

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

G. Thomas Cooper, Jr., Circuit Court Judge

Case No. 2008-CP-40-1696

Ayree Henderson, #237887

Respondent,

v.

State of South Carolina,

Petitioner.

APPENDIX

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¹ The PETITIONER submitted the Proposed Order of Dismissal via email on September 11, 2009, copied to RESPONDENT. [Rule 5(b)(3), SCRCP].

1 Q And sometimes that's laced with cocaine to make
2 it a little more oomph?

3 A No.

4 Q No. And on that night, do you know how much
5 you were smoking or drinking or -- well, just
6 smoking or drinking of various things after
7 midnight?

8 A I mean, I hit it. I hit it.

9 Q You hid it. You hid how much you were smoking
10 and drinking?

11 A No. What I mean by hit it was when it got
12 passed to me, I hit it and I passed it.

13 Q Okay. You would have a hit off whatever was
14 being passed around. Was Shea smoking that night?

15 A Yes.

16 Q Was she drinking that night?

17 A I don't remember her drinking.

18 Q Do you remember her smoking crack that night?

19 A Her smoke crack?

20 Q Yes.

21 A (Witness shook head.)

22 Q You don't remember?

23 A (Witness shook head.)

24 Q Were you with her every second from midnight to
25 1:00 to 2:00 to 3:00 to 4:00 to 5:00 to 6:00?

1 **A** No, ma'am, but we was -- we was around each
2 other.

3 **Q** How much did you make that night?

4 **A** Probably about a hundred dollars.

5 **Q** A hundred dollars?

6 **A** Yes.

7 **Q** Did you sell all of your product? Were you
8 selling marijuana? Were you selling crack? What
9 were you selling?

10 **A** Crack.

11 **Q** And you were only selling crack?

12 **A** Yes, ma'am.

13 **Q** You weren't a marijuana dealer?

14 **A** (Witness shook head.)

15 **Q** And in selling your crack, did you sell all you
16 had?

17 **A** No, I had about two pieces.

18 **Q** Two pieces left?

19 **A** Yes.

20 **Q** And that morning, some time around 6:00 a.m.,
21 you decided that you and Shea would go down to a
22 person's house who you did not know, except for his
23 reputation for being a drug dealer, and purchase
24 drugs at 6:00 a.m. in the morning?

25 **A** Yes, ma'am.

1 Q Was it dark or light out when y'all went down
2 there?

3 A I mean, it was like morning. You could tell it
4 was early morning.

5 Q You could tell it was early morning?

6 A Yes, ma'am.

7 Q So it was light enough to see?

8 A Yes, ma'am.

9 Q And, at that point, how much had you had to
10 drink that night, sir, in that 12 hour -- how long
11 were you there before midnight?

12 A I mean, I didn't have much because no stores
13 was open, I mean, around the area.

14 Q No stores were open. Okay, well then how much
15 did you ingest prior to the stores closing?

16 A I mean, I had two beers.

17 Q Two beers? You had two beers?

18 A Two 24-ounces.

19 Q Two 24-ounce beers?

20 A Yes, ma'am.

21 Q And how many blunts of marijuana did you smoke?
22 I don't know if I have the correct terminology.

23 A I mean, we smoked -- we smoked no more than two
24 blunts that night.

25 Q And how much crack cocaine did you smoke?

1 **A** I mean, probably being about all 40, two 20's.

2 **Q** Two 20's?

3 **A** Yes.

4 **Q** Forty dollars worth of drugs that night?

5 **A** Yes, ma'am.

6 **Q** And that was in addition to the two blunts, in
7 addition to the two 24-ounce beers?

8 **A** Yes, ma'am.

9 **Q** And you didn't get sleepy or anything because
10 this is the time of day you're up, right?

11 **A** Yes, ma'am.

12 **Q** So about six o'clock in the morning, you and
13 Shea decide to go buy marijuana from Moe who lives
14 there in Hammond Village, it was where he lived, and
15 you didn't see that as any kind of problem?

16 **A** No, ma'am.

17 **Q** And that was normal business practice?

18 **A** Yes, ma'am.

19 **Q** So when you went down to this stranger, you're
20 saying he was a stranger, that's your testimony,
21 right?

22 **A** Yes, ma'am.

23 **Q** That's your testimony. When you went down to
24 this stranger's house, you knew where to go?

25 **A** Yes, ma'am.

1 Q How did you know where to go?

2 A I've been there before.

3 Q Okay. He's a stranger, but you've been there
4 before. How did you know that you -- when did you
5 go there before?

6 A I mean, during the course of the time that I
7 was out there, he was out there.

8 Q So you were acquaintances, he wasn't a
9 stranger?

10 A Acquaintance?

11 Q I don't mean to put words in your mouth. You
12 tell it the way you want to tell it.

13 A What I mean is I know him because he sell
14 drugs, but he know me because I be out there.

15 Q You know him because he sells drugs and he
16 knows you because you would be out there, but y'all
17 don't deal in the same drugs?

18 A I mean, we don't hang together is what I mean.
19 We don't sit down and hang together, talk and kick
20 the bobo (ph) like that. It's just that when I go
21 there, I go get what I want, he give me what I want
22 and that's it.

23 Q Well, that's a form of the -- because you
24 didn't bring that up before that you'd been there on
25 multiple occasions to purchase drugs from Moe?

1 **A** I mean --

2 **Q** At 6:00 a.m.?

3 **A** This was my first time going there at this
4 time.

5 **Q** Okay. This was your first time going there or
6 this was your first time going there at this time?

7 **A** At that time.

8 **Q** At that time. But you'd been there on multiple
9 occasions to purchase drugs from this man?

10 **A** Yes, ma'am.

11 **Q** So he wasn't a stranger?

12 **A** He wasn't a stranger.

13 **Q** You knew him as Moe and he was a drug dealer?

14 **A** Yes, ma'am.

15 **Q** Just like you were a drug dealer?

16 **A** Yes, ma'am.

17 **Q** And you went there at 6:00 in the morning and
18 you knew it would be appropriate to go up to a
19 strange -- a drug dealer's house and knock on his
20 back door at 6:00 in the morning?

21 **A** Yes, ma'am.

22 **Q** Did you know who he was living with?

23 **A** I knew he was staying with Ms. Myers.

24 **Q** With Ms. Myers?

25 **A** Yes.

1 Q And how do you know Ms. Myers?

2 A I mean, I just know her from him staying with
3 her.

4 Q From him staying with her?

5 A Yeah.

6 Q You didn't know her in middle school?

7 A I mean, no, ma'am.

8 Q Okay. And when you went to the back door and
9 you knocked on the back door -- why were you getting
10 marijuana? Did you need more marijuana? Were you
11 out?

12 A I mean, Shea wanted some, so we went to go get
13 some.

14 Q So, once again, you're doing somebody a favor,
15 right, to help her get her marijuana and you happen
16 to know where to go?

17 A Yes, ma'am.

18 Q So you're going down to this drug dealer's
19 house at 6:00 in the morning to help her get the
20 marijuana she needs before she goes home and goes to
21 sleep?

22 A Yes, ma'am.

23 Q And your condition at that point, you weren't
24 intoxicated or inebriated in any way, you were clear
25 thinking, luckily, at this point?

1 **A** Yes, ma'am.

2 **Q** Even though you can't really remember anything
3 that happened up until midnight, right?

4 **A** Right.

5 **Q** But you remember everything pretty much from
6 midnight until 6:00 a.m. after you'd ingested
7 marijuana, cocaine, crack and liquor -- was it
8 liquor or beer? Beer, I'm sorry. That's right?

9 **A** That's right.

10 **Q** That's when your mind is the clearest and
11 that's why you can remember this so well, right?

12 **A** Right.

13 **Q** So you go down there, you're knocking on the
14 back door. Y'all never went into the front parking
15 lot?

16 **A** No, ma'am.

17 **Q** You and Shea never went into the front parking
18 lot?

19 **A** Never.

20 **Q** You were never hanging out in that parking lot,
21 where everybody sells drugs, earlier that night?

22 **A** No, ma'am.

23 **Q** You were never with a group of people,
24 including Z.Z. Zelazurro, who were out there
25 screaming about how they want to rob someone?

1 **A** No, ma'am.

2 **Q** You were never the one saying that?

3 **A** No, ma'am.

4 **Q** And so then you were just down there to, and I
5 think I quote Shea, to purchase marijuana?

6 **A** Yes, ma'am.

7 **Q** And when you go banging on the back door, you
8 said, Alonzo -- you never saw Terrell?

9 **A** No, I never saw her.

10 **Q** You never saw her?

11 **A** Never saw her.

12 **Q** But you said Alonzo yelled down at you. This
13 is your story.

14 **A** No. I said that she said, Who is it? I said,
15 Ayree. Moe said, Who the fuck that is? She said,
16 Ayree, that's Ayree down there. I said, Moe, what's
17 up, this is Ayree, like that.

18 **Q** Who's she?

19 **MR. JOHNSON:** Your Honor, she's not letting him
20 finish his answer.

21 **THE COURT:** He can finish the answer and you
22 can ask the question to clarify.

23 **BY MS. CAMPBELL:**

24 **Q** If you want to say anything else, go ahead?

25 **A** I was saying that when I -- when she said, Who

1 is it, I said, Ayree. Moe said, Who the fuck that
2 is? I said, This is Ayree. What's up, Moe? So he
3 was like, Who the fuck that is at my door, who the
4 fuck that is? So when I heard him saying that,
5 that's when I began -- we began to walk off because
6 I knew he was upset just by him saying that.

7 Q Okay. And so now your testimony is you heard a
8 female voice saying something and then you heard
9 Moe's voice?

10 A That's right.

11 Q You left that out before?

12 A No, ma'am.

13 Q And once you heard him -- and he sounded angry,
14 didn't he?

15 A Yes, ma'am.

16 Q It was 6:00 a.m., y'all are banging on the back
17 door and he's yelling from the thing and he's
18 already cussing, because you mentioned he cusses,
19 right?

20 A Yeah.

21 Q And he was cussing at you?

22 A That's right.

23 Q And he said -- what did you say?

24 A He was like -- he was saying like, Who the fuck
25 that is at my door like that, who the fuck that is?

1 And I was like, This is Ayree, Moe, this is Ayree,
2 what's up, to let him know that it was me.

3 Q Okay. And, at that point, he came down to the
4 door?

5 A Yes, ma'am.

6 Q And you were walking off?

7 A Yeah, we was beginning to walk off.

8 Q Beginning to walk off?

9 A That's right.

10 Q And, at that point, he opens the back door?

11 A Yes, ma'am.

12 Q Now, when you heard his voice, and you
13 mentioned twice that he was nasty sounding and he
14 was cussing at you and everything, didn't you think
15 it would be in your best interest to get out of
16 there?

17 A Yes, ma'am.

18 Q And, again, your mind was clear and lucid and
19 you were able to concentrate on that?

20 A I mean, I was -- I was thinking that -- when he
21 was saying all of that, I was shocked because we
22 never -- it never been at that point with me and
23 him. I mean, I never -- we never argued, we never
24 disagreed on anything. It was just always I go cop
25 and go. Whatever I get from you, I cop and go. So

1 it never -- we never had an altercation or
2 disagreement like that.

3 **Q** Cop and go?

4 **A** Yes, ma'am.

5 **Q** That's buy drugs and go?

6 **A** That's it.

7 **Q** And you didn't mention that before. And how
8 many times were you there to buy drugs?

9 **A** I can't remember.

10 **Q** You didn't sell marijuana, why were you buying
11 it?

12 **A** To smoke it.

13 **Q** You smoked it. That was your personal -- he
14 was your personal supplier versus your commercial
15 supplier for the crack?

16 **A** No. I mean, that's -- that's where you go get
17 it from, you go get it from him.

18 **Q** So you get down there and, at this point, he's
19 yelling at you out the window. You're starting to
20 walk off and he comes to the back door and the first
21 thing you notice is he's in his boxer shorts and he
22 has a gun in his hand?

23 **A** Yes, ma'am.

24 **Q** And, in that lucid moment, what did you think?

25 **A** I was shocked.

1 Q You were shocked?

2 A Yes, ma'am.

3 Q So you stopped?

4 A I stopped.

5 Q You didn't run?

6 A I mean, because he didn't just come down there
7 in his boxer shorts, he came down there with a gun.
8 He was like, What the fuck you doing at my door like
9 this -- I mean, excuse me, but he was like, What the
10 fuck you doing at my door like this at this time of
11 morning, huh? Huh? Huh, what I told you about
12 that, huh? Huh?

13 And he had the gun pointed down and I was just
14 looking at him shocked, like I hope he don't shoot
15 me or anything like that. So he was like, Huh, what
16 I told you, mother fucker? I told you don't ever
17 come to my door like this, didn't I tell you that?
18 So I'm just looking at him like I can't believe it,
19 you know, you got a gun on me. I mean, I didn't
20 know what to do.

21 Q You didn't know what to do, you're just frozen?

22 A I'm frozen.

23 Q So, at that point, Moe goes back into his house
24 and shuts the door behind him is your testimony?

25 A Yes, ma'am.

1 Q So, at that point, you took off?

2 A I'm fixing to get on through.

3 Q You're fixing to get on through, right?

4 A Yes, ma'am.

5 Q You're running out of there. The guy's come
6 out, he's angry, he's cussing you. I mean,
7 literally, he's out of his mind, according to your
8 testimony. He's waving a gun at you. And then he's
9 telling you before he goes in, I've got something
10 for you; is that what he said?

11 A He said something like that. I can't remember
12 what he said.

13 Q You can't remember what he said?

14 A (Witness shook head.)

15 Q And, at that point, y'all walk off slowly?

16 A We started to walk off. Once we began to walk
17 off -- by the time I got to the end of that
18 building, he was right there with that gun.

19 Q At the end of the building?

20 A He came from around the building.

21 Q And let's get one thing straight, and I show
22 you State's Exhibit 14, this is the end of the
23 building, isn't it?

24 A Yes, ma'am.

25 Q The door's right over here?

1 **A** The door's right there.

2 **Q** So how far would you say it was from where you
3 were standing when he came to the back door to where
4 you encountered him at the end of the building?

5 **A** You're talking about once I encountered him?
6 You said where I was at?

7 **Q** Once he shut the door -- and you started
8 walking off rapidly, I assume?

9 **A** I mean, we was like (indicating). I can't
10 remember exactly, but I was somewhere around in this
11 area right here.

12 **Q** Right in this area right here?

13 **A** Yeah, right in this area.

14 **Q** Am I pointing to the right place,
15 approximately?

16 **A** Approximately. I can't remember the exact
17 area, but it was somewhere -- when he went in the
18 house, I was somewhere near his house.

19 **Q** Near that window in between 2-1 and 2-2?

20 **A** That's right.

21 **Q** Okay. Which would be Kathy Wilson's window,
22 right?

23 **A** I mean, I don't know --

24 **Q** And just for the record, there wasn't, at that
25 point, any tussling going on, nobody was bumping up

1 against the wall or anything at that point, right?

2 A No, ma'am.

3 Q And then you start walking quickly towards the
4 end, all of 12 to 15 feet maybe?

5 A Yes, ma'am.

6 Q And in the meantime, unbeknownst to you, Moe's
7 gone in the house, gotten whatever he's promised
8 you. Now, when he came around, did you notice he
9 had on his blue jean shorts?

10 A I mean, I didn't know -- the only thing I paid
11 attention to was the gun. And when he came around
12 the building, he had the gun in his hand like this
13 (indicating) and he came up just like, What's up
14 now, mother fucker.

15 Q So he's gone all the way through there,
16 according to Shea's testimony, put on his shorts,
17 gotten something to put in his gun, gone out the
18 front of his apartment and come around the side and
19 met you before you could even get past the end of
20 this building?

21 A We was at the end of the building.

22 Q That's right, you were at the end of the
23 building?

24 A That's right.

25 Q And that's when he came at you with the gun?

1 **A** That's right.

2 **Q** Because you didn't have that gun?

3 **A** No.

4 **Q** No. And then he points it at you, right at

5 your head, that's what you said?

6 **A** (Witness nodded head.)

7 **Q** It was within inches?

8 **A** (Witness nodded head.)

9 **Q** And that's when you dove towards him?

10 **A** I was like, when I seen it, the first thing --

11 the first reaction was, was grab it.

12 **Q** Grab it?

13 **A** That's right.

14 **Q** And he's still got his hand on it?

15 **A** Yes, ma'am.

16 **Q** And y'all are struggling, right?

17 **A** Right.

18 **Q** And as you're struggling, within how quickly,

19 and I'm not asking you for the time, but was it

20 quick? It's all going pretty quick, isn't it? And

21 y'all are here on the end, right, the end of the

22 property of the building?

23 Let me find the right piece of paper. Have you

24 seen the exhibit, the defense exhibit where it shows

25 where Shea's standing at the end of the building?

1 Here it is, Defendant's Exhibit 1, is that right
2 where y'all met up?

3 **A** Around about right here, in this area right
4 here.

5 **Q** In this area, right here?

6 **A** Right here.

7 **Q** So it's not where she's standing showing where
8 you met, it's over further?

9 **A** Yeah, it's about right here.

10 **Q** You knew that they were further towards the
11 corner of the building?

12 **A** Yeah, it was --

13 **Q** So you say --

14 **A** I mean, both of us -- it was like he was
15 standing right there and I was standing right there.

16 **Q** Okay. And that's when the tussling starts?

17 **A** Yeah.

18 **Q** And as you're tussling, do y'all fall to the
19 ground?

20 **A** I mean, I didn't fall. He -- it was like when
21 we tussled for the gun, I had the gun like this
22 (indicating). So we start -- when we started
23 tussling like this and once the gun went off, he
24 fell.

25 **Q** He fell?

1 **A** He fell.

2 **Q** Once the gun went off?

3 **A** Once the gun went off, he fell.

4 **Q** But up until that point, both of you are
5 standing up?

6 **A** Yes, ma'am.

7 **Q** And when you are tussling, are y'all tussling
8 in the grass; are you tussling on the sidewalk; are
9 y'all tussling right there in the grass?

10 **A** Right there in the grass.

11 **Q** And y'all aren't up against the wall, you're a
12 little further out from the wall, right?

13 **A** Yeah, about -- I mean, it just -- when it
14 happened so fast, I mean, I can't tell you exactly
15 what spot it was in because the only thing I was
16 thinking about was that gun.

17 **Q** Okay. And you saw as he fell -- you heard the
18 shot and you saw him fall?

19 **A** When I heard the shot and when I seen the
20 fall --

21 **Q** Where was the gun when you heard the shot?

22 **A** I mean, the gun was on the -- I seen the gun on
23 the ground.

24 **Q** Before the shot, right before the shot. At the
25 time of the shot, y'all are tussling over the gun.

1 You've got your hands on the gun, he's got his hands
2 on the gun, right?

3 **A** Yes, ma'am.

4 **Q** No question about that?

5 **A** No question.

6 **Q** Where was the gun in relation to you and him?

7 **A** Talking about when?

8 **Q** Where was the gun? Was it down here? Was it
9 up here? Was it here? Was it towards his throat?
10 Were you tussling like this? Were you tussling down
11 here? What was going on; do you remember?

12 **A** I remember that once I grabbed it going like
13 (indicating) --

14 **Q** It was pretty quick, wasn't it; right like
15 this?

16 **A** Right.

17 **Q** So the gun's right there kind of between your
18 face and his face?

19 **A** Yeah.

20 **Q** And you and he are about the same height,
21 aren't you?

22 **A** I mean, he's a little taller. He's a little
23 taller than me.

24 **Q** An inch taller?

25 **A** I mean, I don't know.

1 Q Okay. But you're pretty much face to face with
2 him?

3 A Yeah.

4 Q And the gun's right there between y'all?

5 A Right.

6 Q And it goes off?

7 A It went off.

8 Q Okay. And it went through his neck?

9 A I mean, I don't know.

10 Q And out his back. And that's after it had
11 started out in this position towards you and it
12 ended up coming back towards him during the tussle?

13 A Yes, ma'am.

14 Q But it was close between you?

15 A It was --

16 Q Because y'all are face to face?

17 A Right.

18 Q Okay. Then you take off and you go to a crack
19 dealer's house you know. Did you know he was shot?

20 A I mean, when I seen him fall, I seen him fall
21 and when he hit the ground, I seen blood come out
22 his mouth. So once I seen that, I just ran.

23 Q And then you ran and you didn't call the
24 police, right?

25 A Right.

1 Q And you went to a hotel?

2 A Right.

3 Q And why did you want to get advice from your
4 friend Z.Z.?

5 A I mean, I -- I mean, I didn't -- I ain't got
6 nobody else. I didn't have nobody else, you know,
7 to call or anything like that.

8 Q When did you find out he was dead?

9 A Later on that day.

10 Q Later on that day?

11 A Yes, ma'am.

12 Q And, at that point, did you think it was
13 appropriate to contact the police and let them know
14 that you hadn't been at fault yet again?

