

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Horry County
Steven H. John, Circuit Court Judge

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SC Court of Appeals

STATE OF SOUTH CAROLINA,

Respondent,

v.

ARMANDO K. CHESTNUT,

Appellant

Appellate Case No. 2013-002123

SUPPLEMENTAL RECORD ON APPEAL

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STATE OF SOUTH CAROLINA

COUNTY OF HORRY

vs.

ARMANDO CHESTNUT,

DEFENDANT.

IN THE COURT OF GENERAL SESSIONS

Indictment No.: 2012-GS26-3115

2012-GS26-3116

2012-GS26-3117

2012-GS26-3118

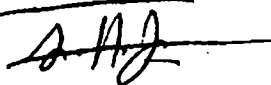
**ORDER DENYING MOTION FOR
NEW TRIAL - AMENDED**

(Motion to Reconsider)

This matter comes before this honorable Court on Defendant's Notice of Motion and Motion to Reconsider its ruling on the Motion for New Trial and the sentence imposed on the above-cited matter. Defendant, through his attorney of record, renewed all objections made in the original Motion for a New Trial, and specifically argued the inadmissibility of the Defendant's confession, the inappropriate statements of the Solicitor during closing argument concerning the Defendant's failure to produce a particular witness, the bolstering of the credibility of State's witnesses, and the jury instruction with regard to the inference of malice by the use of a deadly weapon. Additionally, Defendant moved to set aside the sentence of Life without the Possibility of Parole under South Carolina Code of Laws §17-25-45 and requested that the Defendant be sentenced within the range of sentences imposed for the crimes of which he was convicted. A hearing on this motion was held before me on September 4, 2013. Present at the hearing were Armando Chestnut, defendant, Barbara Pratt, counsel for Defendant, and Senior Assistant Solicitor Brad C. Richardson on behalf of the State.

Upon hearing from both the Defense and the State the Court found:

- 1- Regarding the admission of the Confession: the Court's ruling at the time of the hearing on the motion to suppress the statement by the Defendant is confirmed; further, the jury was informed that it was the State's burden to prove that the confession was voluntary beyond a reasonable doubt, and that it was proper that the confession be considered by the jury;
- 2- Regarding the Solicitor's comments during closing argument: any inappropriate comment by the State with regard to vouching for witnesses and the failure of the



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Horry County
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CLERK OF COURT

Defense to call a witness was appropriately objected to and sustained; the State was not allowed to continue, and any resulting error was harmless;

- 3- Regarding the jury instruction concerning the inference of Malice: while the Court should not have given this instruction, when objected to by the Defendant, the Court gave the proper curative instruction; further, upon request by the jury to be recharged on "Murder" and "Voluntary Manslaughter," the Court properly omitted any reference to the inference of Malice by Use of a Deadly Weapon and offered to give a further charge of Self-Defense, which offer was rejected by the foreman of the jury; and
- 4- The sentence of Life without the Possibility of Parole is mandatory and not discretionary pursuant to South Carolina Code of Law § 17-25-45 in the conviction of Voluntary Manslaughter and Attempted Murder when the defendant has been previously convicted of a Prior Most Serious Offense; as the Court is not a judicial discretion as to the sentence, the sentence is appropriate.

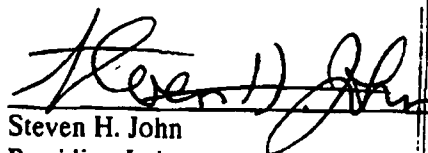
THEREFORE, Motion to Reconsider the ruling on the Motion for New Trial and the Sentence imposed is DENIED and the Defendant is hereby remanded to the SC Department of Corrections pursuant to the sentences imposed on July 19, 2013.

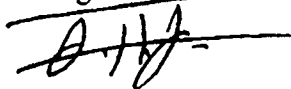
AND IT IS SO ORDERED.

September 26, 2013

Conway, S.C.

Resident


Steven H. John
Presiding Judge
Fifteenth Judicial Circuit



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HORRIS COUNTY

2013 OCT 14 AM 10:05

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1 verdict of not guilty in regards to Mr. Canty on both of those
2 indictments. Neither -- the State has not put forward Mr.
3 Canty; they have not put forward proof as to a agreement or a
4 mob; they have not put forward proof as to substantial injury;
5 they have not put forward intent to kill in regards to Mr.
6 Canty. And therefore, Your Honor, we believe it is
7 appropriate that there be a verdict directed as to him on
8 those two indictments.

9 THE COURT: All right. Well let's, let's separate them.
10 You got assault and battery by a mob second degree. All
11 right.

12 MS. PRATT: Yes, sir.

13 THE COURT: Solicitor, let me hear you about serious
14 bodily injury to Damien Canty in the assault by a mob, second
15 degree, serious bodily injury.

16 MR. RICHARDSON: Yes, sir, Your Honor. From the video we
17 watched and testimony, we know that the shooting occurred a
18 little bit after 1:14 in the morning. At 1:15 in the morning,
19 Defendant is inside being knocked down, knocked unconscious
20 and stomped. By Defendant's own statement, he and several,
21 several other guys were hitting him at the same time and he
22 was jumping up and down on his head. He admits to kicking him
23 several times along with others. We pull a bullet out of Mr.
24 Canty's elbow. It is traced back through SLED as being fired
25 by the handgun that the Defendant admits is his. So he shot

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1 State would want the Court to do as to the verdict forms?

