioner's father] argue." R. 338, ll. 6 – 10. Emmanuel testified his decedent cousin "had his two fists up" at the point petitioner shot him. R. 340, ll. 1 – 15.

William Greene also testified that the decedent was the one making threats that afternoon, not petitioner. Greene said that the decedent told petitioner's father: "If you ever put your hands on him [Emmanuel] again, I'm going to light this bitch up. In fact, I [would] like to light this bitch up right now." R. 372, l. 4 – 374, l. 6. Greene said that petitioner was apologetic that afternoon to Emmanuel's family, saying "I never disrespected none of ya'll." R. 373, l. 24 –

374, l. 6. Petitioner's father testified that the decedent was loud and rude that afternoon stating "he would close my house down." R. 416, l. 17 – 418, l. 20. Johnson said he was very concerned for his safety because the decedent was in his home making these threats, and the decedent also threatened that he would "light my ass up." At that point, Johnson said petitioner "pulled him [the decedent] out of the house and told him that he can't be disrespecting his daddy and mom in their house [and] that he would have to get out." R. 419, ll. 6 – 16.

It was based upon this testimony that defense counsel asked for the jury instructions 7-9, pursuant to S.C. Code § 16-11-440, which state that a person is presumed to have a reasonable fear of imminent peril of death or great bodily injury to himself or another person if he "is attempting to remove another person against his will from the dwelling or residence." See S.C. Code § 16-11-440 (A)(1)(2). Defense counsel's argument was that the shooting, which occurred immediately outside the apartment, was still within the purview of the "protection of persons and property act" because the attempt to repel continuing was on petitioner's porch. See S.C. Code § 16-11-410 et. seq.

Further, Roger Johnson had specifically testified he knew the decedent "was definitely going to do some damage to me that he was going to do some physical harm." R. 419, ll. 6 – 10.

Petitioner then took the stand in his own defense. Petitioner testified he was at William Greene's apartment when Greene told him that the decedent "was very irate about what was going on [between his father and Emmanuel]" Petitioner said he heard the decedent telling Greene on the speaker phone that he was on his way over to the apartment complex. Petitioner recalled that his father had earlier told him "that Emmanuel was disrespecting him." R. 465, l. 6 – 468, l. 12. Petitioner said he also spoke to Ms. Ward about Emmanuel "disrespecting my father." R. 468, ll. 9 – 12.

Petitioner testified that he got his gun "because I felt like the life of my father and the household members were put in danger." R. 471, ll. 20 – 24.

Petitioner said when he got to his father's apartment his father and the decedent were standing face to face. R. 472, ll. 15 – 24. Petitioner recalled that the decedent was yelling that he "would wipe the mother fucker up, how he would shut our household down." R. 473, ll. 4 – 24.

Petitioner testified the decedent was moving his hands from side to side as he made these threats, and that he told the decedent: "Alright, I can't have you disrespecting my mother and father." R. 474, l. 24 – 475, l. 7. Petitioner testified he pulled the decedent towards the front door, and that the decedent "still was carrying on about . . . what he was going to do to us." R. 475, l. 22 – 476, l. 23.

Once outside petitioner remembered the decedent "was standing in between the yard carrying on." Petitioner told his mother not to come outside because of the threats the decedent was making. R. 477, l. 9 – 478, l. 4.

Petitioner testified that the decedent reached under his shirt. Petitioner thought he was going for a weapon because of the threats he was making at the time. Petitioner pulled out his gun and shot at the decedent. R. 478, l. 19 – 479, l. 11. Petitioner said he stopped shooting at the decedent when the decedent ran between some parked cars, and he strongly denied that he stood over the decedent and shot him. R. 479, ll. 8 – 20.

Petitioner explained that he was totally reasonable in thinking Grant had a weapon because guns and gunshots at Ashley Shores Apartments were the norm, not the exception. Other witnesses had also testified that gunfire at the apartment complex was a common occurrence, and that gunfire alone was not a cause for concern. R. 481, ll. 12 – 24.

Defense counsel argued that petitioner's father's testimony was "that he [the decedent] was coming after him and that he [petitioner] was pulling out of the house." The judge responded, "Your recollection is different from mine. I don't think that is sufficient as the matter of law that I could grant the motion." R. 506, ll. 2 – 11.

The judge refused to charge petitioner's request to charge numbers seven, eight, and nine pertaining to S.C. Code § 16-11-440 on the presumption that a person is presumed to have a reasonable fear of imminent peril of death or great bodily injury to himself or another if the decedent was unlawful and forcefully entering, or who had unlawfully and forcefully entered a dwelling or residence. See Request to Charge 7– 9. R. 603 - 605. Defense counsel correctly pointed out that S.C. Code § 16-11-440(A)(1)(2) also covered the situation of a person -- as here -- who must remove "or is attempting to remove another person against his will from the dwelling, residence, or occupied vehicle." R. 511, l. 14 – 512, l. 3. Defense counsel correctly argued the statute also provided protection for the occupant of the dwelling where the self-defense occurs on the porch. See S.C. Code § 16-11-430(1). Defense counsel also argued the matter should have been dismissed based on the pre-trial arguments.

However, the judge stated: "Every situation that I've seen that statute, it deals with a home where there has been invasion, a shooting occurs within the home, within the confines of the house, not just the yard. Do you have anything applies to premises? Is there any case in which that statute has been applied that applies to the premises?" R. 512, ll. 7 – 14.

Defense counsel responded that the language of the statute included the porch. The judge ruled the statutes did not apply to the present situation, and that he would give these jury instructions. The judge apparently reasoned they were not on the porch when the shooting occurred. R. 512, l. 5 – 519, l. 24.

The policy of the General Assembly

The General Assembly found that it was proper for "law-abiding citizens to protect themselves, their families, and others from intruders and attackers without the fear of prosecution." The legislature also noted the right of citizens to bear arms. See S.C. Code § 16-11-420.

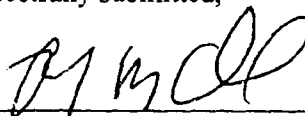
S.C. Code § 16-11-440(A)(1) covers the present situation where petitioner "removes or is attempting to remove another person against his will from the dwelling, residence . . . and who uses deadly force." See S.C. Code § 16-11-440.

The requested jury instructions correctly stated that petitioner was presumed to have had a reasonable fear of imminent peril of death or great bodily injury where the decedent's hostile's actions occurred on the property where petitioner lived. While the judge observed that he had only seen the statute applied to situations where "homes" were invaded, petitioner was respectfully entitled to no less protection because he lived in a housing project in North Charleston.

Further, as petitioner argued, S.C. Code § 16-11-430(1) is similar to the burglary statute, and the legislature meant to codify the common law of burglary. In State v. Evans, 18 S.C. 137 (1882), this Court noted that the common law extension of what constitutes "burglary" applies to certain structures within the curtilage. The structure must be somehow connected with or contributory to the dwelling and it cannot be separate from it and have a distinct use. State v. Evans, 18 S.C. at 410; State v. Ginns, 1NMcC 583 (1819).

Petitioner respectfully requests that rehearing be granted.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'R M Dudek', written over a horizontal line.

Robert M. Dudek
Chief Appellate Defender

This 17th day of August, 2010.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Charleston CountyR. Markley Dennis, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

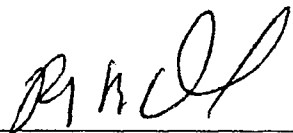
V.

ROGER RAYNARD PARKER,

PETITIONER

CERTIFICATE OF SERVICE

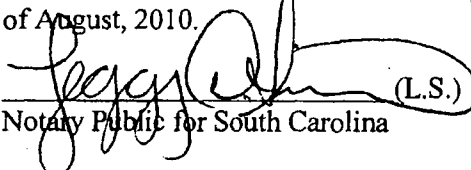
The undersigned attorney hereby certifies that a true copy of the Petition for Rehearing in the above-entitled case has been served upon S. Creighton Waters, Esquire, this 17th day of August, 2010.



Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 17th day
of August, 2010.



(L.S.)
Notary Public for South Carolina

My Commission Expires: December 4, 2017

The South Carolina Court of Appeals

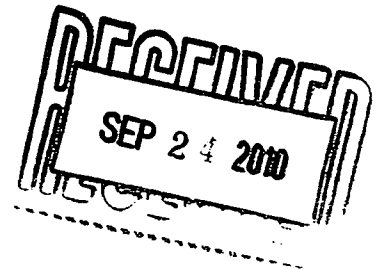
The State,

Respondent,

v.

Roger Raynard Parker,

Appellant.

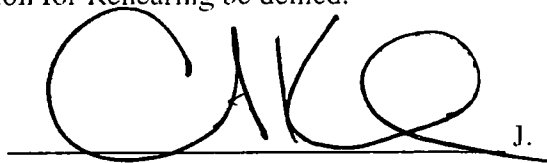


The Honorable R. Markley Dennis, Jr.
Charleston County
Trial Court Case No. 2007-GS-10-04293

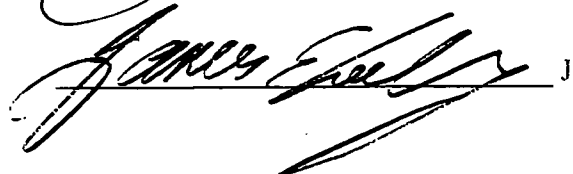
ORDER DENYING PETITION FOR REHEARING

PER CURIAM: After a 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.

It is, therefore, ordered that the Petition for Rehearing be denied.

 J.

 J.

 J.

FILEDSeptember 24, 2010

cc: Chief Appellate Defender Robert M. Dudek
Attorney General Henry Dargan McMaster
Chief Deputy Attorney General John W. McIntosh
Assistant Deputy Attorney General Donald J. Zelenka
Senior Assistant Attorney General S. Creighton Waters
Scarlett Anne Wilson, Esquire

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Charleston County

R. Markley Dennis, Jr., Circuit Court Judge

Opinion No. 2010-UP-378 (S.C. Ct. App. filed 8/2/2010)

07-GS-10-4293

THE STATE,

RESPONDENT,

V.

ROGER RAYNARD PARKER,

PETITIONER

PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS

ROBERT M. DUDEK
Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1343

ATTORNEY FOR PETITIONER.

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CERTIFICATE OF COUNSEL

Counsel for petitioner certifies that the petition for rehearing was made and finally ruled on by the Court of Appeals on September 24, 2010.

QUESTION PRESENTED

Whether the Court of Appeals erred by ruling it was not error to refuse to instruct on defense requests to charge seven, eight, and nine on the "protection of a person's and property act," S.C. Code § 16-11-410 et. seq., holding the Act only applied prospectively since these were correct presumptions under this statute which provides that a person is presumed to have a reasonable fear of imminent peril of death or great bodily harm to himself or another person where another person is unlawfully and forcibly in their dwelling, or has to be forcefully removed from the dwelling, since petitioner had to forcibly remove the decedent to protect his father from harm?

STATEMENT OF THE CASE

Petitioner was indicted by the Charleston County grand jury for the offense of murder. R. 599. His case was called to trial on February 25, 2008 before the Honorable R. Markley Dennis, Jr., and a jury. Andrew Grimes and Jason Mikell represented petitioner. Jennifer Shealy and Chad Simpson were the solicitors. R. 1.

At the conclusion of the trial on February 27, 2008 the jury found petitioner guilty. R. 597, ll. 5 – 14. Judge Dennis sentenced petitioner to life imprisonment. R. 598, ll. 17 – 18.

The Court of Appeals affirmed petitioner's convictions in State v. Roger Raynard Parker, 2010-UP-378 (August 2, 2010). App. 1-2. Petitioner sought rehearing on August 17, 2010. App. 3-11. Rehearing was denied. App. 12.

This petition for a writ of certiorari follows.

ARGUMENT

The Court of Appeals erred by ruling it was not error to refuse to instruct on defense requests to charge seven, eight, and nine on the “protection of a person’s and property act,” S.C. Code § 16-11-410 et. seq., holding the Act only applied prospectively since these were correct presumptions under this statute which provides that a person is presumed to have a reasonable fear of imminent peril of death or great bodily harm to himself or another person where another person is unlawfully and forcibly in their dwelling, or has to be forcefully removed from the dwelling, since petitioner had to forcibly remove the decedent to protect his father from harm, and the Act was meant to apply retroactively.

Introduction

The Court of Appeals cited two of its own cases, State v. Bolin, 381 S.C. 557, 561, 673 S.E.2d 885, 887 (Ct.App. 2009) and State v. Dickey, 380 S.C. 384, 404-405, 699 S.E.2d 917, 928 (Ct.App. 2008), and held that the Protection of Persons and Property Act, S.C. Code §16-11-440, only applied prospectively so it did not address petitioner’s underlying claim that he was entitled to the protection of this Act. App. 1-2. As seen above, that Court refused to reconsider on rehearing.

Relevant facts

Demetria Grant was the sister of the decedent, Carlise “Carlos” Grant. She lived in the Ashley Shores apartment complex in North Charleston with her two young children. R. 9, l. 1 – 10, l. 20. Emmanuel Johnson, who was fifteen years old on April 18, 2006, continued his ongoing dispute that day with petitioner’s father, Roger Johnson, by “disrespecting” him. Johnson had limited mobility because of health problems. Johnson and petitioner shared an apartment. R. 11, ll. 13 – 14; r. 15, l. 5 – 16, l. 25.

While petitioner's father thought the teenaged Emmanuel was again "disrespecting" him, Emmanuel conversely allegedly thought Johnson had earlier sent some young men to "beat him up" because he thought Emmanuel's brother had broken into his apartment.

Demetria testified that her mother was visiting her apartment at Ashley Shores on April 18, 2006. Johnson and Emmanuel "said some little words" to each other. Demetria said Johnson eventually came out of his apartment and was he swinging a baseball bat in Emmanuel's direction. Demetria recalled her mother, Cassandra Ward, got between Emmanuel and Johnson and broke up the dispute. R. 15, l. 5 – 16, l. 25. Everyone then went back inside their respective apartments.

Demetria testified that when the decedent arrived home from his work at a local hotel, he knocked on Johnson's door to talk about the tension, and he was invited inside. R. 18, ll. 19 – 22. At this point the testimony of the government's witnesses and petitioner's witnesses differed greatly.

Demetria said the decedent and Johnson were having a civil conversation inside Johnson's apartment after she explained to the decedent "what was going on." R. 20, ll. 1 – 13. Demetria testified that neither man threatened the other. Everything was allegedly civil until petitioner came home. Demetria claimed Johnson then "started acting totally different" when they were outside the apartment. Demetria recalled that Johnson got his baseball bat and hit the decedent with that bat while they were standing outside their apartment. R. 22, l. 21 – 24, l. 16. Demetria maintained at this point petitioner "pulled the gun" and shot the decedent. R. 26, ll. 20 – 22.

Demetria said she "hurriedly got them" – her children -- into the apartment. When she next looked outside she "saw my brother on the ground and Stinka [petitioner] was running down the street shooting the gun in the air." R. 28, ll. 4 – 8.

On cross-examination, Demetria acknowledged that the decedent had a temper, but she now claimed the decedent only "*used to* have a temper." R. 33, ll. 12 – 13. (emphasis added). Demetria also admitted when the decedent came home from work that day the decedent told everyone they were going to "resolve this today." R. 36, ll. 16 – 20. Demetria at trial claimed that she did not tell the police that the decedent said they were going to "resolve this today" even though that information was included in her statement.

Demetria's mother, Cassandra Ward, also testified about this dispute between Roger Johnson and fifteen-year-old Emmanuel. R. 52, l. 19 – 53, l. 11. Ward remembered that when Johnson came outside with a bat, Emmanuel grabbed a chair. Ward said he told petitioner's father: "This is a child and I'm not going to allow you to hit this child." R. 53, l. 12 – 54, l. 9.

Ward claimed the decedent was calm when he came home from work that April afternoon. She remembered petitioner's mother asking the decedent: "How would you feel if somebody had broken in your house and you were afraid for yourself?" This was regarding the accusation that Emmanuel's brother had broken into their apartment. R. 56, l. 21 – 58, l. 10.

Ward also claimed that petitioner's father, Roger Johnson, and the decedent were able to talk calmly until petitioner arrived. R. 58, ll. 13 – 23. Ward testified that petitioner's father hit the decedent with a bat outside of his apartment, and that petitioner then shot the decedent. She said the decedent ran after he was shot in the shoulder, and that petitioner ran after him shooting his gun. Ward maintained that when her son fell to the ground: "I watched him [petitioner] stand over my child and he shot him in his head." R. 63, l. 10 – 68, l. 20. Ward also claimed that after petitioner shot the decedent "he ran down the street, shooting up in to the air." R. 69, ll. 19 – 22.

Detective Keith Elmore said petitioner was arrested as a result of an anonymous tip on January 17, 2007 in Charleston. Both sides stipulated to this fact. R. 131, l. 25 – 133, l. 14.

SLED agent John Roberts testified that the decedent had a high “quantity of metals to be detected on the right palm and the left palm [that] may be associated with gunshot residue.” R. 229, ll. 14 – 17. However, agent Roberts opined that the quantity of metal was so high on the decedent’s palms that it indicated “to me that it is someone who is being fired at,” rather than having fired a gun.¹ R. 230, ll. 17 – 24.

The pathologist, Dr. Kim Collins, testified that the decedent had a wound on his arm consistent with him being with being hit by a baseball bat. R. 265, l. 19 – 266, l. 4. The decedent had been shot in the shoulder and the head. The shot to the head was the fatal shot. R. 266, l. 5 – 271, l. 8.

On cross-examination, Dr. Collins acknowledged that marijuana was found in the decedent’s bloodstream. However, she claimed the positive match for cocaine was a “false positive.” R. 272, l. 2 – 278, l. 12.

The defense case

Emmanuel Johnson testified on that fatal day, April 18, 2006, that the decedent warned: “If I have to come back around here it won’t be pretty.” Emmanuel said he took that as a threat. R. 344, l. 17 – 345, l. 6.

Conversely, Emmanuel recalled that petitioner was “just standing there, listening to them [the decedent and petitioner’s father] argue.” R. 338, ll. 6 – 10. Emmanuel testified his decedent cousin “had his two fists up” at the point petitioner shot him. R. 340, ll. 1 – 15.

¹ Petitioner proffered an incident report which indicated “there was a shootout.” R. 239, l. 4 – 240, l. 22. The judge refused to allow agent Roberts to cross-examine about this report because he did not prepare it, and allegedly did not rely on it, and he told petitioner he could “bring in your own expert.” R. 244, ll. 2 – 22.

William Greene also testified that the decedent was the one making threats that afternoon, not petitioner. Greene said that the decedent told petitioner's father: "If you ever put your hands on him [Emmanuel] again, I'm going to light this bitch up. In fact, I [would] like to light this bitch up right now." R. 372, l. 4 – 374, l. 6. Greene said that petitioner was apologetic that afternoon to Emmanuel's family, saying "I never disrespected none of ya'll." R. 373, l. 24 – 374, l. 6.

Petitioner's father testified that the decedent was loud and rude that afternoon stating "he would close my house down." R. 416, l. 17 – 418, l. 20. Johnson said he was very concerned for his safety because the decedent was in his home making these threats, and the decedent also threatened that he would "light my ass up." At that point, Johnson said petitioner "pulled him [the decedent] out of the house and told him that he can't be disrespecting his daddy and mom in their house [and] that he would have to get out." R. 419, ll. 6 – 16.

It was based upon this testimony that defense counsel asked for the jury instructions 7-9, pursuant to S.C. Code § 16-11-440, which state that a person is presumed to have a reasonable fear of imminent peril of death or great bodily injury to himself or another person if he "is attempting to remove another person against his will from the dwelling or residence." See S.C. Code § 16-11-440 (A)(1)(2). Defense counsel's argument was that the shooting, which occurred immediately outside the apartment, was still within the purview of the "protection of persons and property act" because the attempt to repel was continuing on petitioner's porch. See S.C. Code § 16-11-410 et. seq.