15 A I was scared to call the police.

16 Q You were scared to call the police?

17 A Yes, ma'am.

18 Q So you went and got your friend Z.Z. to get you
19 a lawyer?

20 A Yes, ma'am.

21 Q And then you turned yourself in the next
22 evening?

23 A Yes, ma'am.

24 Q Where was the gun when you left --

25 A It was on the ground -- it was on the ground

1 when I left. I just -- I just panicked.

2 Q You panicked?

3 A When I panicked, I ran. I didn't know what to
4 do. I mean, first thing that came to my mind was
5 I'm going to jail for a long time.

6 Q The first thing that came to your mind was
7 you're going to jail for a long time?

8 A Yes, ma'am.

9 Q And you didn't have a gun out there that night.
10 Do you remember asking one of the ladies whose
11 daughter lived out in that area that you needed her
12 to go buy you a gun because she didn't have a
13 record?

14 A No.

15 Q Do you know a Pamela Long?

16 A Pamela Long?

17 Q Jessica Long?

18 A Okay. I know them. They stay next door.

19 Q Uh-huh. Do you remember having a conversation
20 with her about that?

21 A No, ma'am.

22 Q You didn't have a gun that night, but you had a
23 gun before, hadn't you?

24 A No.

25 Q No? You want to look at this? Two days prior,

1 Hammond Village?

2 A I didn't have no gun.

3 Q You ran and left the gun, that gun?

4 A No, ma'am.

5 Q Okay. So you're denying that?

6 A That's not...

7 Q From August the 1st of 2002 at 921 Marlboro
8 Street. Was that one of your friend's guns?

9 A I don't know whose gun that was. It wasn't my
10 gun.

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

12 (Pause.)

13 MS. CAMPBELL: Thank you.

14 THE COURT: Any redirect?

15 MR. JOHNSON: Yes, Your Honor. May it please
16 the Court.

17 REDIRECT EXAMINATION

18 BY MR. JOHNSON:

19 Q Avery, let's clear up some stuff.

20 A Okay.

21 Q She asked you did you own a gun. Have you ever
22 owned a gun?

23 A No, sir.

24 Q Did you have a gun that night?

25 A No, sir.

1 **Q** If you ran away and left a gun two days
2 earlier, then that was at least one gun you wouldn't
3 have, isn't it?

4 **A** Yes, sir.

5 **Q** When -- when you talk about your relationship
6 with Moe, you knew him?

7 **A** I knew him.

8 **Q** And you had went there to buy drugs before?

9 **A** Yes, sir.

10 **Q** Now, let's explain this to the jury, and they
11 probably might already understand, when do drug
12 dealers sell drugs? Do they sell it at noon time
13 like you go down to the Burger King or do they do it
14 at night?

15 **A** They do it anytime. I mean, drug dealers, they
16 don't -- it's not like they got a 9:00 to 5:00, they
17 got to clock in 9:00 to 5:00, they sell it anytime.

18 **Q** Now, for you, when do you sell most of your
19 drugs?

20 **A** At night.

21 **Q** Why?

22 **A** Because that's when there ain't nobody -- no
23 police is out like, you know, at nighttime, you can,
24 basically, just be out. I mean, at nighttime, you
25 can elude the police and stuff like that at night,

1 that's why.

2 **Q** And what do you do during the daytime?

3 **A** I probably -- it depends on who I'm with or
4 what I'm doing. I may be with a friend or with a
5 young lady or something like that.

6 **Q** When did you rest?

7 **A** When do I rest?

8 **Q** Uh-huh.

9 **A** In the day.

10 **Q** So your body was trained to be up at night?

11 **A** Yes, sir.

12 **Q** Now, do you -- if you're using drugs and
13 selling drugs, isn't that bad business?

14 **A** Yes, sir.

15 **Q** But you did that anyway?

16 **A** I mean, I wouldn't -- I wouldn't -- I have
17 always -- I have money in my pocket if I'm doing
18 drugs because I couldn't -- you always got to have
19 money to support your habit, so, you know, but I
20 wasn't no -- I wasn't the type of person to go break
21 in a pawnshop just to go get a 20 or something like
22 that, you know. I mean, I did drugs to appease me,
23 that's what I wanted to do drugs for.

24 **Q** Would you harm somebody in order to get some
25 money to do some drugs?

1 **A** No, sir.

2 **Q** Have you ever intentionally harmed anybody?

3 **A** No, sir.

4 **Q** Did you harm Moe intentionally?

5 **A** No, sir.

6 **Q** How do you feel about him being dead?

7 **A** I feel remorseful. I feel -- I feel guilty
8 because a soul has been taken (sic) and a mother
9 has lost a son. And I feel that because he's dead,
10 that means that, you know, I feel like -- first
11 thing that come to my mind is I feel like God has
12 showed mercy upon me because if it wasn't Moe dead,
13 it would have been me, first of all. But I, you
14 know, I pray every night that God continue to have
15 mercy on me, you know, because somebody has died,
16 you know, I'm guilty because someone has died,
17 but --

18 **Q** So do you feel like the reason he's dead is
19 because if it wasn't him, it would have been you?

20 **A** Yes, sir.

21 **Q** So you felt like it was self-defense?

22 **A** Yes, sir.

23 **MR. JOHNSON:** No other questions.

24 **THE COURT:** You may step down. Thank you.

25 Any further witnesses, Mr. Johnson?

1 **MR. JOHNSON:** One moment.

2 (Pause.)

3 **MR. JOHNSON:** Your Honor, at this time, the
4 defense rests.

5 **THE COURT:** Any rebuttal by the State?

6 **MS. CAMPBELL:** Yes, Your Honor. The State
7 would call Corporal Hall.

8 **THE COURT:** I'll remind you, sir, that you're
9 still under oath to tell the truth in this matter.

10 **THE WITNESS:** Yes, ma'am.

11 ROBERT JOHN HALL,
12 having been previously duly sworn, resumed the
13 witness stand and testified as follows:

14 DIRECT EXAMINATION

15 BY MS. CAMPBELL:

16 **Q** Corporal Hall, I just have a few quick
17 questions and you're still under oath, okay?

18 **A** Yes, ma'am.

19 **Q** When you arrived at the scene that morning, I
20 believe you testified earlier that you got there
21 within a few seconds of the actual call going out?

22 **A** Yes, ma'am.

23 **Q** And what time did you actually arrive at the
24 scene?

25 **A** From the time that the call went out to the

1 time I got there, was about 35 to 45 seconds.

2 Q What time in the morning was that that you
3 actually got there?

4 A That was at 6:21.

5 Q 6:21?

6 A 6:21 is when we got the call and by the time I
7 looked at my watch, it was 6:22.

8 Q And when you got to the scene, who was the
9 first live person you encountered?

10 A Initially, when I went up to the victim, Moe,
11 his -- as I approached to assess first aid, he gave
12 out his last breath and stopped breathing. And, at
13 that point, Ms. Myers was still on the telephone,
14 came running toward me.

15 Q And what was her condition at that point?

16 A Hysterical.

17 Q Hysterical?

18 A Yes, ma'am.

19 Q And the time of this actual occurrence was, I
20 believe, 6:18 in the morning?

21 A Yes, ma'am.

22 Q So you were there within three to four minutes.
23 And when you got there, you mentioned that the
24 defendant actually gave his last breath shortly
25 after your arrival?

1 **A** Yes, ma'am.

2 **Q** And was he up against that car?

3 **A** He was laying down where he had laid on the car
4 and then slid off of the fender and was down by the
5 left front tire.

6 **Q** Okay. And did you have an opportunity to
7 observe what, if anything, he was wearing at that
8 time?

9 **A** He was wearing boxer shorts, underwear.

10 **Q** Did he have any blue jeans, shorts or pants on
11 anywhere?

12 **A** No, ma'am.

13 **Q** Were there any guns or anything else there
14 around him?

15 **A** No, ma'am. We searched the area and we also
16 searched inside the apartment where Ms. Myers had
17 given us permission.

18 **Q** Given you permission?

19 **A** Yes, ma'am.

20 **Q** Did you find any drugs or guns there?

21 **A** No, ma'am. We checked even cereal boxes. We
22 went through the entire house looking for possibly a
23 quantity of drugs or where someone could hide a
24 handgun.

25 **Q** And the area at the end of the building where

1 2-1 -- actually, the end of the building, that grass
2 area next to it, did you also search there for the
3 presence of any kind of struggle or gun or anything
4 of that sort?

5 **A** We searched for a handgun and we also looked
6 for the brass casings. And we searched the grassy
7 area and up on the hill and could not find -- I
8 think the only thing we found was one piece of brass
9 -- spent brass and I think the I.D. tech found the
10 bullet.

11 **Q** On the back area?

12 **A** Yes, ma'am.

13 **Q** On the sidewalk area?

14 **A** Yes.

15 **Q** Behind the apartments. I'm going to show you
16 this photograph. Is that, approximately, how the
17 victim was laying? I believe that's after EMT was
18 actually there, but is that how he was dressed when
19 you got there at the very least?

20 **A** This is what his entire other -- the paper bags
21 were put on his hands to protect his hands so that
22 they could do a gunshot residue test.

23 **Q** And then this one white mark on his upper
24 chest, that was where EMT was trying to --

25 **A** That's an EKG tag where they check for vital

1 signs. He had a couple of those on there.

2 **Q** But is this what he was wearing at the time
3 when you got there and, approximately, where he was
4 lying, maybe not in that position because EMT moved
5 him?

6 **A** Yes, ma'am. He was a little further up toward
7 the -- they rolled him over to straighten him out to
8 be able to check for vital signs.

9 **Q** Okay. But this is the clothing he had on when
10 you first got there?

11 **A** Correct.

12 **MR. JOHNSON:** No objection.

13 **MS. CAMPBELL:** Your Honor, we'd offer it into
14 evidence.

15 **THE COURT:** State's Exhibit 49 is admitted.

16 (State's Exhibit Number 49, photograph of
17 the victim, admitted into evidence.)

18 BY MS. CAMPBELL:

19 **Q** And, again, the only clothing he was wearing
20 when you got there was?

21 **A** The boxer shorts, underwear.

22 **MS. CAMPBELL:** That's all I have, Your Honor.

23 **THE COURT:** Any cross?

24 **MR. JOHNSON:** Yes.

25 *****

1 CROSS-EXAMINATION

2 BY MR. JOHNSON:

3 Q Officer Hall, you say that a bullet was found,
4 a shell casing and a projectile?

5 A Yes, sir.

6 Q Projectile was found on the corner of the
7 building, wasn't it?8 A I don't know where the -- I understood that the
9 projectile was found. We found the casing and --
10 the casing part, I was aware that they found at that
11 time, and then the projectile was found later and --

12 Q So you don't know where it was found?

13 A I don't know where the projectile was found.

14 Q So when the State just said that it was found
15 in the corner, she could have -- I mean, was found
16 in the back, you don't know, do you?17 A The information that I had received from other
18 police officers was that a projectile was found in
19 the rear, but I don't know where.

20 Q In the rear?

21 A Correct.

22 Q Okay. Also, on the underwear that was found,
23 what color were they?

24 A The picture shows to be --

25 Q Well, you take a look at the picture, tell me,

1 what color are they?

2 **A** They're a burgundy or a brownish and white
3 checker pattern.

4 **Q** So they are shorts, though? I mean, they're
5 boxer shorts or whatever, but they're shorts?

6 **A** They're underwear.

7 **Q** Right. But they're not long, I mean, they're
8 not pants or anything like that?

9 **A** No, sir.

10 **Q** And one final question, remember when you was
11 cross-examined by me before and I asked you about
12 blood and you said there was blood everywhere; is
13 that correct?

14 **A** Yes, sir.

15 **Q** You said there was so much blood you couldn't
16 even see where the bullet holes were, could you?

17 **A** Correct.

18 **Q** And blood was on everything, his hands,
19 everything, wasn't it?

20 **A** There was a large quantity on his face and
21 there was a large quantity on the car. And it
22 appeared that he had slumped over the car and then
23 slid down the car and had gotten -- the smear from
24 where it had squirted on the car had gotten on to
25 his face.

1 Q And it was on his hands as well, wasn't it?

2 A Well, I didn't deal with -- once he went down
3 and -- or he was down and his last breath, I focused
4 on securing the perimeter and then we -- there was a
5 lot of people coming out, so we put a curtain of...

6 Q The curtain --

7 A The thing around it so people wouldn't --

8 Q So you didn't box his hands?

9 A No, sir, I did not.

10 Q Oh, okay.

11 A I did not bag the hands. I was --

12 Q You don't know who did it?

13 A I was holding the curtain.

14 Q So you don't know who did it?

15 A I believe it was Don Catoe, the I.D.

16 technician. I was holding the curtain up while they
17 were --

18 Q Have you been sitting through this whole thing?

19 A No, sir.

20 Q Okay. Well, do you know a Ms. Dianne Crawford?

21 A No, sir.

22 MS. CAMPBELL: Objection, Your Honor, just as
23 to -- I think we're a little bit outside the scope
24 of --

25 MR. JOHNSON: Your Honor. May we approach?

1 **THE COURT:** Yes, sir.

2 (Whereupon, a bench conference was held off
3 the record, in the presence of the jury, but out of
4 the hearing of the jury.)

5 BY MR. JOHNSON:

6 **Q** Officer Hall, you stated that you were with him
7 when he took his last breath?

8 **A** Yes, sir.

9 **Q** And that Ms. Myers was there; is that correct?

10 **A** Yes, sir, she was approaching.

11 **Q** Was there anybody else there?

12 **A** There were some -- the initial approach on her,
13 I saw Mr. Gale down. I exited the car, went up,
14 and, at that point, he expelled his last breath.
15 And then my focus had turned to Ms. Myers coming --

16 **Q** Now, let me be more specific --

17 **MS. CAMPBELL:** Objection, Your Honor. He has a
18 right to answer his question fully.

19 BY MR. JOHNSON:

20 **Q** Go ahead and finish.

21 **A** And once I had found out from Ms. Myers, at
22 that point, who she was and she says, you know, They
23 shot him, they shot him. And I said, Who? And she
24 said, Ayree or Avery. And that's why I put them
25 both on the report as either Ayree or Avery. And,

1 at that point, people started coming out and there
2 appeared to be two people to my left by building
3 three and possibly one out near building two dash
4 one and that's -- and, at that point, additional
5 people during the time, five, six, seven minutes,
6 started showing up, additional people.

7 **Q** But you did not see a Ms. Dianne Crawford
8 standing up over you while he was taking his last
9 breath?

10 **A** I don't recall that. I don't remember.

11 **MR. JOHNSON:** No other questions.

12 **THE COURT:** You may step down.

13 Any additional rebuttal witnesses?

14 **MS. CAMPBELL:** Beg the Court's indulgence, Your
15 Honor.

16 (Pause.)

17 **MS. CAMPBELL:** Your Honor, that's all from the
18 State.

19 **THE COURT:** Ladies and gentlemen, we have now
20 reached the stage of the trial where the testimony
21 and the evidence is concluded. This would be a good
22 time to take a break for the evening. We have some
23 legal matters which we would need to take up outside
24 of your presence and so there's no need for you to
25 stay here while we do that.

1 Even though now you have heard all of the
2 evidence that has to be presented, you still may not
3 begin to discuss this matter as you've not heard my
4 instructions to you on the law that's to be applied
5 in this case. And until you've heard those
6 instructions, you are not in a position to be able
7 to analyze the testimony and the evidence and
8 determine the facts of this case.

9 So I'm going to ask that you report tomorrow
10 morning. And when you report tomorrow morning, we
11 will be ready to hear the closing arguments of the
12 attorneys. And then I will instruct you on the law
13 and then you may begin your deliberations at that
14 point.

15 I'm going to remind you again not to begin any
16 discussions among yourselves. Please, also do not
17 allow anyone to approach you to discuss this case
18 with you. Again, refrain from any discussions with
19 your family members and friends about this case for
20 the reasons that I've given to you throughout the
21 course of this trial. Please, also do not listen to
22 any conversations as you come and go from the
23 hallways. Now that you've heard all of the
24 evidence, you would be in the position to be able to
25 determine the facts and you should not be influenced

1 by conversations that you hear in the hallways as
2 you come and go.

3 Again, ladies and gentlemen, for the evening,
4 I'm going to ask again that you not listen or watch
5 or read any media reports to the extent that there
6 may be any and also that you do not conduct any
7 independent investigation again for the reasons that
8 I've given to you throughout the course of this
9 trial.

10 When you come tomorrow morning, as I stated, we
11 will be ready to hear the closing arguments and we
12 can continue on with the trial of this case. I ask
13 that you report tomorrow morning at 9:30 to the same
14 jury room where you've reported throughout the
15 course of this trial and we'll continue on at that
16 time. I hope that you have a very pleasant
17 afternoon. Thank you.

18 (The jury was excused for the day.)

19 **THE COURT:** Are there any motions at this time?

20 **MR. JOHNSON:** At this time, Your Honor, I would
21 just like to renew my directed verdict motion, as
22 well as any other motions that I made previously.

23 **THE COURT:** And, again, I think that, clearly,
24 there's evidence that puts it within the purview of
25 the jury to weigh the credibility of the witnesses

1 who have testified and that they'll have to make,
2 ultimately, the determination as to which witnesses
3 they choose to believe and what portions of the
4 evidence they choose to believe and so I'm going to
5 deny your motion on that basis. I think that there
6 is sufficient evidence to allow it to go to the
7 jury, however.

8 Anything further motion-wise?

9 Let's take a brief break and then we'll come
10 back and talk about charges.

11 (Brief recess.)

12 **THE COURT:** I find that it's easier to tell you
13 what I plan to charge and then if I leave anything
14 out or there's something more specific that you want
15 me to discuss, then we can talk about those. So
16 I'll go over what I plan to charge at this
17 particular point and then we can go from there.

18 I will charge them that they have to determine
19 -- that they're the exclusive judges of the facts in
20 this case, that they have to determine the
21 credibility or believability of the witnesses. I
22 will charge them that they may be -- a witness'
23 testimony may be impeached by a prior inconsistent
24 statement. I will also instruct them that both the
25 prior record of a defendant and the prior record of

1 a witness is only to be used for purposes of
2 determining credibility.

3 I will also charge them on expert witnesses. I
4 will then charge them on -- I will charge them on
5 circumstantial evidence. I will charge them on the
6 fact that the defendant was charged, arrested and
7 indicted is not evidence. I will charge them on the
8 presumption of innocence. I will charge them on the
9 Victor versus Nebraska reasonable doubt.

10 I will charge them on the elements of murder,
11 that is, the State has to prove beyond a reasonable
12 doubt that the defendant did kill a person and that
13 the killing was done with malice aforethought. The
14 State doesn't have to prove a motive for killing.

15 The State must prove that the defendant did
16 kill another with malice aforethought. And define
17 malice as the intentional doing of a wrongful act
18 without just cause or excuse and with the -- an
19 intent to inflict injury, that malice aforethought
20 is the deliberate and well-formed purpose to do the
21 unlawful act.

22 Aforethought means that the intention to do the
23 unlawful act was conceived or planned some time
24 before the actual commission of the unlawful act;
25 though, malice need not to exist for any particular

1 length of time before the killing.

2 Malice is defined as it's a suggestion of
3 wickedness or hatred or a determination to do what
4 one knows to be wrong without just cause or excuse
5 or legal provocation. It does not have to be in the
6 mind for any particular length of time before the
7 act of killing in order to render the killing
8 murder. If malice is present in the mind for any
9 length of time before the act, then its presence
10 would be sufficient to render the killing a murder.

11 Malice may be expressed or inferred. It's
12 expressed where there is manifested a violent,
13 deliberate intention to unlawfully take away the
14 life of a human being. It may be inferred where one
15 does -- where one intentionally and deliberately
16 does an unlawful act which he knows to be wrong in
17 violation of his duty to another. It may be
18 inferred where no excuse or legal provocation for
19 the killing appears.

20 The law says that if one intentionally kills
21 another with a deadly weapon, the inference of
22 malice may arise. A deadly weapon is any object or
23 substance which would reasonably -- could be
24 reasonably used to cause bodily harm. It may be
25 inferred from the use of a deadly weapon. And they

1 may infer malice from the conduct of the defendant
2 in the use or handling of a deadly weapon, if such
3 conduct results directly in the death of another,
4 and if such conduct was so inexcusable, so
5 aggravated and grossly reckless as to show an
6 actual, intentional disregard of consequences to
7 human life. A conduct sufficient to show
8 deliberate, intentional design to use, employ or
9 handle a deadly weapon so as to endanger the life of
10 another without just cause or excuse.

11 I will charge on the felony murder inference
12 that if one intentionally kills another during the
13 commission of a felony, the inference of malice may
14 arise if facts are proven beyond a reasonable doubt
15 sufficient to raise an inference of malice to your
16 satisfaction. This inference would simply be an
17 evidentiary fact to be taken in consideration along
18 with all the evidence in the case and you may give
19 it the weight that you determine it should receive.
20 And as with all inferences, you are free to accept
21 them or reject them as you deem appropriate.