2 MR. RICHARDSON: Your Honor, the only question I have and
3 it always troubles me whenever I get asked that question about
4 lesser includeds and the way they've changed the laws, I don't
5 know if you need to include a statutory ABHAN charge with the
6 attempted murder or not?

7 THE COURT: Well, let me hear from you, Ms. Pratt. Are
8 you asking me to charge assault and battery?

9 MS. PRATT: I am asking the Court to charge a form of
10 assault and battery as a lesser included of the attempted
11 murder charge and also as a lesser included of the assault and
12 battery by a mob. I believe that the jury could find that
13 there was no intent to murder, but that there was an assault
14 and I would like the Solicitor to ---

15 THE COURT: Assault and battery with intent to kill?

16 MS. PRATT: Well, Your Honor, they changed the penalties
17 and changed the organization of it. I believe that the
18 concern would be having an assault and battery that does not
19 have the specific intent to kill or the maliciousness because
20 obviously if we're using self-defense, there's no inference of
21 malice with a deadly weapon. Perhaps -- and I'm not as
22 familiar with the new definitions as I ought to be but I may
23 be thinking in terms of either the ABHAN or the assault and
24 battery first degree for -- in regards to a lesser included
25 either the attempted murder charge. And then under the

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1 assault and battery by a mob, I would want some kind of
2 assault and battery that does not include the combination of
3 persons as a mob if the jury decided that Armando was acting
4 alone when he stomped Mr. Canty.

5 THE COURT: All right. Well, let's talk about the murder
6 charge. All right.

7 All right, Solicitor, what lesser included offenses do
8 you think there should be regarding murder?

9 MR. RICHARDSON: The murder, I believe voluntary
10 manslaughter is proper.

11 THE COURT: Lesser included?

12 MR. RICHARDSON: Lesser included, yes, sir.

13 THE COURT: And nothing else?

14 MR. RICHARDSON: And nothing else, Your Honor.

15 THE COURT: Okay. And the attempted murder, anything
16 there?

17 MR. RICHARDSON: Your Honor, as I stated, I don't -- I
18 think there was, speaking with Ms. Pratt, and under the new
19 law is it's almost attempted murder is to statutory ABHAN as
20 murder is to voluntary manslaughter. They could find there
21 was a great bodily injury, the shooting in the arm that
22 required hospitalization, without, without finding that
23 there's malice attached. There's more from the sudden heat of
24 passion provoked upon the joint fight, mutual combat,
25 whatever could be ---

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1 THE COURT: All right. So you believe then there ought
2 to be assault and battery high and aggravated nature as a
3 lesser included of the attempted murder?

4 MR. RICHARDSON: Yes, sir. That is the State's position.

5 THE COURT: All right. Do you disagree with that, Ms.
6 Pratt?

7 MS. PRATT: Not at all, Your Honor. I believe that's
8 what I was trying to ---

9 THE COURT: Okay. All right. Hold on a second.

10 All right. So, and then pointing and presenting, assault
11 and battery by a mob second degree seriously bodily injury and
12 then -- I mean -- yes, second degree and third degree. Now
13 you want me to put some type of assault and battery not
14 including the mob; is that correct?

15 MS. PRATT: Yes, Your Honor.

16 THE COURT: All right. Looking at the indictment,
17 assault and battery by a mob second degree, serious bodily
18 injury, Armando K. Chestnut, while joined with others acting
19 as a mob, did in Horry County on or about March 6th, 2012
20 commit an act of violence which resulted in serious bodily
21 injury to Jamal McFadden or Damien Canty. All right. So
22 assault and battery if you look at assault and battery first
23 degree, assault and battery first degree, a person commits the
24 offense of assault and battery first degree if the person
25 unlawfully injures another person and the act -- commission of

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1 robbery or theft -- but you go to subsection 2, a person may
2 also commit the offense of assault and battery in the first
3 degree if the person unlawfully offers or attempts to injure
4 another person with the present ability to do so and the act
5 either is accomplished by means likely to produce death or
6 great bodily injury. And then they talk about great bodily
7 injury means bodily injury which causes a substantial risk of
8 death or which causes serious permanent disfigurement or
9 protracted loss or impairment or function of a bodily member
10 or organ. You think that applies?

11 MS. PRATT: I believe, Your Honor, if they felt that Mr.
12 Canty's injuries were great bodily injury, but not committed
13 by a mob, that that could apply and therefore, by the same
14 token, assault and battery second, which I believe is the next
15 level down from bodily injury would also apply.

16 THE COURT: A person commits the offense of assault and
17 battery in second degree, if a person unlawfully injures
18 another person or offers or attempts to injure another person
19 with the present ability to do so and either -- well, it would
20 not be an either because it's not the nonconsensual but it was
21 to do so and moderate bodily injury to another person results
22 in moderate bodily injury to another person could have
23 resulted. And then they have defined moderate bodily injury
24 as means physical injury requiring treatment to an organ
25 system of the body other than skin, muscles and connective

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1 tissues of the body except when there is a penetration of the
2 skin, muscles and connective tissue that requires certain
3 repair of a complex nature or when treatment of the injuries
4 requires the use of reasonable and general anesthesia. So --
5 all right. So you want me to include then as a lesser
6 included of assault and battery by a mob second degree serious
7 bodily injury, not only the third degree bodily injury or add
8 also assault and battery first degree and second degree; is
9 that right?