Further, Roger Johnson had specifically testified he knew the decedent "was definitely going to do some damage to me that he was going to do some physical harm." R. 419, ll. 6 – 10.

Petitioner testifies

Petitioner then took the stand in his own defense. Petitioner testified he was at William Greene's apartment when Greene told him that the decedent "was very irate about what was going on [between his father and Emmanuel]" Petitioner said he heard the decedent telling Greene on the speaker phone that he was on his way over to the apartment complex. Petitioner recalled that his father had earlier told him "that Emmanuel was disrespecting him." R. 465, l. 6 – 468, l. 12. Petitioner said he also spoke to Ms. Ward about Emmanuel "disrespecting my father." R. 468, ll. 9 – 12.

Petitioner testified that he got his gun "because I felt like the life of my father and the household members were put in danger." R. 471, ll. 20 – 24.

Petitioner said when he got to his father's apartment his father and the decedent were standing face to face. R. 472, ll. 15 – 24. Petitioner recalled that the decedent was yelling that he "would wipe the mother fucker up, how he would shut our household down." R. 473, ll. 4 – 24.

Petitioner testified the decedent was moving his hands from side to side as he made these threats, and that he told the decedent: "Alright, I can't have you disrespecting my mother and father." R. 474, l. 24 – 475, l. 7. Petitioner testified he pulled the decedent towards the front door, and that the decedent "still was carrying on about . . . what he was going to do to us." R. 475, l. 22 – 476, l. 23.

Once outside petitioner remembered the decedent "was standing in between the yard carrying on." Petitioner told his mother not to come outside because of the threats the decedent was making. R. 477, l. 9 – 478, l. 4.

Petitioner testified that the decedent reached under his shirt. Petitioner thought he was going for a weapon because of the threats he was making at the time. Petitioner pulled out his gun and shot at the decedent. R. 478, l. 19 – 479, l. 11. Petitioner said he stopped shooting at the decedent when the decedent ran between some parked cars, and he strongly denied that he stood over the decedent and shot him. R. 479, ll. 8 – 20.

Petitioner explained that he was totally reasonable in thinking Grant had a weapon because guns and gunshots at Ashley Shores Apartments were the norm, not the exception. Other witnesses had also testified that gunfire at the apartment complex was a common occurrence, and that gunfire alone was not a cause for concern. R. 481, ll. 12 – 24.

Following the defense case counsel moved to dismiss under the protection of persons and property act, S.C. Code § 16-11-410 et. seq., because the decedent had come onto petitioner's property and because petitioner was acting in self-defense. The judge asked defense counsel to explain how these statutes applied to him. R. 505, l. 13 – 506, l. 1.

Defense counsel argued that petitioner's father's testimony was "that he [the decedent] was coming after him and that he [petitioner] was pulling out of the house." The judge responded, "Your recollection is different from mine. I don't think that is sufficient as the matter of law that I could grant the motion." R. 506, ll. 2 – 11.

The judge then agreed to charge self-defense, defense of others and defense of habitation. However, the judge refused to charge petitioner's request to charge numbers seven, eight, and nine pertaining to S.C. Code § 16-11-440 on the presumption that a person is presumed to have a reasonable fear of imminent peril of death or great bodily injury to himself or another if the decedent was unlawful and forcefully entering, or who had unlawfully and forcefully entered a dwelling or residence. See Request to Charge 7– 9. R. 603 - 605. Defense counsel correctly

pointed out that S.C. Code § 16-11-440(A)(1)(2) also covered the situation of a person -- as here -- who must remove "or is attempting to remove another person against his will from the dwelling, residence, or occupied vehicle." R. 511, l. 14 – 512, l. 3. Defense counsel correctly argued the statute also provided protection for the occupant of the dwelling where the self-defense occurs on the porch. See S.C. Code § 16-11-430(1).

However, the judge stated: "Every situation that I've seen that statute, it deals with a home where there has been invasion, a shooting occurs within the home, within the confines of the house, not just the yard. Do you have anything applies to premises? Is there any case in which that statute has been applied that applies to the premises?" R. 512, ll. 7 – 14.

Defense counsel responded that the language of the statute included the porch. The judge ruled the statutes did not apply to the present situation, and that he would not give these jury instructions. The judge apparently reasoned they were not on the porch when the shooting occurred. R. 512, l. 5 – 519, l. 24.

After the judge charged the jury on self-defense, defense of others, and defense of habitation defense counsel took exception to the judge's refusal to charge requests number seven, eight, and nine -- "the charges of protection of persons or property" requests. R. 590, ll. 3 – 10. See Requests to Charge. R. 603 - 605.

Court of Appeals

Before the Court of Appeals petitioner argued the trial court erred by refusing to his request to charge based on the Act. As seen above, the Court of Appeals cited State v. Bolin, 381 S.C. 557, 561, 673 S.E.2d 885, 887 (Ct.App. 2009) and State v. Dickey, 380 S.C. 384, 404-405, 699 S.E.2d 917, 928 (Ct.App. 2008), and held that the Protection of Persons and Property Act, S.C.

Code §16-11-440, only applied prospectively so it did not address petitioner's underlying claim that he was entitled to the protection of this Act by way of his requests to charge. App. 1-2

Discussion

Defense counsel correctly argued that the protection of persons and property act, S.C. Code § 16-11-410 et. seq., applied to him. In stating its intent and findings of the General Assembly in S.C. Code § 16-11-410 the General Assembly stated its intent was to "codify the common law Castle doctrine which recognizes that a person's home is his castle . . ." See S.C. Code § 16-11-420. The fatal encounter in this case occurred on April 18, 2006. In State v. Bolin, 381 S.C. 557, 561, 673 S.E.2d 885, 887 (Ct.App. 2009), the Court of Appeals noted that the Act became effective on June 9, 2006, four months after the crime.

Here, however, petitioner's trial began on February 25, 2008, well *after* the effective date of the 2006 Act. In Dickey, the Court noted the Cornell Arms shooting occurred in 2004, two years before the effective date of the Act. See State v. Dickey, 380 S.C. 384, 405, 699 S.E.2d 917, 928 (Ct.App. 2008).

Here, the General Assembly found that it was proper for "law-abiding citizens to protect themselves, their families, and others from intruders and attackers without the fear of prosecution." The legislature also noted the right of citizens to bear arms. See S.C. Code § 16-11-420.

S.C. Code § 16-11-440(A)(1) covers the present situation where petitioner "removes or is attempting to remove another person against his will from the dwelling, residence . . . and who uses deadly force." Request to charge #7; See S.C. Code § 16-11-440; R. 603.

The requested jury instructions correctly stated that petitioner was presumed to have had a reasonable fear of imminent peril of death or great bodily injury where the decedent's hostile's

actions occurred on the property where petitioner lived. R. 604-605. While the judge observed that he had only seen the statute applied to situations where “homes” were invaded, petitioner was respectfully entitled to no less protection because he lived in a housing project in North Charleston.

Further, S.C. Code § 16-11-430(1) is similar to the burglary statute, and the legislature meant to codify the common law of burglary. In State v. Evans, 18 S.C. 137 (1882), this Court noted that the common law extension of what constitutes “burglary” applies to certain structures within the curtilage. The structure must be somehow connected with or contributory to the dwelling and it cannot be separate from it and have a distinct use. State v. Evans, 18 S.C. at 410; State v. Ginns, 1NMcC 583 (1819).

Petitioner respectfully submits that because the General Assembly intended to codify the common law of burglary, and because a dog house, a smoke house, and a hen house have qualified as being within the protection of the burglary statute, that the area immediately in front of petitioner’s apartment also was protected against uninvited intrusion under these statutes. See State v. Langford, 55 S.C. 322, 33 S.E.2d 370 (1899); State v. Branham, 13 S.C. 389 (1879); State v. Johnson, 45 S.C. 483, 23 S.E.2d 619 (1895).

The requested jury instructions, defendant’s seven through nine, were proper statements of the law, and the jury should have been instructed on the presumptions applicable under the protections of persons and property act. S.C. Code § 16-11-430 *et. seq.* In Commonwealth v. Pring-Wilson, 448 Mass. 718, 863 N.E.2d 963 (2007), the Court held that that even though it had held that a *new rule* allowing defendants to introduce evidence of specific prior act of violence of the victim would only apply *prospectively* in self-defense cases, the judge in Pring-Wilson did not abuse her discretion by ordering a new trial for a defendant who had been denied the right

put forth evidence of the victim's prior violent acts because they were relevant to the issue of the first aggressor. Technically, Pring-Wilson was not entitled to admit this evidence because the new rule only applied prospectively. However, where the application of the new rule in a self-defense case only prospectively will work an injustice the Court has the inherent power to cure it by applying the rule retroactively.

Here the Protections of Persons and Property Act became effective June 9, 2006, four months after the shooting. However, as stated above, petitioner's trial began on February 25, 2008, well *after* the effective date of the 2006 Act. The interests of justice demanded that petitioner be given the benefit of the Act during his subsequent 2008 trial. The requested jury instructions were only slight modifications to the law of burglary in that they allowed a presumption petitioner had a reasonable fear to himself or another person if the decedent was unlawfully and forcefully entering, and that the person unlawfully and forcefully entering was presumed to be forcefully entering to commit an unlawful act involving force or a violent crime pursuant to S.C. Code §16-60. R. 603-605.

Finally, penal statutes are construed against the state, and in favor of the defendant. Hair v. State, 305 S.C. 77, 406 S.E.2d 332 (1991). This Court, as the highest Court of this case, should respectfully have the last word on under what conditions a defendant who is entitled to a self-defense instruction, where it is undisputed the aggressor was acting violently on the defendant's property, can have the benefit of the Protection of Persons and Property Act where he is *tried* after the date of the Act became effective for an alleged homicide occurring near the effective date of the Act. This would be consistent a criminal defendant being entitled to the benefit of a new rule, where the matter was properly raised at trial and on appeal *while he is on*

direct appeal, but not while he is on collateral challenged such as post-conviction relief. See Danforth v. Minnesota, 522 U.S. 264, 298 (2008); Wright v. West, 505 U.S. 277 (1992).

Petitioner testified that when he got to his father's apartment his father and the decedent were standing face to face. R. 472, ll. 15 – 24. Petitioner recalled that the decedent was yelling that he “would wipe the mother fucker up, how he would shut our household down.” R. 473, ll. 4 – 24. The decedent was moving his hands from side to side as he made these threats, and that he told the decedent: “Alright, I can’t have you disrespecting my mother and father.” R. 474, l. 24 – 475, l. 7. Petitioner testified he pulled the decedent towards the front door, and that the decedent “still was carrying on about . . . what he was going to do to us.” R. 475, l. 22 – 476, l. 23. Once outside petitioner remembered the decedent “was standing in between the yard carrying on.” Petitioner told his mother not to come outside because of the threats the decedent was making. R. 477, l. 9 – 478, l. 4.

Petitioner testified that the decedent reached under his shirt. Petitioner thought he was going for a weapon because of the threats he was making at the time. Petitioner pulled out his gun and shot at the decedent. R. 478, l. 19 – 479, l. 11. Petitioner said he stopped shooting at the decedent when the decedent ran between some parked cars, and he strongly denied that he stood over the decedent and shot him. R. 479, ll. 8 – 20.

Petitioner should have been given the advantage of the presumptions in the Protection of Persons and Property Act given that the shooting occurred very near the time Act became law, and his trial and appeal occurred well after the Act had become law.

CONCLUSION

By reason of the foregoing arguments, a writ of certiorari to the Court of Appeals should be issued to allow full briefing on these issues.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read 'R M Dudek', written over a horizontal line.

Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR PETITIONER.

This 29th day of December, 2010

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Charleston County

R. Markley Dennis, Jr., Circuit Court Judge

Opinion No. 2010-UP-378 (S.C. Ct. App. filed 8/2/2010)
07-GS-10-4293

THE STATE,

RESPONDENT,

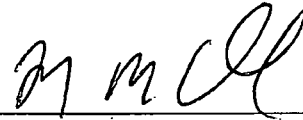
V.

ROGER RAYNARD PARKER,

PETITIONER

CERTIFICATE OF SERVICE

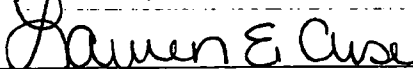
I certify that a true copy of the petition for writ of certiorari and a copy of the appendix, in this case has been served on S. Creighton Waters, Esquire, and the S.C. Court of Appeals this 29th day of December, 2010.



Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 29th day
of December, 2010.

 (L.S.)

Notary Public for South Carolina

My Commission Expires: August 23, 2014

**STATE OF SOUTH CAROLINA
IN THE SUPREME COURT**

Certiorari to the Charleston County
R. Markley Dennis, Jr. Circuit Court Judge

Opinion No. 2010-UP-378 (S.C. App. filed 8/2/2010)

THE STATE,

Respondent,

v.

ROGER RAYNARD PARKER,

Petitioner

RETURN TO PETITION FOR WRIT OF CERTIORARI

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Chief Deputy Attorney General

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ATTORNEYS FOR RESPONDENT

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STATEMENT OF THE ISSUE ON APPEAL

DID THE COURT OF APPEALS ERR IN AFFIRMING THE TRIAL COURT'S REFUSAL TO GIVE INSTRUCTIONS BASED IN THE PROTECTION OF PERSONS AND PROPERTY ACT, WHERE THE ACT IS CLEAR THAT IT IS PROSPECTIVE ONLY, AND WHERE THE ACT WAS INAPPLICABLE UNDER ANY VERSION OF THE FACTS IN THIS CASE?

STATEMENT OF THE CASE

Petitioner, Roger R. Parker, was indicted by the Charleston County Grand Jury for murder (07-GS-10-04293). Specifically, the indictment alleged that, on April 18th, 2006, Petitioner with malice aforethought killed Carlise Grant by shooting him. {R. p. 599-600}.

The Honorable R Markeley Dennis, Jr., conducted a jury trial from February 25th to 27th, 2008. At trial, Applicant was represented by Public Defenders Andrew Grimes and Jason Mikell, and Assistant Solicitors Jennifer Shealy and Chad Simpson prosecuted the case for the State. On February 27th, 2008, the jury found Petitioner guilty of murder, and Judge Dennis sentenced Petitioner to life. {R. 598}.

A timely Notice of Appeal was filed with the South Carolina Court of Appeals. Following briefing and argument, the Court of Appeals issued an opinion on August 2, 2010, in which it affirmed. {App. 1}. The petition for rehearing filed by Petitioner was denied by the Court of Appeals on September 24, 2010. {App. 11}.

ARGUMENT

THE COURT OF APPEALS DID NOT ERR IN AFFIRMING THE TRIAL COURT'S REFUSAL TO GIVE INSTRUCTIONS BASED IN THE PROTECTION OF PERSONS AND PROPERTY ACT, BECAUSE THE ACT IS CLEAR THAT IT IS PROSPECTIVE ONLY, AND THE ACT WAS INAPPLICABLE UNDER ANY VERSION OF THE FACTS IN THIS CASE ANYWAY.

Petitioner did not deny shooting the victim, but raised self-defense at trial. He contends the Court of Appeals erred in affirming the trial court refusal to charge three requests he asserts are necessary after the passage of the Protection of Person and Property Act ("the Act"), S.C. Code Ann. § 16-11-410, *et. seq.* However, the Act is clear that it is prospective only and inapplicable to Petitioner's case. Even if the Act was retroactive, it is inapplicable to the facts of this case.

A. The Act

Aside from some intent and definitional provisions, the substance of the Act is in S.C. Code Ann. § 16-11-440 and -450 (Supp. 2007). Subsection 16-11-440(A) first provides for presumptions that one has a reasonable fear of imminent peril if: (1) another person is unlawfully and forcefully entering "a dwelling, residence, or occupied vehicle", or is attempting to remove someone against his will from "a dwelling, residence, or occupied vehicle"; or (2) if the person using deadly force knows or has reason to believe an unlawful and forcible entry or act is occurring or has occurred.

Subsection -440(B) has exclusions for the presumption in subsection (A), including where the person who uses deadly force is engaged in an unlawful activity or is using the dwelling, residence, or occupied vehicle for an unlawful activity.

Subsection -440(C) seems to have a significant effect on the duty to retreat in South

Carolina. It provides that one not engaged in unlawful activity "who is attacked in a place where he has a right to be, including, but not limited to, his place of business", has no duty to retreat. Such a person may use deadly force if he reasonably believes it to be necessary to prevent death or great bodily injury to himself "or another person", or to prevent the commission of a violent crime.

Subsection -440(D) provides that a person who unlawfully and forcefully attempts to enter another's dwelling, residence, or occupied vehicle is presumed to be doing so with the intent to commit an unlawful act involving force or a violent crime.

Subsection -440(E) provides that a person who forcefully enters or attempts to enter a dwelling, residence, or occupied vehicle in violation of an order of protection, restraining order, or bond condition is presumed to be doing so with the intent to commit an unlawful act.

B. Events at trial

At the close of evidence, Petitioner moved to dismiss the case based on the Act, arguing it protects someone who defends himself against another forcing his way on the former's property. The judge inquired as to the existence of evidence Carlos forced his way on the property, to which Petitioner responded that while Carlos had not forced his way inside, he did have to be pulled out, and Roger Johnson testified Carlos was coming at him. The judge denied the motion. **{R. 505-506}**.

During the charge conference, Petitioner first asked for Defense Request No. 7, which asked the judge to charge that "Mr. Parker is presumed to have had a reasonable fear of imminent peril of death or great bodily harm to himself or another person if you find

that the decedent was in the process of unlawfully and forcefully entering, or has unlawfully and forcibly entered a dwelling or residence". {R. 511; 603}. The judge found the statute inapplicable to these facts, at which point Petitioner argued that the language includes a "porch" and there was testimony the events took place on the "porch". The judge stated he did not believe the statute stood for the proposition that one could just shoot someone down in these circumstances. {R. 511-513}.

Defense counsel had also submitted Request Eight, which stated that a person who "unlawfully or by force attempts to enter a person's dwelling, residence, or occupied vehicle is presumed to be doing so with the intent to commit an unlawful act involving force or a violent crime as defined in Section 16-1-60." Request Nine tracked the definitions of "dwelling" and "residence" in the statute. {R. 604-05}.

The judge charged on self-defense, defense of others, and defense of habitation. {R. 578-584}. After the charge, the defense renewed the request for charges seven, eight, and nine. {R. 590}.

C. The trial court committed no reversible error in refusing the charges proposed by Petitioner under the Act, since the Act's effective date was after the commission of the crime in this case.

As an initial matter, as the Court of Appeals has already held on two occasions, the Act is prospective only. Thus, it does not apply to Petitioner's case. State v. Bolin, 381 S.C. 557, 673 S.E.2d 885 (Ct. App. 2009); State v. Dickey, 380 S.C. 384, 669 S.E.2d 917 (S.C. Ct. App. 2008) (cert. granted Oct. 20, 2010).

Generally, statutory enactments are presumed to be prospective rather than retroactive, unless the statute is remedial or procedural – such as a statute of limitations

or a statute allowing change of venue. See Jenkins v. Meares, 302 S.C. 142, 394 S.E.2d 317 (1990) (mentioning the statute of limitations as such a procedural rule, and holding Tort Reform Act was not retroactive); State v. Davis, 309 S.C. 326, 422 S.E.2d 133 (1992) (new statute allowing change of venue was procedural and retroactive), overruled on other grounds by Brightman v. State, 336 S.C. 348, 520 S.E.2d 614 (1999). However, those are rules of statutory construction, and the paramount and ultimate consideration is the intent of the Legislature. Meares, supra (finding dispositive the act's express statement that it would only apply to actions arising or accruing after the effective date of the act).