22 Likewise, if facts are proven beyond a
23 reasonable doubt sufficient to raise an inference
24 with malice, if any, from the use of a deadly weapon
25 to your satisfaction, this inference is also an

1 evidentiary fact to be taken into consideration and
2 to be given the weight that you should determine it
3 should receive. The defendant is not required to
4 prove the absence of malice; therefore, you may
5 accept or reject the inference.

6 If you find that the State has not proven
7 beyond a reasonable doubt that the defendant did
8 kill a person with malice aforethought, then you may
9 consider the crime of manslaughter. If you have a
10 reasonable doubt that the State has proved murder,
11 you must resolve that doubt in favor of
12 manslaughter. Manslaughter is the unlawful killing
13 of another without malice, but in sudden heat and
14 passion and upon sufficient legal provocation.

15 In order for the State to prove the defendant
16 guilty of manslaughter, the State must prove beyond
17 a reasonable doubt that the defendant took the life
18 of another in a sudden heat and passion and upon
19 sufficient legal provocation. The law recognizes
20 sudden heat and passion may for the time being
21 affect one's self-control, temporarily disturb the
22 sway of one's reason and, therefore, reduce the
23 crime from murder to manslaughter provided there's
24 sufficient legal provocation.

25 Sufficient legal provocation must be such as

1 would be calculated to cause a person of ordinary
2 reason and caution to become enraged, that is, to
3 experience sudden heat and passion and thereby lose
4 control of himself temporarily. Words alone,
5 however vulgar or insulting, are not sufficient to
6 constitute legal provocation.

7 Merely by way of illustration and illustration
8 alone, the following may be acts of provocation
9 sufficient to negate malice which will reduce the
10 crime of murder to manslaughter if it appears the
11 act was done in sudden heat and passion: Pointing a
12 gun at the defendant; sudden mutual combat in which
13 one person was killed by another, but without
14 previously formed intentions to do so; previous or
15 prior fighting.

16 To be manslaughter, the killing must be in
17 sudden heat and passion. And if the heat and
18 passion had cooled or if there's -- there's
19 sufficient time between the provocation, if any, and
20 the killing for the passion to cool, then the
21 killing would not be attributed to heat and passion,
22 but to malice.

23 The sufficiency of cooling time depends on
24 whether there was time, considering all
25 circumstances, for a person of ordinary reason to

1 cool off. If you find that the State has not proved
2 beyond a reasonable doubt that the defendant did
3 unlawfully kill a person in sudden heat and passion
4 and upon sufficient legal provocation, you must find
5 the defendant not guilty.

6 If you find beyond a reasonable doubt that this
7 defendant did not commit the offense of voluntary
8 manslaughter, then you may consider the offense of
9 involuntary manslaughter. Involuntary manslaughter
10 is defined as the unintentional causing the death of
11 another through criminal negligence. First, that
12 the -- notice first that the causing of death must
13 be unintentional. By this, I mean that the
14 defendant must not have intended for anyone to be
15 killed or seriously injured. Second, the death must
16 have been caused by criminal negligence.

17 Criminal negligence is defined as the reckless
18 disregard of the safety of others. And reckless
19 disregard for the safety of others signifies an
20 indifference to the consequences of one's act. It
21 means something more than mere negligence or
22 carelessness which indicates inadvertence, mere
23 negligence or carelessness in the failure to
24 exercise due care. It is the care that a person of
25 ordinary reason and prudence would exercise under

1 the same circumstances.

2 Recklessness denotes a conscious failure to
3 exercise due care or ordinary care or a conscious
4 indifference to the rights and safety of others or a
5 reckless disregard thereof.

6 With respect to the use of a dangerous
7 instrumentality, such as a gun, recklessness exists
8 where a person who knows or should know that
9 ordinary care and prudence requiring him to use
10 certain precautions in the use of dangerous
11 instrumentality for the safety of others,
12 nevertheless -- unconcern an indifference fails to
13 use those precautions. Stated differently,
14 recklessness exists where a person is aware that a
15 particular course of conduct is negligent, but who
16 nevertheless with unconcern an indifference follows
17 such negligent course of action.

18 So to recap, involuntary manslaughter is either
19 the killing of another without malice and
20 unintentionally, but while engaged in the commission
21 of some unlawful act not amounting to a felony and
22 not naturally tending to cause death or great bodily
23 harm or the killing of another without malice and
24 unintentionally, but while engaged in the doing of a
25 lawful act with a reckless disregard for the safety

1 of others.

2 The third element necessary to establish the
3 crime of involuntary manslaughter is that the
4 criminal negligence must be the proximate cause of
5 death. By proximate cause, I mean a real and
6 efficient cause, the cause which brings about an
7 injury or death and without which, the same would
8 not have occurred.

9 I also charge you that voluntary intoxication
10 is never an excuse for or a defense to a crime
11 regardless of whether that crime is one involving
12 general or -- let me rephrase that -- I charge you
13 that voluntary intoxication is never an excuse or a
14 defense to a crime. A person who voluntarily
15 renders himself intoxicated or under the influence
16 of drugs is no less responsible for his acts while
17 in such condition.

18 If one voluntarily drinks intoxicating liquors,
19 wine or beer or is under the influence of drugs and
20 becomes intoxicated to any degree and while -- if
21 while in that condition, commits an act which would
22 be a crime if committed by a sober person, the fact
23 of drunkenness or -- or being under the influence of
24 drugs would not relieve the person -- the
25 intoxicated person from responsibility where it has

1 not produced permanent insanity.

2 The State must prove each and every element of
3 the crime charged beyond a reasonable doubt
4 regardless of the defendant's stated alleged
5 intoxication.

6 I'll charge them that their verdict has to be
7 unanimous, that is, it must be the verdict of all 12
8 of them. That there are four possible verdicts
9 which they may find in this case, guilty of murder,
10 guilty of voluntary manslaughter, guilty of
11 involuntary manslaughter, not guilty. There's no
12 significance of the order in which I say them.

13 If they find that the State has not established
14 its burden of proving beyond a reasonable doubt that
15 the defendant is guilty of murder, then they may go
16 on to consider whether or not the State has met its
17 burden of proving that the defendant is guilty
18 beyond a reasonable doubt of the offense of
19 voluntary manslaughter.

20 If they find that the State has not met its
21 burden on the voluntary manslaughter, then they may
22 go on to consider whether or not the State has met
23 its burden of proving the defendant guilty beyond a
24 reasonable doubt on the offense of involuntary
25 manslaughter. If they find that the State has not

1 met its burden in that regard, then they would have
2 no choice but to return a verdict of not guilty.

3 Is there anything that I've left out, anything
4 that I've skipped over? I'm sorry, I didn't cover
5 self-defense.

6 **MR. JOHNSON:** I'll sit back down, Your Honor.

7 **THE COURT:** I knew there was something I was
8 leaving out.

9 After intoxication -- the charge on voluntary
10 intoxication, I will also then go to self-defense.
11 To establish self-defense in South Carolina, four
12 elements must be present:

13 First, that the defendant must be without fault
14 in bringing on the difficulty. Second, the
15 defendant must have been in actual imminent danger
16 of losing his life or sustaining serious bodily
17 injury or must have actually believed he was in
18 imminent danger of losing his life or sustaining
19 serious bodily injury. Third, if his defense is
20 based upon his belief of imminent danger, a
21 reasonably prudent man of ordinary firmness and
22 courage would have entertained the same belief. If
23 the defendant was actually in imminent danger, the
24 circumstances were such as would warrant a man of
25 ordinary prudence, firmness and courage to strike

1 the fatal blow in order to save himself from serious
2 bodily harm or losing his own life. And, fourth,
3 the defendant had no other probable means of
4 avoiding the danger.

5 The law recognizes the right of every person to
6 defend himself from death or serious bodily harm.
7 And to do this, he may use such force as is
8 necessary even to the point of taking a human life.
9 In other words, self-defense is a complete defense
10 and entitles one charged with unlawful homicide to
11 an acquittal if the legal elements of the plea of
12 self-defense are shown to your satisfaction by the
13 evidence. So self-defense is a complete defense, if
14 it is established, you must find the defendant not
15 guilty.

16 And I will tell you that the self-defense
17 charge that I'm going through is not exactly how
18 I'll say it tomorrow, but all of the elements will
19 -- all of these things will be in there. I'll
20 probably rework it a little bit.

21 A defendant must show that he believed he was
22 in imminent danger, not that he was -- not that he
23 was actually in such danger because he had the right
24 to act on appearances, and under the circumstances
25 as they appeared to him, he believed he was in such

1 danger. And a reasonably prudent man of ordinary
2 firmness and courage would have entertained the same
3 belief.

4 In evaluating the reasonable person standard,
5 you may consider, along with any other factors you
6 deem reasonable and appropriate, the physical
7 conditions and the characteristics of the defendant
8 and the alleged -- and the deceased.

9 I will further define, without fault in
10 bringing on the difficulty that this requires -- it
11 would be unreasonable to permit a man to
12 deliberately provoke an act of aggression against
13 himself and then shield himself against
14 responsibility for the death of his adversary by
15 pleading the law of self-defense. It would be just
16 as unreasonable to withhold from a man the right to
17 defend his life against a deadly assault merely
18 because he had been guilty of some rudeness or bad
19 manners or disrespect not intended nor reasonably
20 calculated under all the circumstances to provoke a
21 deadly assault.

22 And so both common sense and the law agree that
23 one is not deprived of the right to plead
24 self-defense and justification of a homicide unless
25 his conduct or fault is of such a nature as was

1 reasonably calculated to and did provoke a deadly
2 assault. Self-defense is not available to a person
3 who uses such language so derogatory as is
4 reasonably calculated to bring on a difficulty and
5 which does actually contribute to the bringing on of
6 a physical encounter.

7 I think that's it. Is there anything that I've
8 left out? Anything I need to clarify? Anything
9 from the State?

10 **MS. CAMPBELL:** The only thing from the State,
11 Your Honor, I think you've covered all of my
12 requests to charge except on the circumstantial, are
13 you doing the Grippon?

14 **THE COURT:** Is that what you put in your
15 request?

16 **MS. CAMPBELL:** Yes, ma'am, I just want --

17 **THE COURT:** Let me just read it. Your request
18 to charge number ten is the one that I will give.

19 **MS. CAMPBELL:** That's fine. And the only other
20 thing I would have, Your Honor, is my jury charge
21 request eight which defines malice and it's the
22 Mouzon definition of malice, which is the general
23 malicious -- safety of others, condition of mind --

24 **THE COURT:** I have seen that one. Let me look
25 -- I'm not sure that that's the way I have it

1 defined.

2 **MS. CAMPBELL:** I believe Mr. Johnson doesn't
3 have a problem with adding that definition, Your
4 Honor.

5 **THE COURT:** You're referring specifically to --

6 **MS. CAMPBELL:** Jury charge -- my request to
7 charge number eight.

8 **THE COURT:** Number eight?

9 **MS. CAMPBELL:** Yes, ma'am, that's the only one
10 I have that you didn't already cover.

11 **THE COURT:** Well, if you don't have any
12 objection to this specific language.

13 **MR. JOHNSON:** Your Honor, I just read it and
14 after reading it, I don't have any. However, I'm
15 not sure what your original charge was.

16 **THE COURT:** I think mine conveys the same thing
17 just not in those words. I'll look at it and work
18 it together. I'll blend them, how is that?

19 **MR. JOHNSON:** Thank you, Your Honor.

20 **THE COURT:** Anything further from the State?

21 **MS. CAMPBELL:** No, Your Honor, that's all.

22 **THE COURT:** Anything further from the defense?

23 **MR. JOHNSON:** No, Your Honor. I guess, it's a
24 matter -- I guess, tomorrow we'll come back with the
25 closing arguments and charge.

1 **THE COURT:** Yes, sir. And I was about to ask
2 in terms of closing argument, I like to get an idea,
3 approximately, how long you think your arguments
4 will last. You're going to open in full?

5 **MS. CAMPBELL:** Yes, ma'am, just because the law
6 in this case is somewhat detailed.

7 **MR. JOHNSON:** I would say, Your Honor, I'm
8 never that very long. I'll say a half an hour, 45
9 minutes.

10 **THE COURT:** I mean, I won't -- in a criminal
11 case, I can't hold you directly to it. I think the
12 statute says you can't talk more than two hours.

13 **MR. JOHNSON:** I couldn't do that anyway.

14 **THE COURT:** I hope nobody's going to talk that
15 long, please..

16 **MR. JOHNSON:** Your Honor, I'm thinking a half
17 an hour actually.

18 **MS. CAMPBELL:** I think my actual longer
19 argument will be my first one in this case just to
20 go through the law. So I would anticipate, since I
21 put up eight witnesses that mattered, that it should
22 be -- it would be less than his.

23 **THE COURT:** All right. I would guess that my
24 charge will take somewhere between a half hour and
25 45 minutes at the minimum.

1 **MR. JOHNSON:** Just for the record, Your Honor,
2 I guess I would have to call Judge Manning in
3 Sumter. I have a plea in another murder case
4 tomorrow. I probably need to let him know that I
5 won't be there.

6 **THE COURT:** That's fine. And if you need
7 assistance, let me know, I'll be happy to put in a
8 call.

9 **MR. JOHNSON:** Thank you, Your Honor.

10 **THE COURT:** All right. I'll see y'all tomorrow
11 morning at 9:30 in the morning then.

12 (Whereupon, the proceedings were concluded
13 for September 23, 2004.)

14 (The following proceedings were held on
15 September 24, 2004.)

16 **THE COURT:** Is there anything that we need to
17 take up before the jury comes in?

18 **MS. CAMPBELL:** Your Honor, the only thing I
19 ask, and I'm sorry, I meant to address this
20 yesterday, is that in the inference from the felony
21 murder rule, if you can just instruct the jury that
22 either robbery or the purchase of drugs will be
23 felonies in this state.

24 **MR. JOHNSON:** And, Your Honor, of course, I
25 object to that. I think the way that you have it is

1 sufficient enough and any other reference to robbery
2 or the purchase of drugs would be in some ways kind
3 of admitting or giving the inference that there was
4 a robbery or attempt to purchase a drug or purchase
5 drugs. The State's main case is that their client
6 didn't have any drugs. And also, Your Honor, they
7 presented no evidence that there was a robbery.

8 **THE COURT:** What I will do -- I will in my
9 charge I won't specifically define armed robbery and
10 purchasing drugs as felonies, but what I will say is
11 that if one intentionally kills another during the
12 commission of a felony, such as a robbery or the
13 purchase of illicit drugs, the inference of malice
14 may arise. If facts are proven beyond a reasonable
15 doubt sufficient to raise an inference of malice to
16 your satisfaction, then this inference would simply
17 be an evidentiary fact to be taken into
18 consideration along with the other evidence in the
19 case and to give it the weight that you think it
20 deserves. And that will be the charge on the felony
21 murder. Anything else?

22 **MS. CAMPBELL:** Thank you, Your Honor.

23 **MR. JOHNSON:** I have nothing from the defense,
24 Your Honor.

25 **THE COURT:** You may ask the jury to come in.

1 (The jury enters the courtroom at 9:50 a.m.)

2 **THE COURT:** Good morning, ladies and gentlemen.

3 At this time, we are now ready to hear the closing
4 arguments of the attorneys. And as I told you
5 earlier in the trial, the closing arguments are not
6 evidence. But they will argue to you portions of
7 the evidence that you've heard or seen in an effort
8 to try to sway you to find the facts in accordance
9 with their view of what occurred.

10 Since it's not evidence, I do ask that you
11 listen very carefully to what they have to say for
12 they may cause you to think about the evidence in a
13 different light or they may raise questions that
14 you'll want to discuss among yourselves when it's
15 time for you to begin your deliberation.

16 When they have concluded those closing
17 arguments, then I will instruct you on the law to be
18 applied and then you may begin your deliberations at
19 that time.

20 Ms. Campbell.

21 **MS. CAMPBELL:** May it please the Court, Your
22 Honor.

23 **THE COURT:** Yes.

24 **MS. CAMPBELL:** Ladies and gentlemen, the first
25 thing I would like to do this morning, on behalf of

1 the State of South Carolina and the citizens of
2 Richland County, is to thank you for your service in
3 this case over the last week. I know the facts and
4 circumstances involving this case, as in every
5 murder, are not especially pleasant. It's not
6 something that necessarily any of us would want to
7 be informed about or have to learn about whether it
8 be in a courtroom, in our community or wherever.

9 But as I have noticed over the last several
10 days, each and every one of you has paid careful
11 attention. And on behalf of the State, on behalf of
12 the victim in this case, I want to thank you for
13 your service.

14 You know, Winston Churchill once said that jury
15 service is the highest duty one can render to one's
16 country in times of peace. And although many of our
17 citizens are having to fight a war across an ocean,
18 for those of us that are here, we must continue to
19 be active in the system and to participate. And,
20 again, on behalf of the citizens of this county and
21 the State of South Carolina, I thank you.

22 Now, this is the first time I've had the
23 opportunity to address you. And I'm sure it's
24 somewhat frustrating because y'all don't have the
25 opportunity to say anything. But I want to take

1 this time, and the first thing I'm going to talk
2 about is the law in the case, the law that applies.
3 And then you're going to hear from Mr. Johnson and
4 he's going to talk to you about his version of the
5 facts in this case. And then I'm going to have the
6 opportunity to get back up in front of you and talk
7 to you a little bit about the evidence and what it
8 shows.

9 But the first thing I want to say is as I'm
10 talking about the law, if I mischaracterize
11 anything, if I misstate the law, it is not
12 intentional on my part. You take the law as the
13 Judge gives it to you after you've heard from both
14 parties because what we say here today is not
15 evidence.

16 And in that same vein, ladies and gentlemen, as
17 you hear each side, both the State and the defense,
18 talk about the facts in the case and the evidence,
19 you remember the facts. If either side
20 mischaracterizes or tries to twist it, you remember
21 the facts, because the roles in this courtroom are
22 very well defined.

23 The role of the prosecution is to bring forth
24 all of the relevant evidence involving this case, be
25 it good, bad or ugly, if it's relevant to the facts

1 of what happened back on August the 3rd of 2002.
2 The role of the defense attorney is obvious, too.
3 He is to have a very zealous, and he has,
4 representation of his client to make sure his rights
5 are protected. Now, the role of the Judge is to
6 determine the admissibility of the evidence, what
7 you're allowed to hear as to the facts in this case.

8 But the most important role in this courtroom,
9 ladies and gentlemen, by far is your role because
10 you alone, each of you, individually, and then when
11 you get back to your jury room, collectively, must
12 determine what happened back on August the 3rd of
13 2002. And you must determine that based on the
14 credible, believable testimony and the evidence.

15 Now, you have heard all of the evidence that
16 you're allowed to consider in this case. And I want
17 to just take this opportunity to say this, too. You
18 must base your verdict on the evidence, the
19 testimony, the physical evidence, not on questions
20 by lawyers, not on innuendo, speculation,
21 conjecture. If a question is asked and the answer
22 is no, unless there is evidence to the contrary,
23 just because they ask a question, doesn't mean it is
24 even so or it existed, not on wishful thinking by
25 anybody either, base it on the evidence. And the

1 Judge will instruct you about that.

2 I also want to take this opportunity before I
3 get to the law to apologize if, over the last
4 several days, I've done anything to offend anyone.
5 At times, my questioning has been inartful, clumsy,
6 I get kind of caught up in things and want it to get
7 out. It wasn't intentional on my part. On behalf
8 of the State, please don't hold that against us.

9 There are times when evidence was not
10 admissible and then later you were able to hear
11 limited evidence and how it applied. And there are
12 rules and they're in place for a reason. And if I
13 have done anything over the last several days or if
14 Mr. Jeffries has done anything to offend you, please
15 don't hold that against the State.

16 Now, in every criminal case, it is somewhat
17 unique because as you observed over the last several
18 days, you have seen live testimony. And the reason
19 for that is very simple, ladies and gentlemen, under
20 our constitution, as it should be, the defendant has
21 the right to confront each and every witness.

22 And you've heard about statements. You've
23 heard about reports from the pathologist, from
24 different people in this case. There have been
25 expert testimony who, you know, they have reports

1 and those are not entered into evidence. In a
2 criminal case in this country, the witnesses are
3 required to come before you. You haven't seen any
4 video taped depositions or anything of that rapport.
5 You've heard about statements, but those aren't
6 entered into evidence.

7 And the reason for that is very simple, ladies
8 and gentlemen, because the defendant has the right
9 to confront and cross-examine each and every witness
10 and for you to have the opportunity to determine
11 their credibility, to determine their qualifications
12 in the case of expert witnesses to testify as to
13 what they have observed or tested.