10 MS. PRATT: Yes, Your Honor. And, Your Honor, I'd like
11 to ask a question. I don't know if it's appropriate to divide
12 the two victims in this issue of the assault and battery by a
13 mob because in the original warrants it's only Mr. Canty and
14 then they in this they put both indict -- both names in here
15 and they actually have different facts and different injuries.
16 So I don't think that ---

17 THE COURT: Solicitor, what's ---

18 MR. RICHARDSON: Your Honor, I'll actually go a step
19 further on that. The proper charge is assault and battery by
20 a mob on -- actually on Mr. McFadden and assault and battery
21 first degree where death occurs. We're fine with going
22 forward only with regard to the victim, Mr. Canty.

23 THE COURT: All right. So on the indictment -- let's be
24 clear about this -- on the indictment and that is 2012-GS-26-
25 3118, on that indictment, where it has assault and battery by

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1 a mob second degree serious bodily injury, you want to amend
2 the indictment to remove the name of Jamal McFadden and retain
3 only the name of Damien Canty; is that correct?

4 MR. RICHARDSON: That's correct, Your Honor. I believe
5 that's the way I've argued it.

6 THE COURT: All right. So is there any objection to
7 that, Ms. Pratt?

8 MS. PRATT: No, Your Honor, that makes it much clearer.

9 THE COURT: All right. So we will do that. All right.
10 So what we would then have on that count, assault and battery
11 by a mob second degree serious bodily injury of Damien Canty.
12 And then if they find him not guilty of that then they can
13 consider assault and battery by a mob third degree bodily
14 injury of Damien Canty.

15 MR. RICHARDSON: Yes, sir.

16 THE COURT: And then they could consider, if they don't
17 find him guilty of those, assault and battery first ---

18 MR. RICHARDSON: I assume you'll have language in there,
19 Your Honor, if you find that he is not acted with others?

20 THE COURT: Well, I would have to explain that to them
21 that when we're talking about a lesser included offense, but
22 ---

23 MR. RICHARDSON: The grave, then grave concern I have is
24 that specifically the assault statutes now, they actually
25 define what a great bodily injury is, what a moderate bodily

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1 injury is ---

2 THE COURT: Yes, they do.

3 MR. RICHARDSON: --- and what I think a serious injury
4 injury is. And I just couldn't find it today. The assault
5 and battery by a mob is in a separate section of 16, Your
6 Honor. It's under the old lynching section.

7 THE COURT: Well ---

8 MR. RICHARDSON: And they don't have a definition of
9 serious bodily injury that, that I saw.

10 THE COURT: No, in the -- they do not. 16-3-210 does not
11 define serious bodily injury nor does it define bodily injury
12 in third degree.

13 MR. RICHARDSON: And so I would have some concern with it
14 if we're mixing the two that we're left with the definition of
15 bodily injury and great bodily injury and then you're left in
16 the lurch on what serious bodily injury is or what bodily
17 injury is for that matter.

18 THE COURT: Well, that may be. I don't know that I can
19 -- y'all want to agree on what's -- on what the definition of
20 serious bodily injury is and, and a definition of bodily
21 injury or -- I mean, you could adopt if you wanted to, I
22 suppose, looking at assault and battery first degree, serious
23 bodily injury would be the same as the offer or attempt to
24 injure another person with the present ability to do so and
25 the act is either accomplished by means likely to produce

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1 death or great bodily injury. And then great bodily injury
2 means bodily injury, which causes a substantial risk of death
3 or which causes serious permanent disfigurement or protracted
4 loss or impairment of the function of a bodily member or
5 organ. And then bodily injury could be defined as the same as
6 moderate bodily injury under assault and battery second degree
7 if y'all agree or you can just leave it as the statute says
8 and let them ---

9 MR. RICHARDSON: Your Honor, I ---

10 THE COURT: --- figure it out.

11 MR. RICHARDSON: --- I think the cleanest way to do it --
12 we'd have to find some precedence -- is just let the charges
13 stand as they will and the jury can sort out what serious
14 bodily injury is.

15 THE COURT: What do you want me to do, Ms. Pratt?

16 MS. PRATT: Your Honor, I, I believe that there's a
17 system in place in the assault and battery -- it's not in this
18 lynching -- but in the same title earlier on that talks about
19 those things because we talked about serious bodily injury and
20 great bodily injury when we're dealing with all of these. I
21 do not have those definitions here but I believe they're in
22 the code. If there is a code definition for either serious
23 bodily injury or great bodily injury earlier on, I believe
24 they would apply.

25 MR. RICHARDSON: There is one for great bodily injury

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1 here. There's not one for serious bodily injury. I didn't
2 find it in the assault section. It says moderate to great
3 bodily injury ---

4 THE COURT: Well hold on one second.

5 All right. In the assault by a mob, is that only
6 contained in 16-3-210 or is there any other code section that
7 applies to the mob?

8 MR. RICHARDSON: On my reading of it, Your Honor, I did
9 not find such.

10 THE COURT: I mean, we're ---

11 MR. RICHARDSON: They changed the law and didn't give us
12 enough to work with.

13 THE COURT: All right. I'm just saying, you know, y'all
14 could adopt, you know you could equate serious bodily injury
15 with great bodily injury that's included in the assault and
16 battery statutes. And the bodily injury, adopt the one that's
17 moderate for second if y'all want to. I mean, I'm, I'm, I'm
18 fine with just giving it to them as the statute says or if you
19 want -- y'all want me to, that's up to y'all to agree to --
20 then I'll be glad to adopt the assault and battery first
21 degree definition of great bodily injury for serious bodily
22 injury and the assault and battery second degree definition of
23 moderate bodily injury for bodily injury in assault and
24 battery by a mob second degree if you want me to. Those are
25 defined but I don't see them defined in the mob section. I

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1 don't see that.