Here, not only is this statute clearly substantive in its expressed intent to codify and expand the castle doctrine, but the General Assembly in the Act's savings clause clearly expressed the intent that it not be applied to criminal and civil actions, and rights, liabilities or duties, in existence prior to the Act's effective date. Section 4 of 2006 South Carolina Laws Act 379 reads as follows:

The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, *does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of the act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.*

(Emphasis added). The General Assembly could not have been clearer. And, indeed, this makes sense, as one is presumed to know the law when one acts. Petitioner could not have been relying on the Act when he opened fire as it did not exist yet. See generally Morehead v. Doe, 324 S.C. 559, 479 S.E.2d 817 (Ct. App. 1996) (person presumed to

know the law).

Petitioner's crimes were committed on April 18th, 2006, and the arrest warrant was issued on that date {R. 601}. The Act took effect on June 9th, 2006. It is inapplicable to Petitioner's prosecution for a crime that took place before the Act's effective date. Thus, Petitioner's jury requests did not reflect the proper law of South Carolina and the judge was not in error for refusing them. Floyd v. Country Squire Mobile Homes, Inc., 287 S.C. 51, 336 S.E.2d 502 (Ct. App. 1985) (where charge, if given in exact language of request, would be incorrect, it is not error to refuse it).

D. Even if the Act were retroactive, the facts of this case do not trigger application of the Act.

Moreover, the facts of this case simply do not trigger the Act, as the trial court correctly concluded there was no evidence of forcible entry or attempt to enter Petitioner's home. It is of course true that the common law of self defense includes the curtilage of a home when addressing where one has no duty to retreat. See, e.g. State v. Wiggins, 330 S.C. 538, 500 S.E.2d 489 (1998). However, we are dealing here not with the common law and its judicial interpretation, but a specific and express statutory definition. "Dwelling" is defined by the Act as:

[A] building or conveyance or any kind, including an attached porch, whether the building or conveyance is temporary or permanent, mobile or immobile, which has a roof over it, including a tent, and is designed to be occupied by people lodging there at night.

S.C. Code Ann. § 16-11-430(1) (Supp. 2007). Tellingly, this is distinguishable from the statutory definition of "dwelling" for purposes of burglary, which includes appurtenant structures 200 yards from the main house. See S.C. Code Ann. § 16-11-10 (Rev. 2003).

Thus, nothing about the specific and unequivocal language of the Act would support a conclusion that the more expansive definition of "dwelling" from burglary was intended. Thus, for the Act to apply, the unlawful and forcible entry would have to be to the house itself or an attached porch.¹

In the present case, there was no evidence that the victim at any time forcibly entered or attempted to enter the dwelling as defined by the Act. This crime took place at adjacent apartments in a housing project, where each apartment had a small concrete "stoop" or "porch" in front of each door. {R. 13-14; 17; 369-371; 422-424}. Demetria testified that Roger Johnson was "in the walkway" when he hit Carlos with the bat while Carlos was leaving, and Carlos turned to retaliate. {R. 25-26}. Cassandra testified Carlos was going to his car when Petitioner stated "come here I want to talk to you", at which point Petitioner stopped and faced him. {R. 64-66}. Emmanuel stated the altercation took place in his front yard, but also seem to imply of course that they shared a front yard being in such close proximity. {R. 337-339}. Nothing from these witnesses could be construed as a forcible entry on the part of Carlos.

While William Greene ultimately testified Petitioner had to pull Carlos outside after Carlos had initially been invited inside {R. 367-369; 389-390}, the physical altercation did not start until everyone was outside. Greene's version was that Emmanuel was standing on his own porch when he swung the chair, and that Petitioner broke up the fight before

¹ Indeed, it does not appear that such a small unenclosed stoop at issue here would qualify as a dwelling under the burglary statute anyway. See State v. Stone, 350 S.C. 442, 567 S.E.2d 244 (2002) (screened porch did qualify as part of the dwelling). Further, for similar reasons as discussed in Stone, it cannot be concluded that the Legislature intended the "attached porch" under the Act to include a small unenclosed stoop.

going to leave. It was not until Carlos allegedly reached for something that gunshots rung out. {R. 365-374}. Nothing in this version supports a conclusion that Carlos was trying to forcibly enter Roger Johnson's house, as everyone was outside, the fight had been separated, and William did not even see what happened when Petitioner opened fire – he only saw Carlos reach for something, not attempt to break into the house.

Roger Johnson's testimony likewise does not get Petitioner there. He also noted that Carlos had to be pulled outside after initially being invited in, but stated he was on the sidewalk and Emmanuel was on Emmanuel's porch – about ten feet away – when Emmanuel picked up the chair. {R. 421-423}. Roger stated that Carlos was on the edge of the yard and Carlos, Carlos's mother, and Carlos's sister all started approaching him. Roger stated when Emmanuel picked up the chair, he swung his bat, and then went into the house as they were approaching or "chasing" him. He heard the gunshots but did not see what happened. {R. 424-428; 451-453}. While Roger testified Carlos and his family was approaching him as he was going inside, at no point did he testify they were on the stoop or trying to break into his apartment. Indeed, he did not even see what happened at the moment deadly force was used. This simply is not actual evidence that Carlos was in the process of unlawfully and forcibly entering the dwelling, such that Petitioner could be presumptively said to meet both the actual fear and the reasonable fear elements of self-defense.

Finally, Petitioner's testimony is insufficient as well. He testified he only had to gently pull Carlos outside, and that he only fired because Carlos reached under his shirt – not because Carlos was trying forcibly enter the apartment again or otherwise break into

it. {R. 476-480; 495-501}.

The facts of this case do not support application of the presumption in the Act.

CONCLUSION

For the foregoing reasons, the Court of Appeals should be affirmed.

Respectfully submitted,

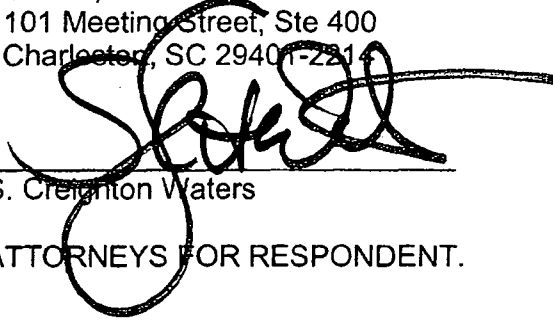
HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Assistant Deputy Attorney General

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Charleston, SC 29401-2214



S. Creighton Waters

ATTORNEYS FOR RESPONDENT.

January 28, 2010

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to the Charleston County
R. Markley Dennis, Jr. Circuit Court Judge

Opinion No. 2010-UP-378 (S.C. App. filed 8/2/2010)

THE STATE,

Respondent,

v.

ROGER RAYNARD PARKER,

Petitioner

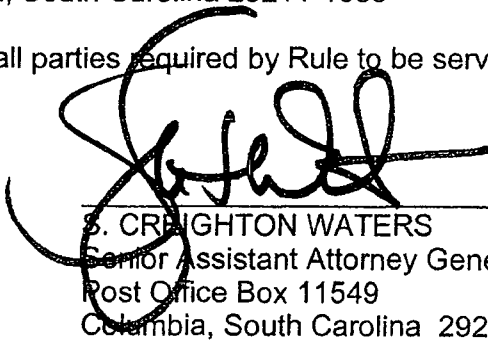
PROOF OF SERVICE

I, S. Creighton Waters, Counsel for Respondent, certify that I have this date served the **Return to Petition for Writ Certiorari** dated January 28, 2011, on Petitioner by depositing two copies of the same in the United States mail, first class postage prepaid, addressed to his attorney of record:

Robert M. Dudek, Chief Appellate Defender
South Carolina Office of Appellate Defense
PO Box 11589
Columbia, South Carolina 29211-1589

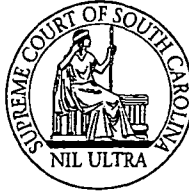
I further certify that I have served all parties required by Rule to be served.

This 28th day of January, 2011.



S. CREIGHTON WATERS
Senior Assistant Attorney General
Post Office Box 11549
Columbia, South Carolina 29211

ATTORNEY FOR RESPONDENT



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

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January 11, 2012

Chief Appellate Defender Robert M. Dudek
South Carolina Commission
on Indigent Defense
P O Box 11589
Columbia, SC 29211

Re: The State v. Parker, Roger Raynard
Trial Court Case No. 2007-GS-10-04293

Dear Counsel:

The Court has issued the following Order on your Petition for Writ of Certiorari in the above entitled matter:

"Petition for Writ of Certiorari Denied.

s/ Jean H. Toal C.J.
For the Court

January 11, 2012."

By copy of this letter we are advising all interested parties of the action of the Court in this matter.

Very truly yours,

Daniel E. Shearouse
CLERK

RECEIVED

DES/lda

JAN 11 2012

cc: Assistant Attorney General S. Creighton Waters
The Honorable Julie J. Armstrong
The Honorable Tanya Gee

**SC OFFICE OF
APPELLATE DEFENSE**



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

February 3, 2012

REMITTITUR

The Honorable Julie J. Armstrong
100 Broad Street, Suite 106
Charleston, SC 29401-2258

Re: The State v. Parker, Roger Raynard
2007-GS-10-04293

Dear Ms. Armstrong:

The above referenced matter is hereby remitted to the lower court. A copy of the judgment of this Court is attached.

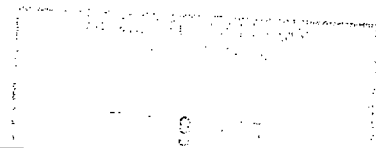
Sincerely,

V. Claire Allen

V. Claire Allen
Deputy Clerk of Court

VCA/tf

cc: Chief Appellate Defender Robert M. Dudek
Senior Assistant Attorney General S. Creighton Waters
Scarlett Anne Wilson, Esquire



887
9

2012-CP-10-7465

FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

ROGER RAYMOND FRYER, Jr., 32678

Full name and prison number (if any) of Applicant.

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

APPLICATION FOR

POST-CONVICTION RELIEF

FILED
2012 NOV 14 PM 4:08
JULIE ARMSTRONG
CLERK OF COURT

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay fees and costs of the proceedings. When the application is completed the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention LEE CI, 990 WISACKY HWY., BISHOPVILLE, S.C. 29010
2. Name and location of Court which imposed sentence CHARLESTON CO. GEN. SESS.
3. Name(s) of co-defendant(s) (if any) NONE
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2007-GS-10-4293, MURDER
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) DECEMBER 25-27, 2008; LIFE TERM SENTENCE
 - (b) _____

Revised 3/2003

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ~~XXX~~ _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
~~NO~~ **YES** _____
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. **S.C. COURT OF APPEALS** _____
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. **AFFIRMED CONVICTION. DISMISSED APPEAL** _____
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. **AS SHOWN ON ISSUED ORDER BY APPELLATE COURT** _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. **SEE ORDER OF AFFIRMATION TO CONVICTION** _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing: ~~NA~~
- (a) _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully: **SEE ATTACHED MEMORANDUM NOTING ISSUES:**

(a) **SEE ATTACHED MEMO.**

(b) " " "

(c) " " "

11. State concisely and in the same order the facts which support each of the grounds set out in (10): **SEE ATTACHED MEMO. SETTING FACT TO SUPPORT CLAIMS/ISSUES**

(a) _____

(b) " " "

(c) " " "

12. Prior to this application have you filed with respect to this conviction: **N/A**

(a) any petition in a State Court under South Carolina Law? _____

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? _____

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____

(d) any other petitions, motions or applications in this or any other Court? _____

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof: **N/A**

i. _____

ii. _____

iii. _____

iv. _____

(b) the name and location of the Court in which each was filed: **N/A**

i. _____

ii. _____

iii. _____

iv. _____

(c) the disposition thereof: **N/A**

i. _____

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition: **N/A**

i. _____

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition: **N/A**

i. _____

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

15. If you answered "yes" to (14) identify: **NO**

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

(b) the proceedings in which each ground was raised: **N/A**

i. _____

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) **APPLICANT MUST FOLLOW THE PROPER EXHAUSTION DOCTRINE:**

(b) **APPELLATE COUNSEL FAILED TO FOLLOW THE U.S. SUPREME COURT**

(c) **RULE 13(1), etc., AS TO SEEK CERTIORARI REVIEW BY THE**

U.S. Supreme Court.

17. Were you represented by an attorney at any time during the course of:

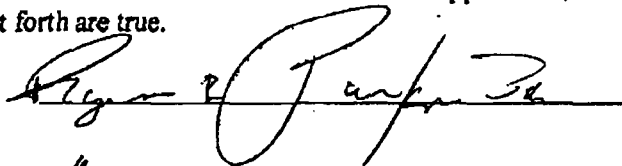
- (a) your arraignment and plea? _____
- (b) your trial, if any? xxx
- (c) your sentencing? xxx
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? xxxx
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- i. ANDREW GRIMES, PUBLIC DEFENDER & JASON MIREL, PUBLIC DEFENDER
- ii. ROBERT DUDEK, APPELLATE DEFENSE COUNSEL
- iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. GRIMES, ESQ., FOR TRIAL
- ii. ROBERT DUDEK, ESQ. FOR APPEAL
- iii. _____
19. State clearly the relief you seek in filing this application: VACATE SENTENCE AND REMAND FOR NEW TRIAL ON THE LESSER INCLUDED CHARGE AND OR DISMISS MURDER AND REDUCE TO INVOLUNTARY MANSLAUGHTER, etc.
20. Are you now under sentence from any other court that you have not challenged?
no

STATE OF SOUTH CAROLINA)

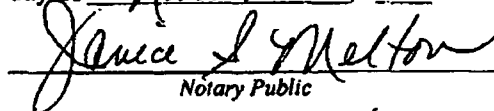
County of LEE)

VERIFICATION

ROGER R. PARKER, Jr.
I, **ROGER R. PARKER, Jr.**, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.



SWORN to and subscribed before me this 7th
day of November, 2014.

 (L.S.)
Notary Public

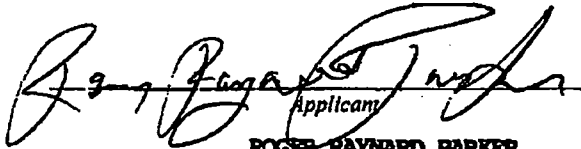
My Commission Expires: 4-26-2014

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

ROGER R. PARKER

I, ROGER R. PARKER, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.


Applicant

SWORN or affirmed to and subscribed before me this
7th day of November, 2012


Notary Public

ROGER RAYMOND PARKER
LEE CT
990 WISACKS HWY.
BISHOPVILLE, S.C. 29010

My Commission Expires: 4-26-2014

POST CONVICTION RELIEF
ADDENDUM #1.

MEMORANDUM OF ISSUES:

10(A): APPLICANT WAS DENIED THE RIGHTS TO EFFECTIVE ASSISTANCE OF TRIAL COUNSEL AND APPELLATE COUNSEL GUARANTEED BY SIXTH AND FOURTEENTH AMENDMENTS OF THE UNITED STATES CONSTITUTION AND BY ARTICLE I, §§ 3 AND 14 OF THE SOUTH CAROLINA CONSTITUTION DURING THE APPLICANT'S TRIAL, etc. AND THE APPEAL EXHAUSTING THROUGH THE APPEALS COURT FOR PROPER REVIEWS AND EXHAUSTING REMEDY AVAILABLE TO THE APPLICANT TO PROPERLY EXHAUST HIS CASE BY PURSUANT TO THE PROPER EXHAUSTION DOCTRINE, etc.

11A: SUPPORTING FACTS TO ISSUES:

TRIAL COUNSEL AND APPELLATE COUNSEL PERFORMANCE DURING TRIAL AND APPEAL WAS BOTH UNREASONABLE AND PREJUDICIAL AGAINST APPLICANT, PER SE SEE AT CASE: STRICKLAND V. WASHINGTON, 466 U.S. 668 (1984), COUNSELS ACTS AND OMISSIONS ARE BUT NOT LIMITED TO THE FOLLOWING:

1. COUNSEL FAILED TO ADEQUATELY INVESTIGATE THE FACTS & CIRCUMSTANCES SURROUNDING THE DEATH OF VICTIM. COUNSEL'S FAILURES TO CONDUCT SUCH AND CRUX INVESTIGATION DEPRIVED THE APPLICANT FIRST OF DUE PROCESS AND A FAIR TRIAL AND PREVENT THE JURY FROM INFORMATION TO AN ACCURATE ASSESSMENT OF APPLICANT'S INNOCENCE, SEE WIGGINS V. SMITH, 539 U.S. 510 (2003); STATE V. HENDRIX, 270 S.C. 653, 244 S.E.2d 503 (1978); STATE V. NICHOLS, 481 S.E. 2d 118 (1997).

2. COUNSEL FAILED TO PRE-TRIAL THE MURDER INDICTMENT BASED UPON THE FACTS THAT THE INDICTMENT FAILED TO SET FORTH THE GREATER INCLUDING ONLY THE GREATER CHARGE, AND IN THE APPLICANT'S INDICTMENT THE GREATER IS INCLUDING THE LESSER CHARGE ALSO, SEE S.C. CONST. I, § 11, etc.

3. COUNSEL FAILED TO CALL APPLICANT'S WITNESSES TO TESTIFY AT TRIAL AS APPLICANT MADE SEVERAL DEMANDS TO COUNSEL TO CONTACT HIS WITNESSES ANDS THE TRIAL COUNSEL FAILED TO DO SO, AND THIS PREVENTED THE APPLICANT FROM A COMPLETE DEFENSE PURSUANT TO ARD V. CATOE, *supra.*, etc.

4. COUNSEL FAILED TO PROFFER EVIDENCE TO THE COURT TO COMPEL THE COURT TO GIVE THE APPLICANT'S TRIAL JURY A SELF-DEFENSE CHARGE, APPLICANT WAS ON OWN PREMISES AND ATTACKED ANOTHER WHILE HE WAS WITHOUT FAULT IN THE DIFFICULTY, AND NO RETREAT ON THE APPLICANT'S BEHALF WAS NECESSARY, etc.

5. APPELLATE COUNSEL FAILED TO PURSUE ALL APPEAL REMEDIES BY THE S.C. APPELLATE COURT PROCESSES FOR THE SAKE OF BEING IN COMPLIANCES WITH THE PROPER EXHAUSTION DOCTRINE, etc., SEE APPLICANT COULD HAVE APPEALED HIS CASE TO THE U.S. SUPREME COURT HAD THE COUNSEL FOLLOWED APPEAL PROCEDURES. ESTABLISHED BY THE APPLICABLE RULES OF THE STATE COURT, etc., AND SEE AT GILCHRIST V. STATE, 364 SC 173, 612 SE2d 702 (2005); ANDERSON V. STATE, 354 SC 431, 581 SE2d 834 (2003) AND SEE SOUTHERLAND V. STATE, 337 SC 610, 524 SE2d 833 (1999).

POST CONVICTION RELIEF
 ADDENDUM #2.

MEMORANDUM OF LAWS-SUPPORTING FACTS:

NOTE: APPLICANT'S MEMO ARE CONTAINED OF UNLISHED ISSUES THAT REQUIRES THE APPOINTED CASE ATTORNEY TO AVOID APPLICANT'S PRO SE FILED APPLICATION ONCE RESPONDENT'S RETURN TO FOR HAVE BEEN FILED TO THE LOWER COURT, etc.