14 You've also heard about other officers say
15 they've been at the scene, and the State is not
16 allowed, especially in this case where the issues
17 have been somewhat narrow, to bring forth every
18 officer that was at the scene that day to say the
19 same thing over and over. We're allowed to bring
20 forth different people who have something new or
21 different to add, who have a piece of the puzzle to
22 show the whole picture or who -- in some cases,
23 eyewitnesses who have observed or heard things there
24 at the scene. We're allowed to bring forth the
25 credible, relevant people who have something new to

1 add.

2 So just because, as you've heard in this case,
3 there were, say, 15 or 20 officers at that scene
4 searching and everything, because they didn't have
5 anything different to say from, say, Corporal Hall
6 or from Investigator Vinson, they're not brought
7 before you. That's called cumulative evidence. You
8 have heard all of the relevant evidence in each
9 person who can either set up something or give you a
10 different piece of information from someone else.

11 You've also heard from a number of witnesses,
12 and you may wonder why we heard these, because it's
13 very important in cases when testing is done that
14 may be crucial later to make sure that a chain of
15 evidence has been established, that the evidence was
16 not tampered with or altered or changed in any way.
17 And I submit, ladies and gentlemen, there is
18 absolutely no dispute in this case in this courtroom
19 that the chain of evidence, such as on the gunshot
20 residue kit, was complete, that the evidence was
21 secured properly and that it was submitted properly.
22 And that's why you heard from those witnesses.

23 Now, I want to talk a little about the law.
24 The burden of proof in every criminal case, as it
25 should be, is on the State of South Carolina to

1 prove this defendant, Ayree Henderson, guilty beyond
2 a reasonable doubt. Guilty beyond a reasonable
3 doubt. That is our burden. It stops right here,
4 where it should.

5 It's not up to him to have to prove himself
6 innocent. Although, I'll talk about once they
7 choose to put up a defense, you judge it the same
8 way. But this burden is on the State. And as
9 Mr. Jeffries told you in his opening statement, in
10 this case, with these facts and this physical
11 evidence, that is a burden the State welcomes.

12 Now, what is the definition of guilty beyond a
13 reasonable doubt? In civil cases, it's only
14 necessary to prove that a fact is more probable than
15 not. In criminal cases, the proof has to be a
16 little more powerful than that. And our Courts over
17 the last several years have defined reasonable
18 doubt, and this is just an aid you can use, some
19 people say a reasonable doubt is the kind of doubt
20 that makes a person hesitate to act.

21 And in that same vein, the Courts have gone a
22 little bit further in a case called State versus
23 Darby here in South Carolina, which is a Supreme
24 Court case. And in this case, they have defined
25 reasonable doubt, and this is a tool you can use in

1 determining things because the courts have
2 recognized that proof beyond a reasonable doubt is
3 proof that leaves you firmly convinced of the
4 defendant's guilt.

5 There are very few things in this world that we
6 know with absolute certainty. And in criminal
7 cases, the law does not require proof that overcomes
8 every possible doubt. If, based on your
9 consideration of the evidence, you are firmly
10 convinced, and that's all, just firmly convinced of
11 the defendant's guilt, then you must find him
12 guilty. If, on the other hand, you think that there
13 is a real possibility that he's not guilty, then you
14 should find him not guilty.

15 That is the law in this state and that is kind
16 of a way for you to look at it, an aid when y'all
17 are back there deliberating to use as to what is
18 proof beyond a reasonable doubt.

19 I submit, ladies and gentlemen, in this case,
20 based on the evidence and the testimony we've heard,
21 this is proof way beyond a reasonable doubt, but all
22 the burden on the State is to prove beyond a
23 reasonable doubt.

24 You have one indictment, but as in many cases
25 when a crime is charged, there are what we call

1 lesser included offenses. And you are going to have
2 several lesser included offenses of the crime of
3 murder.

4 As Mr. Jeffries told you in his opening
5 argument, the definition of murder in our code of
6 laws is perhaps the shortest one for the most
7 egregious crime in our laws, but it is very simple,
8 murder is defined as the unlawful killing of any
9 person with malice aforethought either expressed or
10 implied. So very simply, ladies and gentlemen, for
11 a person to be guilty of murder, they must have
12 killed someone with malice aforethought either
13 expressed or implied.

14 And what is expressed or implied? The law
15 recognizes in certain cases, such as rape, murder,
16 violent crimes, you aren't going to have usually a
17 whole lot of eyewitnesses around when those types of
18 crimes are committed, not typically. So they
19 acknowledge that you can imply malice when, in fact,
20 you end up having expressed malice. However, ladies
21 and gentlemen, in this case, we do have expressed
22 malice.

23 What is expressed malice? That is when a
24 person expresses or vocalizes or does something to
25 show an intent to commit a crime, an intent. In

1 this case, you heard from independent witnesses, I
2 told you not to with me, you heard that was the
3 statement before he racked the gun and shot him.
4 That's expressed malice. You don't have to find
5 that, though.

6 You will hear, and I'll go back to this, the
7 use of a deadly weapon, and a pistol, a revolver or
8 a semiautomatic is a deadly weapon by anybody's
9 definition, the use of that gun alone, especially in
10 the commission of a felony, there are multiple ways
11 to prove malice in this case, the use of a deadly
12 weapon alone is enough to infer malice. And I'll
13 get back to that.

14 Now, what is the definition of malice? You
15 have to have a killing and you have to have malice
16 aforethought.

17 What's malice aforethought? The Judge will
18 instruct you that at some point, it can be a second
19 before, it can be the point when he's racking the
20 gun, before he picks it up and shoots it, there has
21 to be what we call malice, a wickedness in his
22 heart, an intent to pull the trigger. Malice can be
23 inferred just from recklessness, and I'll get back
24 to that, but it has to exist for some time, not
25 days.

1 And you'll hear the Judge, listen carefully,
2 murder is not defined as there doesn't have to be
3 premeditation. There can be, there doesn't have to
4 be, motive, there can be. Listen to the Judge, she
5 will not instruct you in order to find someone
6 guilty of murder, you have to find that he
7 premeditated or murdered someone. In this case, if
8 you find that he just went there to buy drugs, if he
9 just went there to rob him, whatever his reason, you
10 don't have to find any real reason. And he pulled
11 out his gun, he just got mad because he was high.
12 If he pulled out his gun and shot, it's malice.

13 The definition of malice in it's popular sense,
14 the term malice conveys the meaning of hatred, ill
15 will or hostility towards another. The word
16 malicious comes from malice. I think that's the
17 easiest way to describe it. It's kind of an evil,
18 not evil, but it doesn't even have to rise to that
19 level, hateful, mean spirited act.

20 Malice is a term importing wickedness and
21 excluding just cause or excuse and I'll get back to
22 that. It is something that springs from wickedness,
23 from depravity, from a heart devoid of social duty
24 and fatally bent upon mischief. Malice may be
25 implied for the willful, deliberate and intentional

1 doing of an unlawful act without just cause or
2 excuse or just from the use of a deadly weapon. The
3 use of a deadly weapon alone is enough to infer
4 malice.

5 Malice has gone further in the definitions in
6 our courts. In another case, it has been defined in
7 the following way: Malice is a wicked condition of
8 the heart. It is a wicked purpose. In its popular
9 sense, malice conveys the meaning of hatred, ill
10 will or hostility towards another.

11 In its legal sense, however, it is employed in
12 the description of murder. It is not a necessity,
13 import ill will towards the individual. We don't
14 have to prove he went there specifically to shoot
15 him. We do have to prove that while he was there,
16 he shot him and it wasn't in self-defense, but
17 signifies, and this captures this phrase, a general
18 malignant, recklessness of the lives and safety of
19 others or a condition of the mind which shows a
20 heart regardless of social duty and fatally bent on
21 mischief.

22 And I submit, ladies and gentlemen, if that
23 doesn't describe Ayree Henderson back on the early
24 morning hours of August the 3rd, nothing does, a
25 heart regardless of social duty and fatally bent on

1 mischief.

2 Now, the law goes even one step further because
3 when a person is out there committing certain
4 crimes, such as felonies, the law says you can infer
5 malice from the attempt or the commission of that
6 felony alone. The law says if one intentionally
7 kills another during the commission of a felony, the
8 implication of malice may arise.

9 And a felony, as the Judge will instruct you,
10 is the attempt to purchase drugs. A felony is
11 robbery or armed robbery. Those are felonies. And
12 listen to the Judge.

13 If he goes there with that intent and during
14 the course of that, during the course of that
15 felony, he shoots someone, and it's not that the gun
16 went off accidentally like they want you to believe,
17 but he shoots someone, then it rises to the level of
18 murder. And I submit, ladies and gentlemen, there
19 is no shooting, no killing in this county that gets
20 more malicious than this. This reeks of malice.

21 The lesser included of murder, because whenever
22 the greater offense is charged, there's a lesser
23 included offense, and you will hear from the Judge,
24 she will charge that if you find that he killed him,
25 but that you do not think under any one of those

1 ways that you can infer malice, there was expressed
2 malice, inferred malice in, I believe, three
3 different ways, if you don't think that the State
4 has proven that he killed him with malice, then you
5 can consider a lesser included charge and what is
6 that?

7 It's called voluntary manslaughter. As the
8 Judge will tell you, just plain manslaughter. And
9 there's a difference because I'm going to tell you
10 about an even lesser included offense, which is
11 called involuntary manslaughter. So there is murder
12 and manslaughter is the lesser included, and then
13 the least is involuntary manslaughter and I'll get
14 to that in a minute.

15 What is the definition of voluntary
16 manslaughter? The State must prove beyond a
17 reasonable doubt that the defendant took the life of
18 another in sudden heat of passion and upon
19 sufficient legal provocation. That is the
20 definition of voluntary manslaughter. And the
21 easiest way to describe it sometimes, and the Judge
22 will define it this way, is that, basically, it's a
23 killing without malice.

24 If you feel like that the State has not proven
25 that this man on that night was fatally bent on

1 mischief and his heart was devoid of social duty and
2 he was there to -- we don't have to prove all of
3 those by the way, I didn't mean to say that, you
4 just have to prove any one of those, you can infer
5 malice from or that when he chambered that round
6 and, Man, I told you, the words, and I don't want to
7 misquote the witnesses, you remember what they
8 heard, then you can consider voluntary manslaughter.
9 And I submit, ladies and gentlemen, after you hear
10 for all -- the stories and everything, the issue is
11 trying to resolve this lesser included, to get you
12 voluntary manslaughter.

13 The exercise of a legal right, such as a man
14 standing in the doorway of his own home, no matter
15 how offensive, no matter how offensive he said, Get
16 out of here, is never sufficient legal provocation
17 for voluntary manslaughter. And, remember, that's
18 important in this case. Alonzo Gale was in his
19 home, asleep in his bed when that man chose to go
20 there.

21 In the heat of -- if the heat of passion had
22 cooled or if there was enough time between the
23 provocation, if any, because if you don't find there
24 was provocation, it's murder not manslaughter, if he
25 had time, you know, reasonably like leave the scene,

1 then it's murder not manslaughter. And the killing
2 of passion -- of a reasonable person to cool, the
3 killing would not be voluntary manslaughter. In
4 deciding whether a reasonable person would have
5 enough time to cool off, you should consider all the
6 circumstances surrounding the killing.

7 And, again, the law allows you to infer. And
8 the reason for that, ladies and gentlemen, is a lot
9 of times the reason you're able to hear from experts
10 is because the law recognizes we aren't always going
11 to have credible eyewitnesses, we aren't always
12 going to have people right there. You have to infer
13 from the facts and the circumstances what happened
14 that night to a reasonable degree.

15 So for voluntary manslaughter, the defendant
16 took the life of another in sudden heat of passion
17 based upon legal provocation. You must have both of
18 those for it to be reduced from murder to
19 manslaughter. And you must find that there was no
20 malice present, that he wasn't acting with malice.

21 The lesser included offense of manslaughter, or
22 voluntary manslaughter as we call it sometimes, it
23 can be called manslaughter, is involuntary
24 manslaughter. And, basically, ladies and gentlemen,
25 involuntary manslaughter is an unintentional

1. killing. Involuntary manslaughter is like having --
2. it's almost accidental, but you were doing
3. something not so -- you were acting recklessly.

4. Involuntary manslaughter is the unintentional
5. killing of another without malice, of course,
6. because this is the least by far of the three, but
7. while engaging in unlawful activity, such as
8. purchasing a gun, carrying a gun, anything of that
9. sort, not naturally tending to cause the death or
10. great bodily harm. And I submit, ladies and
11. gentlemen, when you go to someone's house with a gun
12. in your hand, that that naturally tends to cause
13. bodily harm, so that makes this not involuntary
14. manslaughter, or the unintentional killing of
15. another without malice while engaged in lawful
16. activity. And there's no dispute by the defendant's
17. own testimony nothing he did that night was lawful.
18. With reckless disregard for the safety of others.
19. That is involuntary manslaughter.

20. So whenever you get charged with assault or
21. whatever with a greater charge, you're going to have
22. the lesser charges submitted for your consideration.
23. And I submit, ladies and gentlemen, in this case,
24. with these facts, malice existed.

25. You're also going to hear, as the defense

1 attorney said in his opening statement, that this
2 was just -- you're going to be charged on the
3 elements of self-defense. And the reason we want
4 you charged on the elements of self-defense is
5 merely getting up there and saying I acted in
6 self-defense is not enough. There are four
7 essential elements and each one of these elements
8 must be met by the defense in order for it to be
9 self-defense.

10 And in this case, for it to be self-defense,
11 you have to believe the defendant's version of what
12 happened because anything else is not self-defense,
13 it's not involuntary manslaughter. And the only
14 issue is between whether it was manslaughter or
15 murder.

16 Self-defense. To establish self-defense, there
17 must be evidence that, number one, the defendant was
18 without fault at bringing on the difficulty. By his
19 own testimony, he went banging on the door that
20 night trying to purchase drugs, according to his own
21 story, if you even want to believe it. That's his
22 version of why he went there. By his own testimony,
23 he's at fault with bringing on the difficulty.

24 You must find that in addition to that, he
25 believed he was in imminent danger of losing his

1 life or sustaining serious bodily injury and that a
2 reasonably prudent person of ordinary firmness and
3 courage would have entertained the same belief and
4 that he had no other probable way of avoiding the
5 danger.

6 Now, if you believe what that defendant
7 testified to -- even if you believe everything he
8 said, he's still at fault at bringing on the
9 difficulty, but he must meet, and listen to the
10 Judge, don't listen to me, when she charges you on
11 the elements of self-defense, he must meet each and
12 every one of these elements for it to even be
13 self-defense.

14 You will also hear from the Judge about
15 voluntary intoxication. On the night in question,
16 there is evidence, according to the defendant, that
17 he ingested several drugs -- two drugs, excuse me,
18 and alcohol. But, ladies and gentlemen, that's no
19 excuse for his actions because the law recognizes
20 people cannot get off just because they voluntarily
21 choose, and he chose, to be a drug addict, to drink
22 alcohol.

23 Voluntary intoxication is never an excuse or a
24 defense to a crime. A person who voluntarily
25 renders himself intoxicated is no less responsible

1 from his acts while in such condition. If a person
2 voluntarily drinks intoxicating liquors and becomes
3 intoxicated or if he voluntarily takes drugs and
4 becomes inebriated and if, while in that condition,
5 commits an act that will be crimes that were
6 committed by a sober person, the fact of drunkenness
7 would not relieve him of responsibility.

8 And the Judge will charge you it doesn't matter
9 if it's alcohol, it doesn't matter if it's drugs, if
10 he voluntarily does it, it's not a defense. He
11 doesn't get off. And that's the law in this state.

12 Now, in every case, we must also prove that the
13 defendant acted with criminal intent. And what is
14 criminal intent? The law also recognizes just as
15 they do about you can have inferences to prove
16 malice of what went on that night that it can prove
17 criminal intent.

18 We also -- the law also recognizes that you
19 can't dissect someone's brain, you know, spread it
20 open and determine exactly what they were thinking
21 at the time. So they say to look at the actions and
22 the words and surroundings of what was going on at
23 the time in determining criminal intent. And I
24 submit, ladies and gentlemen, there's no issue as to
25 criminal intent in this case.

1 Now, there are two types of evidence that you
2 can consider in rendering your verdict, and the
3 Judge will instruct you, one is called direct
4 evidence and one is called circumstantial evidence.
5 And she will also instruct you there's absolutely no
6 weight -- more weight you give to one than the
7 other. And in this case, ladies and gentlemen, you
8 actually have direct testimony, as well as
9 circumstantial evidence or testimony. They
10 corroborate each other because, in this case, you've
11 heard from several people who heard or in different
12 places and heard or saw different things that night.

13 Now, what is direct evidence? It's
14 traditionally referred to as eyewitness evidence.
15 That is evidence a person perceives through their
16 senses, what they hear, what they see, what they
17 smell, feel, touch, things of that nature, that's
18 called direct evidence. In this case, ladies and
19 gentlemen, you heard from, I believe, four different
20 people from the State who saw or heard different
21 things that night around this crime about what
22 happened that night, that's direct testimony.

23 Now, in this case, even more importantly in
24 this case perhaps than any other, is circumstantial
25 evidence. And what kind of evidence is that? Very

1 simply it's defined as a proof of the chain of
2 circumstances or facts that lead one to the
3 conclusion of a fact or the nonexistence of a fact.

4 In other words, the best example, I go to bed
5 tonight, when I looked out my window as I go to bed,
6 the ground is green, there's nothing on it. I wake
7 up the next morning. When I wake up seven or eight
8 hours later, as far as I can see, there's snow.
9 Now, there's a reasonable inference, therefore, from
10 the facts and circumstances of what you observed, or
11 the testing in this case, that it snowed while I was
12 asleep.

13 Now, the defense is going to get up here and
14 say, well, no, your next-door neighbor brought in a
15 snow plow from North Carolina and decided to trick
16 you and just spread snow all over the neighborhood
17 for fun.

18 That's not a reasonable inference because in
19 each -- in every case, ladies and gentlemen, in this
20 case especially, your common sense, the values, the
21 common sense that you brought with you to court it
22 is so important. And in this case, ladies and
23 gentlemen, look at the evidence the witnesses told
24 you and look, because luckily, luckily in this case,
25 we have photographs of every drop of blood, we have

1 photographs of that crime scene, we have experts who
2 were able to testify, the direct evidence is totally
3 and completely corroborated by the circumstantial
4 evidence, the gunshot residue kit, the pathologist's
5 testimony, the crime scene investigator. It
6 couldn't happen the way they said. It had to
7 happen, because of the circumstantial evidence, the
8 way four independent witnesses told you it did.

9 Now, you've also heard expert testimony in this
10 case. And the law allows in certain cases, because
11 of the inferences we must prove, that if a person
12 has certain training and certain education, they are
13 able to come before you and to give you opinions.
14 Normal people like me, I can't give an opinion when
15 I get on the stand because I'm not an expert. But
16 if a person is trained in a field, such as crime
17 scene investigation, such as pathology, forensic
18 pathology, we happen to be lucky in this state to
19 have one of the leading forensic pathologists in the
20 country, Clay Nichols, because of their training and
21 their education, they're able to come before you
22 based on their findings, their testing, their
23 observations and draw conclusions and tell you what
24 those conclusions are.

25 Now, with expert testimony just as with every

1 other testimony, use your common sense, judge them
2 in the same way as you would anyone else. You judge
3 whether they're believable or credible. But I
4 submit, ladies and gentlemen, you've now heard all
5 of the expert testimony you can consider in this
6 case.

7 I just have a couple more things. You also
8 heard about the police conduct in this case. And
9 it's very important in every case to make sure that
10 the police did what they were supposed to do, that
11 there was no police misconduct. And in this case,
12 ladies and gentlemen, the police jumped through the
13 hoops. They preserved the chain of evidence. They
14 submitted the evidence properly. They respected the
15 defendant's rights when he had a lawyer. They did
16 everything by the book. This case is not a case of
17 any police misconduct not in this courtroom, not in
18 this case.

19 Now, this case, let's face it, it boils down to
20 credibility because you have heard two different
21 versions of what went on that night. And that's
22 why, again, I talked about the physical evidence,
23 which I'll get back to, two different versions.

24 And in determining credibility, because you all
25 must determine based on the credible evidence what

1 happened, the Judge will tell you you can look at
2 several factors: You can look at the witness'
3 demeanor on the stand; were they forthright; were
4 they hesitant; was their testimony consistent with
5 other testimony; was their testimony consistent with
6 other evidence; was it corroborated by the physical
7 evidence.

8 You can believe all of a witness' testimony,
9 none of it, some of it. It's totally up to you.
10 You can believe one against many, many against one.

11 You can also, and this is very important,
12 determine whether or not they have a bias or a
13 prejudice. Do they have a reason to come forward
14 and say certain things or to try to make things look
15 the way they want them to, bias or prejudice?