2 MR. RICHARDSON: Your Honor, the State would have no, no
3 issue if we wish to -- serious to great bodily injury and
4 moderate to ---

5 THE COURT: To bodily injury.

6 MR. RICHARDSON: --- bodily injury.

7 THE COURT: Ms. Pratt?

8 MS. PRATT: And the definition of great bodily injury?

9 THE COURT: Okay. I'll ---

10 MS. PRATT: If you could ---

11 THE COURT: --- go back again. All right. Hold on one
12 second. I had got out of that. Let me look ---

13 MS. PRATT: I'm sorry.

14 THE COURT: That's all right. Let me go look one before
15 I get out of this part.

16 Okay. All right. Assault and battery first degree --
17 all right -- a person commits it if the person unlawfully
18 injures another person and the act -- if the person unlawfully
19 offers or attempts to injure another person with the present
20 ability to do so and the act either is accomplished by means
21 likely to produce death or great bodily injury, great bodily
22 injury means bodily injury which causes a substantial risk of
23 death or which causes serious permanent disfigurement or
24 protracted loss or impairment of function of a bodily member
25 or organ. Assault and battery second degree talks about

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1 moderate bodily injury. Moderate bodily injury means physical
2 injury requiring treatment to an organ system of the body
3 other than skin, muscles and connective tissues of the body
4 except when there is penetration of the skin, muscles,
5 connective tissues that require surgical repair of a complex
6 nature when the treatment of the injuries require the use of
7 regional or general anesthesia.

8 Now you remember when you're talking about assault and
9 battery second degree, it is the person injures another person
10 or offers or attempts to injure another person with the
11 present ability to do so and either moderate bodily injury to
12 another person results or moderate bodily injury to another
13 person could have resulted. So I think, you know, the kicking
14 as shown, whether the actual strike or as he described it the
15 other two that he tried to or attempted to deliver, I think
16 would fall within that. So I think again, with y'all's
17 consent if y'all wanted me to, I think we can give that same
18 definition when we're talking about mob and we're talking mob
19 in second degree serious bodily injury and then third degree
20 bodily injury. Is that acceptable to the State?

21 MR. RICHARDSON: It is, Your Honor.

22 THE COURT: To the Defense?

23 MS. PRATT: Yes, Your Honor.

24 THE COURT: All right. Very good. We can do that.

25 Also since there isn't a definition of assault and

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1 battery in assault and battery by a mob, that's another
2 definition that's not in there, I'm going back to the general
3 definition that's in all the assault and batteries. You know,
4 the assault occurs when a person unlawfully attempts or offers
5 to commit a violent injury to another person, they have the
6 present ability to complete it. And the battery is the
7 unlawful touching of another person by a person who committed
8 the assault. All right?

9 MR. RICHARDSON: Without exception, Your Honor.

10 THE COURT: All right.

11 MS. PRATT: Thank you, Your Honor, yes.

12 THE COURT: From the Defense also. All right. Very
13 good. All right.

14 So we've got the verdict forms for that; we'll do those
15 in the morning.

16 So, now as to the charge itself, let's talk about the
17 charge itself. Obviously, the usual things we talk about the
18 jury's job, credibility, believability, direct and
19 circumstantial evidence, presumption of -- presumption of
20 innocence, prior record of the Defendant, that being evidence
21 was admitted for a limited person -- purpose, you must not
22 consider such evidence for any purpose except for the purpose
23 in which it was admitted. It may be considered by you for the
24 purpose of evaluating the credibility and believability of the
25 testimony presented by the Defendant and for no other purpose.

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1 You can't use it regarding -- as any evidence of guilt of the
2 charge which he's being tried. Prior record of the witnesses,
3 similar testimony of a witness can be discredited or
4 impeached. And, you know, a person who has a past criminal
5 record can testify during the trial; the past record does not
6 affect the ability to testify; the past record may only be
7 considered by you, if any or if at all in determining the
8 witness' credibility and believability.

9 We also have the statement of the Defendant. We talked
10 about that earlier when we had the Jackson v. Denno hearing
11 and it's gonna be up to the jury to consider and I'll instruct
12 them, you know, if they state -- if the Defendant made a
13 statement they have to determine whether it was made by the
14 Defendant voluntarily of his own freewill without pressure,
15 force, threats, coercion or intimidation. Consider the
16 characteristics of the questioning. Consider the -- whether
17 or not the Defendant was advised of his Miranda Warnings and
18 go through those. And again, the State has the burden of
19 proof beyond a reasonable doubt that the alleged statement was
20 voluntary. If they determine it was, give it any
21 consideration they deem necessary. If you decide it wasn't,
22 you disregard it.

23 Reasonable doubt, the kind of doubt that would cause a
24 reasonable person to hesitate to act. Then go into the
25 definitions of the crimes charged as we have talked about;

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1 murder, voluntary manslaughter, attempted murder, assault and
2 battery high and aggravated nature, and then pointing and
3 presenting a firearm, assault and battery by a mob second
4 degree, third degree, assault and battery first degree and
5 assault and battery second degree. And then the general
6 charge that we have as to greater or lesser offenses. If you
7 have reasonable doubt as to whether the Defendant is guilty of
8 the greater or lesser, should you resolve that now in favor
9 the Defendant and find him guilty of a lesser offense if it is
10 your view of the evidence and it has been proven to you beyond
11 a reasonable doubt.