ISSUE ONE:

APPLICANT SHOWS BY THE RECORDS BY THE TRANSCRIPT THAT THE TRIAL COUNSEL FAILED TO PRESENT TO THE TRIAL COURT THE CRUX INFORMATION THAT COULD HAVE BEEN USED TO EXONERATE APPLICANT OF THE MURDER CHARGE, AND USED THE INFORMATION IN HIS FAVOR TO THE CHARGE DROPPED BY THE EVIDENCE PRESENTED TO THE COURT, THE APPLICANT WAS PREJUDICE AGAINST WHEN TRIAL COUNSEL FAILED TO RAISE THE CORRECT LAW MANDATES AND PRESENT THE EVIDENCE THAT SUPPORT HIS PRE-TRIAL MOTION FOR A DISMISSAL TO THE MURDER CHARGE SEE AT TT PAGE 81 UNDER INDEX TITLE AS MOTION TO DISMISS, etc., THE TRIAL COUNSEL FAILED TO OBJECT TO THE NONAPPLICABLE LAW AS WINN V. STATE, supra., THE TRIAL COUNSEL TRIAL COUNSEL FAILED TO MOVE THE COURT PURSUANT TO SC CODE § 17-19-30, as amended, THE COUNSEL HAD COMMITTED EX PARTE COMMUNICATION WHEN HE HAD THE CHAMBER DISCUSSIONS WITH THE JUDGE OFF THE RECORD, AND AS THIS CONFERENCE WAS NOT MADE A PART OF THE COURT'S RECORDS IT VIOLATED THE APPLICANT'S RIGHTS TO DUE PROCESS OF LAW, AND SHOWS THAT THE APPLICANT WAS ABSENT FROM A CRITICAL STAGE OF HIS TRIAL, SEE JUDGE'S COLLOQUY AT LINE 19-24, TT PAGE 80, THE RECORDS REFLECTS THIS ISSUE WITH MERITS, etc. THE APPLICANT FACTUALLY SHOWS THAT THE TRIAL COUNSEL DID NOT PROFFERED TO THE COURT THE ENTIRELY STORY OF THE EVENTS AND THE EXACT AND COMPLETE ACTIONS OF THE DECEDENT, BECAUSE AS THE DECEDENT BEING AT THE HOME OF THE APPLICANT FOR WHATEVER REASON AND PURPOSES IT WAS, AS IT BEING PERCEIVED THAT THE DECEDENT WAS HOSTILE VISITOR IN THE HOME OF THE APPLICANT, HOWEVER, TRIAL COUNSEL FAILED TO PRESENT THE EVIDENTARY FACTUALS TO THE TRIAL COURT APPROPRIATE AND CORRECTLY TO PRESENT A DEFENSE THE APPLICANT IS ENTITLED TO FROM TRIAL COUNSEL, BY LAW. THE TRIAL JURY COULD HAVE DRAWN INFERENCES FROM THE PRESENTING FACTUALS AS THEM BEING THAT THE DECEDENT HAD COMMITTED A CRIME AS BREAKING INTO THE APPLICANT'S HOME IN PRIOR TIME BEFORE DECEDENT WAS VISITING THE APPLICANT'S HOME, AND THIS HAVING WEIGHT UPON THE HOSTILITY BETWEEN THE APPLICANT AS IT IS THE VERY REASON WHY THE BAD BLOOD BETWEEN THE DECEDENT AND APPLICANT EXISTED, THIS FACTS NOT BEING CORRECT AND APPROPRIATELY PRESENTED TO THE COURT PREJUDICED THE APPLICANT AND DENIED HIM OF A FAIR TRIAL, APPLICANT'S CONTENTIONS ARE AS THE APPLICANT HAD STATED THEM, BUT THERE ARE SHOWN OTHER DEPRIVATIONS BY COUNSEL HERE IN THIS ISSUE RAISED, etc. SEE

POST CONVICTION RELIEF
MEMORANDUM #3.

CONTINUED: THE APPLICANT'S TRIAL COUNSEL DID NOT ASSIST APPLICANT AS WAS REQUIRED, THE APPLICANT WAS DENIED THE RIGHTS TO PRESENT A COMPLETE DEFENSE AND THE COMPLETE STORY TO THE COURT, IN REGARDS TO THE JURY NOT BEING AWARE OF THE EVIDENTIARY FACTUALS TO THE EVENTS OCCURRED IN THE INCIDENT, IT IS SHOWN THAT THE TRIAL COUNSEL DID NOT FULLY PRESENTED THE PRIOR EVENTS AND THE PRIOR THREATS MADE BY THE DECEDENT TO THE APPLICANT AND SHOW WHY THE APPLICANT WOULD HAVE BELIEVED THAT THE DECEDENT WAS A DEADLY AND CERTAIN THREAT IN THEIR CONFRONTATION, IT IS ALSO SHOWN THAT IF THE TRIAL COUNSEL WOULD HAVE MOVED FOR A DIRECT VERDICT ON MURDER BASED UPON THE EVIDENCE THAT WAS RELIABLE THROUGH THE OUTSIDE RECORDS THAT TRIAL COUNSEL SHOULD HAVE PROCURED HE MAY HAVE BEEN SUCCESSFUL AND THE RESULTS WOULD HAVE BEEN A JURY INSTRUCTIONS ON SELF-DEFENSE AND OR MAYBE AN INVOLUNTARY MANSLAUGHTER CHARGE, THE APPLICANT'S CASE IS ALIKE AND SITUATED AS SEE: STATE V. HENDRIX, 270 S.C. 653, 244 S.E.2d 503 (1978); STATE V. NICHOLS, SUPRA., WIGGINS V. SMITH, COURT.

ISSUE TWO:

APPLICANT SHOWS BY THE RECORD OF THE PRE-TRIAL HEARING, THE TRIAL COURT RELIED ON INAPPLICABLE LAW MANDATES SUCH AS THE CASE WINN V. STATE, supra., AND THIS CASE DOES NOT APPLIES TO THE DEFECTIVE INDICTMENT IN APPLICANT'S CASE MATTERS THAT WERE REVIEW AND EVALUATED BY THE COURT ON PRE-TRIAL MOTION, TRIAL COUNSEL DID FAILED TO COMPEL THE TRIAL COURT TO REVIEW AND EVALUATE MOTION BY THE PROPER AND CORRECT LAWS AS S.C. CODE OF LAW §17-19-30, as amended, WHEREAS, THE LAWS IS PLAIN AND CLEAR, AND IT STATES: 1. IN ORDER TO CORRECTLY CONVICT A DEFENDANT FOR MURDER THE INDICTMENT MUST STATE THE TIME AND PLACE OF THE ASSAULT, AND 2. MUST ALSO STATE THE TIME AND PLACE OF THE DEATH RESULTED FROM THE ASSAULT, etc. THE TRIAL COUNSEL PRESENTED THE ERRONEOUS PREPARED INDICTMENT AND FAILED TO OBJECT TO THE COURT ERRED RULING OF LAW AS STATED IN TT PAGES 80-82, WINN, SUPRA. THE COURT SHOULD HAVE REVIEWED THE MOTION PURSUANT TO THE NOTED AND STATED CODE OF LAW DUE TO THE FACT THAT THE APPLICANT CASE DID NOT HAVE NO OTHER CRIME ELEMENTS EXISTING WITH THE ALLEGED CHARGE, AND THIS SURELY DID NOT HAVE NO DRUG RELATED CHARGES ALIKE WINN, THE TRIAL COURT DID NOT USED THE PRACTICAL EYE TEST AND NOR DID USED THE PLAIN ERROR TEST ANALYSIS TO APPLY AND RESOLVE THE MOTION BY, AND THIS WAS DONE WITHOUT THE TRIAL COUNSEL PLACING ANY OBJECTIONS TO THE RECORD DURING THE HEARING, NOR DID THE TRIAL COUNSEL PLACE TO THE RECORD THAT HE WAS ACKNOWLEDGEABLE OF STANDING LAWS THAT WERE APPLICABLE TO THE APPLICANT'S CASE MATTER HERE CONTENDED, HAD THE TRIAL COUNSEL BEEN AWARE OF SUCH MANDATES OF CODE OF LAW THE RESULTS OF THE PRE-TRIAL MOTION WOULD HAVE MAYBE BEEN DIFFERENT AND THE APPLICANT COULD HAVE AVOID A TRIAL FOR MURDER.

POST CONVICTION RELIEF
ADDENDUM #4.

ISSUES CONTINUED, etc.

ISSUE THREE:

APPLICANT TRIAL COUNSEL FAILED TO CALL APPLICANT'S WITNESSES TO TESTIFY AT HIS TRIAL EVEN AFTER APPLICANT MADE SEVERAL DEMANDS THAT HE DO SO, TRIAL REFUSED TO CORPORATE WAS DETRIMENTAL TO THE APPLICANT BECAUSE THIS DENIED THE APPLICANT FROM HAVING TESTIMONY PROFFERED TO THE JURY IN RELATION TO THE EVENTS AND THE COMPLETE STORY TOLD TO THE JURY FOR IT FIGURING OUT WHAT REALLY TOOK PLACE AND HOW THE DECEDENT WAS AT FAULT IN THE INCIDENTS, etc.

APPLICANT CONTENTS BY THE FOLLOWING WELL SETTLED LAWS AND MANDATES ESTABLISHED BY THE US AND SC CONSTITUTIONS, HERETO, THAT IT IS AXIOMATIC THAT A CRIMINAL DEFENDANT'S RIGHT TO PRESENT WITNESSES IN HIS BEHALF IS ESSENTIAL ELEMENT OF A FUNDAMENTAL FAIR TRIAL, "THE RIGHT TO OFFER THE TESTIMONY OF WITNESSES, AND TO COMPEL THEIR ATTENDANCE, IF NECESSARY, IS IN PLAIN TERMS THE RIGHT TO PRESENT A DEFENSE, THE RIGHT TO PRESENT DEFENDANT'S VERSION OF THE FACTS TO THE JURY SO IT MAY DECIDE WHERE THE TRUTH LIES, JUST AS THE DEFENDANT HAD THE RIGHT TO CONFRONT THE PROSECUTION'S WITNESSES FOR THE PURPOSES OF CHALLENGING THEIR TESTIMONY, HE HAS THE RIGHT TO PRESENT HIS OWN WITNESSES TO ESTABLISH AN ADEQUATE AND ACCURATE DEFENSE, AND THIS IS A RIGHT ESTABLISHED BY A FUNDAMENTAL ELEMENT OF DUE PROCESS OF LAW, SEE AT THE FOLLOWING: WASHINGTON V. TEXAS, 388 U.S. 14 (1967); CHAMBERS V. MISSISSIPPI, 410 U.S. 284 (1973) ("FEW RIGHTS ARE MORE FUNDAMENTAL THAN THAT OF AN ACCUSED TO PRESENT WITNESSES IN HIS OWN DEFENSE."), THUS, SUBSTANTIAL INTERFERENCE WITH AN ACCUSED'S IN PRESENTATION OF HIS DEFENSE THROUGH THE "FREE" AND UNHAMPERED TESTIMONY OF WITNESSES IS A VIOLATION OF DUE PROCESS, US V. HENRIKSEN, 564 F.2d 197, 198 (1977), per curiam], THE APPLICANT WILL SHOW THAT THE TRIAL COUNSEL WERE INEFFECTIVE WHEN HE DID NOT PROFFER TO THE COURT THE CREDIBLE WITNESSES THAT COULD HAVE PROVIDED TESTIMONY TO THE COURT ON BEHALF OF THE APPLICANT AT TRIAL, THIS COULD HAVE BEEN A SUPPORTING TO THE TESTIMONY THAT THE APPLICANT PROVIDED WHEN HE DID TESTIFIED ON HIS OWN BEHALF, THE TRIAL ATTORNEY DID NOT PROCURE ANY OF APPLICANT'S WITNESSES OTHER THAN THE PARENTS OF THE APPLICANT WHOM THE JURY SEEN AS BIAS WITNESSES, BUT THE TRIAL RECORDS SHOWS THAT THE STATE'S PHONIC THEORIES PRESENTED TO THE JURY OF TRIAL WAS NON CHALLENGED BY THE TRIAL COUNSEL BASED UPON LACKINGS TO DO SO, AND IN THE COUNSEL'S CLOSING STATEMENTS HE ADMITTED TO HIS LACK OF ABILITIES TO RENDER ASSISTANCE REQUIRED BY THE COUNSEL OF THE LAW AS ABA, 6th AND 14th AMENDMENT OF THE US CONST.. APPLICANT WILL SHOW THE COURT AS TO HOW THE TESTIMONIES OF THE POTENTIAL WITNESSES WOULD HAVE BEEN BENEFICIAL TO THE APPLICANT'S DEFENSE AND PROBABLY WOULD

PCR MEMO #5.

ISSUES CONT'D

CHANGED THE OUTCOME OF THE TRIAL, THIS IS A FACT BASED HOW THE TRIAL COUNSEL INADEQUATELY CROSSED THE DECEDENT'S FAMILY MEMBERS, THE APPLICANT'S OWN TESTIMONY GAVE CLARITY TO THE PRIOR ACTS INDIRECTLY OF THE DECEDENT, AND HOW IT PLAYED THE PRIMARY INTO WHAT TOOK PLACE ON THE DAY OF THE ALLEGED ALTERCATION, AND IT MOST SURELY PLAYED A FACTOR IN AS TO HOW THE APPLICANT HAD REACTED TO THE DECEDENT AS IN HOW APPLICANT HAD TO RESOLVE THE MATTER, THE APPLICANT'S WITNESSES POTENTIALLY COULD HAVE PROVIDED FACTUALS AND EVIDENTIARY INFERENCES TO THE JURY AND THIS COULD HAVE AID THE FACT FINDERS IN DETERMINING THE TRUTH OF APPLICANT'S CASE MATTER, etc. APPLICANT SEEKS THE ENTITLED FINDING OF FACTS AND A CONCLUSION OF LAWS TO HIS PROPERLY PRESENTED ISSUE TO THE PCR COURT, SEE THE APPLICANT'S TESTIMONY AND THE THEORIES PRESENTED TO THE TRIAL JURY, WITH THE TRIAL CROSSING THE STATE'S WITNESSES. etc.

ISSUE FOUR:

APPLICANT WILL CONTEND THAT THE TRIAL COUNSEL WAS INEFFECTIVE FOR NOT OBJECTING TO THE IMPROPER CHARGE OF LAW IN THE SELF-DEFENSE CHARGE, see CHARGE OF LAW, TT. PG. 701, JURY CHARGE OF LAW, THE APPLICANT DEFENSE PRESENTED BY THE TRIAL COUNSEL NEVER INCLUDED ANY PRESENTATION OF THE FACTUALS THAT THE DECEDENT NEVER AT ONCE WAS IN HIS HOME, YARD, AND OR DWELLINGS, etc., THE APPLICANT TRIAL COUNSEL NEVER AT ONCE MADE THE EVIDENTIARY BE PROFFERED TO THE COURT ABOUT HOW THE DECEDENT WAS AGGRESSIVE AND VERBALLY ASSAULTING THE APPLICANT'S FATHER, THE COURT FAILED TO TOTAL THE CONCEPT AS TO HOW THE DECISION OF THE APPLICANT MADE BY HEARING THE DECEDENT THREATEN HIS FATHER WITH HARMS, AND THIS IS AN ASSAULT IN ITSELF. THE COURT DID NOT GIVE THE PROPER CHARGE AND THE TRIAL COUNSEL FAILED TO OBJECT TO THE IMPROPER CHARGE GIVEN TO THE JURY, THE TRIAL COUNSEL OVERLOOKED THIS ISSUE AS WELL IN THE TIME OF EXCEPTION/ADDITION SESSION OF THE COURT AT THE CLOSE OF THE TAKING OF EVIDENCE, THE APPLICANT WILL CONTEND THAT THE TRIAL COUNSEL FAILED TO ALSO BE AWARE OF THE S.C. CONST. ~~§§§§§~~ art. § v, 21, HERE THE JUSTIFICATIONS TO GIVE THE CORRECT CHARGE OF LAW IS BASED UPON THE EVIDENCE OF THE CASE, THE JUDGE JOB IS ONLY TO GIVE A CHARGE OF CORRECT LAWS TO THE CASE GIVEN TO THE FACT FINDERS, THE TRIAL COUNSEL NOT COMPELLING THE JUDGE TO GIVE THE PROPER CHARGE OF LAW IS A CLEAR VIOLATION OF APPLICANT'S DUE PROCESS OF LAW, APPLICANT'S STANCES ARE CLARIFIED AND BASED ON THE FACTS THAT THE TRIAL COUNSEL SHOULD HAVE COMPELLED THE TRIAL JUDGE NOT TO CHARGE THE JURY IN THE RESPECT TO MATTERS OF FACTS BUT INSTEAD DECLARE THE LAW. APPLICANT WILL MAKE THE APPROPRIATE AMENDINGS TO THE ISSUE DUE TO THE FACTS THAT THE RELIANCE OF OUTSIDE EVIDENCE IS REQUIRED TO AVAIL IN ISSUE, etc.

FOR AMENDMENT #5.

ISSUE FIVE:

APPLICANT APPELLATE COUNSEL IS INEFFECTIVE ASSISTANCE WHEN HE FAILED TO FURTHER ASSIST APPLICANT IN HIS APPEAL REMEDY, THE APPLICANT'S APPEAL COUNSEL DID SEEK CERTIORARI REVIEW FROM THE STATE SUPREME COURT HEREAS IN FOLLOWING THE PROPER EXHAUSTION DOCTRINE TO HIS APPEAL GIVING THE ~~STATE~~ APPELLATE COURT A ONE ROUND REVIEW ON APPELLATE LEVELS TO CORRECT ERRORS OF LAWS IN THE APPLICANT'S CASE ON APPEAL AS IS REQUIRED BY THE FED. AND STATE LAW, IN THE PURPOSES OF MAKING SENSES, THE APPLICANT TAKE THE STANCES THAT WHILE THE APPELLATE COUNSEL FOLLOWED THE CORRECT PROCEDURES IN HIS CASE ON APPEAL SEEKING REVIEWS, SUCH AS, SEEKED THE REHEARING TO THE SC. COURT OF APPEALS, SEEKED CERTIORARI TO THE SUPREME COURT FROM THE COURT OF APPEALS, BUT WHAT MAKES THE APPELLATE COUNSEL VERY INEFFECTIVE ASSISTANCE IS HOW HE FOLLOWED THE PROPER EXHAUSTIONS PROPERLY THROUGH THE APPELLATE COURTS BUT FAILED TO SEEK A REVIEW ON CERTIORARI TO THE U.S. SUPREME COURT AS IS AFTER THE **DIRECT APPEAL BEING AFFIRMED BY THE HIGHEST APPELLATE COURT IN THE STATE:** AS THE STATE RESPONDENTS LOVE TO USE THE LACK OF PROPER EXHAUSTING CASES THROUGH THE COURT BY AVAILABLE REMEDIES, IT IS A DETRIMENT TO THE APPLICANT AS TO HOW THE APPLICANT'S CASE BEEN APPEALED TO THE COURT BY THE APPLICANT'S APPELLATE COUNSEL, SEE APPLICANT'S CASE PROCEDURAL HISTORY, etc., THE APPLICANT IS ENTITLED TO A **FULL AND FAIR** REVIEW TO INCLUDE HAVING HIS CASE PROPERLY EXHAUSTED TO BE IN **COMPLIANCE** WITH THE PROPER EXHAUSTION DOCTRINE, HERE IT IS SHOWN THAT THE APPELLATE COUNSEL ROBERT DUDEK HAS MADE A WAIVER TO AVAILABLE **APPEAL REMEDIES** AND THIS VIOLATES THE APPLICANT'S 6th AMENDMENT RIGHT, OF THE U.S. CONSTITUTION, THE **TRIAL** TRANSCRIPT WILL REFLECT THAT THE APPELLATE COUNSEL FAILED ALSO TO BRIEF ALL PRESERVED ISSUES FROM THE TRIAL RECORD THAT OF WHICH THE TRIAL COUNSEL HAD PRESERVED BY THE OBJECTIONS MADE TO THE **TRIALS** via RECORDS. THE APPLICANT WILL SHOW THE COURT FOR PCR THAT THE APPEAL COUNSEL FAILED IT OBLIGATIONS TO CORRECTLY PERFECTED HIS APPEAL TO **THREE** STAGES OF THE COURT AS WAS REQUIRED AND THIS HOW THE THE APPLICANT IS PREJUDICED AGAINST BY HIS APPEAL COUNSEL. THE APPLICANT HAD NO INTENTIONS TO WAIVE NONE OF HIS APPEAL RIGHTS THROUGH THE COURT AND EXHAUSTING IT TO EVERY COURT BY THE AVAILABLE REMEDIES SETFORTH BY THE RULES, SEE U.S. SUPREME COURT RULE 13, etc., THE APPLICANT WILL SHOW THE COURT THAT THE APPELLATE COUNSEL CAN NOT WAIVE ANY OF HIS APPEAL RIGHTS NOR COULD THE COUNSEL COULD HAVE WAIVE APPLICANT'S RIGHTS TO A REVIEW FROM THE US SUPREME COURT ON PETITION OF CERTIORARI AFTER DIRECT APPEAL. SEE ALSO FOR AMENDING ISSUE BASED **UPON** THE UNBRIEFED ISSUES THAT **AREN'T** SUBMITTED TO THE APPELLATE COURT BY APPEAL COUNSEL.