16 And in that same vein, whenever a witness
17 elects to take the stand, you are allowed to hear
18 about certain prior convictions. And the reason for
19 that, ladies and gentlemen, is not so anybody can go
20 on a smear campaign, no one's in here saying that
21 anybody's guilty of a crime because of crimes they
22 have done in the past, but you can use it in your
23 consideration of whether or not they're believable,
24 whether or not their testimony is credible and that
25 is the reason you were able to hear about certain

1 prior convictions on some of the witnesses in this
2 case. It's not an attempt to embarrass anyone. It
3 is merely another tool you use in determining the
4 credibility.

5 You've also heard about prior statements and
6 you can consider those. And, in this case, it's
7 very important because three witnesses that day gave
8 prior statements and their testimony here in the
9 courtroom has been consistent with those.

10 You have heard about with Terrell Myers one
11 statement she gave and there's one line in there
12 that seems to say that the guy went out the back
13 door, came back and went out again and did like in a
14 big circle. You judge her credibility. Was the
15 statement sloppily written? Yes. But you judge,
16 why would she make that up? No one knew, not the
17 police officer, not a witness that this was going to
18 be self-defense until Tuesday. She told you the
19 truth and she swore on the Bible and she
20 understands, like he told her, what perjury means,
21 you judge the credibility.

22 And I beg you, I plead with you, judge Kathy
23 Wilson, you judge Everett Wilson, Terrell Myers and
24 Dianne Crawford. Does their testimony corroborate
25 completely by the evidence as much as they wish it

1 wasn't so? Is their testimony consistent with each
2 other? And you know what makes them credible? They
3 didn't get up here and tell you that they saw the
4 shooting, that they saw Ayree Henderson pull out a
5 gun shooting in cold blood.

6 Just like they did that morning within a few
7 hours of this heinous crime, because being involved
8 in someone dying, literally blood gurgling out of
9 them is a traumatic event, they told what happened
10 just like they did two years later here in court.
11 Is that credible? They didn't have two years to get
12 their stories straight. Judge them, look at the
13 evidence and judge them.

14 And the defense has absolutely no obligation to
15 get up here and put any evidence up. But, ladies
16 and gentlemen, once they do, you judge their
17 credibility the same way you do the State's
18 witnesses because once they choose to put up a
19 defense, in this case, an affirmative defense of
20 self-defense, it is to go under the same scrutiny as
21 any other witness as far as credibility is
22 concerned. You see who they put up, who they didn't
23 put up in the same manner you would judge us.

24 All we ask, ladies and gentlemen, in this case,
25 hold him responsible for this crime for what he did,

1 for his choices. And it doesn't matter if he was
2 drunk or high, he made choices and he's got to be
3 held responsible for the citizens of this county.
4 They deserve it. Thank you.

5 **THE COURT:** Mr. Johnson.

6 **MR. JOHNSON:** Thank you, Your Honor. May it
7 please the Court.

8 Ladies and gentlemen of the jury, good morning.
9 I want to thank you also for taking the time to
10 listen to this case. I don't have anything on my
11 desk over there, that's because everything that I
12 can do, I've done. It's your turn to do your job.
13 And I hope that you don't do the job that the police
14 have done in this case because if they had done
15 their job, you will probably already know exactly
16 what you're going to do.

17 The main key to this whole case is that people
18 did not do their job. So now you have a family over
19 here that has a son that's dead. You have a
20 gentleman over here that's charged with killing that
21 son. And except for this gentleman here, the young
22 lady that testified yesterday and their dead son,
23 nobody else knows exactly what happened. We would
24 have a better understanding what happened if the
25 police did their job, but they didn't.

1 The theme of this whole case is somebody's
2 lying. Now, you're going to have to make a
3 determination as to who's lying. But I tell you
4 what, there's been some lying in this case. There's
5 been some testalying (sic).

6 You know the reason that this whole thing about
7 why they make a big deal about whether he went back
8 through the door and came out the front door is so
9 important, that's the whole key to this whole case,
10 because if my client went there to buy some drugs,
11 they had an argument, he was wrong. If they got
12 into some type of fight in that back door, then he
13 was wrong. And, therefore, it would elect a defense
14 of self-defense because in order to have
15 self-defense, you have to show that you did not
16 cause the conflict, that you was withdrawing from
17 the conflict. And once you get over that hurdle,
18 then the rest fits.

19 He shows a gun, you have to believe that you're
20 in imminent danger and you had no other choice but
21 what you did in defending yourself and killed an
22 individual. But if you contributed in any way to
23 cause this incident, then self-defense is out the
24 door.

25 So that's why it's so important. That's why

1 people made a big point of lying about that because
2 see, if my client was walking away from the house,
3 he was withdrawing from the scene. And if that
4 individual, the victim as they call him, went back
5 inside his house safely, alive, no shooting, no
6 injury, no nothing and shut his back door, then went
7 out his front door and followed my client, my client
8 should be innocent and should be found innocent and
9 found -- because of self-defense. He withdrew from
10 the action. He was not at fault once he moved away.
11 And that's why it's important about where the shot
12 was.

13 If the shot is in the back door, then this
14 gentleman was in his house. But if the shot is on
15 the corner where the witness testified where the
16 shot was, where the blood is on the corner, remember
17 when I asked investigator -- the CSI, Mr. Castro
18 (sic), I asked him about the blood spatter, remember
19 he got up there as an expert and he testified he
20 could see where the blood went through the house and
21 you can follow the droplets. But remember when I
22 asked him, well, what about the blood coming from
23 the corner of the house, he said, well, I can't tell
24 from that. So, what, you can tell where blood
25 matches your story, but when blood goes against your

1 story, you disagree?

2 This expert stood up and told you that you have
3 high velocity blood spatter all over the door, and
4 I'm going to show you the pictures in a minute, and
5 there was blood all around the door, that that would
6 indicate a gunshot. But the other expert, who the
7 prosecution just said is a world renowned expert,
8 said that if you were shot in the neck and you have
9 a major artery, such as the one that was severed in
10 this, spurting out blood every time the heart beat,
11 it was under high pressure, that that would also
12 bring out high velocity blood spatter.

13 So, therefore, under our belief and our theory
14 in this case, if there was a fight at the corner of
15 the building, the gentleman was shot, he fell, he
16 got up, he walked back to his house holding his neck
17 with his hand, blood all over his hand, he stops at
18 the door, and by their own testimony, he knocked on
19 the door, so he's leaning against the door, that's
20 where all the blood comes from at the door, high
21 velocity blood coming out of his neck hitting the
22 door.

23 She opened the door. He walks in, he goes for
24 a phone because he's trying to save his life. She
25 grabs the phone from him. He walks out the door

1 towards the car, because I'm assuming he was trying
2 to get to his car to go get help, and he stumbles
3 and falls by his car and he dies. That's the case.
4 The question is was it self-defense?

5 One thing I can tell you, I honestly believe
6 that we have proven to you that this is not murder.
7 It might be something less than that, but this is
8 not murder. You have a eyewitness in this case who
9 came and testified, and the main thing that I made
10 sure that I told each one of the defense witnesses,
11 just tell the truth. You're not here because you
12 sold drugs. You're not here because of where you
13 live. You're not here because of what you smoke.
14 You're here because a man is dead and the family,
15 the jury and everybody here deserves to know the
16 truth.

17 Now, if there's been any lying done, it's been
18 on the prosecution side because they did not do
19 their job initially. Now they come in here two
20 years later, two years, and try to make up a story
21 to fit their story.

22 Think about this, we in the United States can
23 go to Iraq, find Saddam Hussein in a hole in the
24 ground, that eyewitness lived one mile away from the
25 murder scene and after two years, they couldn't find

1 her, think about that. They wasn't trying to find
2 her because she was not going to tell the story that
3 they wanted her to tell. They have an eyewitness.
4 They didn't even put her up for the prosecution
5 because why, because she was going to tell the
6 truth.

7 All I ask of you is to look at what you've
8 heard over the last two days, each of you make your
9 decision. This stuff about CSI you see on T.V.,
10 well most of the time you end up with people like
11 Officer Castro, okay?

12 And as I told the SLED agent, the one that did
13 the gun residue test, he makes one fatal assumption
14 every time he makes the test, he assumes that the
15 people that took the exam at the scene did it
16 properly. If they don't do it properly, you're not
17 going to have a result.

18 They're saying no gun residue on his hand. Do
19 you -- when you take these pictures back in the
20 back, look at them, look at the amount of blood.
21 Think about it. He also said -- I asked him what
22 would make gun residue go away from your hands, he
23 said, Blood.

24 The State intentionally showed you all of this
25 blood in their attempt to show you how gruesome it

1 was, but what they have shown is blood on your hands
2 will make gun residue go away. If you bag up a
3 person's hand with nothing but blood on it, what do
4 you got, bloody hands.

5 I, on behalf of my client, had attempted to
6 show you the truth. You make the decision about
7 whether he's guilty or innocent. This was not
8 murder. What it was, that's up to you as a jury to
9 decide, but this was not murder.

10 I ask you to check the credibility of the
11 witnesses. These people got up and they talked to
12 you. But the prosecution own witnesses -- the
13 prosecution own witnesses testified that he --
14 Mr. Wilson testified he heard a gunshot outside of
15 his window. This is the house. This is Mr.
16 Wilson's house. He testified he heard a gunshot
17 outside of his window. The investigator for the
18 police said he was shot in front of his house, which
19 is over here. It's impossible. It's impossible.

20 The one bullet that they found was found on the
21 corner. Blood was found on the corner. There
22 wasn't blood going this way and coming back. Blood
23 was found on the corner with a line coming through
24 the house.

25 This is State's Exhibit 34. When you take it

1 back, please take a look at it. This shows the
2 corner of the building. And you can notice the
3 corner because if you look at it, they have the
4 corner here and Moe's house was further down. There
5 is blood from here going back towards the house.
6 Just look at the evidence, that's all I ask you to
7 do, sit down, take the time and look at the evidence
8 and you will see, as I have shown, that the evidence
9 indicates that this was an unfortunate incident in
10 which a person was killed, but it was self-defense.

11 There are no winners in this case, okay? A
12 family has lost a son. An individual is sitting
13 here with his life on the line. And no matter what
14 the outcome, there's no winners.

15 But one thing for sure, if the police had done
16 their job, you might would have a better feeling
17 about the outcome of this case when you make your
18 decision one way or the other because you would be
19 in a better position of understanding and knowing
20 that you have made a right decision. So they have
21 placed a great burden upon you because now you're
22 going to have to do their job. You're going to have
23 to take this evidence that they had two years ago
24 and figure out what happened.

25 All I've tried to do is show you all of the

1 evidence, the truthful evidence. I had to put an
2 officer up here and he got up and said she only said
3 one time. And then after I got up and
4 cross-examined a little more, remember he said,
5 Well, yes, she said two times? He wrote it down.
6 Now, some people might say well he misspoken, some
7 people might say, well, he misunderstood your
8 question. He lied, plain and simply lied.

9 I'm from the country so forgive me. Down in
10 the Low Country where I'm from, you call it what it
11 is. People lying in this case. You make the
12 determination it was lies.

13 My client, he's not the best in the world.
14 He's not the worst in the world. What he is is a
15 human being. And he has a right to have his case
16 heard, and not based on he sold drugs, he did this,
17 he's not here for that. He's here for killing an
18 individual, intentionally killing an individual.

19 They would have you believe he went there with
20 the intent on robbing someone. What was he going to
21 rob him of? If he wasn't a drug dealer, then he
22 didn't have nothing. There was no evidence that he
23 -- that was any robbery attempt.

24 Their best witness that anything was going to
25 happen was Ms. Crawford, Ms. Dianne Crawford, who

1 said, I'm not that high, who said that she was
2 kneeling beside him when he died. And remember I
3 asked the officer who said that he was there,
4 Officer Hall, and I asked him, Was anybody around
5 you when the individual died, and he said, No.
6 Their own witnesses. It wasn't a witness I put up.

7 The law that you have in this case, you're
8 going to be instructed by the Judge. Ms. Campbell,
9 in her attempt to address you, for lack of a better
10 word, she's biased. She represents the State and
11 she has a commitment to do and she does it well.
12 She does it extremely well. The problem that she
13 has with her whole case is the evidence. It doesn't
14 match her case. So she has to persuade you by
15 giving you things, all right?

16 We had a thing in law school that said that if
17 you can't dazzle them with brilliance, dazzle them
18 with bull and that's what they're trying to do.
19 Look at the evidence, that's all I'm asking you to
20 do.

21 Defense attorneys for a long time have been led
22 to, you hear it on T.V., tell the jury, you know,
23 smoke and mirrors, we hold a mirror up and it's not
24 what it seems. I'm not asking you to do that. I'm
25 just asking you just look at the evidence. Do not

1 let them do smoke and mirrors.

2 You will be instructed by the Judge on about
3 four or five type of verdicts that you may come back
4 with, one is murder. I am confident that we have
5 proven that this isn't murder. And I'm not even
6 going to address that but briefly. Murder is malice
7 aforethought, meaning that a person went there with
8 a wicked thought or a wicked purpose to do what he
9 did. And if you find that, then find my client
10 guilty of murder and we'll leave that at that.

11 The other one is voluntary manslaughter, that
12 is something similar to a fight. And remember, I'm
13 giving you my belief on how -- my understanding of
14 the law. The Judge is going to actually give you
15 the actual law itself. But voluntary manslaughter
16 is like you're in a fight with an individual and the
17 individual is killed.

18 Involuntary manslaughter is an unintentional
19 killing. It's something where -- where you're
20 playing with a gun or you're having to struggle with
21 someone over a gun and, unintentionally, you kill
22 him. Like you and your friend are struggling over a
23 gun and, unintentionally, it goes off and kills him,
24 or -- or -- or you have no intent on doing the final
25 result.

1 Self-defense is just that, that this person was
2 killed because if this person was not killed, you
3 feared for your own life, and that is under the
4 belief that is reasonable. You have to show that a
5 reasonable person in the same situation would have
6 felt the same way, as well as you didn't contribute
7 to bringing on the action yourself, that you were
8 trying to withdraw from the action.

9 Those are the verdicts that you will be given
10 in this case. And I ask you to look at each one of
11 those and examine the evidence and make your
12 decision based on that. All that is before you is
13 that this is not murder. What it is other than
14 murder, you decide, but this is not murder.

15 I don't prepare a statement or anything to tell
16 the jury because by the time we get to this point,
17 if you don't know the answer, I sure can't tell you
18 anymore. All I ask you to do is that this man
19 deserves each and every one of you to take your time
20 and look at everything, make your decision based on
21 what you've seen, what you observed.

22 The prosecution is going to tell you things to
23 -- that will make you sway their way. I'm going to
24 tell you, look at the evidence and come to whatever
25 conclusion you come to. But you have common sense,

1 that's why you are the jury, use your common sense,
2 look at the evidence and all I ask is that you judge
3 my client justly. And whatever that result is,
4 then, as I told my client, you made your bed, you
5 have to lay in it. Thank you.

6 **THE COURT:** Any rebuttal?

7 **MS. CAMPBELL:** May it please the Court, Your
8 Honor.

9 **THE COURT:** Yes, ma'am.

10 **MS. CAMPBELL:** You made your bed, you have to
11 lay in it. And I submit, ladies and gentlemen, that
12 is one thing that the defense attorney and I agree
13 on. Ayree Henderson's choices, his actions, his
14 malice made his bed and he does have to lie in it.

15 And I'm going to talk to you a little bit about
16 the facts, ladies and gentlemen. And, again, you
17 remember the facts as you heard them from the stand,
18 the testimony, not innuendo, conjecture or wishful
19 thinking, the testimony. If I misquote, I don't
20 mean to, you remember, because you alone must
21 determine the facts. And then you take that law as
22 the Judge gives it to you.

23 Now, in every case when I come into a
24 courtroom, as I did on this Tuesday and I was even
25 in jury qualification, I believe, on Monday, you try

1 and anticipate what the defense is going to be. In
2 a murder case typically, identification, do I have
3 the wrong person; oh, it was an accidental shooting;
4 oh, it was self-defense. And as I listened to this
5 defense attorney's opening statement, I thought it
6 would become crystal clear what the defense would
7 be. Very simply, the facts in this case were
8 self-defense, that's what he said in his opening
9 statement.

10 But as I listened and watched the
11 cross-examination over the last several days and as
12 I just heard his closing argument, that isn't the
13 defense at all in this case because even Mr. Johnson
14 could not get up here and with a straight face argue
15 that this is self-defense. All he has argued and
16 all he has tried to do is to confuse the issues or
17 to rattle or to make the facts not look like the
18 facts in order for you to benefit his client. As he
19 just said, I don't know what this is, but it's not
20 murder.

21 And I submit, ladies and gentlemen, in his
22 cross-examination, which he did vigorously as he
23 should, in his challenging every witness, which he
24 should do, all he is attempting to do is to cloud
25 the issue enough so that you resolve any doubt in

1 favor of him and only find him guilty of voluntary
2 manslaughter.

3 There's an old joke from law school and it's
4 not a dazzle joke or anything. It's about a lawyer
5 and a preacher are walking down the sidewalk and it
6 had rained the day before and there's mud on either
7 side and there's a puddle right there next to the
8 street. And the preacher looks down and he looks
9 into the puddle. And at the bottom of the puddle is
10 a silver dollar, you can see it plain as day. And
11 he looks at the lawyer and he says, look, there's a
12 silver dollar. And the lawyer picks up a stick and
13 he stirs up the water and the silt starts to cloud
14 the water and you can't see the dollar anymore. And
15 he looks at the preacher and he says, what silver
16 dollar.

17 I submit, ladies and gentlemen, don't let them
18 muddy the facts and the evidence in this case
19 because you have heard two stories. As he also told
20 you in his opening statement, there are two sides to
21 every story, but there's a third side in this case?
22 No, ma'am, no, sir. There is but one side in this
23 case with these facts. And even he has just
24 admitted that the best it can be is voluntary
25 manslaughter.

1 And I want to talk to you a little bit now
2 about the facts, not my speculation. I'm not trying
3 to twist anything about the expert testimony and the
4 credible evidence that corroborates it in this case.
5 And I want to take this opportunity just to address
6 a little bit about what you have heard over the last
7 several days, the cold hard facts.

8 And, you know, they say facts are stubborn
9 things. It's hard to get around them. And I
10 submit, ladies and gentlemen, in this case, as hard
11 as they tried, as much as they tailored their whole
12 story, and that's part of the problem in that one
13 statement around them coming in and out about five
14 times, they can't make this any better than it is
15 because this case reeks of malice and this is
16 murder.

17 Now, you heard from State's witnesses in this
18 case and I want to talk to you a little bit about
19 what significant things they said. Again, don't
20 take what I say as what they said, you remember it.
21 Y'all are the sole judges of the facts. And as much
22 as he tried to rattle people on cross-examination,
23 you remember what the credible, relevant testimony
24 in this case is.

25 And I want to talk to you a little bit about

1 the lay witnesses in this case and who you heard
2 from. And the first person you heard from is
3 Terrell Myers. Terrell Myers, she has no record.
4 She was there at her apartment on that night asleep.
5 She went over to the window and when she looked
6 down, she recognized the guy she knew as Ayree. She
7 yelled down to him, Ayree, what are you doing here?

8 Alonzo, Moe, gets out of bed. He goes over to
9 the window. And, of course, he says this can't be a
10 robbery because what robber would identify himself.
11 Well, how else are you going to get him down to the
12 door if you don't act friendly and identify
13 yourself? Because after all, who's going to believe
14 Alonzo anyway because he's a drug dealer, isn't he,
15 according to them?

16 He goes downstairs. Once he gets downstairs,
17 he goes out the door. And remember what's
18 significant, and you've got photos, thank God, of
19 everything, every relevant piece of evidence in this
20 case, once he gets downstairs, what did you hear?
21 The door slammed once.

22 And that's according to Kathy Wilson who gave
23 her statement, and that statement, back at 8:30 a.m.
24 on August the 3rd of 2002 just as she testified to
25 in this courtroom before she knew the defense. She

1 doesn't know the defendant. She's not out to frame
2 anybody. She corroborates what Terrell Myers says.
3 Regardless of how big a deal -- and they wanted that
4 statement to read the way they want it to because
5 it's important, but even he, after it's all over,
6 can't argue that's credible.

7 Terrell Myers told you she heard, after the
8 gunshots, three gunshots, ladies and gentlemen,
9 three gunshots, each and every witness out there --
10 out there that night that's credible heard three
11 gunshots, and then she heard, Oh, shit, and excuse
12 my language, you shot him. That's what she heard.

13 And you know what makes her credible? She
14 didn't get up here and say, yeah, I saw Ayree cold
15 bloodily shoot, she didn't tell you anything she
16 couldn't have seen. She told you what she did know
17 and that's what makes her credible. We haven't gone
18 forth and brought forth witnesses two years later to
19 come up with a scenario they think they can get
20 around the facts to come up with some self-defense
21 that doesn't apply in this case.