12 And then the final thing would be the self-defense and
13 why don't I go over that with you so that y'all can tell me if
14 you're in agreement with that or you have exceptions to that.

15 Yes, sir, you were standing up for something?

16 MR. RICHARDSON: Yes, sir, Your Honor. I don't know if
17 this is the proper time but the State would just like to take
18 exception to the self-defense charge and draw the Court's
19 attention to State v. Slater. I think the case is on point in
20 this ---

21 THE COURT: I have read State v. Slater and also the
22 Supreme Court decision of State v. Slater.

23 MR. RICHARDSON: Yes, sir. That's, I'm sorry, that's the
24 one I was referring to.

25 THE COURT: I realize that's now at 373 S.C. 66, 644

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1 S.E.2d 50, 2007 decision of the South Carolina Supreme Court
2 and I also have looked at State v. Burroughs.

3 MR. RICHARDSON: Yes, sir.

4 THE COURT: A Supreme Court decision that's found at 334
5 S.C. 256, 513 S.E.2d 104. Now, in Slater and there it found
6 that basically it wasn't proper, but they're talking about the
7 particular facts and circumstances of the case. And obviously
8 they indicate that a self-defense charge is not required
9 unless it's supported by the evidence. In that case, they
10 said the clear evidence in that case Slater failed to meet the
11 first requirement, that is he was not without fault in
12 bringing on the difficulty.

13 Well, in this particular case, there is conflicting
14 testimony as to whether or not the Defendant participated in
15 bringing on the difficulty or not. So I can't weigh
16 credibility and believability. I can't decide which testimony
17 to believe. Therefore, there is a reasonable interpretation
18 of the evidence that supports self-defense. There is also a
19 reasonable interpretation of the facts and evidence that
20 indicate self-defense is not warranted and not available to
21 the Defendant but that's the jury's job in weighing the
22 evidence and deciding what they're gonna believe and what
23 they're not gonna believe. I can't -- unless it was a bench
24 trial, that's not my job. So I believe self-defense is proper
25 and I will charge it and let me go over what it is my

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1 intention to do.

2 Now I'm not gonna read every single word here that I'm
3 gonna say to the jury, but I believe I'll give you an
4 extremely good idea of what I'm gonna tell the jury. I will
5 indicate the Defendant has raised the defense of self-defense.
6 It's a complete defense and, if established, you must find the
7 Defendant not guilty. I will then immediately say the State
8 has the burden of disproving self-defense by proof beyond a
9 reasonable doubt. If you have a reasonable doubt of the
10 Defendant's guilt after considering all the evidence including
11 the evidence of self-defense, then you must find the Defendant
12 not guilty. On the other hand, if you have no reasonable
13 doubt of the Defendant's guilt after considering all the
14 evidence, including the evidence of self-defense, then you
15 must find the Defendant guilty. And we talk about the
16 elements without fault, the Defendant must be without fault of
17 bringing on the difficulty. In -- when I'm talking about
18 without fault, as I indicated to Ms. Pratt before, I will have
19 the statement at the mere unlawful possession of a firearm in
20 and of itself does not automatically bar a self-defense
21 charge. A person can be acting lawfully even if he is in
22 unlawful possession of a weapon if he was entitled to arm
23 himself in self-defense.

24 Then I'm gonna go on to talk about mutual combat. If the
25 Defendant voluntarily participated in mutual combat for

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1 purposes other than protection, the killing of the victim
2 would not be self-defense, further talk about mutual combat.

3 The second element is imminent danger. Is that the
4 Defendant was actually in imminent danger of death or serious
5 bodily injury or the Defendant actually believed they were in
6 imminent danger of death or serious bodily injury.

7 The right to act on appearances, the Defendant does not
8 have to show prudent person that he was actually in danger.
9 It was enough if the Defendant believed he was in imminent
10 danger and a reasonable person or ordinary firmness and
11 courage would've had the same belief.

12 Intoxication of the victim may be considered in deciding
13 whether the Defendant's fear of death or bodily injury was
14 reasonable.

15 The final element is the Defendant had no other way,
16 probable way to avoid the danger of death or serious bodily
17 injury to act as the Defendant did in this particular
18 instance.

19 Degree of force, a person cannot be required to make an
20 exact calculation as to the degree or amount of force which
21 may be needed to avoid death or serious bodily harm.
22 Defendant has the right to use the force needed to avoid death
23 or serious bodily harm. It does not have to be limited to the
24 degree or amount of force used by the victim.

25 Continuing until the threat of harm is ended, the

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1 Defendant is justified in defending himself or others and in
2 firing the first shot, then the Defendant is also justified in
3 continuing to shoot until it is apparent that the danger of
4 death or serious bodily injury has completely ended.

5 And then we go on to talk about the defense of others.
6 Under the law of self-defense, the Defendant may take
7 another's life in the defense of others. The right to
8 intervene to protect another person is subject to the same
9 rights and limitations as the right of self-defense. The
10 Defendant may take the life of a person who assaults a friend,
11 relative or bystander if that friend, relative or bystander
12 would have had the same right of self-defense. And we go on
13 and talk about some of the same things that we talked about in
14 self-defense. Also right to act on appearances, we'll talk
15 about that again. Defendant does not have to show that the
16 person that Defendant defended was actually in danger. It's
17 enough that the Defendant believed the person was in imminent
18 danger. Defendant has the right to act on appearances even
19 though the Defendant's beliefs may have been mistaken.