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

2012-CP-10-7465

Roger Parker, Jr., #326778,

Applicant,

v.

RETURN

State of South Carolina,

Respondent.

The Respondent, making its Return to the application for post-conviction relief (PCR) filed November 14, 2012, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. The Applicant was indicted at the March 2007 term of the Charleston County Grand Jury for murder (2007-GS-10-4293). The Applicant was represented by Andrew Grimes, Esquire.

The Applicant proceeded to trial and was convicted on February 27, 2008. The Honorable R. Markley Dennis, Jr. sentenced the Applicant to confinement for a period of life without parole.

The Applicant filed a timely Notice of Appeal. The appeal was perfected by Robert Dudek, Esquire of the South Carolina Office of Appellate Defense. The South Carolina Court of Appeals affirmed the Applicant's conviction and sentence. State v. Roger, Op. No. 2010-UP-378 (Ct. of App. August 2, 2010). The Applicant filed a Petition for Certiorari to the South Carolina

Supreme Court which was denied by Order dated January 11, 2012. The Remittitur was issued February 3, 2012.

Attached herewith and incorporated herein are the records of the Charleston County Clerk of Court regarding the subject conviction, the Applicant's records from the South Carolina Department of Corrections, and the appellate records. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Trial Counsel
 - a. "Counsel failed to adequately investigate the facts and circumstances surrounding the death of victim."
 - b. "Counsel failed to pre-trail the murder indictment based upon the facts that the indictment failed to set forth the greater including only the greater charge, and in the Applicant's indictment the greater is including the lesser charge."
 - c. "Counsel failed to call Applicant's witnesses to testify at trial as Applicant made several demands to counsel to contact his witnesses."
 - d. "Counsel failed to proffer evidence to the court to compel the court to give the Applicant's trial jury a self-defense charge."
2. Ineffective Assistance of Appellate Counsel
 - a. "Appellate counsel failed to pursue all appeal remedies by the S.C. appellate court processes for the sake of being in compliance with the proper exhaustion doctrine."

III.

The Applicant alleges ineffective assistance of trial counsel. The Respondent asserts the Applicant's allegation that his attorney was ineffective is without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a criminal defense attorney.

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial

process that the trial cannot be relied on as having produced a just result.” Strickland v. Washington, 466 U.S. 668, 686 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel “rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Strickland, 466 U.S. at 690. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel’s performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under prevailing professional norms.” Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688). Second, counsel’s deficient performance must have prejudiced the Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. “A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668 (1984)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

IV.

The Applicant also alleges ineffective assistance of appellate counsel. A defendant is constitutionally entitled to effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387, 105 S.Ct. 830, 83 L.Ed.2d 821 (1985). "However, appellate counsel is not required to raise every non-frivolous issue that is presented by the record." Thrift v. State, 302 S.C. 535, 539, 397 S.E.2d 523 (1990). Appellate counsel has a professional duty to choose among potential issues according to their merit. Jones v. Barnes, 463 U.S. 745 (1983). Where the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not ineffective assistance of counsel. Griffin v. Aiken, 775 F.2d 1226 (4th Cir. 1985).

The Applicant must show that appellate counsel's performance was deficient and that he was prejudiced by the deficiency. Thrift, at 537; Gilchrist v. State, 364 S.C. 173, 612 S.E.2d 702 (2005); Anderson v. State, 354 S.C. 431, 581 S.E.2d 834 (2003). When a claim of ineffective assistance of counsel is based upon failure to raise viable issues, the court must examine the record to determine "whether appellate counsel failed to present significant and obvious issues on appeal." Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986). Generally, the presumption of effective assistance of counsel will be overcome only when the alleged ignored issues are clearly stronger than those actually raised on appeal. Id.

The Respondent contends that the Applicant's appellate attorney rendered effective assistance of counsel. However, this ground for relief may raise factual issues that are not conclusively refuted by the record. The Respondent requests an evidentiary hearing on this allegation.

V.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

VI.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

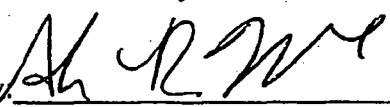
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

ASHLEIGH R. WILSON
Assistant Attorney General

By 

ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

July 5, 2013.

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

2012-CP-10-7465

ROGER PARKER, Jr., #326778

Applicant,

Vs

AFFIDAVIT OF SERVICE BY MAIL

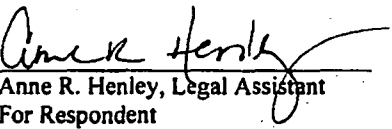
STATE OF SOUTH CAROLINA,

Respondent.

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Mr. Rodney D. Davis, Esquire
4000 Faber Place Drive
Suite 3000
Charleston, SC 29405

DATED this 5th day of July, 2013


Anne R. Henley, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA)

THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON)

DOCKET NO. 2012-CP-10-7465

ROGER RAYNARD PARKER, JR.)

Plaintiff)

vs.)

STATE OF SOUTH CAROLINA)

Defendant)

TRANSCRIPT OF RECORD

May 19, 2014

Charleston, South Carolina

B E F O R E:

THE HONORABLE DEADRA L. JEFFERSON, JUDGE

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

CHRISTOPHER L. MURPHY, ESQ.
Attorney for the PlaintiffASHLEIGH R. WILSON, ESQ.
Attorney for the State

JOYCE C. RUEGER, CVR-M

Circuit Court Reporter

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No exhibits were introduced

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PROCEEDINGS

THE COURT: This is Roger Parker, Jr. versus the State of South Carolina, 2014-CP-10-7465. It is before the court on an application for post conviction relief, which was filed on November 4th, of 2012. He was sentenced on Indictment 2007-GS-10-4293 on the offense of Murder. On February 27th of 2008 he received a life sentence.

The matter went before the Court of Appeals, which affirmed the conviction and dismissed the appeal. The State filed its return on July 9th of 2013. At the time of trial the applicant was represented by Andrew Grimes. It was tried before Judge Dennis. He alleges ineffective assistance of counsel. The applicant is represented by Christopher Murphy. The State is represented by Ashleigh Wilson. Is the State ready to proceed?

MS. WILSON: Yes, Your Honor. The State is ready to proceed.

THE COURT: Is the defense ready to proceed? Is the applicant ready to proceed?

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1 MR. MURPHY: Your Honor, I spoke to Mr. Parker
2 today and he says that he is uncomfortable with my
3 representation.

4 THE COURT: Well, if he wants a new lawyer he's
5 going to have to hire one. You are his second lawyer and
6 the court is not relieving anybody else.

7 MR. MURPHY: That's correct, Your Honor. I spoke
8 with his family who is here. They indicate they have the
9 financial means to hire private counsel ---

10 THE COURT: --- why haven't they done it before
11 now?

12 MR. MURPHY: I don't know that answer, Your Honor.
13 But they understand that the next term of court is in
14 September at which time ---

15 THE COURT: --- well, I haven't relieved you and
16 I'm not inclined to if you're ready to go forward. I
17 perceive that this is merely dilatory. And the
18 application has been filed, it's been pending and it
19 needs to be disposed of.

20 MR. MURPHY: Yes, Your Honor. The only thing I
21 would ask -- I am prepared to go forward however...

22 THE COURT: What's the basis of the motion to
23 relieve you?

24 MR. PARKER: The reason ---

25 THE COURT: --- I can't hear you sir and you need

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1 to stand when addressing the court.

2 [Whereupon, Mr. Parker stands]

3 MR. PARKER: It's a motion to relieve him because I
4 haven't met him or discussed anything with him about my
5 case. And you can't just meet with somebody for five
6 minutes and come up a strategy for a case to be discussed
7 or heard or argued inside the courtroom.

8 THE COURT: Well, they are all legal matters and he
9 does these quite often. So it would be a matter of him
10 looking -- it really is based on the trial records. So
11 I'm trying to figure out what is it that you would have
12 added to that discussion that would have assisted him in
13 making his presentation of your matter more effective or
14 more persuasive to the court.

15 MR. PARKER: Well ma'am, I haven't received any
16 notice from him.

17 THE COURT: Okay. I'm still trying to figure out
18 how that affects his being able to -- because all the
19 issues you raised are legal matters. They are confined
20 to this record that I've already read. So I'm trying to
21 figure out what is it that you would have added to that
22 that would have changed how he would have presented the
23 case or how you've been prejudiced by that.

24 MR. PARKER: Because I haven't received anything
25 from him and he hasn't told me anything about what he

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1 thinks would be the legal matter that we could have
2 raised or anything.

3 THE COURT: I'm still trying to figure out how that
4 affects his ability to effectively present your P-C-R.

5 MR. PARKER: That we haven't discussed anything
6 among one another and go over anything.

7 THE COURT: What is it that y'all need to go over
8 that is going to affect how he presents it to the court?

9 MR. PARKER: We would need to go over whether the
10 arguments are good enough from his point of view and my
11 point of view.

12 THE COURT: You recognize he doesn't have to
13 consult with you about that, that you don't have to
14 concur with him about how he presents your case. Matters
15 of strategy he doesn't have to discuss with you. He can
16 hear your opinion about it but he doesn't have to agree
17 with you and he doesn't have to do what you tell him to.
18 That's one of misnomers I think people gain from watching
19 television about how the attorney client relationship
20 actually works.

21 MR. PARKER: He never explained that to me.

22 THE COURT: Have you gone over the trial
23 transcript?

24 MR. MURPHY: Your Honor, I have read the 750 page
25 trial transcript. I have sent him numerous letters

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1 explaining why I think his grounds have merit or don't
2 have merit. He admitted ---

3 THE COURT: --- okay ---

4 MR. MURPHY: --- to me that he got one of my
5 letters in chambers. I have sent several letters all to
6 the same address, Your Honor, and in those letters I've
7 asked him to call me at any time. I've also asked him to
8 write me if he has any questions or wants to present
9 anything.

10 I've asked him for the names and addresses of any
11 witnesses, which is what I do in every one of these cases
12 for exactly this reason, Your Honor. And I have a
13 feeling he doesn't like what I'm telling him about his
14 percentage of the pleading and whether what he's raised
15 in his application has merit, Your Honor.

16 THE COURT: Sir, did in fact Mr. Murphy write you
17 several times?

18 MR. PARKER: No, ma'am. I got one ---

19 THE COURT: --- so you're telling me those letters
20 in his file are false that he made them up?

21 MR. PARKER: I never got them.

22 THE COURT: Aren't you at Lieber?

23 MR. PARKER: No, ma'am. I'm at Lee County.

24 THE COURT: --- you're at Lee; I'm sorry. I knew
25 it was an L word -- in Bishopville. Have you moved from

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1 Lee County?

2 MR. PARKER: No, ma'am.

3 THE COURT: So that's where you've been all this
4 time?

5 MR. PARKER: Yes, ma'am since 2010 ---

6 THE COURT: --- and you got one letter?

7 MR. PARKER: Yes, ma'am.

8 THE COURT: And you're telling me you didn't get
9 the other letters but you got one.

10 MR. PARKER: I got one.

11 THE COURT: Okay. Did you make any attempts to
12 call him?

13 MR. PARKER: No, ma'am ---

14 THE COURT: --- are there any witnesses that you
15 feel need to be presented during these proceedings?

16 MR. PARKER: Yes, ma'am.

17 THE COURT: Who are they?

18 MR. PARKER: Because Andrew Grimes didn't put my
19 mother on the stand.

20 THE COURT: Okay. You can put her on the stand
21 today. What other witnesses are there that you didn't
22 feel...

23 MR. PARKER: That's it. But I don't feel
24 comfortable with his representation. I don't understand
25 how could I go forward with somebody I don't feel

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1 comfortable with.

2 THE COURT: Because you haven't felt comfortable
3 with anybody that has been appointed to you and I don't
4 have ---

5 MR. PARKER: --- I didn't relieve Mr. Davis. Mr.
6 Davis released himself because he represented a ---

7 THE COURT: --- a co-defendant?

8 MR. PARKER: Yes, ma'am.

9 THE COURT: Okay. I got you.

10 MR. PARKER: He released himself. I didn't release
11 him.

12 THE COURT: What I'm going to do is I'm going to
13 give Mr. Murphy some time to go over everything with you.
14 I haven't heard anything at this point that's indicated
15 or would rise to the level of the court relieving him as
16 your counsel. And this matter has been pending since
17 2012; it's now 2014. If your family intended to hire
18 someone to represent you they should have done it long
19 before now.

20 MR. PARKER: I don't feel comfortable with that,
21 Judge. I understand everything you're saying ---

22 THE COURT: --- well, I'm going to give him an
23 opportunity to go over everything with you. P-C-R's are
24 largely legal matters. It's confined to the record of
25 the trial. There is no mystery about it. It's a matter

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1 of reading the record and determining whether there are
2 things that Mr. Grimes should have done that he didn't do
3 or he did things he should not have done that somehow
4 prejudiced you. So there is no mystical formula to a
5 post conviction relief action. And if there is a witness
6 that wasn't called that you feel should have been called,
7 you can go over that with Mr. Murphy.

8 And certainly again, that witness can be called
9 today although not for the purpose -- in determining how
10 that would have actually affected your trial. So I have
11 another case that I can go forward on and you and Mr.
12 Murphy can go over your file. And we'll be at ease while
13 y'all do that.

14 MS. WILSON: Thank you, Your Honor.

15 [Whereupon, the hearing is in recess]
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1 THE COURT: We're back on the record in Roger
2 Parker, Jr. versus the State of South Carolina, 2012-
3 7465. Is the State ready to proceed?

4 MS. WILSON: Yes, Your Honor. The State is ready
5 to proceed.

6 THE COURT: Is the applicant ready to proceed?

7 MR. MURPHY: Your Honor, if I may just address the
8 court briefly, Your Honor.

9 THE COURT: Sure.

10 MR. MURPHY: And this is completely unintentional
11 but it was pointed out that I misspoke to you earlier.

12 THE COURT: Okay.

13 MR. MURPHY: The applicant's family did not say
14 that they have the money or the currently have the funds
15 to hire private counsel. They indicate to me that they
16 would need time to retain private counsel to retain those
17 funds, secure those funds to get counsel and that they
18 would be ready by the September term, Your Honor.

19 That being the case, Your Honor, these are always
20 difficult situations. This is Mr. Parker's last shot and
21 he's fighting for his life and his family is fighting too
22 and I completely understand that. I would just ask you
23 to consider granting the continuance to allow the family
24 to secure private counsel and with the understanding that
25 this is not going to be continued again if Your Honor is.

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1 so inclined. And Your Honor, that was just -- that would
2 be what we would ask, Your Honor.

3 THE COURT: Are you ready to go forward?

4 MR. MURPHY: I am ready, Your Honor.

5 THE COURT: Okay. What's the State's position?

6 MS. WILSON: Your Honor, the State is here and
7 ready to proceed. By way I guess of a little procedural
8 history this matter was continued once before when Mr.
9 Parker was represented by Mr. Rodney Davis. Then
10 subsequently it was continued again because Mr. Davis was
11 relieved and Mr. Murphy was retained.

12 I think it's been continued one time when Mr. Murphy
13 was his counsel but that was by no fault of anyone; I
14 believe there was a flu outbreak and he wasn't
15 transported. But other than that we're here and ready to
16 proceed and everybody is here ready to go.

17 And also, Your Honor, the State would add if you're
18 inclined to grant this request I would appreciate it if
19 you could specify a time when counsel needs to be
20 retained so that we can proceed during the September term
21 without a continuance.

22 THE COURT: Okay. I've not heard anything that
23 rises to the level to grant a continuance. This matter
24 has been pending since 2012; it is now 2014. P-C-R's
25 should be disposed of in an orderly and timely manner.

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1 And while I am empathetic that Mr. Parker's family may
2 desire to obtain post conviction relief -- private post
3 conviction relief counsel for him they have had more than
4 ample time to have done that before today's date.

5 I have not heard that Mr. Murphy is not prepared.
6 And in the interim I have given him an additional
7 opportunity to go over these matters with his client and
8 they've had about an hour and a half to do that while we
9 proceeded with another case. So I've not heard anything
10 that would rise to the level of granting a continuance in
11 this matter.

12 It has been my experience that when people say they
13 are going to retain counsel it never actually happens.
14 And that's no reflection on you all. One is that it is
15 extremely expensive. There are very few people in this
16 State that handle post conviction relief.

17 They mostly don't take payments and it becomes an
18 extreme expense on the family that once they really
19 reflect on it they have second thoughts and that's
20 reasonable because in this economy to lay out probably in
21 excess of 10 to 20,000 dollars to retain somebody is a
22 lot of money. And so what ends up happening is that the
23 matter is delayed and it still doesn't go forward. So
24 what I am going to do is I'm going be Solomon, I'm going
25 to split the baby. There is no indication that you are...

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1 not ready to go forward. P-C-R's are largely legal
2 matters that rest on legal principles and on the record
3 that we already have. So I can see or discern no reason
4 to delay it.

5 However, his family can proceed with retaining
6 counsel if they would like. They have 30 days to do that
7 and once counsel has reviewed the record if they feel
8 they need to supplement this record with anything if
9 there is anything new they want to bring to the court's
10 attention, if there is anything new they want to present
11 I will give them the opportunity to do that.

12 And likewise if there is anything that you feel
13 after discussing with your client that you feel needs to
14 supplement the record, Mr. Murphy I'll give you the
15 opportunity to do that as well. So that I think is an
16 equitable resolution of the matter because if they in
17 fact retain someone that person can review the record.
18 There is no prejudice to be suffered by Mr. Parker.

19 And if there is anything new that they want to bring
20 to the court's attention that they want me to consider
21 before making a decision, if there are any witnesses they
22 want to call, any additional argument they want to make
23 they will be given leave to do that. But I am putting a
24 finite time period on that is 30 days from today that I
25 need to be notified not only that counsel has been

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1 retained but if they want to supplement the record.

2 MR. MURPHY: Thank you, Your Honor.

3 THE COURT: I think that's a reasonable amount of
4 time for that to be accomplished.

5 MR. MURPHY: Yes, Your Honor, I believe so. And I
6 would just like the record to reflect that during that
7 time you gave me an opportunity to talk to Mr. Parker he
8 refused to talk to me, therefore I...

9 THE COURT: That was his informed decision. I have
10 no reason to believe that he is impaired in any way
11 today, that he is under the influence of any drugs or
12 alcohol, or suffers from any other mental deficit that
13 would have prevented you from having -- and the timeframe
14 was more than adequate for you to have gone over the
15 entire file really with him from beginning to end and any
16 strategies you plan to employ today or otherwise.

17 And the fact that he did not avail himself of that
18 well that was his decision and we certainly cannot force
19 upon him. But the record should reflect that he refused
20 to speak with you. And of course that was his decision.
21 What has been -- Mr. Parker's comment that he just was
22 not comfortable with you with the situation at the
23 institution at least my understanding of late is there
24 have been a lot of lockdowns and a lot of flu outbreaks
25 and other things. And I also understand now that it is

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1 very difficult to schedule appointments to meet with
2 people individually. For whatever reason I think they
3 only schedule so many a day and once it is exhausted then
4 they -- and I don't pretend to know all the ins and outs
5 of what is going on except to the extent that I've been
6 made aware that it is becoming increasingly difficult to
7 do that.