22 She told the officers there that morning, and,
23 yeah, Vinson wrote it down one day, he told you they
24 were up and down. She put her hand on the Bible.
25 And why would she make that up? How does she know

1 that's significant? That's what makes her credible.

2 Then you heard from Kathy Wilson and Everett
3 Wilson. And do you remember, very importantly,
4 because they're very important in this case, ladies
5 and gentlemen, because they're asleep in their beds,
6 Kathy Wilson wakes up and she hears a verbal
7 argument outside her window. And you've got the
8 pictures, and I'm not going to belabor the point,
9 her bedroom window is just past -- it's in between
10 the two stoops from 2-1 and 2-2, her bedroom window
11 was the one right there. And she can hear it
12 clearly because her window is closed, remember,
13 because it's right outside her window just where the
14 blood happens to end up.

15 And she hears an argument. And she hears Moe
16 say something, I want to make sure I don't misquote,
17 Man, why are you knocking on my door, like that.
18 And, specifically, she recognizes Alonzo's voice,
19 Moe, the person she's lived next to, Why are you
20 knocking on my door that night.

21 And why would he go downstairs to get the
22 people banging on the door out of there? Perhaps
23 because his girlfriend and his baby are asleep
24 upstairs. They want you to believe he's a drug
25 dealer. Now, he's a drug user. They want you to

1 believe he's the bad guy because that would make him
2 the victim.

3 Kathy Wilson told you the next thing she heard
4 -- and what's credible, think about it, Everett was
5 at the door, she was behind him, and what they said
6 they heard, that's what makes them credible, she
7 didn't say she saw anybody shoot anybody. She
8 doesn't say anything. Just like she told the police
9 at 8:30 that morning, she told you here two years
10 later credibly that the next thing she heard, a
11 voice she didn't recognize say, Man, didn't I tell
12 you don't, with me? Is that expressed malice? Is
13 that what he wants you to forget? Didn't I tell you
14 don't fuck with me. It wasn't Moe's voice.

15 Now, if you believe their story, it wasn't
16 anybody's voice because they're around the building
17 over on some grass and I'll get back to that.

18 Credible, she told them, she told you now. She
19 told you specifically she only heard the back door,
20 you know, because when you open those screen doors,
21 they slam back once. She corroborates Terrell
22 completely and everything. And she doesn't try to
23 get up here and say, Oh, no, it was around the end
24 of the building and everything two years later. She
25 tells you it sounded like it was outside her window,

1 the shots.

2 And remember the distance that the shots, and
3 this is where Doctor Nichols is so important, it's
4 at least 18 to 24, the muzzle, the end of that gun
5 is at least an arm's length, 18 to -- I don't know
6 how long my arm is -- 24 inches away when it's shot.
7 And it could be as far away as the range of that
8 bullet. And I'll get back to that because of where
9 the blood is.

10 Is he standing back, Man, I told you? Was
11 Alonzo Gale -- and the one thing they didn't talk
12 about at all, the angle of the bullet. It enters
13 here, it exits at a slightly lower part down his
14 back and it doesn't hit any major bones, it hits
15 arteries. It tears, literally, the flesh out and he
16 drowns in his own blood.

17 But what's significant? Is he backing off back
18 towards his door? Is Ayree standing outside the
19 window shooting not once, because all three of them
20 heard three shots, not twice, but three times
21 because he's got to make sure he hits him because he
22 told him not to, with him? Is that what happened?
23 Is that corroborated by the physical evidence? Is
24 that corroborated by the forensic pathologist? Is
25 that corroborated by the gunshot residue kit?

1 That's what Kathy Wilson said.

2 But you have more, you don't have to just rely
3 on one person because you've got Everett Wilson.
4 He's dead asleep. He is in the living room. That's
5 the last window towards the end. He can hear
6 someone arguing. And as much as he tried to say,
7 well, they were down towards the end, weren't they?
8 No. He looked out the window and saw a black male
9 that just happens to match his description standing
10 behind when the argument's going on.

11 We aren't around the end because you can look
12 at the end, and thank goodness they brought this one
13 picture in. Look at this. There aren't any windows
14 there. This is where they say the fight happened.
15 And why do they say that? Because they have to try
16 to make it self-defense. And when they make up this
17 story, as they're passing pictures back and forth,
18 they don't realize there are no windows there.

19 And let's get one thing straight, Everett, as
20 good as he is, he can't look out the window and see
21 around the corner on to the back of the building.

22 Everett said he saw a black male he didn't know
23 fitting his physical description. And then Everett
24 told you he heard a voice, Man, don't you mess with
25 me, is how he remembers it and is that credible --

1 and that's what makes it credible. Each one
2 remembers it their own way.

3 Did he say it more than once? Now, who is the
4 aggressor here? Alonzo Gale has just woken up from
5 a dead sleep, gone out on his back porch to get rid
6 of the guy that's banging on the back door. Man,
7 don't you mess with me. Again, he didn't recognize
8 the voice. Does that corroborate what his mother
9 said? Is that totally consistent with malice?

10 And then what's even more important, and think
11 about this because if you believe this defendant,
12 because it's one of two ways, it's either how the
13 State presented it, this isn't one with a third
14 side, or it's how he said it happened, if you
15 believe this defendant that all of this happened
16 around the corner of the building, the windows were
17 closed in the Wilson's apartment, they told you
18 where they heard the sounds coming from, Everett
19 Wilson said he saw that man behind the building on
20 the sidewalk, not around the corner where supposedly
21 the tussle is going on and the fighting is going on
22 at that point, if you believe it happened at the end
23 of the building like he said, then find him not
24 guilty, send him back.

25 Everett Wilson told you he heard the gun rack.

1 Man, I told you don't mess with me, then he heard
2 the gun rack. Is that deliberate? Is that
3 malicious? Does it get anymore malicious?

4 And then he told you where he heard the shots
5 coming from. And, again, the defense attorney tried
6 to say, Oh, up towards the end. He's like, No, it's
7 right outside the door where it sounds like it's
8 coming from. And does that make sense? Does that
9 corroborate the forensic evidence in this case?
10 Does that corroborate the blood spatter? That's
11 what Everett Wilson told you.

12 And you also heard from Dianne Crawford who did
13 not come forward at the time. Was she scared? Did
14 she not want to get involved? Is that unusual in
15 the neighborhood? Do you blame her?

16 She came to court under subpoena and she told
17 you the little bit she knew. She didn't get up here
18 and say she saw the shooting. She talked about ribs
19 most of the time she was on the stand, but she's
20 nosey and we all know nosey people. And she got up
21 here and she told you up front she's got a drug
22 problem, but she told you the little bit she knew
23 about that night. And she didn't get up here and
24 say, Ayree came to her front door and said, I'm
25 going to rob Alonzo, would you please call him up.

1 She told you the truth. Again, what makes her
2 credible? Whether or not she came forth at whatever
3 time, what makes her credible?

4 She told you that she saw them out there in the
5 parking lot. And, oh, it was very important in
6 their testimony that they never went from the upper
7 parking lot to the lower parking lot. I guess, they
8 only sell drugs on the upper level not the lower
9 level. That Ayree and his group of friends over
10 there were out there that night doing their usual
11 thing, selling drugs, and they were yelling. And
12 she heard Ayree among other people yelling, Man, I'm
13 going to, me somebody tonight. Now, she didn't say
14 he said I am going to rob Moe tonight. That's what
15 makes it credible.

16 She then told you that in the early morning
17 hours, that that man who she -- and why would she
18 make this up against him? She's known him since he
19 was a child. She doesn't have anything against him.
20 According to him, he helps her out. Why would she
21 be saying something against her source if she's this
22 drug addict? Does that make sense?

23 He came and said, Man, I need you to get Alonzo
24 for me for whatever reason. And we don't have to
25 prove what reason he went there for. He says to buy

1 drugs. His statements earlier in the night said to
2 rob him. It can be one, either or both, that
3 doesn't reduce it from murder to manslaughter.

4 You also heard from several police officers,
5 and I want to talk about them. These four
6 witnesses, you heard from Corporal Hall, Catoe, Hue
7 Tang from SLED, Cal Reighley, Clay Nichols and
8 Investigator Vinson. These are the chain people,
9 Donna Martin, Pete Currie and all them. They were
10 basically to show that there was no tampering in
11 this case. Nothing was done to these samples that
12 shouldn't have been done, that they were stored
13 properly. And that's not a dispute in this case.

14 And I want to get back to the witness'
15 testimony. Corporal Hall got up here. He was in
16 that scene in 35 seconds. He happened to be around
17 the corner. He arrived there, I believe he said, at
18 6:22, it might have been 6:23, but within three to
19 four minutes was his testimony. And when he got
20 there, coming out the front was Dianne -- was,
21 excuse me, Terrell Myers hysterical, screaming.

22 Can you imagine her being anything else?
23 Because according to them, I guess, she must have
24 gone around the corner, picked up the gun where she
25 wouldn't have known where it was, but, anyway,

1 whatever theory they've got.

2 He gets to the scene and he sees the defendant
3 (sic) sitting there. And you will have this picture
4 back there of the defendant dead on the ground in
5 front of his home. And it's a small picture because
6 usually these are not admissible. And the only
7 reason this picture, which is offensive and you
8 shouldn't have to see, no one should have to see
9 this, is because there was a question about what he
10 was wearing because, I guess, they didn't get that
11 picture back there. There was a picture -- a
12 question and it is clear from this picture, and I
13 apologize about this picture and the reason it's not
14 blown up is because we weren't intending to try to
15 offend anyone and introduce it, it's clear that he's
16 wearing boxer shorts only.

17 The defendant (sic) breathes his last breath.
18 He says people were around at that point, he didn't
19 know who.

20 Most important about what he told you, they do
21 a search of the area. They search for the gun,
22 that's important if we can find it. But let's get
23 one thing straight, ladies and gentlemen, just
24 because the defendant is smart enough to take his
25 gun with him, doesn't mean he didn't commit murder

1 because someone familiar with murder may know to
2 take the gun, to take the shell casings, to try to
3 get any evidence that may later link you until you
4 figure out there's too much evidence and you need to
5 come up with a different story.

6 He told you they searched the apartment for
7 drugs. Now, nobody is up here to tell you Alonzo
8 Gale -- and we brought forth the evidence about
9 Alonzo Gale's prior drug use, about his intoxication
10 or lack thereof that night, but that he had been
11 drinking that night. We brought that up because
12 that's relevant and you should consider that because
13 we don't try to pick and choose who we bring. We
14 bring forth every credible, relevant person. We
15 don't bring forth people that are going to get up
16 here and lie.

17 He told you they searched. They didn't find
18 drugs. They didn't find guns. They didn't find any
19 ammunition in there. Because that would have been
20 relevant and we would have collected it. He secured
21 the scene and that's important.

22 And then you heard from Investigator Catoe is
23 his name, Don Catoe. He's retired now. Two years
24 ago, he retired November two years ago. And he got
25 up here and I -- he just had heart surgery last

1 week, but he got up here and he told you about his
2 findings. And you don't even have to believe -- I
3 mean, him, they say he's not believable?

4 Well, look at the photos. We talked about high
5 velocity spatter or splatter, blood spatter. You
6 can look at the pictures. He talked about -- and he
7 asked him about these pictures in particular, about
8 the blood further down the sidewalk. And this is
9 very important, especially this one picture, State's
10 Exhibit 35 and State's Exhibit 26, because the blood
11 goes from two points. It goes from exactly right in
12 from the corner of that building, back to the door
13 of 2-2. There's no blood anywhere else.
14 Specifically and most importantly, there's no blood
15 anywhere here. This is the extent.

16 And they want you to believe, and he says, that
17 the blood spatter, the high velocity spatter, and
18 you'll have pictures of it, on the victim's back
19 door is consistent with spatter that would happen
20 when he got shot. Now, he can continue to pump
21 blood out at a rapid rate. That's not saying -- we
22 aren't saying that could not have happened.

23 What we're saying is his patterns that he found
24 out in the back are consistent with that having been
25 where he got shot. It could also be consistent with

1 it spattering forward. But what we do know, as much
2 as they tried, this blood is not consistent with
3 anything but drips.

4 Now, he said, and he asked specifically, how
5 did this blood get out here once the victim was
6 shot? Did he try to wander one way? Was he
7 disoriented once his neck was torn apart? Did he go
8 one direction and then try to get back to his home,
9 to his safety? Is this consistent with that
10 scenario? Is this consistent with him having been
11 around this area at the time it was shot? Yes.

12 But you don't have to rely on that, ladies and
13 gentlemen, because the witnesses all said where they
14 heard the shots were outside their window. And
15 Wilson's bedroom window is between the stoops of 2-1
16 and 2-2. And is that consistent with what the
17 evidence shows? Would it be consistent with Alonzo
18 Gale trying to back away from the defendant as he
19 pointed the gun at him? The shots rang out in the
20 back not in the middle of the struggle around the
21 corner. The distance the pathologist told you could
22 be an arm's length or much further.

23 He also told you how he collected the gunshot
24 residue kit. And Lord knows we've heard enough
25 about that. And the reason they jump that so hard

1 is because it kills their theory before it ever
2 starts because if he had -- and remember Hue Tang,
3 the expert you heard from, told you if you've
4 handled a gun, shot a gun or if your hand has been
5 near a gun when it's shot, you're going to get
6 residue. There's no evidence that these were taken
7 in any manner but a correct manner.

8 There should be some residue, any residue if
9 his hands -- according to them, he walked out with
10 it, that alone should be enough. According to them,
11 he's the one that had it when it was shot.
12 According to them, it was still in his hand when he
13 went down on the ground. That's why Hue Tang -- he
14 kept trying to say, Well, the blood would wash it
15 off, blood would wash it off, wouldn't it? Not if
16 it's collected correctly.

17 He wants you to believe, and he argued it, the
18 problem with this case is the police didn't do their
19 job. The problem for him is the police did.

20 You also heard from Cal Reighley. And the
21 reason he was brought before you was to show you two
22 things. We aren't trying to hide anything. We told
23 you there was cocaine and cocaine metabolites in
24 this victim's body, in his urine. We told you that
25 he had a blood alcohol of point 06. And I asked

1 about his impairment, he could be somewhat under the
2 influence. Whenever you drink any alcohol, you're
3 going to be somewhat under the influence, whether or
4 not it's impaired is a judgment call. But he didn't
5 have any cocaine in his brain, so it wasn't a
6 combination of marijuana, cocaine and everything
7 else. He wasn't under the influence of drugs.

8 You also heard from Investigator Vinson. And
9 he told you the attempts he made to try to find the
10 gun. He told you how it's not unusual for them to
11 get away with one. And let's face it, the first
12 thing anybody's going to take is the gun.

13 Their theory is someone came out there and got
14 it? They happen to know the exact place where it
15 would be? That's their theory?

16 You heard from Shea Thomas. And Ms. Thomas got
17 up here and she and the defendant are friends and
18 she was out there that night. Again, her
19 convictions were not meant to embarrass her, but for
20 the purposes of you judging her credibility. She
21 mentioned that she had met with the defendant at the
22 jail on at least one occasion. She mentioned the
23 phone calls that they had exchanged back and forth.
24 She admitted to you the day before yesterday of them
25 having a conversation for 20 to 30 minutes, during

1 which time he handed her photographs of the crime
2 scene, but they weren't discussing what happened.
3 That's her testimony.

4 Then she goes on and she tells you this story.
5 And she has a very clear, vivid recollection, not up
6 until that point of that night, but she remembers
7 everything right around the time, amazingly. She
8 was only smoking marijuana, according to her, that
9 night. And she told you that he came out -- he's up
10 at the window, and she doesn't mention Terrell, he's
11 up at the window yelling, angry. So they hang out.
12 He comes to the door, comes out of the door angry.
13 So they hang out.

14 According to her, and remember she volunteered
15 this information, he goes back in the house where he
16 must have put on his blue jean shorts, very specific
17 about that, and he must have put a bullet and racked
18 it in his gun. She knew that. And then he goes
19 back through his house and out the front. And as
20 they are walking away down the sidewalk, and you've
21 got all of the pictures, they happen to meet at the
22 end. And she went so far as to go out with the
23 defense attorney last Sunday and take a picture
24 exactly where that fight took place.

25 Now, the defense attorney kept trying to say,

1 Oh, it was more over towards here, wasn't it,
2 according to them, according to both Ayree Henderson
3 and her, it took place right here in the grass.
4 That's their story.

5 He didn't have on blue jeans. There's no
6 dispute, unless, I guess, somebody came when they
7 were getting the gun and got the blue jeans off of
8 him, too, in that three minute period. That's their
9 theory? It happened right there. And when she last
10 saw him, he went down and that's important and I'll
11 get back to that.

12 And then you heard from Ayree Henderson. You
13 know, there's an old saying, and I never understood
14 it real well until you see it, the art of confessing
15 error, admit to being bad in every way in the world,
16 just deny the ultimate problem and it kind of gives
17 you credibility.

18 And he got up here and he told you about his
19 life and he's been in foster care. There's no
20 dispute about that. He's been in and out of prison
21 his whole life. He told you that. When he's in
22 prison, he seems to do well. When he's on the
23 street, he's using drugs, drinking, selling drugs
24 and committing crimes, but he didn't do this one.

25 He got up here and he even told you, and he

1 does, he's got a good family, but they don't support
2 him anymore not because they're bad people, but
3 because of the choices he made just as he did in
4 this situation. Don't let him twist that.

5 He told you about on the night this occurred,
6 that he was doing drugs, marijuana, \$40 dollars
7 worth of crack and two 24-ounce beers, that he can
8 recall. And what's more significant, ladies and
9 gentlemen, is he told you, remember when I was
10 asking him questions, he said, No, I'm addicted,
11 like that's supposed to be an excuse for him. And I
12 do think that's significant because he was addicted.

13 And, unfortunately, all of us know, Ayree
14 Henderson yesterday is not addicted. The Ayree
15 Henderson of August the 3rd of 2002 was, by his own
16 admission. And I submit, ladies and gentlemen, on
17 that night, Ayree Henderson was just trying to do
18 one more thing to feed his addiction. And,
19 unfortunately, people who are addicted, sometimes do
20 whatever it takes to get what they want. When
21 confronted, when you're high and intoxicated, do you
22 act rationally? Are you more likely to shoot
23 somebody when you have a gun with you?

24 And it was interesting, too, I asked him about
25 a gun that he was in the village with two days

1 earlier. And we can only conclude certain things
2 that are collateral matters. And his lawyer got up
3 here, did you hear them? It's like how they twist
4 everything. He said, Well, she asked you about if
5 you had a gun two days earlier, but the police kept
6 that gun, didn't they? He went, Yeah. Well, if
7 they kept the gun, then you wouldn't have had one
8 two days later.

9 That's how they rationalize? That's their
10 theory?

11 According to Ayree Henderson, he's doing
12 nothing wrong. He's trying to calm the angry man
13 down. The angry man goes back in his house. He
14 walks all the way through the house, around the
15 corner, coming down and meets him half way right
16 here in the middle of this field on the end where no
17 windows are. And, at that point, they have a
18 confrontation. No one racks the gun, according to
19 him, but the gunshot goes off.

20 And let's get one thing straight, and I wanted
21 to make sure, he showed me just how they had that
22 gun, they were face to face. And let's get one
23 thing straight, he said it, Moe is taller than him
24 by a couple inches. So Moe's here, he's here, they
25 got the gun between them. And according to him, it

1 just went off, it's right here.

2 Well, ladies and gentlemen, think about Doctor
3 Nichols who's an independent, totally -- I mean, he
4 doesn't have anything to do with this case, the
5 angle of the bullet. What is he going to say, that
6 Moe had the gun pointed at him and he was able to
7 bring it back around, Moe's taller than him, get it
8 to this point and get him to shoot him like that
9 (indicating)? Does that make sense? Could that be
10 possible? And then he fell, remember? And he saw
11 blood. That's important, he saw blood. Well, if he
12 fell, where is the blood? There was no blood. You
13 have photographs of all the blood.

14 So maybe he fell and the blood didn't go on the
15 ground, but it would have spurted out because that's
16 what they're saying happened right here on the
17 corner, it would have spurted out. According to
18 them, it happens right here next to this wall.

19 How did the blood, it spurts three to four
20 feet, that's our witness' testimony, spurt out to
21 here. Look at this picture, you got the corner of
22 the building, how did it spurt out to the -- to the
23 left straight out and then take a right to go into
24 the sidewalk to be here? Because there's no blood
25 on the corner of this building. There's no blood on

1 the back of that building. There's no blood
2 anywhere, but to this point and that's where they
3 have a problem. Their story, as they admitted,
4 isn't possible.