20 So, that would be my intention as the charge on self-
21 defense. Understanding the State did not want me to do that,
22 going beyond that, do you have objections to what it is my
23 intention to charge?

24 MR. RICHARDSON: No, Your Honor.

25 THE COURT: All right. Ms. Pratt?

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1 MS. PRATT: No other requests, Your Honor.

2 THE COURT: All right. So that is my intention as to the
3 Court's charge to the jury in this case.

4 Anything else that the State wants me to consider?

5 MR. RICHARDSON: Starting at 11:00.

6 THE COURT: Well, how about as to the charge, anything
7 else?

8 MR. RICHARDSON: No. No, sir, Your Honor.

9 THE COURT: All right.

10 MR. RICHARDSON: No, sir, Your Honor, I believe you
11 covered all -- I did wish to ask I assume it's your standard
12 reasonable doubt charge where you do the hesitate to act and
13 the firmly convinced language?

14 THE COURT: Yes.

15 MR. RICHARDSON: Yes, sir, just wanted to double-check on
16 that.

17 THE COURT: And if you want me to, Ms. Pratt, you want me
18 to read the whole thing to you? It's pretty short.

19 MS. PRATT: Please, Your Honor.

20 THE COURT: All right. Sure. All right. Let me find
21 it.

22 Reasonable doubt is the kind of doubt that would cause a
23 reasonable person to hesitate to act. The State has the
24 burden of proving the Defendant guilty beyond a reasonable
25 doubt. Proof beyond a reasonable doubt is proof that leaves

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1 All right. Additions, deletions, exceptions to the
2 charge from the State?

3 MR. RICHARDSON: No, sir, Your Honor.

4 THE COURT: From the Defense?

5 MS. PRATT: None, Your Honor.

6 THE COURT: All right. Thank you. All right. We'll be
7 at ease until the jury needs us.

8 MR. RICHARDSON: Thank you, Your Honor.

9 (RECESS - 3:10 P.M.)

10 *****OFF THE RECORD*****

11 (On the Record - 4:15 P.M.)

12 THE COURT: Thank you very much. You may be seated.
13 Thank y'all.

14 All right. Solicitor, Ms. Pratt, the, the Court's been
15 informed that the jury has reached a verdict in this matter.

16 Is the State ready to receive it?

17 MR. RICHARDSON: We are, Your Honor.

18 THE COURT: And the Defense?

19 MS. PRATT: Yes, Your Honor.

20 THE COURT: All right. Very good. I'll say as I usually
21 do that we've asked the jury to do a very difficult thing.
22 We'll receive their verdict with respect and silence. Thank
23 you very much.

24 Ask the jury to come in.

25 (REPORTER'S NOTE: The jury returns to the courtroom. 4:20

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1 P.M.)

2 VERDICT OF THE JURY:

3 THE COURT: All right. Madam Forelady, has your jury
4 returned the verdicts in the matter?

5 JUROR 319: Yes, we have.

6 THE COURT: All right. Could you hand the verdict forms
7 to the Clerk, please, ma'am?

8 JURPR 319: Everything's been ---

9 THE COURT: Yes, ma'am, you need to return them.

10 JUROR 319: Everything has to be signed and dated, right?

11 THE COURT: Yes, it does. All right. I'll look through
12 them just to make sure.

13 All right, ma'am, you may publish these verdicts.

14 CLERK: Indictment number 2012-GS-26-3115, State of South
15 Carolina, County of Horry versus Armando Chestnut on the
16 charge of murder of Jamal McFadden, we, the jury, by unanimous
17 consent, find the Defendant Armando K. Chestnut, not guilty.

18 Indictment number 2012-GS-26-3115, State of South
19 Carolina, County of Horry versus Armando K. Chestnut on the
20 charge of voluntary manslaughter of Jamal McFadden, we, the
21 jury, by unanimous consent, find the Defendant guilty.

22 Indictment number 2012-GS-26-3116, State of South
23 Carolina, County of Horry versus Armando K. Chestnut on the
24 charge of attempted murder of Damien Canty, we, the jury, by
25 unanimous consent, find the Defendant guilty.

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1 2012-GS-26-3118, State of South Carolina, County of Horry
2 versus Armando K. Chestnut, on the charge of assault and
3 battery by a mob second degree serious bodily injury of Damien
4 Canty, we, the jury, by unanimous consent, find the Defendant,
5 Armando K. Chestnut, not guilty.

6 2012-GS-26-3118, State of South Carolina, County of Horry
7 versus Armando K. Chestnut, on the charge of assault and
8 battery by a mob third degree bodily injury of Damien Canty,
9 we, the jury, by unanimous consent, find the Defendant,
10 Armando K. Chestnut, not guilty.

11 Indictment number 2012-GS-26-3118, State of South
12 Carolina, County of Horry versus Armando K. Chestnut, on the
13 charge of assault and battery first degree of Damien Canty,
14 we, the jury, by unanimous consent, find the Defendant,
15 Armando K. Chestnut, not guilty.

16 Indictment number 2012-GS-26-3118, State of South
17 Carolina, County of Horry versus Armando K. Chestnut, on the
18 charge of assault and battery second degree of Damien Canty,
19 we, the jury, by unanimous consent, find the Defendant,
20 Armando K. Chestnut, guilty.