8 So it doesn't mean that somebody just didn't come to
9 see you. It just means that for whatever reason and I've
10 been made aware that often times people have been making
11 appointments and at the last moment the institution has
12 been cancelling them without any real explanation to them
13 as to why they couldn't have their visits.

14 And I'm certain that they are reasons that have been
15 sufficient to the institution especially in light of
16 again all the health issues and other reasons why they
17 have to institute lockdowns and otherwise. But Mr.
18 Murphy has indicated to the court that he has kept the
19 applicant apprised, that he has written him on several
20 occasions. The applicant acknowledges receiving one
21 letter.

22 I have no reason to believe that if he got one that
23 he did not get them all and he has not availed himself of
24 cooperating with his counsel in terms of providing him
25 with any additional witnesses or otherwise. So I cannot

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1 again discern any reason to delay this matter any
2 further. And it really would work to the prejudice of
3 Mr. Parker as Mr. Murphy has said he is fighting for his
4 life and in terms of this litigation. And if in fact
5 that is the case then the quicker the system runs its
6 course the better for him. There certainly is -- does
7 not work to his benefit to continue to delay the
8 disposition of his case.

9 And again Mr. Parker, I would advise you that it is
10 in your best interest to try and speak with Mr. Murphy.
11 If after this hearing I would strongly suggest that if
12 there is anything you need to bring to his attention that
13 you do that because I am giving him the opportunity to
14 what we call supplement the court's record, which means
15 that if there is anything that he doesn't raise today
16 that I will give him the opportunity to come back before
17 the court and raise those issues or to provide the court
18 with those witnesses.

19 So if there is anything that he does not present
20 today that you have not made him aware of you need to
21 make him aware of it so that he can bring it to the
22 court's attention for that purpose. Otherwise it will be
23 waived on your behalf and you basically would be the
24 architect of your own dilemma. So I would just make you
25 aware of that...Okay. You ready to proceed?

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1 MR. MURPHY: Yes, Your Honor.

2 THE COURT: You ready to proceed, Ms. Wilson?

3 MS. WILSON: Yes, Your Honor.

4 THE COURT: All right.

5 MR. MURPHY: Thank you, Your Honor. We would call
6 Mr. Parker.

7 THE COURT: Sir, if you would stand and raise your
8 right hand to be sworn.

9 [Whereupon, the witness complies]

10 [Whereupon, the witness is duly sworn by the court]

11 THE COURT: You can be seated sir and state your
12 full name for the record spelling your last name for the
13 court reporter.

14 THE WITNESS: Roger Raynard Parker P-A-R-K-E-R.

15 THE COURT: And if you could speak loudly and
16 clearly for me I'd greatly appreciate it. You may
17 proceed.

18 THE WITNESS: Roger Raynard Parker P-A-R-K-E-R.

19 THE COURT: Thank you, sir. You may proceed Mr.
20 Murphy.

21 MR. MURPHY: Thank you, Your Honor. May it please
22 the court?

23 THE COURT: Yes, sir.
24
25

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1 ROGER PARKER,
2 Having been first duly sworn,
3 Was examined and testified as follows:
4 DIRECT EXAMINATION
5 BY MR. MURPHY:
6 Q. Mr. Parker you were convicted of murder in Charleston
7 County?
8 A. Yes, sir.
9 Q. And you were represented by Mr. Grimes?
10 A. Yes, sir.
11 Q. And he was with the public defender's office?
12 A. Yes, sir.
13 Q. And how many times did you meet with him to discuss
14 your case?
15 A. More than hands and toes both --
16 THE COURT: I'm sorry sir, please repeat ---
17 A. --- More than fingers and toes --
18 Q. [Mr. Murphy] So you met with him an adequate amount
19 of times?
20 A. Yes --
21 Q. And you had -- did you go over all the evidence with
22 him?
23 THE COURT: I need him to repeat that answer again.
24 The court reporter did not understand what he was saying.
25 A. More than 20 times.

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1 THE COURT: Thank you, sir.

2 Q. [Mr. Murphy] And during these more than 20 times did
3 you go over all the evidence with him?

4 A. Everything that he had.

5 Q. Okay. And did you discuss witnesses -- what
6 witnesses to call?

7 A. Yes, sir.

8 Q. And you said everything that he had. Did he not
9 have something that you thought would have been relevant
10 or help your defense?

11 A. Everything that was given to me is what is had.

12 Q. Okay. Did you have any offers prior to going to
13 trial from the State?

14 A. No, sir.

15 Q. Okay. So they just were going to go after murder
16 and that was it. There was no plea bargaining?

17 A. At the second day of trial.

18 Q. And at the second day of trial what happened?

19 A. They offered me a plea for 30 years.

20 Q. Okay. And you discussed that with Mr. Grimes?

21 A. I mean that's what he came to the table after
22 leaving the Judge.

23 Q. Okay. And ultimately you decided against that?

24 A. Yes, sir.

25 Q. Okay. And let's talk about your trial strategy.

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- 1 You obviously went over your trial strategy with Mr.
2 Grimes correct?
3 A. Yes, sir.
4 Q. And what was your trial strategy?
5 A. I mean basically the trial strategy was to prove
6 self defense.
7 Q. Okay. So self defense was your main defense in
8 this case?
9 A. Yes, sir.
10 Q. Okay. And did Mr. Grimes -- is there anybody that
11 Mr. Grimes could have called to help assist you with your
12 self-defense claims?
13 A. I believe so.
14 Q. Okay. Who would that have been?
15 A. My mother.
16 Q. Okay. How would your mother have helped you?
17 A. Because she was home.
18 Q. She was at the time?
19 A. Uh Huh.
20 Q. So she would have been a witness that was there?
21 A. Yes, sir.
22 Q. And she could have explained her version of the
23 facts?
24 A. Exactly.
25 Q. And in your P-C-R application you mentioned that Mr.

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1 Grimes failed to investigate the facts do you recall
2 that?

3 A. Uh Huh.

4 Q. And tell the court what you mean by that? What did
5 he not do? How did ---

6 A. --- he didn't call my mother.

7 Q. Okay. He didn't call your mother?

8 A. And he didn't call a witness.

9 Q. And you also in your first prong you talk about you
10 could have possibly gotten manslaughter charge
11 conviction?

12 A. Yes, sir.

13 Q. Did you discuss lesser included offenses with Mr.
14 Grimes?

15 A. We went over it more than a number of times when he
16 was coming to see me before trial started.

17 Q. Okay. And in your second alleged area in your
18 application you indicate that the indictment did not
19 include the lesser included charges.

20 A. Exactly.

21 Q. Okay. And what do you mean by that?

22 A. That it didn't include the lesser included charges.

23 Q. It only -- yes.

24 A. It only included murder.

25 Q. Okay. And then you talk about in the third prong

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1 that he failed to call certain witnesses. Would that
2 have been your mother as well?

3 A. Yes, sir.

4 Q. Okay. And the fourth prong you indicate that he
5 failed to proffer evidence for a self defense charge. Is
6 that again your mother's testimony? If you want to take
7 a look at your application ---

8 A. --- that would be my testimony.

9 Q. Oh, failed to proffer your testimony?

10 A. Because I had a choice to testify or not.

11 Q. Okay.

12 A. I made my choice to testify because of the charge at
13 trial I was trying to prove.

14 Q. You decided to take the stand in your own defense?

15 A. Exactly.

16 Q. And was there any evidence that you were not able to
17 put into the record?

18 A. From my testimony?

19 Q. Yes, in your testimony.

20 A. No, sir.

21 Q. And then you finally allege that the appellate
22 counsel failed to exhaust the appellate process.

23 A. Uh Huh.

24 Q. And you understand that your appellate counsel asked
25 the South Carolina Supreme Court to review this matter?

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1 A. He did.

2 Q. Okay. And the Supreme Court rejected that?

3 A. Exactly.

4 Q. So tell me -- explain to the court how did they not
5 exhaust the appellate process?

6 A. You said how did they not?

7 Q. Yes. What do you wish they did? What is your error
8 that you allege?

9 A. I wish they had alleged the murder like. You see
10 what I'm saying? Murder and break it down to murder and
11 manslaughter.

12 Q. Okay. We're going to get to that in a second.

13 But in terms of just the appellate process failure to
14 exhaust the appellate process what did you mean in your
15 application when you raised that as an issue?

16 [Whereupon, Mr. Murphy provides documents to the
17 witness]

18 Q. If you want to review that maybe that will refresh
19 your memory.

20 [Whereupon, the witness reviews documents]

21 A. I don't know that.

22 Q. Okay. In terms of -- you mentioned about lesser
23 included charges. Did you have conversations with Mr.
24 Grimes about having a trial strategy and trying to seek
25 lesser included charges rather than a murder charge

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1 conviction?

2 A. Uh Huh.

3 Q. You did? And tell me what was the extent of those
4 conversations.

5 A. I mean basically it went on -- it was just about the
6 self defense charge. That was the number one strategy
7 and that was it.

8 Q. That was it? So in terms of did you -- the verdict
9 form only allowed the conviction of murder is that
10 correct?

11 A. Exactly.

12 Q. And did you talk to Mr. Grimes about including
13 lesser included charges on the verdict form?

14 A. At trial?

15 Q. Yes?

16 A. No, but if I'm not mistaken I can't remember -- I
17 know I remember them saying something about he thought
18 the Judge would have ruled manslaughter if he had asked
19 for it. I might be wrong or I might be right; I'm not
20 sure.

21 Q. You think the Judge would have charged the jury on
22 manslaughter if he had asked for it?

23 A. Exactly.

24 Q. Okay. But you didn't -- Mr. Grimes did not ask for
25 that?

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1 A. No, sir.

2 Q. And did you ask him to ask for that?

3 A. No, sir.

4 Q. Was that a decision you made or -- tell me was that
5 a trial strategy or is that something that you would have
6 wanted?

7 A. I would have rather had that than murder.

8 Q. Okay. But you would have rather be convicted of
9 manslaughter ---

10 A. --- manslaughter ---

11 Q. --- there is no question about that ---

12 A. --- not murder ---

13 Q. --- but the jury didn't have that option.

14 A. No, sir.

15 MR. MURPHY: That's all I have, Your Honor.

16 THE COURT: Any questions for the witness?

17 MS. WILSON: No questions for the witness.

18 THE COURT: Do you have any other witnesses?

19 MR. MURPHY: Your Honor, we would just call Mr.
20 Grimes.

21 THE COURT: Mr. Grimes, if you will come forward
22 and be sworn.

23 [Whereupon, Mr. Grimes comes forward]

24 [Whereupon, the witness is duly sworn by the Clerk
25 of Court]

Roger R. Parker, Jr. v State of S.C.
Roger Parker-Direct Examination by Mr. Murphy
May 19, 2014

1 CLERK OF COURT: Once seated if you could please
2 state your first and last name and then spell your last
3 for the record.

4 THE WITNESS: Andrew Grimes G-R-I-M-E-S.

5 THE COURT: You may proceed.

6 MR. MURPHY: Thank you.

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Roger R. Parker, Jr. v State of S.C.
Andrew Grimes-Direct Examination by Mr. Murphy
May 19, 2014

1 ANDREW GRIMES,
2 Having been first duly sworn,
3 Was examined and testified as follows:

4 DIRECT EXAMINATION

5 BY MR. MURPHY:

6 Q. Mr. Grimes, this is going to be really quick. We're
7 just going to skip to the end of the trial and talk about
8 the lesser included defenses. Did you have any
9 discussions with Mr. Parker about including lesser
10 included offenses on that verdict form?

11 A. I believe we had a brief discussion.

12 Q. And tell us what -- if you could explain what was
13 the content or the extent of that discussion.

14 A. I think it was during sort of a charge conference we
15 had requested self defense, defense of others, defense of
16 habitation. I was debating on voluntary manslaughter. I
17 asked Mr. Parker -- before he told me he would -- he
18 wouldn't even have been happy with a sentence of 20 years
19 if I would be able to negotiate one that low.

20 And I believe that the way the trial was going I
21 believe the Judge probably would have charged voluntary
22 manslaughter I think because there was enough evidence
23 for that. But if he had charged voluntary manslaughter
24 he least would have been convicted of that rather than --
25 probably received a 30 year sentence. And I thought it...

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Andrew Grimes-Direct Examination by Mr. Murphy
May 19, 2014

1 might be a problem proving malice aforethought for the
2 self defense argument but not a problem proving it was in
3 the heat of passion with voluntary manslaughter. I
4 figured that would pretty much guarantee a loss on a
5 voluntary manslaughter if he had that charged.

6 And I think -- I could see that Mr. Parker wanted to
7 be given any substantial period of time on the charge and
8 I believed the charge of voluntary manslaughter would
9 guarantee that.

10 Q. And was there any plea negotiations either prior to
11 trial or during the trial in this case?

12 A. I had some with Ms. Shealy; nothing real meaningful.
13 I asked about voluntary and she said she didn't see it.
14 Given the self defense issues I thought it was obvious it
15 was there.

16 Then I think she, as Mr. Parker testified either
17 right before trial or during the beginning of the trial
18 she offered like a sentence -- a deal for 30 years on
19 murder.

20 Q. Did you discuss with Mr. Parker calling his mother
21 to testify as a witness?

22 A. I don't recall it specifically but I'm sure I did.
23 I had some notes from meeting with her and I do remember
24 meeting with her right before trial and I'm sure I got
25 that information from Mr. Parker.

Roger R. Parker, Jr. v State of S.C.
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1 Q. And do you recall Mr. Parker asking you to call his
2 mother as a witness?

3 A. I imagine he did at the beginning of the case or as
4 we prepared for it. The reason I didn't call her as a
5 witness is she was upstairs when it happened and didn't
6 see the incident.

7 I think she saw some preliminary stuff to the
8 incident when Mr. Grant came over and was making a scene.
9 And given that we had his father and Mr. Green as
10 witnesses I wasn't sure how much his mother would add to
11 the facts of the case.

12 Q. Yes, sir.

13 MR. MURPHY: That's all I have, Your Honor.

14 THE COURT: Any questions for the witness?

15 MS. WILSON: Yes, Your Honor.

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Roger R. Parker, Jr. v State of S.C.
Andrew Grimes-Cross-Examination by Ms. Wilson
May 19, 2014

1 CROSS-EXAMINATION

2 BY MS. WILSON:

3 Q. Mr. Grimes how long have you been practicing law?

4 A. I was admitted to the bar in 1995.

5 Q. How much of your time while you've been practicing
6 has been spent doing criminal law?

7 A. I would say the majority of it. I clerked for
8 various Judges and had a private practice and did P-C-R's
9 there and in the public defender's office here and in
10 Walterboro.

11 Q. Do you recall when you were appointed to present Mr.
12 Parker?

13 A. I believe it was -- if I remember my notes right
14 probably around January of 2007.

15 Q. And do you recall how many times you got to meet
16 with him before trial?

17 A. Not specifically but it was a good number of
18 meetings we had.

19 Q. And did you file Brady and Rule 5 motions on Mr.
20 Parker's behalf?

21 A. Yes, ma'am. I believe we also filed a motion to
22 compel.

23 Q. And did you review the discovery materials that you
24 received for Mr. Parker?

25 A. Yes, ma'am.

Roger R. Parker, Jr. v State of S.C.
Andrew Grimes-Cross-Examination by Ms. Wilson
May 19, 2014

1 Q. And did you discuss with him the elements of the
2 charges he was facing and what the State had to prove?

3 A. Yes, ma'am.

4 Q. Did you talk to him about his version of the facts?

5 A. Definitely.

6 Q. Okay. And did you talk to him about possible
7 defenses?

8 A. Yes, ma'am.

9 Q. And could you just replay for the court what defense
10 you ultimately presented on his behalf?

11 A. Our main defense as he testified was self defense.
12 I gave him an article from the Champion talking about the
13 pros and cons of using self defense that we would have to
14 give up making any type of I.D. argument or alibi
15 argument if we were going to go with self defense.

16 And then while going over the elements of self
17 defense and what kind of threat he was facing and whether
18 he acted reasonably with that. I think the case also
19 developed defense of habitation and it came out while
20 this case had been pending.

21 I think it was case from Beaufort County and Judge
22 Dennis gave that and we argued defense of others because
23 his father had been sort of -- it might be fair to say
24 his father kind of maybe started the verbal argument and
25 it escalated from there. So we argued it was an act to

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Andrew Grimes-Cross-Examination by Ms. Wilson
May 19, 2014

1 protect his father. We tried to sort of have the castle
2 doctrine charged, the Protection of Property and Persons
3 act. The court ruled that the act didn't apply because
4 this incident took place before the passage of that.

5 And I think it sort of came down to some
6 creditability issues. The victim's mother testified that
7 while the victim was on the ground Mr. Parker shot him
8 there, which would rule out self defense. And Mr. Parker
9 testified it didn't happen that way.

10 Q. Did Mr. Parker give you any witnesses or leads to
11 investigate?

12 A. Yes, ma'am.

13 Q. And did you look into every one that he brought to
14 your attention?

15 A. I'm assuming so. I can't remember anything he -- I
16 know Mr. Green I met with him. I went to Ashley Shores
17 and walked around there and observed the scene. We
18 called the child who sort of started the fight with
19 gripping the chair because -- because it seemed like the
20 State wasn't calling him so we checked and he was in
21 jail.

22 So we called him as a witness to try to show that
23 the State's evidence and witnesses really weren't clean;
24 that they had their own baggage. His father -- it took
25 some difficulty getting his father to come in because he

Roger R. Parker, Jr. v State of S.C.
Andrew Grimes-Cross-Examination by Ms. Wilson
May 19, 2014

1 was actually charged as an accessory so he had his own
2 defendant worries. He did come in and meet with me and
3 then I remember later Mark Peper said he was going to be
4 retained and then did not give me permission to talk with
5 him.

6 Then when it was coming up for trial the court
7 appointed David Wolf to represent him and appointed Mr.
8 Wolf and I was able to talk freely with Mr. Parker after
9 that and he testified at trial.

10 We obviously went through Mr. Parker's testimony.
11 We spent a good bit of time at the jail. I know me and
12 Mr. Michael -- I think Mr. Michael brought in one of his
13 friends Aaron Hulkey [phonetic] who expressed an interest
14 in working in our office.

15 We sort of went over the pros and cons of his
16 testimony what was good and what was bad. At the jail
17 when he practiced he was thinking in cross pretty well.
18 Unfortunately he got stage fright on the witness stand
19 and kind of didn't have -- his demeanor wasn't as good as
20 it was when we were practicing.

21 Q. Did you feel like you had ample time to prepare for
22 trial?

23 A. Yes, ma'am.

24 Q. You testified that you considered requesting a
25 lesser included defense of voluntary manslaughter is that

Roger R. Parker, Jr. v State of S.C.
Andrew Grimes-Cross-Examination by Ms. Wilson
May 19, 2014

1 correct?

2 A. I considered it.

3 Q. And you discussed the possibility of doing so with
4 Mr. Parker is that correct?

5 A. Not in any great detail but I think if I remember
6 the record may have said -- it may be in the record Judge
7 can I have a moment? And at that point we talked about
8 it a little bit but it wasn't -- at that point it wasn't
9 a great detailed in depth conversation.

10 Q. Okay. Can you just recall for the court what the
11 strategic basis was for not requesting a voluntary
12 manslaughter in charging?

13 A. I think it may have been that summer before we and
14 Ms. Tara Schultz had tried a murder case raising self
15 defense battered woman's issues. In there we
16 specifically did not request voluntary manslaughter and
17 you know there would been an acquittal on the murder.
18 But the first question the jury came back with was can we
19 find her guilty of voluntary manslaughter.