5 All the defense wants you to do, and I'm not
6 trying to twist anything, you determine credible
7 evidence, ladies and gentlemen, not me. My job is
8 to present relevant, credible evidence. You
9 determine what happened. They've attempted to twist
10 it to make it look like it's something it's not just
11 so you'll resolve that doubt in his favor because it
12 either happened one of two ways. They want you to
13 think it's just voluntary manslaughter, but the
14 reason he had to come up with that story is because
15 if he got up here and told you what really happened,
16 it's pretty much cold blooded murder. Malice any
17 way you cut it in this case.

18 That's why he couldn't tell you what happened
19 behind the building. That's why he had to come up
20 with a different story. Don't let them shade the
21 truth. Don't let them throw up smoke screens, red
22 herrings, any way you want to call it. All we ask
23 you to do is base your verdict on the credible,
24 relevant evidence.

25 Ayree Henderson on August the 3rd of 2002 at

1 6:18 in the morning, shot a man and killed him and
2 left him there to drown in his own blood, which he
3 did. And two years later the best thing he can come
4 up with was what you heard in poor pitiful me. He
5 doesn't want to be held responsible.

6 All the State asks, ladies and gentlemen, and
7 it's not an easy thing to do to stand in judgment of
8 your fellow man, Alonzo Gale that night he was in
9 his home minding his own business, they want to make
10 him a drug dealer, they want to make him all these
11 things, which there's no evidence -- we brought that
12 evidence that he's used drugs, that doesn't make it
13 okay to kill him, to shoot him when you go to his
14 house and he won't give you money, when you go to
15 his house and he tells you there's no drugs. Man, I
16 told you not to F with me. Those are his words.
17 And he made sure Alonzo Gale would never mess with
18 anybody again. Hold him responsible for what he
19 did, that's all we ask. Thank you.

20 **THE COURT:** Ladies and gentlemen, given the
21 hour, I think we need to have a break before I begin
22 my charge of the law to you, that will give you an
23 opportunity to stretch and use the restroom, if
24 necessary. I ask that even though you've heard the
25 closing arguments, that you should not begin any

1 discussions while we're on this break. That when we
2 return, I will charge you the law that applies and
3 then you may begin your deliberations after that
4 point. So let's take a brief break and then we'll
5 come back and I'll charge you the law.

6 (The jury retires to the jury room.)

7 **THE COURT:** Let's take a brief break and when
8 we return, I'll charge them.

9 I will tell anyone who's sitting in the
10 audience that the doors will be locked and no one
11 can go in or out during my charge, so take that into
12 consideration when you return to the courtroom.
13 Let's take a break, we'll come back.

14 (Brief recess.)

15 **THE COURT:** If you'll just state what your
16 objection was.

17 **MR. JOHNSON:** Your Honor, my objection was that
18 the prosecution was charging the law to the jury,
19 that she stated that it was an affirmative --
20 affirmative --

21 **MS. CAMPBELL:** An affirmative defense.

22 **MR. JOHNSON:** That it was an affirmative
23 defense of self-defense. It's my understanding
24 under South Carolina versus Taylor, case 2003, that
25 it requires that it be stated that it's the burden

1 of the State to prove that self-defense -- that the
2 elements of self-defense was not met and we ask that
3 you include that in your jury charge.

4 **THE COURT:** The language I read from State
5 versus Taylor, which is 589 Southeastern Second 1,
6 it's a South Carolina Supreme Court 2003 case, and
7 the excerpt from the case says, This court has
8 placed great emphasis on the importance of a
9 defendant's right to assert self-defense when there
10 is any evidence to support it and has taken pains to
11 make ensure the burden to disprove self-defense
12 remains on the State. And it cites State versus
13 Addison, as well as State versus Wiggins.

14 And so what I intend to do at the end of the
15 self-defense charge, I will, basically, say the
16 burden to disprove self-defense falls on the State.
17 Is that sufficient?

18 **MR. JOHNSON:** That's sufficient, Your Honor.

19 **THE COURT:** Okay. Is there anything else we
20 need to take up?

21 **MR. JOHNSON:** Nothing from the defense, Your
22 Honor.

23 **MS. CAMPBELL:** Nothing.

24 **THE COURT:** If you'll ask the jury to come in,
25 please.

1 (The jury returns to the courtroom.)

2 **THE COURT:** During this trial, ladies and
3 gentlemen, you and I have certain duties to perform.
4 As the trial Judge, it is my responsibility to
5 preside over the trial of this case and to rule upon
6 and pass upon the admissibility of evidence that has
7 been presented throughout the course of this trial.

8 And to any evidence to which there was an
9 objection sustained, you must not consider what the
10 evidence might have been or the reason for the
11 objection. You are to consider only the evidence
12 that's been presented from the witness stand along
13 with any exhibits and stipulations of counsel that
14 have been made a part of this case.

15 You are never to insinuate to be true any
16 suggestion based upon a question that's asked of a
17 witness, a question is not evidence. But you may
18 consider it only to the extent that it supplies
19 meaning to the answer that was given. Again, ladies
20 and gentlemen, you should consider only the evidence
21 that has been presented from the witness stand, as
22 well as the exhibits that have been entered into
23 evidence in this case.

24 Now, I have the additional duty to charge you
25 the law that applies in this case. And as the trial

1 Judge, I am the sole Judge of the law that applies.
2 If you have any preconceived ideas as to what the
3 law should be or what the law is or what you want
4 the law to be, you must set all of that aside. For
5 under your oath as jurors, you are sworn to accept
6 the law as I charge it to you.

7 Now, if by chance, I make some error in my
8 charge, then there's another court at another time
9 that can review those errors of law. But for
10 purposes of this trial right now this moment, you
11 must accept the law as I charge it to you as being
12 the correct statement of the law.

13 Now, in every case tried before a jury, you,
14 the jurors, have the sole and exclusive
15 responsibility to determine the facts of this case.
16 No one can tell you what the facts of this case are.

17 And if I've done anything throughout the course
18 of this trial that's given you any impression that
19 I'm commenting on the facts or that I'm telling you
20 what facts to find or that I'm giving you an opinion
21 about the facts, I ask that you set that aside as
22 well. For I assure you, I don't have any opinion
23 about the facts of this case, that's not my job,
24 that's not my role. That's your responsibility,
25 your duty as jurors to determine the facts of this

1 case.

2 Now, in order to do that, ladies and gentlemen,
3 you will have to analyze and to evaluate the
4 evidence and determine what evidence convinces you
5 of its truth. And in order to do that, you will
6 have to determine the credibility or believability
7 of the witnesses who have testified.

8 Credibility is simply a legalistic term which
9 means believability. It will become your duty to
10 analyze and evaluate that evidence and convinces --
11 and determine what portions of that testimony, that
12 evidence convinces you of its truth.

13 Now, in determining the credibility or
14 believability of the witnesses, you may consider the
15 following factors: What was the manner and the
16 appearance of the witness who testified; was he or
17 she hesitant or straightforward in answering the
18 questions; was the witness' testimony consistent or
19 inconsistent; how did the witness come to know the
20 facts that he or she testified to or what was his or
21 her ability to know these facts; is there a reason
22 that a witness would want to give testimony that
23 would help or hurt one side or the other, in other
24 words, was the witness' testimony bias in some
25 manner; and was the testimony of a witness

1 strengthened or weakened by other testimony or other
2 evidence.

3 Now, ladies and gentlemen, in determining the
4 credibility of the witnesses, you may judge one
5 witness against several witnesses or you may believe
6 several witnesses against one witness. You may
7 believe a portion of a witness' testimony and
8 disregard other portions of that same witness'
9 testimony. And if you have a good and sufficient
10 reason for doing so, you may accept a witness'
11 testimony in its entirety or you may reject it in
12 its entirety. These factors you should not exercise
13 arbitrarily, but if, in your judgment, there's
14 reason for you to consider these factors, then you
15 should do so.

16 You may also consider whether a witness'
17 testimony has been impeached or challenged by prior
18 inconsistent statements. If a witness' testimony
19 has been impeached, you may give any or all of the
20 witness' present or prior testimony the weight that
21 you think that it deserves.

22 In addition, ladies and gentlemen, during the
23 course of this trial, there was evidence presented
24 of a prior conviction of the defendant. And this
25 evidence is admitted only for limited purposes and

1 that limited purpose is to determine the credibility
2 of the defendant as he provided testimony, that you
3 will have to judge that testimony in light of the
4 information about his prior criminal record.

5 Now, that prior criminal record should not, in
6 any way, be considered by you as evidence of guilt
7 in this particular case. That record may only be
8 used in determining whether or not you believe his
9 testimony was truthful and in considering the
10 truthfulness of his testimony not as evidence of
11 guilt of the crime for which he has been charged in
12 this case.

13 Likewise, ladies and gentlemen, any conviction
14 of any witnesses who testified, that testimony was
15 also admitted for a limited purpose and, again, that
16 limited purpose was to determine the credibility of
17 that witness who testified. And you may consider
18 that prior criminal record in light of the testimony
19 that that particular witness provided and determine
20 whether or not any or all of the witness' testimony
21 is credible.

22 In addition, ladies and gentlemen, our rules of
23 evidence ordinarily do not allow witnesses to
24 testify about opinions or conclusions. An exception
25 exists for those that we call expert witnesses.

1 Those are witnesses who by their education or
2 training have become some expert in some art or
3 science or profession and they may state an opinion
4 as to relevant and material matters in which they
5 profess to be an expert and they can also give the
6 reasons for their opinion.

7 You should consider any and all expert opinions
8 that have been offered in this case and give them
9 the weight that you think that it deserves. If you
10 feel that an expert's opinion is not based upon
11 sufficient education or training or that perhaps the
12 opinion is outweighed by other evidence or the
13 opinion is not sound, then you may disregard that
14 opinion.

15 An expert's opinion and testimony is to be
16 given no greater weight than that of any other
17 witness simply because that person professes to be
18 an expert. And you are not required to accept an
19 expert's opinion even though it may be
20 uncontradicted.

21 Now, ladies and gentlemen, all of these factors
22 you should consider and you should consider them if,
23 in your good judgment, there's reason for you to do
24 so. Your objective, ladies and gentlemen, is to
25 seek the truth and whether it comes from a witness

1 or witnesses for the State or witness or witnesses
2 for the defendant.

3 You do not determine the truthfulness of the
4 statements by counting the number of witnesses who
5 have testified for one side or the other. The truth
6 isn't determined by continuing witnesses.

7 What the law simply requires is that when you
8 exercise your mental process and in examining what
9 you consider to be true, you use your good common
10 sense, your sense of logic and reasoning, your
11 experiences in life, you then apply those attributes
12 to the evidence and determine what you, the jury,
13 consider to be truthful evidence. And then to those
14 true statements of fact as determined by you, the
15 jury, you will apply the law as I will charge it to
16 you and then you will arrive at your verdict.

17 Your verdict should not be based upon sympathy,
18 passion or prejudice. By your verdict, you have no
19 friends to reward and you have no enemies to punish.
20 Your verdict should simply speak the truth.

21 Now, ladies and gentlemen, I charge you, once
22 again, the fact that this defendant was arrested and
23 charged and indicted is not evidence in this case
24 and should not be construed by you as evidence. The
25 fact that there is this indictment is simply the

1 mechanism by which we come to court so that this
2 case can proceed to trial. And it does not create
3 any inference or presumption of guilt and it should
4 not be considered by you in that fashion.

5 Let me also tell you, ladies and gentlemen,
6 that there are two types of evidence that are
7 generally presented throughout the course of the
8 trial. There is direct evidence and there's
9 circumstantial evidence.

10 Direct evidence is the testimony of a person
11 who claims or asserts to have actual knowledge of
12 specific fact or events, such as an eyewitness.
13 That person comes in and testifies as to what he saw
14 or observed or heard or felt or smelled using the
15 five senses.

16 Circumstantial evidence, on the other hand, is
17 testimony or chain of events that if considered by
18 you, would establish guilt in this case -- I'm
19 sorry -- circumstantial evidence is testimony of
20 proof of a chain of facts that are being presented
21 to you. And those facts and circumstances would
22 seem to create the existence of a particular event
23 or a particular fact.

24 The law makes absolutely no distinction between
25 the weight or the value that is to be given to

1 either circumstantial evidence or direct evidence,
2 nor is a greater degree of one particular type of
3 evidence required over another. In other words, you
4 don't have to have more circumstantial evidence than
5 you do direct evidence or vice versa.

6 You should weigh all of the evidence that has
7 been presented in this case. And after weighing all
8 of the evidence, if you are not firmly convinced of
9 the guilt of the defendant beyond a reasonable
10 doubt, then you must find him not guilty.

11 Now, conjecture, speculation, suspicion and
12 probabilities do not constitute circumstantial
13 evidence.

14 Now, ladies and gentlemen, to the indictment in
15 this case, the defendant has pleaded not guilty.
16 And that plea casts the burden upon the State to
17 prove that the defendant is guilty because any
18 person in the United States who's been charged with
19 committing a criminal offense is never required to
20 prove himself innocent.

21 Now, I charge you, ladies and gentlemen, that
22 it is a very cardinal and important rule of law of
23 our country and of this state that the defendant in
24 a criminal trial, no matter how serious the charge
25 against him may be, he's always presumed to be

1 innocent for the crime of which he is charged unless
2 and until his guilt has been proven by evidence that
3 satisfies you of that guilt beyond a reasonable
4 doubt.

5 Now, the presumption of innocence does not
6 cease when you retire to the jury room, but it
7 remains with the defendant from the time that he
8 makes his first appearance in court until the time
9 that you render a verdict finding him guilty based
10 upon evidence that satisfies you of that guilt
11 beyond a reasonable doubt.

12 Now, our Supreme Court has said that the
13 presumption of innocence is like a robe of
14 righteousness that's been placed around the
15 shoulders of the defendant. And it remains with him
16 and assigns him to that class, that class being the
17 innocent, until that presumptive robe of
18 righteousness has been stripped from his person by
19 evidence that convinces you of his guilt beyond a
20 reasonable doubt.

21 Now, ladies and gentlemen, the presumption of
22 innocence is not just some nice legal theory. It's
23 not some nice legal phrase. It is a very real and a
24 very substantial right to which everyone is entitled
25 unless you, the jury, are satisfied by evidence that

1 establishes that guilt beyond a reasonable doubt.

2 So now what do we mean by beyond a reasonable
3 doubt? The Government has the burden of proving
4 each and every element of the offense that's been
5 charged beyond a reasonable doubt. Now, some of you
6 may have served in civil juries in which you were
7 told that it was only necessary to prove that a fact
8 was more likely true than not true. Well, in
9 criminal cases, the Government's responsibility and
10 burden of proof is more powerful than that, it must
11 be beyond a reasonable doubt.

12 Now, proof beyond a reasonable doubt is proof
13 that leaves you firmly convinced of the defendant's
14 guilt. And there are very few things in this world
15 that we know with absolute certainty. And in
16 criminal cases, the law does not require proof that
17 overcomes every possible doubt.

18 If, based upon your consideration of the
19 evidence, you are firmly convinced that the
20 defendant is guilty of the crime with which he has
21 been charged, then you must find him guilty. If, on
22 the other hand, you think that there is a real
23 possibility that he is not guilty, then you must
24 give him the benefit of that doubt and find him not
25 guilty.

1 In this case, ladies and gentlemen, in the
2 indictment, the State has charged the defendant with
3 murder. Murder is the killing of any person with
4 malice aforethought. In order for the State to
5 prove the defendant guilty of murder, it must be
6 proven beyond a reasonable doubt that the defendant
7 did kill a person and that the killing was done with
8 malice aforethought.

9 Now, the State is not -- is not required to
10 prove any motive for the killing. The State must
11 prove that the defendant did kill another person
12 with malice aforethought.

13 Now, malice is the intentional doing of a
14 wrongful act without just cause or excuse and with
15 an intent to inflict injury or under circumstances
16 that infer evil intent. Malice aforethought is the
17 deliberate and well-formed purpose to do the
18 unlawful act.

19 Aforethought means that the intention to do the
20 unlawful act was conceived or planned some time
21 before the actual commission of the unlawful act.
22 Now, the malice doesn't have to exist for any period
23 of -- particular period of time before the killing
24 occurs.

25 Malice is a wicked condition of the heart, a

1 wicked pers -- purpose. Malice conveys the meaning
2 of hatred or ill will or hostility towards another,
3 but it doesn't necessarily have to mean that there
4 was ill will towards this particular individual.
5 Rather, it is a general, malignant recklessness of
6 the lives and safety of others or a condition of the
7 mind which shows that a heart is regardless of -- of
8 social duty or fatally bent on mischief. Malice is
9 a wrongful intent to injure another and indicates a
10 wicked or a depraved spirit intent on doing wrong.

11 And as I stated earlier, malice need not be in
12 the mind of the one doing the killing any particular
13 length of time before the act of killing in order to
14 call it murder. If it is present in the mind of the
15 one who's doing the killing any length of time
16 before the act, then its presence would be
17 sufficient to render the killing murder.

18 Malice may be expressed malice or inferred
19 malice. And the words expressed or implied do not
20 refer to different kinds of malice, but it simply
21 refers to the manner in which the malice may be
22 shown.

23 Malice is said to be expressed malice when it
24 is manifested as a violent, deliberate intention to
25 unlawfully take away the life of another human

1 being. Malice may be inferred where one
2 intentionally and deliberately does an unlawful act
3 which the person knows to be wrong and in violation
4 of his duty to another. Malice may be inferred
5 where there's no excuse or legal provocation for the
6 killing and when circumstances attending the killing
7 show an abandoned heart or a malignant heart fatally
8 bent upon mischief.

9 The law says that if one intentionally kills
10 another with a deadly weapon, the inference of
11 malice may arise. A deadly weapon is any object or
12 substance which reasonably could be used to do
13 bodily harm. And malice may be inferred from the
14 use of a deadly weapon. Some examples of
15 instrumentalities that may be used as deadly weapons
16 or that may be deadly weapons are: A pistol,
17 shotgun, rifle, dirk, dagger, knife, slingshot,
18 metal knuckles, razor, gasoline or fire bomb or
19 Molotov cocktail and lighter fluid.

20 If facts are proven beyond a reasonable doubt
21 sufficient to raise an inference of malice, if any,
22 from the use of a deadly weapon to your
23 satisfaction, then this inference is simply an
24 evidentiary fact which you must consider along with
25 all of the other evidence in this case that bears on

1 the issue of malice.

2 If one intentionally kills another during the
3 commission of a felony, such as a robbery or the
4 purchase of illicit drugs, the inference of malice
5 may also arise and if facts are proven beyond a
6 reasonable doubt sufficient to give rise to an
7 inference of malice to your satisfaction, then this
8 inference also would be an evidentiary fact to be
9 taken into consideration along with the other
10 evidence in this case and you may give it the weight
11 that you think that it deserves.

12 As with all inferences, you are free to accept
13 or reject them as you deem appropriate.

14 Now, if you find that the State has not proven
15 beyond a reasonable doubt that the defendant did
16 kill a person with malice aforethought, then you may
17 consider the crime of manslaughter. If you have a
18 reasonable doubt that the State has proved murder,
19 your doubt must be resolved in favor of
20 manslaughter.

21 Manslaughter is the unlawful killing of another
22 without malice, but in sudden heat and passion and
23 upon sufficient legal provocation. In order for the
24 State to prove the defendant guilty of manslaughter,
25 the State must prove beyond a reasonable doubt that

1 the defendant took the life of another in a sudden
2 heat and passion and upon sufficient legal
3 provocation.

4 The law recognizes that sudden heat and passion
5 may for a time affect one's self-control and
6 temporarily disturb one's reason. The sudden heat
7 of passion must be the type that would make an
8 ordinary person unable to coolly reflect on his
9 actions and would produce an uncontrollable impulse
10 to do violence.

11 The legal provocation needed for voluntary
12 manslaughter must come from some act of or be
13 related to the victim. Words alone, however vulgar
14 or insulting, are not enough to be legal
15 provocation. Where death is caused by the use of a
16 deadly weapon, the words must be accompanied by some
17 overt threatening act that could have produced heat
18 of passion.

19 Now, by way of illustration and illustration
20 alone, some of the following acts of provocation may
21 be sufficient to negate malice which will reduce the
22 crime of murder to manslaughter if it appears that
23 the act was done in the sudden heat of passion.
24 They would include: Pointing a gun at the
25 defendant; sudden mutual combat in which one person

1 was killed by another, but without previously formed
2 intention to do so; or, previous or prior fighting.

3 To be manslaughter, the killing must be in
4 sudden heat and passion. If the heat and passion
5 has cooled or if there's sufficient time between the
6 provocation, if any, and the killing for the passion
7 to cool, then the killing would not be attributable
8 to the heat and passion, but to malice. The
9 sufficiency of cooling time depends upon whether
10 there was time, considering all of the
11 circumstances, for a person of ordinary reason to
12 cool off.

13 If you find that the State has not proven
14 beyond a reasonable doubt that the defendant did
15 unlawfully kill a person in sudden heat and passion
16 and upon sufficient legal provocation, then you must
17 find the defendant -- I'm sorry -- then you must
18 consider the defense of involuntary manslaughter.