21 2012-GS-26-3117, State of South Carolina, County of Horry
22 versus Armando K. Chestnut, on the charge of pointing and
23 presenting a firearm at Damien Canty and/or Jamal McFadden,
24 we, the jury, by unanimous consent, find the Defendant guilty.

25 Dated July 19th, 2013 signed by Foreperson Jerry Vibbert.

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1 Ladies and gentlemen of the jury, if this is your
2 verdict, so signify by raising your right hand. Thank you.
3 THE COURT: All right. The jury, all the jurors having
4 affirmed their verdict by the raising of their right hand.
5 Does the State wish the jury polled?
6 MR. RICHARDSON: No, sir, Your Honor.
7 THE COURT: Does the Defense wish the jury polled?
8 MS. PRATT: Please, Your Honor.
9 THE COURT: All right, Madam Clerk, if you would please
10 poll the jurors.
11 CLERK: When I call your juror number, if you will please
12 stand.
13 Juror 139, is this your verdict?
14 JUROR 139: Yes.
15 CLERK: Is this still your verdict?
16 JUROR 139: It is.
17 CLERK: Thank you.
18 101, is this your verdict?
19 JUROR 101: Yes.
20 CLERK: Is this still your verdict?
21 JUROR 101: Yes.
22 CLERK: Thank you.
23 316, is this your verdict?
24 JUROR 316: Yes.
25 CLERK: Is this still your verdict?

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1 JUROR 316: Yes.
2 CLERK: Thank you.
3 272, is this your verdict?
4 JUROR 272: Yes.
5 CLERK: Is this still your verdict?
6 JUROR 272: Yes.
7 CLERK: Thank you.
8 34, is this your verdict?
9 JUROR 34: Yes.
10 CLERK: Is this still your verdict?
11 JUROR 34: Yes.
12 CLERK: Thank you.
13 319, is this your verdict?
14 JUROR 319: Yes.
15 CLERK: Is this still your verdict?
16 JUROR 319: Yes.
17 CLERK: Thank you.
18 51, is this your verdict?
19 JUROR 51: Yes.
20 CLERK: Is this still your verdict?
21 JUROR 51: Yes.
22 CLERK: Thank you.
23 203, is this your verdict?
24 JUROR 203: Yes, ma'am.
25 CLERK: Is this still your verdict?

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1 JUROR 203: Yes, ma'am.
2 CLERK: Thank you.
3 160, is this your verdict?
4 JUROR 160: Yes, ma'am.
5 CLERK: Is this still your verdict?
6 JUROR 160: Yes, ma'am.
7 CLERK: Thank you.
8 213, is this your verdict?
9 JUROR 213: Yes.
10 CLERK: Is this still your verdict?
11 JUROR 213: Yes.
12 CLERK: Thank you.
13 17, is this your verdict?
14 JUROR 17: Yes.
15 CLERK: Is this still your verdict?
16 JUROR 17: Yes.
17 CLERK: Thank you.
18 239, is this your verdict?
19 JUROR 239: Yes.
20 CLERK: Is this still your verdict?
21 JUROR 239: Yes.
22 CLERK: Thank you.
23 THE COURT: All right. The juror, having affirmed the
24 verdict by polling, is there anything else as to the jury
25 itself from the State?

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1 MR. RICHARDSON: No, sir, Your Honor.

2 THE COURT: From the Defense?

3 MS. PRATT: No, Your Honor.

4 THE COURT: All right, ladies and gentlemen, I want to
5 thank you for your service in this particular matter. You've
6 done everything that the Court asked of you and expected of
7 you in this particular matter. You well and truly tried the
8 facts and evidence in this case and you reached a true and
9 just verdict in this matter. I want to thank you for your
10 service. It goes without saying, we know we ask you to do a
11 difficult thing to accomplish a difficult task and I
12 appreciate that. We know if anybody's involved in a
13 relationship that sometimes it's hard to get two people to
14 agree on anything, much less twelve. I do appreciate your
15 hard work and service this week in this case. Thank you very
16 much.

17 The, you know that you have the three-year exemption from
18 the -- coming back to Circuit Court. Just tell the Clerk of
19 Court if you happen to get summoned about your three-year
20 exemption.

21 With that, you are now excused. Thank you very much.

22 (REPORTER'S NOTE: The jury exits the courtroom and is
23 excused. 4:28 P.M. The following takes place outside the
24 presence of the jury.)

25 MR. RICHARDSON: Your Honor, may I approach with the

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1 sentencing sheets?

2 THE COURT: Yes, sir.

3 Well, Ms. Pratt, any motions from the Defense at this
4 time?

5 MS. PRATT: Yes, Your Honor.

6 MOTIONS:

7 MS. PRATT: At this time, we would make a motion in
8 arrest of judgment. We would renew, first of all, all the
9 previous motions, objections and exceptions that have been
10 made throughout this trial this week. We are asking for a
11 motion in arrest of judgment as to the guilty verdicts of
12 voluntary manslaughter, attempted murder, pointing and
13 presenting and the assault and battery second. We believe
14 that specifically and especially in light of the attempt -- of
15 the question regarding murder and voluntary manslaughter, that
16 the jury felt they had -- I believe that they felt they had to
17 come back with some kind of verdict out of those choices and
18 not potentially consider the self-defense and the, and the
19 issue of perhaps a not guilty on that situation. I believe
20 that they've not had sufficient time to review and properly
21 consider all the evidence and therefore their verdict would
22 have been the result of passion and emotion because we had a
23 deceased person in that situation. They may have been
24 affected by the recent events that have been occurring around
25 the country in regards to the trial of George Zimmerman. I

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1 hand up to you for sentencing purposes, two different notice
2 of intention to seek life without parole. One served in
3 December, December 7th of 2012 and one served April 9th of
4 2013 along with a certified copy of Defendant's prior record.