20 So I guess I kind of had that on my mind and knowing
21 that it was -- there were some issues with the self
22 defense, defense that the jury would in the best case
23 scenario involving that if it was charged compromise on
24 that and find him guilty of voluntary manslaughter. I
25 believe Judge Dennis would have given him 30 years on

Roger R. Parker, Jr. v State of S.C.
Andrew Grimes-Cross-Examination by Ms. Wilson
May 19, 2014

1 that. And when we talked about pleas and he turned down
2 a plea on 30 I didn't think he would want to take it.
3 Again I thought an all or nothing would have been better
4 given they might have proved malice aforethought. But
5 Mr. Parker is obviously right. It would be better for
6 him to be convicted of voluntary manslaughter than
7 murder.

8 MS. WILSON: Beg the court's indulgence.

9 [Whereupon, Ms. Wilson reviews documents]

10 MS. WILSON: Nothing further from the State.

11 THE COURT: Any redirect?

12 MR. MURPHY: Nothing further, Your Honor. We would
13 call the defendant's mother.

14 THE COURT: You may step down Mr. Grimes.

15 THE WITNESS: Thank you, Your Honor.

16 [Whereupon, the witness is excused and exits the
17 witness stand]

18 [Whereupon, Ms. Johnson comes forward]

19 [Whereupon, the witness is duly sworn by the Clerk
20 of Court]

21 CLERK OF COURT: Once seated if you could please
22 state your first and last name and then spell your last
23 for the record.

24 THE WITNESS: Virginia Johnson J-O-H-N-S-O-N.

25 THE COURT: You may proceed.

Roger R. Parker, Jr. v State of S.C.
Virginia Johnson-Direct Examination by Mr. Murphy
May 19, 2014

1 VIRGINIA JOHNSON,
2 Having been first duly sworn,
3 Was examined and testified as follows:

4 DIRECT EXAMINATION

5 BY MR. MURPHY:

6 Q. All right Ms. Johnson let's take you back to April
7 18th 2006 when this event occurred. And you've heard Mr.
8 Parker testify that you could have given testimony that
9 would have been favorable to his self defense claim in
10 this trial correct?

11 A. Yes.

12 Q. And could you tell the jury -- tell the Judge
13 briefly what happened that day and what you saw?

14 A. Well, I was working the night shift. That's the day
15 after my birthday; my birthday is on April the 17th, it
16 happened on April 18th. I was upstairs and I heard my
17 husband downstairs arguing.

18 So I came downstairs and my husband and a gentleman
19 was in -- the gentleman had just invited himself on in
20 the house. He didn't even ask; he just came ---

21 Q. --- that would have been the victim in this?

22 A. Yes. And he had told my husband -- he was telling
23 my husband what he was going to do to him. He was
24 arguing with him and he was all in his face, which my
25 husband is a dialysis patient, which we had just not too

Roger R. Parker, Jr. v State of S.C.
Virginia Johnson-Direct Examination by Mr. Murphy
May 19, 2014

1 long came from the dialysis clinic. So when I came down
2 the steps I had told the gentleman you know please leave
3 the house you know but the gentleman he wouldn't leave.

4 So he just kept getting in my husband's face in the
5 house and I was like you just invited yourself on in the
6 house and you didn't even ask you know just walk on in
7 and you know threatening us.

8 Q. And was he yelling loud?

9 A. Yes, he was talking real loud to him. He was
10 telling him what he was going to do to him.

11 Q. And what was that?

12 A. He was going to mess him up.

13 Q. All right.

14 A. Yes.

15 Q. And were you scared at that point?

16 A. Huh?

17 Q. Were you scared at that point?

18 A. Right. So I didn't have no clothes on so I ran back
19 upstairs and tried to put on some decent clothes and I
20 came back down stairs and he still wouldn't leave out of
21 our house.

22 He just came you wait till I come back; you wait
23 till I come back. He was saying he was going to come
24 back and he was telling him when he come back he was
25 going to hurt him.

Roger R. Parker, Jr. v State of S.C.
Virginia Johnson-Direct Examination by Mr. Murphy
May 19, 2014

1 Q. Okay. What caused this argument? What was the
2 source of this argument?

3 A. They were our neighbors. And the mother was living
4 there with the children and she left the children there.
5 She left the children at the house. So then the kids
6 turned the house out. So they had pit bulls and my
7 husband was like trying to tell them you know I'm scared
8 of the pit bulls you know.

9 Q. And pit bulls are dogs?

10 A. Yes. And then they started all night long loud
11 music, bamming on the walls and me -- for two weeks I
12 worked to 11:00 to 7:00. The next two weeks I worked
13 7:00 to 3:00. And it was like you know my wife is
14 working all these split shifts y'all just cool down the
15 noise.

16 Q. So you had an original disagreement as neighbors?

17 A. Yes. They was -- they just -- the neighbors I got
18 they had really got wild over there.

19 Q. And it escalated -- the situation escalated?

20 A. Yes.

21 Q. And what happened is one of the children -- the
22 victim in this case came in ---

23 A. --- the young man he kept -- the young man kept
24 disrespecting my husband, keep talking real nasty to him.

25 Q. He was in your house yelling at your husband?

Roger R. Parker, Jr. v State of S.C.
Virginia Johnson-Direct Examination by Mr. Murphy
May 19, 2014

1 A. Yes.

2 Q. Okay. And then after he was done yelling at your
3 husband what happened?

4 A. He went -- he left and he went out the door and then
5 they were arguing, arguing, arguing.

6 Q. Who was arguing?

7 A. My husband and the young man.

8 Q. Okay. What point did Mr. Parker come in?

9 A. When I start my -- my son came over and my son was
10 talking to them and my son was talking to the mother.

11 Q. And where was this? Was this inside your house or
12 outside ---

13 A. --- no, right in front of the door.

14 Q. Okay.

15 A. You know townhouses. You ain't got but this much
16 [indicates] step.

17 Q. Right. So they are on the steps talking.

18 A. Right. And he told him he said -- my son had told
19 him -- my son was trying to calm things down then my son
20 had tell the mother -- you know the mother was like I'm
21 going to call the police.

22 So my son said, well go ahead and call the police.
23 But her son they just kept saying they were get us, they
24 were going to get us.

25 Q. Okay. And you interpret that as a physical threat?

Roger R. Parker, Jr. v State of S.C.
Virginia Johnson-Direct Examination by Mr. Murphy
May 19, 2014

1 A. Yes. I was scared you know because I know they
2 already had them pit bulls you know. And then I don't
3 know the young man -- I just got to say this -- the young
4 man who my son hurt he was reaching. He had something
5 but nobody could know what he had. He had something.

6 Q. Okay. When you saw the victim reaching where was
7 he reaching in his pocket or ---

8 A. --- yes, on his side he had something. And that's
9 when I know I heard gunshots.

10 Q. Did you see the shots fired at all?

11 A. I ran.

12 Q. Okay. You didn't see who shot him you just heard
13 and ran.

14 A. I didn't see it. Right.

15 Q. Okay. And do you have any other testimony that you
16 could have added in defense of your son?

17 A. I could say this. My son was a good -- my son was
18 on his day off from work and all this stuff it went -- my
19 son had just was going to school to have lunch with his
20 daughter. My son wasn't the type of person to hang out.
21 My son worked every day.

22 And the only thing I can with this I had already
23 went to the landlord and I had begged the landlord before
24 all of this happened I went to that landlord three times
25 and begged him please talk to the neighbors. He was

Roger R. Parker, Jr. v State of S.C.
Virginia Johnson-Direct Examination by Mr. Murphy
May 19, 2014

1 going to evict them two days before this happened.

2 Q. Okay.

3 MR. MURPHY: That's all I have Your Honor.

4 THE COURT: You may proceed.

5 MS. WILSON: Just one question, Your Honor.

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Roger R. Parker, Jr. v State of S.C.
Virginia Johnson-Cross Examination by Ms. Wilson
May 19, 2014

1 CROSS-EXAMINATION

2 BY MS. WILSON:

3 Q. Ms. Johnson, you didn't see the victim get shot is
4 that correct?

5 A. I ran after I heard the gunshots.

6 Q. Thank you.

7 MR. MURPHY: Nothing further, Your Honor.

8 THE COURT: Ma'am, you may step down.

9 [Whereupon, the witness is excused and exits the
10 witness stand]

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Roger R. Parker, Jr. v State of S.C.
Proceedings
May 19, 2014

1 THE COURT: Anything further Mr. Murphy?

2 MR. MURPHY: Nothing, Your Honor.

3 THE COURT: Anything from the State?

4 MS. WILSON: Nothing from the State, Your Honor.

5 THE COURT: Okay. I'll take the matter under
6 advisement. Again, there is 30 days from today for Mr.
7 Parker's counsel -- Parker's family to obtain counsel if
8 they should decide to do that. So that would be June
9 19th, which is a Thursday so I'll give them until June
10 20th, which is a Friday to advise the court as to whether
11 they have retained private counsel.

12 Actually that deadline is for private counsel to
13 file a notice of representation with the court and to
14 advise the court if they intend to present or need to
15 present anything further in support of a post conviction
16 relief application and whether the record needs to be
17 supplemented.

18 Again, Mr. Parker I would emphasize please speak
19 with Mr. Murphy before he leaves the courthouse today so
20 that he can ascertain if there is anything further that
21 needs to be placed on the record within that 30 day
22 period as well. Do you all desire to make any closing
23 arguments prior to adjourning this matter.

24 MR. MURPHY: Briefly, Your Honor.

25

Roger R. Parker, Jr. v State of S.C.
Closing Argument-By Mr. Murphy
May 19, 2014

1 CLOSING ARGUMENT

2 BY MR. MURPHY:

3 The sole issue in this case is whether or not it was
4 error to exclude the lesser included charges in this
5 case. I believe that in an all or nothing situation and
6 I understand the testimony was that the jury probably
7 would have split the difference based on Mr. Grimes'
8 experience.

9 But I think failure to give the jury that option put
10 him in a position where he was going to be convicted of
11 murder. I realize he would have faced a long time and he
12 probably would have been convicted of a lesser included
13 charge but certainly 30 years is better than the life
14 that he received. And that would be it, Your Honor.

15 THE COURT: Ms. Wilson?

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Roger R. Parker, Jr. v State of S.C.
Closing Argument-By Ms. Wilson
May 19, 2014

CLOSING ARGUMENT

BY MS. WILSON:

May it please the court, Your Honor? The State would just ask that you deny this application for post conviction relief.

With regard to the allegation that counsel was ineffective for failing to request a voluntary manslaughter instruction it's the State's position that Mr. Grimes articulated a strategic -- a valid trial strategy in the fact that he thought it was best that he just take the risk of the State not being able to prove malice as opposed to requesting a jury instruction on voluntary manslaughter where he was certain that the State would be able to prevail.

Also, with regard to calling witnesses it's the State's position that Ms. Johnson's testimony is duplicate to some of the testimony presented at trial particularly that of several of the defense witnesses. And we just ask that you dismiss this application with prejudice.

Roger R. Parker, Jr. v State of S.C.
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May 19, 2014

1 THE COURT: I'll take the matter under advisement
2 and then at the 30 day mark, which is June 20th if I have
3 not received any notice of representation or any notice
4 to supplement the record I'll rule at that time.

5 MS. WILSON: Thank you, Your Honor.

6 MR. MURPHY: Thank you, Your Honor.

7 *****END OF TRANSCRIPT OF RECORD*****

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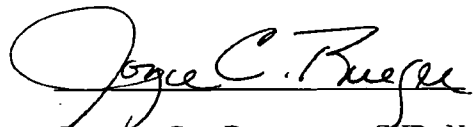
Roger R. Parker, Jr. v State of S.C.
Certificate of the Court Reporter
May 19, 2014

C E R T I F I C A T E

I, the undersigned, Joyce C. Rueger, Official
Circuit Court Reporter for the Ninth Judicial Circuit of
the State of South Carolina, do hereby certify that the
foregoing is a true, accurate, and complete Transcript of
Record of the proceedings had and evidence introduced in
the trial of the captioned case, relative to appeal, in
the Court of Common Pleas for Charleston County, South
Carolina on the 19th day of May, 2014.

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

November 22, 2014


Joyce C. Rueger, CVR-M
Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Roger Raynard Parker, #326778,
Applicant,

v.

State of South Carolina,
Respondent.

IN THE COURT OF COMMON PLEAS
2012-CP-10-7465

ORDER OF DISMISSAL

FILED
2014 SEP 18 PM 12:21
JULIE J. ARMSTRONG
CLERK OF COURT

Presiding Judge:	Hon. Deadra L. Jefferson
Applicant's Attorney:	Christopher L. Murphy, Esquire
Respondent's Attorney:	Ashleigh R. Wilson, Esquire
Trial Counsel:	Andrew Grimes, Esquire
Date of Hearing:	May 19, 2014
Court Reporter:	Joyce C. Rueger

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed November 14, 2012. The Respondent made its Return on or about July 5, 2013. An evidentiary hearing on the matter was convened on May 19, 2014 at the Charleston County Courthouse. The Applicant was present at the hearing and represented by Christopher L. Murphy, Esquire. Ashleigh R. Wilson, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

Also present and testifying was Andrew Grimes, Esquire. The Court had before it the trial transcript, the Charleston County Clerk of Court records, the Applicant's records from the South Carolina Department of Corrections, the Applicant's application, the Respondent's Return, and the Applicant's appellate records.

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[Signature]

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Charleston County Clerk of Court. The Applicant was indicted at the March 2007 term of the Charleston County Grand Jury for Murder¹ (2007-GS-10-4293). He was represented by Andrew Grimes, Esquire.

On February 25-27, 2008, the Applicant proceeded to trial and was found guilty. The Honorable R. Markley Dennis sentenced the Applicant to confinement for life in prison.

A timely Notice of Appeal was filed on the Applicant's behalf at the South Carolina Court of Appeals. Robert Dudek, Esquire of the South Carolina Office of Appellate Defense perfected the appeal. The South Carolina Court of Appeals affirmed the Applicant's conviction and sentence. State v. Parker, Op. No. 2010-UP-378 (S.C. Ct. App. filed August 2, 2010). The Applicant filed a Petition for Rehearing in the Court of Appeals which was denied on September 24, 2010. The Applicant filed a Petition for Writ of Certiorari to the South Carolina Supreme Court which was denied on January 11, 2012. The Remittitur was issued on February 3, 2012.

ALLEGATIONS

In his application, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of trial counsel.
 - a. Counsel failed to adequately investigate the facts and circumstances surrounding the death of the victim.
 - b. Counsel failed to pre-trial the murder indictment based upon the fact that the indictment failed to set forth the greater including only the greater charge, and in the Applicant's indictment the greater is including the lesser charge also.
 - c. Counsel failed to call Applicant's witnesses to testify at trial as Applicant made several demands to counsel to contact his witnesses.

¹ A person who is convicted of or pleads guilty to Murder must be punished by death, by imprisonment for life, or by a mandatory minimum term of imprisonment for thirty (30) years. See S.C. CODE ANN. § 16-3-20 (2006). The offense of Murder is a violent, most serious felony. See S.C. CODE ANN. § 16-1-60 (2006); S.C. CODE ANN. § 17-25-45 (2006).

2 2011/6
SPG

- d. Counsel failed to proffer evidence to the court to compel the court to give the Applicant's trial jury a self-defense charge.
- 2. Ineffective assistance of appellate counsel.
 - a. Appellate counsel failed to pursue all appeal remedies by the S.C. Appellate Court processes for the sake of being in compliances with the proper exhaustion doctrine.

At the evidentiary hearing, the Applicant proceeded solely on the following allegations:

- 1. Ineffective assistance of trial counsel.
 - a. Counsel failed to call the Applicant's mother to testify at trial.
 - b. Counsel failed to request a jury instruction on the lesser included offense of voluntary manslaughter.
- 2. Ineffective assistance of appellate counsel.
 - a. Counsel failed to exhaust all appellate remedies.

This Court finds the Applicant failed to present any evidence or testimony regarding any other allegations, therefore, this Court deems any other allegations to have been abandoned by the Applicant.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon his or her credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusion of law as required by S.C. CODE ANN. § 17-27-80 (2003).

Summary of the Testimony

At the commencement of the Applicant's evidentiary hearing, the Applicant moved to relieve PCR counsel, Christopher L. Murphy, Esquire. The Applicant stated he had not met with Counsel to review or discuss his case. The Applicant testified he had witnesses that he wanted to present to the Court and that he did not feel comfortable going forward with Mr. Murphy.

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Mr. Murphy testified he was ready to proceed and that he had corresponded with the Applicant by mail prior to the hearing. This Court took a ninety (90) minute recess to allow the Applicant additional time to speak with PCR counsel prior to the beginning of his evidentiary hearing.

At the conclusion of this Court's recess, PCR counsel advised the Court that the Applicant wished to have his hearing continued in order to allow the Applicant to retain private counsel. The Applicant's original PCR hearing was continued one time before; was continued a second time with new appointment of counsel; then continued a third time because of a flu outbreak at the correctional institute and the Applicant was not transported.

The grant or denial of a continuance is within the sound discretion of the trial judge and is reviewable on appeal only when an abuse of discretion appears from the record. Plyler v. Burns, 373 S.C. 637, 650, 647 S.E.2d 188, 195 (2007) (citing Bridwell v. Bridwell, 279 S.C. 111, 112, 302 S.E.2d 856, 858 (1983)). See Hudson v. Blanton, 282 S.C. 70, 74, 316 S.E.2d 432, 434 (Ct. App. 1984) (noting a moving party must show the absence of some material evidence and due diligence on his part to obtain such evidence to justify a continuance). Cf. Beasley v. Kerr-McGee Chem. Corp., 273 S.C. 523, 532, 257 S.E.2d 726, 730 (1979) (finding a movant failed to show due diligence to justify a continuance when he had eight months from filing of the complaint until trial to prepare).

Ruling on the record, this Court denied the Applicant's request for a continuance, but gave the Applicant thirty (30) days from the date of the hearing to retain private counsel. This Court ruled that newly retained counsel should then file a notice of appearance and supplement the record if necessary. The Applicant was also given thirty (30) days to supplement the record with any additional testimony if necessary. This Court also found the Applicant was not prejudiced in any way by proceeding at the hearing with his current PCR counsel. The Court was

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never advised that new Counsel was retained by the Applicant after the evidentiary hearing. Thereafter, on June 23, 2014 this Court issued an order finding that the Applicant did not hire private counsel, did not seek to supplement the record as instructed by the June 20, 2014 deadline and denying the Applicant's application for PCR.² Pursuant to that Order the State was instructed to provide the Court and opposing counsel with a proposed order within twenty (20) days of receipt of the June 23, 2014 Order.

The Applicant was present at the evidentiary hearing and testified he was convicted of murder. The Applicant testified he met with his attorney frequently—more than twenty (20) times. He testified he reviewed the evidence and witnesses with Counsel. He testified he also discussed trial strategy with Counsel. The Applicant testified the defense theory at trial was self-defense.

The Applicant testified the State made no guilty plea offers prior to trial. He testified the State made a plea offer of thirty (30) years on the second day of trial. He testified he discussed the offer with Grimes and rejected the plea offer. The Applicant testified Counsel should have called his mother to testify at trial on his behalf. He testified his mother could have explained his version of the facts. He testified he made the choice to testify in his defense.

The Applicant testified he discussed the lesser-included offenses with Counsel. He testified his verdict form did not include the lesser-included offenses. The Applicant testified he did not ask Counsel to request Manslaughter at trial, but that the number one strategy was Self-Defense and he would have wanted a Manslaughter conviction rather than a Murder conviction. The Applicant also testified appellate counsel failed to exhaust his appellate remedies.

² Out of an abundance of caution the Court inquired of Mr. Murphy to see if the applicant had retained counsel. He advised that he had no indication from the applicant although he had followed up with him by letter and had received no response as of June 23, 2014. Further, there is no indication that a notice of appearance was ever filed with the Charleston County Clerk of Courts office.

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Andrew Grimes, trial counsel, was present and testified he has been practicing law since 1995. He testified he has spent the majority of his career practicing criminal law. Counsel testified he was appointed to represent the Applicant in January 2007. He testified he met with the Applicant frequently prior to trial. Counsel testified he filed Brady and Rule 5 motions, as well as motions to compel, on the Applicant's behalf. He testified he reviewed the discovery materials he received with the Applicant.

Counsel testified he discussed with the applicant the elements of the charges he was facing, the State's burden of proof, what the State was required to prove to convict the Applicant, and the Applicant's version of the facts. Counsel testified he also discussed possible defenses with the Applicant. He testified that they fully discussed the pros and cons of a self-defense theory. He testified they pursued self-defense, the defense of others because the Applicant's father started the fight and it escalated from there, and habitation, which had just come out, at trial. He testified he did not pursue alibi or identification defenses but tried a "castle" type of argument prior to passage of the Protection of Persons and Property Act (The Act), see S.C. CODE ANN. § 16-11-440 (Supp. 2009), even though it was not applicable. He testified his investigation of the Applicant's case included going to the scene, speaking with the Applicant's father who was his co-defendant, speaking with several witnesses given to him by the Applicant, and reviewing with the Applicant his trial testimony. Counsel stated that he "assumed" he pursued any witnesses and leads the Applicant provided him. Counsel affirmed that he discussed the pros and cons of the Applicant testifying and that unfortunately, the Applicant got "stage fright" on the stand and his demeanor suffered.

Counsel testified he and the Applicant discussed calling his mother to testify at trial. He testified he did not call the Applicant's mother to testify at trial because she was upstairs and did

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not see the incident and her testimony did not add anything to the facts of the case. Counsel testified he had ample time to prepare for trial.

Counsel testified he discussed lesser included offenses briefly and not in any great detail with the Applicant during breaks in the record. He testified he debated requesting a Voluntary Manslaughter³ jury instruction at trial. Counsel testified the summer before the Applicant's trial, he tried another self-defense case where he did not request a Voluntary Manslaughter jury instruction and the jury acquitted the defendant on Murder. He testified the way the Applicant's trial was progressing, he felt the judge probably would have charged Voluntary Manslaughter. He testified at trial he thought that the State would have trouble proving malice, but that the jury could compromise and find him guilty of Voluntary Manslaughter, for which he could have received thirty (30) years' imprisonment, and that strategically they thought it would be the Applicant's best chance to pursue an "all or nothing" defense by going for Murder or nothing.

Virginia Johnson, the Applicant's mother, also testified at the evidentiary hearing as to her recollection of events. She testified the day of the incident she worked the night shift. She testified she was upstairs when she heard her husband downstairs. She testified she saw her husband arguing with the victim. She testified she told the victim to leave and the victim threatened her husband arguing all in his face. Mrs. Johnson testified she ran back upstairs to put on clothes while the victim was still in her home. She testified the victim said he was going to come back and hurt someone.

Mrs. Johnson testified the altercation with the victim was caused by an argument with the neighbors because the pit bulls barked, loud music played all night, along with banging on the

³ Voluntary Manslaughter is a violent, most serious felony punishable by a mandatory minimum two (2) years' imprisonment and maximum thirty (30) years' imprisonment. See S.C. CODE ANN. § 16-3-50 (2006). The offense of Murder is a violent, most serious felony. See S.C. CODE ANN. § 16-1-60 (2006); S.C. CODE ANN. § 17-25-45 (2006).

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walls, and the victim and neighbors really got loud over there. She testified the victim and her husband were arguing when the Applicant came over and tried to calm things down. Mrs. Johnson testified she interpreted the victim's hand motions as a physical threat. She testified the victim was reaching in his pocket and she did not know what the victim had in his pockets. She testified that the young man kept disrespecting her husband in their home and that while the group was on the steps, the Applicant said "go ahead and call the police." She testified that she asked the victim to leave after he threatened to "mess" her husband "up" because he had just left dialysis treatment and she was scared at that point. She claimed the victim "was reaching" and was holding something, then she heard gunshots, and ran. She also testified that her son was peaceful and went to his daughter's school for lunch. Lastly, Mrs. Johnson testified she did not see the Applicant shoot the victim.

Ineffective Assistance of Trial Counsel

I. Standard

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "the burden of proof is on the applicant to prove his allegation by a preponderance of the evidence." Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 622, 300 S.E.2d 482, 483 (1983)). Where the Applicant alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814 (citing Strickland, 466 U.S. at 686, 104 S. Ct. at 2064).

The proper measure of performance is whether the attorney provided representation

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within the range of competence required in criminal cases. See Strickland at 690, 104 S. Ct. at 2066. The Courts presume that Counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. See id. The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

Courts use a two-pronged test to evaluate allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. See id. at 117-18, 386 S.E.2d at 625. Under this prong, attorney performance is measured by its "reasonableness under prevailing professional norms." Id. at 117, 386 S.E.2d at 625 (citing Strickland, 466 U.S. at 668, 104 S. Ct. at 2052). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625 (citing Strickland, 466 U.S. at 694, 104 S. Ct. at 2068). "A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland, 466 U.S. at 694, 104 S. Ct. at 2068).

This Court finds Counsel is a trial practitioner who has extensive experience in the trial of serious offenses. Counsel conferred with the Applicant on numerous occasions. During conferences with the Applicant, Counsel discussed the pending charges, range of penalty, the elements of the charges and what the State was required to prove, Applicant's constitutional rights, Applicant's version of the facts, and possible defenses or lack thereof.

Regarding the Applicant's claims of ineffective assistance of counsel, this Court finds the Applicant has failed to meet his burden of proof. This Court finds that the Applicant's attorney

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demonstrated the normal degree of skill, knowledge, professional judgment, and representation that are expected of an attorney who practices criminal law in South Carolina. State v. Pendergrass, 270 S.C. 1, 5, 239 S.E.2d 750, 752 (1977); Strickland, 466 U.S. at 687-88, 104 S. Ct. 2052, 2064-65; Butler, 286 S.C. at 442, 334 S.E.2d at 814 (citing Strickland, 466 U.S. at 687-88, 104 S. Ct. at 2064-65, Turner v. Bass, 753 F.2d 342, 348 (4th Cir. 1985), *rev'd on other grounds*, Turner v. Murray, 106 S. Ct. 1683 (1986); Marzullo v. Maryland, 561 F.2d 540, 543 (4th Cir. 1977)). This Court further finds Counsel adequately conferred with the Applicant, conducted a proper investigation, and provided thorough representation. This Court finds that Counsel's representation did not fall below an objective standard of reasonableness.

II. Failure to Call Witnesses

The Applicant asserts trial counsel was ineffective for failing to call the Applicant's mother to testify as a witness for the defense at trial. This Court finds this allegation is without merit. Where counsel articulates a valid strategic reason for his action or inaction, counsel's performance should not be found ineffective. Roseboro v. State, 317 S.C. 292, 294, 454 S.E.2d 312, 313 (1996); Underwood v. State, 309 S.C. 560, 562, 425 S.E.2d 20, 22 (1992); Stokes v. State, 308 S.C. 546, 548, 419 S.E.2d 778, 778-79 (1992). Courts must be wary of second guessing counsel's trial tactics; and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel. Whitehead v. State, 308 S.C. 119, 122, 417 S.E.2d 529, 531 (1992) (citing Goodson v. U.S., 564 F.2d 1071 (4th Cir. 1977)).

Trial counsel provided credible testimony that he discussed with the Applicant calling the Applicant's mother, Virginia Johnson, as a witness at trial. Counsel testified he ultimately decided not to call Mrs. Johnson because she was not present when the shooting took place and he did not think her testimony would add to the facts of the case or the Applicant's testimony.

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This Court finds counsel did not provide deficient performance when deciding not to call a witness whose testimony he did not think would be supportive of the Applicant's defense.

After hearing the testimony of the Applicant's mother at the evidentiary hearing, this Court finds her testimony would not have added anything to the Applicant's version of facts. This Court finds Mrs. Johnson's testimony was particularly unhelpful to the defense since she was not present when the shooting occurred and did not witness the final interaction between the Applicant and the victim, which became the basis for the Applicant's self-defense claim at trial. This Court finds further no prejudice resulted from Counsel's failure to call Mrs. Johnson as a witness at trial since the Applicant took the stand to testify as to his version of events the night of the murder and any testimony from Mrs. Johnson would likely have been cumulative to the Applicant's trial testimony. This Court finds the Applicant has failed to carry his burden of proving trial counsel was ineffective for failing to call the Applicant's mother as a witness at trial.

II. Failure to Request Jury Charge on Lesser Included Offenses

The Applicant asserts trial counsel was ineffective for failing to request a voluntary manslaughter jury instruction. This Court finds this allegation is without merit. This Court finds Counsel articulated a valid strategic basis for failing to request a jury instruction on the lesser included offense. Strickland requires that trial counsel must be given leeway to make reasonable strategic decisions. "No particular set of detailed rules for counsel's conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant." Strickland, 466 U.S. at 688-689, 104 S. Ct. at 2065. "Representation is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another." Id. at 693, 104 S. Ct. at 2067. Therefore,

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"[j]udicial scrutiny of counsel's performance must be highly deferential." Id. at 689, 104 S. Ct. at 2065. "A fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct and to evaluate the conduct from counsel's perspective at the time." Id. at 689, 104 S. Ct. 2065. Where counsel articulates a valid strategic reason for his action or inaction, counsel's performance should not be found ineffective. Roseboro v. State, 317 S.C. 292, 294, 454 S.E.2d 312, 313 (1996); Underwood v. State, 309 S.C. 560, 562, 425 S.E.2d 20, 22 (1992); Stokes v. State, 308 S.C. 546, 548, 419 S.E.2d 778, 778-79 (1992). Courts must be wary of second guessing counsel's trial tactics; and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel. Whitehead v. State, 308 S.C. 119, 122, 417 S.E.2d 529, 531 (1992) (citing Goodson v. U.S., 564 F.2d 1071 (4th Cir. 1977)).

At the evidentiary hearing, Counsel testified he considered requesting a Voluntary Manslaughter jury instruction, but ultimately decided not to request the lesser included offense. Counsel testified he felt the State would have trouble proving the malice element of Murder therefore, Counsel testified, he thought the best strategy was to go "all or nothing" and not give the jury the option of Voluntary Manslaughter, if the jury felt the State did not prove malice. Counsel testified he tried another self-defense case similar to the Applicant's and in that case, he did not request a jury instruction on Voluntary Manslaughter and the jury acquitted the defendant of Murder.

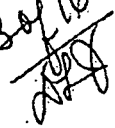
This Court finds counsel articulated a valid strategic basis for his decision not to request a Voluntary Manslaughter jury instruction. The South Carolina Court of Appeals recently held in Abney v. State, that trial counsel is not ineffective where he can articulate a valid strategic reason for failing to request a lesser offense jury instruction. 408 S.C. 41, 45-47, 757 S.E.2d 544, 546-

12-2-16


47 (Ct. App. 2014), *reh'g denied* (April 24, 2014). See Dempsey v. State, 363 S.C. 365, 370–72, 610 S.E.2d 812, 815–16 (2005) (counsel not ineffective for failure to request charge on lesser included offense); State v. Funchess, 267 S.C. 427, 429, 229 S.E.2d 331, 332 (1976) (“[I]t is not error to refuse to submit a lesser included offense unless there is testimony tending to show that the defendant is only guilty of the lesser offense.”). This Court finds the strategy employed by Counsel was valid and did not result in any failure by Counsel to meet an objectionably reasonable standard of performance. This Court finds the Applicant has failed to carry his burden of proving trial counsel was ineffective in this regard.

Ineffective Assistance of Appellate Counsel

The Applicant alleges ineffective assistance of appellate counsel. “A defendant is constitutionally entitled to the effective assistance of appellate counsel.” Southerland v. State, 337 S.C. 610, 615–16, 524 S.E.2d 833, 836 (1999) (Evitts v. Lucey, 469 U.S. 387, 105 S. Ct. 830, 83 L.Ed.2d 821 (1985)) (to be effective appellate counsel must give assistance of such quality as to make appellate proceedings fair); Thrift v. State, 302 S.C. 535, 397 S.E.2d 523 (1990) (appellate counsel must provide effective assistance but need not raise every non-frivolous issue presented by the record). “In deciding a claim of ineffective assistance of counsel, the focus is on ‘the fundamental fairness of the proceeding whose result is being challenged.’” Id. (citing Strickland v. Washington, 466 U.S. 668, 685, 696, 104 S. Ct. 2052, 2063, 2069, 80 L.Ed.2d 674, 692, 699 (1984)). Although appellate counsel is required to provide effective assistance of counsel, “appellate counsel is not required to raise every non-frivolous issue that is presented by the record.” Thrift, 302 S.C. at 539, 397 S.E.2d at 526 (citing Jones v. Barnes, 463 U.S. 745, 103 S. Ct. 3308 (1983)). “For judges to second-guess reasonable professional judgments and impose on . . . counsel a duty to raise every ‘colorable’ claim suggested by a

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client would disserve the very goal of vigorous and effective advocacy.” Jones, 463 U.S. at 754, 103 S. Ct. 3308. See Tisdale v. State, 357 S.C. 474, 476, 594 S.E.2d 166, 167 (2004).

Generally, in analyzing a claim of ineffective assistance of appellate counsel, the Court applies the Strickland test just as it would when analyzing a claim of ineffective assistance of trial counsel. See Southerland, 337 S.C. at 616, 524 S.E.2d at 836 (citing Strickland, 466 U.S. at 117–18, 386 S.E.2d at 625). Thus, in this case, we ask 1) whether appellate counsel’s performance was deficient, and 2) whether Respondent was prejudiced by appellate counsel’s deficient performance. Bennett v. State, 383 S.C. 303, 307–308, 680 S.E.2d 273, 275–76 (2009) (citing Strickland, 466 U.S. at 668, 104 S. Ct. at 2052; Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006)). To prove prejudice, the applicant must show that, but for counsel’s errors, there is a reasonable probability he would have prevailed on appeal. Anderson v. State, 354 S.C. 431, 434, 581 S.E.2d 834, 835 (2003) (citing Strickland, 466 U.S. at 668, 104 S. Ct. at 2052; Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997)).

The Applicant asserts appellate counsel failed to exhaust all appellate remedies. This Court finds this allegation is without merit. This Court finds and the record reflects appellate counsel pursued the Applicant’s claims in South Carolina’s Court of Appeals and Supreme Court. The South Carolina Court of Appeals affirmed the Applicant’s convictions and sentences. State v. Parker, Op. No. 2010-UP-378 (S.C. Ct. App. filed August 2, 2010). The Applicant filed a Petition for Rehearing in the Court of Appeals which was denied on September 24, 2010. The Applicant filed a Petition for Writ of Certiorari to the South Carolina Supreme Court which was denied on January 11, 2012.

“[I]n all appeals from criminal convictions or post-conviction relief matters, a litigant shall not be required to petition for rehearing and certiorari following an adverse decision of the

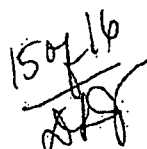
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Court of Appeals in order to be deemed to have exhausted all available state remedies respecting a claim of error. Rather, when the claim has been presented to the Court of Appeals or the Supreme Court, and relief has been denied, the litigant shall be deemed to have exhausted all available state remedies." In re Exhaustion of State Remedies in Criminal & Post-Conviction Relief Cases, 321 S.C. 563, 564, 471 S.E.2d 454 (1990). Exhaustion "turns on an inquiry into what procedures are available under state law." Osullivan v. Boerckel, 526 U.S. 838, 847, 119 S. Ct. 1728, 1734 (1999). Cf. State v. McKennedy, 348 S.C. 270, 274-75, 559 S.E.2d 850, 852 (2002) ("Appellant must at least seek discretionary review in this Court in order to exhaust Appellant's state remedies for purposes of federal habeas.").

This Court finds that the Applicant's appellate counsel exhausted all appellate remedies beyond that required under state and federal law by, after receipt of an unfavorable ruling from the Court of Appeals, petitioning for discretionary review to the state's highest court, even though review was denied. This Court also finds the Applicant has failed to show that appellate counsel had any duty to exhaust all appellate remedies on the Applicant's behalf. This Court finds appellate counsel provided vigorous and effective advocacy. This Court finds the Applicant has failed to carry his burden of proving counsel was ineffective for failing to exhaust all appellate remedies.

All Other Allegations

As to any and all allegations that were raised in the application at the hearing in this matter and not specifically addressed in this Order, this Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds the Applicant abandoned such allegations. Therefore they are hereby denied and dismissed.

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CONCLUSION

Based on all the forgoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his trial and sentencing proceedings. Counsel was not deficient and the Applicant was not prejudiced by counsel's representation. Therefore, this PCR application must be denied and dismissed with prejudice.

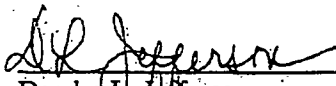
This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

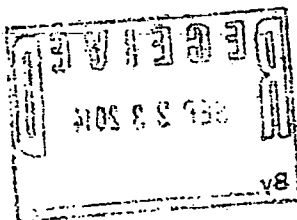
IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 16th day of Sept., 2014

Charleston, South Carolina
At Chambers


Deadra L. Jefferson
Presiding Judge
9th Judicial Circuit



16 Sept 16


SAW20060402195

WITNESSES

S. Patrick

North Charleston Police Department

AGENCY CASE NUMBER

2006013848

ARREST WARRANT NUMBER

K023747

DATE OF ARREST

January 17, 2007

ACTION OF GRAND JURY

FILED
MAR 21 2007
CLERK, C.P. & G.S.

Foreperson of Grand Jury

Date: *[Signature]*

VERDICT

Foreperson of Petit Jury

Date:

INDICT.DOT

DOCKET NO. 2007GS1004293

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

March 2007 Term

THE STATE

vs.

ROGER PARKER
A/K/A STINKA

07-23746(1)

Indictment for

MURDER

SC Code: 16-03-0010, 0020

FILED

MAR 21 2007

JULIE J. ASST. CLERK, C.P. & G.S.

[Signature]

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

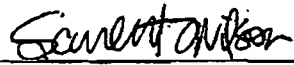
INDICTMENT

At a Court of General Sessions, convened on March 5, 2007 the Grand Jurors of Charleston County present upon their oath:

MURDER

That in Charleston County on or about April 18, 2006, with malice aforethought, **Roger Parker, a/k/a Stinka**, did kill and murder Carlise Grant by means of shooting him; and that Carlise Grant did die in Charleston County as a proximate result thereof on April 18, 2006; in violation of Section 16-3-10 of the South Carolina Code of Laws (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SCARLETT WILSON
CHIEF DEPUTY SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Charleston
STATE VS.

ROGER PARKER

AKA: _____

Race: B Sex: M Age: 26DOB: [REDACTED] SS#: [REDACTED]Address: NORTH CHARLES, SC 294050000

DL#: _____ SID#: _____

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2007GS1004293A/W#: K023747Date of Offense: 4/18/2006S.C. Code § : 16-03-0010.0020CDR Code #: 0116

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS TO: Murderin violation of § 16-03-0010, 0020 of the S.C. Code of Laws, bearing CDR Code # 0116☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45 w/minor 1st or Lewd Act)The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (Defendant initial)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: _____

Shealy, Jennifer Kneese

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of life days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended 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.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ set by SCDPPPS _____

Recipient: _____

*Fine: _____ \$ _____

§ 14-1-206 (Assessments 107.5 %) _____ \$ _____

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____

§ 56-5-2995 (DUI Assessment) \$12 \$ _____

§ 35.13 (Public Def/Prob) \$500 \$ _____

§ 73.3, 1B TP (Law Enforce. Funding) \$25 \$ 25.00

§ 33.7, 1B TP (Drug Court Surcharge) \$100 \$ _____

§ 50-21-114(BUI Breath Test Fee) \$50 \$ _____

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

3% to County (if paid in installments) \$ 3.75TOTAL \$ 128.75

Clerk of Court/ Deputy Clerk

Court Reporter: V. CrossPRESIDING JUDGE [Signature]Judge Code: 2Sentence Date: 2/27/08

SCCA/217 (10/2007)