5 Would you like me to have those marked as a Court's
6 Exhibit?

7 THE COURT: Yes, sir. No, a State's Exhibit.

8 MR. RICHARDSON: State's Exhibit, I'm sorry, Your Honor.

9 THE COURT: I'll be glad to receive it.

10 STATE'S EXHIBIT NUMBER ONE-HUNDRED-TWENTY-THREE, ONE-

11 HUNDRED-TWENTY-FOUR AND ONE-HUNDRED-TWENTY-FIVE

12 MARKED FOR IDENTIFICATION

13 MR. RICHARDSON: Your Honor, I'll hand up State's One-
14 Twenty-three, One-Twenty-four and One-Twenty-five to the Court
15 at this time.

16 THE COURT: All right.

17 MR. RICHARDSON: Thank you, Your Honor.

18 THE COURT: All right. You've seen the sentencing
19 sheets, Ms. Pratt?

20 MR. RICHARDSON: I have showed her that one, Your Honor.

21 THE COURT: That one?

22 MR. RICHARDSON: Yes.

23 THE COURT: All right. I'll be glad for you to look at
24 all of them.

25 MS. PRATT: No, that's, that's, Your Honor, I assume and

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1 trust that the Solicitor has the right CDR codes on each one
2 and the Court will be reviewing those as well.

3 THE COURT: Yes, ma'am. All right.

4 And you have also looked at these State's Exhibits One
5 Twenty-three, One Twenty-four, One Twenty-five, ma'am?

6 MS. PRATT: Yes, I have, sir.

7 THE COURT: All right. Very good. All right.
8 Solicitor, I will be glad to hear from you?

9 MR. RICHARDSON: Your Honor, we've spent a great deal of
10 time in this trial. We've all seen the video. The jury, not
11 only did they have it for deliberations, each one of them had
12 it in their mind for five days now.

13 Mr. Chestnut has a horrendous record. In 1995, he was
14 convicted of voluntary manslaughter, which he served a
15 sentence of ten years. When he got out, I believe it was in
16 2004 he got caught dealing drugs and pulled some more time, a
17 five-year sentence. Then he got out on this one and he goes
18 to a club, he's got a gun. He stated on the record that he
19 carries his to all the places. And he takes that gun during a
20 fight and turns this fight into what turns out to be an
21 attempted murder and voluntary manslaughter.

22 Your Honor, the State served the Defendant with notice of
23 intent to seek life without on December 7th, 2012 and again in
24 April 2013 to make sure that it was abundantly clear whether
25 the Defendant -- whether the jury would return the verdict of

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1 guilty on murder or voluntary manslaughter, the State would be
2 seeking a life without sentence. Under our sentencing
3 guidelines, it's proper, that what's called for. He had
4 proper notice of that, he and his counsel. The State would
5 ask you to sentence him to life without for voluntary
6 manslaughter. Additionally, Your Honor, given the nature of
7 -- the State would be asking for consecutive sentences.

8 THE COURT: All right. Thank you.

9 All right. Ms. Pratt, I'll be glad to hear from you,
10 ma'am.

11 MS. PRATT: Thank you, Your Honor. Your Honor, we are
12 asking that you set aside the notice of life without parole
13 and sentence my client to the minimums that you are able to do
14 in this case without doing any damage to the conscious and
15 being just and fair and granting mercy to my client. The
16 proportionality of this sentence of life without parole for a
17 young man, who will be thirty-seven years old in two days, I
18 find very troubling.

19 While I understand the Solicitor's concern, I understand
20 the Solicitor's statements, I would like to say some things
21 about Armando. I represented him at the time that he pled to
22 voluntary manslaughter in 1995. He was seventeen years old
23 when the crime occurred. He was in a very difficult situation
24 with his home life. He had aligned himself with several
25 people who were dangerous. He was not the shooter in that

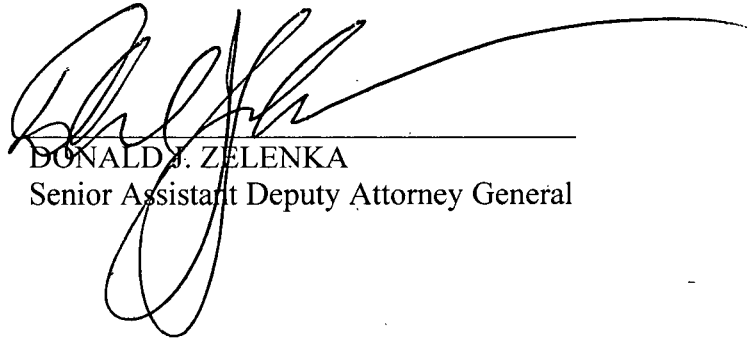
CERTIFICATE OF COUNSEL

RECEIVED

OCT 21 2015

SC Court of Appeals

Counsel for Respondent certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies with the April 15, 2014 Order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."



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October 21, 2015