19 To prove involuntary manslaughter, the State
20 must prove beyond a reasonable doubt that the
21 defendant unintentionally killed the victim without
22 malice, but while engaged in an unlawful activity
23 not tending to cause death or great bodily harm or
24 that the defendant unintentionally killed the victim
25 without malice while engaging in a lawful activity

1 with reckless disregard for the safety of others.

2 Unintentional means that the defendant did not
3 intend for anyone to be killed or seriously injured.

4 Reckless disregard for the safety of others is
5 more than mere negligence or carelessness. Mere
6 negligence or carelessness is the failure to use due
7 care or the care that a person of ordinary reason
8 would use under the same circumstances.

9 Recklessness is the conscious failure to use
10 ordinary care.

11 Reckless disregard for the safety of others
12 signifies an indifference to the consequences of
13 one's acts. It means that you are not interested in
14 the consequences of your acts or the rights and
15 safety of others. If a person who knows or should
16 know that ordinary care requires certain acts and
17 precautions to be taken for the safety of others
18 when using a dangerous instrumentality, such as a
19 gun, but that person fails to use those precautions
20 without concern, then that person's actions are
21 considered to be reckless.

22 The State must also prove beyond a reasonable
23 doubt that the defendant's act was the proximate
24 cause of death.

25 Now, proximate cause is the direct cause. It

1 is the immediate cause. It is the efficient cause.
2 It is the cause without which the death of the
3 victim would not have resulted. There must be a
4 chain of causation from the time of the injury
5 inflicted by the defendant until the time of the
6 victim's death. And proximate cause does not
7 necessarily mean that it immediately occurred before
8 the death of the victim.

9 Now, ladies and gentlemen, I charge you that
10 voluntary intoxication is never an excuse for or a
11 defense to a crime. A person who voluntarily
12 renders himself intoxicated or under the influence
13 of drugs is no less responsible for his acts when in
14 such condition.

15 If one voluntarily drinks intoxicating liquors
16 or beer or wine or is under the influence of drugs
17 and becomes intoxicated to any degree and if, while
18 in that condition, commits an act which would be a
19 crime if it had been committed by a sober person or
20 one not under the influences, the fact of
21 drunkenness or being under the influence of drugs
22 would not relieve the intoxicated person from
23 responsibility where it has not produced permanent
24 insanity.

25 However, the State must prove each and every

1 element of the crime charged beyond a reasonable
2 doubt regardless of the defendant's state of alleged
3 intoxication or being under the influence of drugs.

4 Now, ladies and gentlemen, you must also
5 consider any defenses that had been raised. The law
6 recognizes the right of every person to defend
7 himself from death or serious bodily harm. And to
8 do so, he may use such force as is necessary even to
9 the point of taking a human life. In other words,
10 self-defense is a complete defense and entitles one
11 charged with an unlawful homicide or murder to an
12 acquittal if the legal elements of the plea of
13 self-defense are shown to your satisfaction by the
14 evidence.

15 Now, since self-defense is a complete defense,
16 if it is established, you must find the defendant
17 not guilty. And there are four elements required by
18 the law to establish self-defense in this case:

19 First, the defendant must be without fault in
20 bringing about the difficulty. It would be entirely
21 unreasonable to permit someone to deliberately
22 provoke an act of aggression against himself and
23 then to shield himself against responsibility for
24 the death of his adversary by pleading the law of
25 self-defense. It would be just as unreasonable to

1 withhold from a person the right to defend his life
2 against a deadly assault merely because he would
3 have been guilty of some rudeness or bad manners or
4 disrespect that's not intended nor reasonably
5 calculated under the circumstances to provoke a
6 deadly assault.

7 And so both common sense and the law agree that
8 one is not deprived of the right to be able to plead
9 self-defense as justification to a homicide unless
10 his conduct or fault was of such a nature as was
11 reasonably calculated to and did provoke a deadly
12 assault. Self-defense is not available to a person
13 who uses such language that's so derogatory as is
14 reasonably calculated to bring on a difficulty and
15 which does actually contribute to the bringing on of
16 a physical encounter.

17 Second, the defendant must have actually
18 believed that he was in imminent danger of losing
19 his life or sustaining serious bodily injury or he
20 actually was in such imminent danger.

21 Third, if his defense is based upon his belief
22 of imminent danger, a person of ordinary fitness and
23 courage would have entertained the same belief. A
24 defendant must show that he believed he was in
25 imminent danger that he was -- not that he was

1 actually in such danger, because he has a right to
2 act on appearances, and under the circumstances as
3 they appear to him, he believed that he was in such
4 danger and that a reasonable, prudent person or a
5 reasonable man of ordinary firmness and courage
6 would have acted and entertained in the same belief.

7 One may not -- I'm sorry -- one may act on
8 appearances and he may be mistaken. The law does
9 not hold someone to a refined assessment of the
10 danger, provided, of course, he has acted as a
11 person of ordinary coolness and courage would have
12 acted should he have been placed and acted in the
13 appearance of danger.

14 If the defendant actually was in imminent
15 danger or had the belief that he was in imminent
16 danger, the circumstances were such that would
17 warrant a man of ordinary firmness and courage to
18 strike the fatal blow in order to save himself from
19 serious bodily harm or from losing his own life.

20 Now, in evaluating the reasonable person
21 standard, you may consider, along with any other
22 factors that you consider to be reasonable, the
23 appropriate physical condition and characteristics
24 of the defendant and the deceased.

25 Fourth, the defendant has no other probable

1 means of avoiding the danger of losing his own life
2 or sustaining serious bodily injury than to act as
3 he did in this particular instance.

4 I further charge you, ladies and gentlemen,
5 that an individual has no duty to retreat, if, by
6 doing so, he would increase his danger of being
7 killed or suffering serious bodily injury.

8 One who has a right to use force in repelling
9 force or in his self-protection cannot be required
10 to make an exact calculation as to the degree or
11 quantity of force that may be necessary in order to
12 protect himself from loss of life or serious bodily
13 injury.

14 Now, if you find the defendant was without
15 fault in bringing on the difficulty, he has the
16 right to self-defense and the right to use such
17 force as is necessary and is required for his
18 complete protection from the loss of life or serious
19 bodily harm and he would not be limited to the
20 degree or quantity of the attacking opposing force.

21 That is to say, he would not be required to
22 expect to defend himself using only a certain amount
23 of force and no more, but he has the right to use as
24 much force as appeared necessary for his complete
25 self-protection and which in the mind of an ordinary

1 person would have appeared to have been necessary to
2 prevent the loss of life or serious bodily harm.

3 Now, if you have a reasonable -- if you have a
4 reasonable doubt of the defendant's guilt after
5 considering all of the evidence of self-defense and
6 including all of the other evidence that has been
7 presented, as well as the evidence of self-defense,
8 then you must find him not guilty. On the other
9 hand, if you have no reasonable doubt of the
10 defendant's guilt after considering all of the
11 evidence, including the evidence of self-defense,
12 then you must find the defendant guilty of the
13 offense with which you believe based upon the
14 evidence he is guilty.

15 And, ladies and gentlemen, the burden to
16 disprove self-defense falls on the State.

17 Now, ladies and gentlemen, after you have
18 considered all of the evidence in this case, then it
19 will be time for you to make a determination and
20 complete the appropriate verdict form.

21 You have been sworn as fair and impartial
22 jurors to determine the facts of this case. And
23 once you have determined the facts of this case,
24 then you must apply the law as I have charged it to
25 you. And when you have done that, then you will

1 arrive at your verdict. And, Mr. Foreman, it will
2 become your responsibility to complete the form with
3 the appropriate verdict.

4 Ladies and gentlemen, there are four possible
5 verdicts in this case: Guilty of murder, guilty of
6 voluntary manslaughter or manslaughter, guilty of
7 involuntary manslaughter, not guilty. There's no
8 significance to the order in which I've stated them,
9 I have to put one first. I have to put one second.
10 But, ladies and gentlemen, you need to consider all
11 of the evidence that has been presented.

12 If you determine that the defendant is entitled
13 to the benefit of his plea of self-defense, then
14 that is an absolute defense and your verdict must be
15 not guilty.

16 If you consider that the State has met its
17 burden of establishing beyond a reasonable doubt
18 that the defendant is guilty of murder, then you
19 must find guilty of murder.

20 If, on the other hand, you find that the State
21 has not proven by evidence that convinces you of
22 guilt of murder beyond a reasonable doubt, then you
23 should consider the voluntary manslaughter. If you
24 find that the State has met its burden of proof
25 beyond a reasonable doubt establishing the elements

1 of voluntary manslaughter, then your verdict would
2 be guilty of voluntary manslaughter.

3 On the other hand, if you find that the State
4 has not met that burden of proving beyond a
5 reasonable doubt that the defendant is guilty of
6 voluntary manslaughter, then you would consider
7 involuntary manslaughter. If you find that the
8 State has met its burden of proving the elements
9 beyond a reasonable doubt of involuntary
10 manslaughter, then your verdict would be guilty of
11 involuntary manslaughter.

12 If you find that the State has not met its
13 burden of proving beyond a reasonable doubt
14 involuntary manslaughter, then your verdict would be
15 not guilty.

16 So you must first consider the murder. If the
17 State has not met its burden on that, then you go to
18 the voluntary manslaughter, then you go to the
19 involuntary manslaughter, if necessary, if you find
20 it's appropriate. So those are all -- involuntary
21 manslaughter and voluntary manslaughter are lesser
22 included offenses of the murder.

23 And as I stated, on the other hand, if you
24 believe that the defendant is entitled to the plea
25 of self-defense, that is an absolute defense and you

1 would find him not guilty regardless of whether or
2 not the evidence has been established or shows other
3 offenses.

4 Ladies and gentlemen, your verdict must be
5 unanimous. It must be the verdict of all 12 of you.
6 And as I've stated, when you have considered all of
7 the evidence and you have determined the facts and
8 applied the law as I have charged you, then you will
9 arrive at your verdict. And whatever that verdict
10 is, no one will be able to complain about your
11 verdict under those circumstances.

12 Again, ladies and gentlemen, your verdict
13 should not be based upon sympathy, passion or
14 prejudice. Your verdict should simply speak the
15 truth.

16 Now, a few housekeeping matters, ladies and
17 gentlemen. I'm going to ask that you retire to the
18 jury room but not to begin to deliberate just yet.
19 The law requires that I consult with the attorneys
20 to see if I have omitted anything from my charge.
21 If I have not omitted anything, then all of the
22 evidence that will be -- that has been admitted in
23 this case along with the indictment will be sent to
24 you and you may begin your deliberations at that
25 time.

1 If, throughout the course of your
2 deliberations, there are any questions that come up,
3 Mr. Foreman, I ask that you write your name -- I'm
4 sorry -- that you write the question on a sheet of
5 paper, sign your name and then knock on the door and
6 give it to the bailiff and we'll try to answer those
7 questions.

8 If you have no questions and you reach a
9 verdict, then simply, on the front of the indictment
10 at the bottom, it says verdict, if you will write
11 whatever your verdict is and then sign your name and
12 put today's date. When you have done that, knock on
13 the door and tell the bailiff that you have reached
14 a verdict and we can have you come back to court so
15 that we can hear your verdict.

16 Now, Mr. Stills, as the alternate, your role
17 has been very important in this matter. If one of
18 the jurors had been unable to complete service, then
19 you would have stepped into that person's shoes. I
20 ask that you simply wait right outside the jury
21 room, do not go in yet -- do not go in with them and
22 just wait outside the jury room and I will come and
23 dismiss you when it's appropriate.

24 And we've ordered lunch and I believe that the
25 lunch should have arrived. I ask that once you are

1 instructed to begin your deliberations, to eat while
2 you deliberate.

3 And, Mr. Stills, your lunch -- you're certainly
4 welcome to eat it here or take it with you,
5 whichever you choose to do.

6 But I ask that you eat while you deliberate.
7 And if there are any questions that come up, then
8 just simply write a note, Mr. Foreman. So I'll ask,
9 at this time, that you retire to the jury room, but
10 not to deliberate until further instructions.

11 (The jury retires to the jury room.)

12 **THE COURT:** Are there any exceptions to the
13 charge by the State?

14 **MS. CAMPBELL:** No, ma'am.

15 **THE COURT:** By the defense?

16 **MR. JOHNSON:** No, ma'am.

17 **THE COURT:** Counsel, if you will, please come
18 and look at all of the exhibits and make sure we
19 have the appropriate ones, in particular State's
20 Number 48, which was to be redacted, make sure that
21 was done. And also look at the indictment to make
22 sure that it's appropriate.

23 (Pause.)

24 **THE COURT:** Given the fact that it's lunchtime,
25 I don't have a problem that you leave just leave me

1 a cell number where I can get a hold of you.

2 (The alternate was dismissed.)

3 (The jury commences its deliberations at

4 12:25 p.m.)

5 (A recess transpired.)

6 (The following occurred during jury
7 deliberations.)

8 **THE COURT:** I've got a note from the jury that
9 says, We need clarification of definitions, murder,
10 voluntary. And then the note says, The definition
11 on the boards presented by the State would be
12 helpful. And it's signed by the foreperson.

13 So I don't know whether they want to be
14 recharged on those elements or whether they just
15 want the elements of the offense. I didn't see the
16 board, so I really don't know what they say. I know
17 that you used them during the closing, but -- and I
18 don't know what your feelings are as to whether or
19 not it's sufficient to go back or whether you want
20 to agree with them to go back or you just want me to
21 recharge them.

22 **MR. JOHNSON:** Of course, I disagree with the
23 boards going back.

24 **MS. CAMPBELL:** I don't know, Judge. I've had
25 in the past some judges will just send back a copy

1 of their charge. I don't know if you feel
2 comfortable --

3 **THE COURT:** No, because my charge is not in the
4 format that I'd allow anybody to read.

5 **MS. CAMPBELL:** Then I think the best solution
6 would be just to tell them we can recharge -- you
7 can recharge them on the law of murder and
8 voluntary.

9 **MR. JOHNSON:** I have no objection to that, Your
10 Honor.

11 **MS. CAMPBELL:** I don't mean to tell you what to
12 do. I'm just saying that might be the best way to
13 address it and ask them if that will be helpful to
14 them.

15 (Pause.)

16 **MR. JOHNSON:** Your Honor, if I could inquire,
17 is it the Court's intention to recharge on all four
18 counts?

19 **THE COURT:** No.

20 **MR. JOHNSON:** Which count, just the murder
21 and --

22 **THE COURT:** They asked for murder and
23 voluntary. And I'm really debating whether I need
24 to charge them -- recharge everything on those two
25 or whether they just want to hear the definitions.

1 I'll just ask the foreperson whether they just want
2 the basic definition or do they want to hear the
3 entire charge as it relates to those two.

4 **MS. CAMPBELL:** Your Honor, I think we would
5 both agree that we ask that you do the full charge
6 on both.

7 **THE COURT:** I don't have any problem with that.

8 **MS. CAMPBELL:** Thank you, Your Honor.

9 **THE COURT:** Ask the jury to come in, please.

10 (The jury returns to the courtroom at 2:29
11 p.m.)

12 **THE COURT:** Mr. Foreman, I received a note that
13 says, We need clarification of definitions, murder,
14 voluntary. The definition on the boards presented
15 by the State would be helpful. Is that the note
16 that you sent to me?

17 **FOREMAN:** Yes, ma'am.

18 **THE COURT:** Ladies and gentlemen, what I'm
19 going to do is I'm going to recharge you on the law
20 as it relates to the murder and voluntary
21 manslaughter charges.

22 Murder is the killing of any person with malice
23 aforethought. In order for the State to prove the
24 defendant guilty of murder, it must be proven beyond
25 a reasonable doubt that the defendant did kill a

1 person and that the killing was done with malice
2 aforethought. The State is not required to prove
3 any motive for the killing. The State must prove
4 that the defendant did kill another person with
5 malice aforethought.

6 Malice is the intentional doing of a wrongful
7 act without just cause or excuse and with an intent
8 to inflict injury or other -- or under circumstances
9 that infer evil intent. Malice aforethought is the
10 deliberate and well-formed purpose to do the
11 unlawful act. Aforethought means that the intention
12 to do the unlawful act was conceived or planned some
13 time before the actual commission of the unlawful
14 act. The malice need not exist for any period of
15 time or particular length of time before the
16 killing.

17 Malice is a wicked condition of the heart, a
18 wicked purpose. Malice conveys meaning of hatred,
19 ill will or hostility towards another, but it does
20 not necessarily import ill will towards the
21 individual who is actually injured. Rather it is a
22 general, malignant recklessness of the lives and
23 safety of others or a condition of the mind which
24 shows a heart regardless of social duty and fatally
25 bent on mischief.

1 Malice is the wrongful intent to injure another
2 and indicates a wicked or depraved spirit intent on
3 doing wrong.

4 As I stated, malice need not be in the mind of
5 the one doing the killing of any particular length
6 of time before the act of killing in order to render
7 that act -- or render the killing murder. If it is
8 present in the mind of the one doing the killing any
9 length of time before the act itself, then its
10 presence would be sufficient to render the killing
11 murder.

12 Malice may be expressed malice or implied
13 malice. And the words expressed or implied do not
14 mean different types of malice, they're just simply
15 the manner in which the malice may be shown to
16 exist.

17 Malice is said to be expressed malice where it
18 has manifested a violent, deliberate intention to
19 unlawfully take away the life of another human
20 being.

21 Malice may be inferred where one intentionally
22 and deliberately does an unlawful act which he or
23 she knows to be wrong and in violation of the duty
24 to another. Malice may be inferred where no excuse
25 or legal provocation for killing appears and when

1 circumstances attending a killing show an abandoned
2 heart or a malignant heart fatally bent upon
3 mischief.

4 The law says that if one intentionally kills
5 another with a deadly weapon, the inference of
6 malice may arise. A deadly weapon is any object or
7 substance which reasonably could be used to cause
8 bodily harm. And malice may be inferred from the
9 use of a deadly weapon. Examples of instruments
10 that may be used as deadly weapons include: A
11 pistol, a shotgun, rifle, dirk, dagger, knife,
12 slingshot, metal knuckles, razor, gasoline, a fire
13 bomb, a Molotov cocktail and lighter fluid.

14 If facts are proved beyond a reasonable doubt
15 sufficient to raise an inference of malice from the
16 use of a deadly weapon to your satisfaction, this
17 inference would simply be an evidentiary fact to be
18 taken into consideration along with other evidence
19 in this case that bears on malice.

20 If one intentionally kills another during the
21 commission of a felony, such as a robbery or the
22 purchase of illicit drugs, the inference of malice
23 may also arise under those circumstances.

24 Again, if facts are proved beyond a reasonable
25 doubt sufficient to raise an inference of malice to

1 your satisfaction, that inference would simply be an
2 evidentiary fact to be taken into consideration
3 along with other evidence that you may consider in
4 this case and you must give it the weight that you
5 think that it deserves. And as with all inferences,
6 ladies and gentlemen, you are free to accept or
7 reject them as you deem appropriate.

8 Now, if you find that the State has not proven
9 beyond a reasonable doubt that this defendant did
10 kill a person with malice aforethought, then you may
11 consider the crime of manslaughter. If you have a
12 reasonable doubt that the State has proved murder,
13 you must resolve that doubt in favor of considering
14 the manslaughter.

15 And manslaughter is the unlawful killing of
16 another without malice, but in sudden heat and
17 passion and upon sufficient provocation. In order
18 for the State to prove the defendant guilty of
19 manslaughter, and we're talking about voluntary
20 manslaughter, the State must prove beyond a
21 reasonable doubt that the defendant took the life of
22 another in a sudden heat and passion and upon
23 sufficient legal provocation.

24 Now, the law recognizes that sudden heat of
25 passion may for a time affect one's self-control or

1 temporarily disturb a person's reason. The sudden
2 heat of passion must be of the type that would make
3 an ordinary person unable to coolly reflect on his
4 actions and would produce an uncontrollable impulse
5 to do violence.

6 The legal provocation needed for voluntary
7 manslaughter must come from some act of or related
8 to the victim. Words alone, however, no matter how
9 vulgar or insulting, are not enough to be considered
10 legal provocation. And where the death is caused by
11 the use of a deadly weapon, the words must be
12 accompanied by some overt act or threatening act
13 that would have produced a sudden heat of passion.

14 By way of illustration and only by
15 illustration, the following may be acts of
16 provocation sufficient to negate malice which would
17 reduce the crime of murder to manslaughter, these --
18 if it appears that the act was done in the sudden
19 heat of passion. This includes: Pointing a gun at
20 the defendant; sudden mutual combat in which one
21 person was killed by another, but without previously
22 formed intention to do so; and previous or prior
23 fighting.

24 To be manslaughter, the killing must be in
25 sudden heat and passion. And if the heat and

1 passion had cooled or if there was sufficient time
2 between the provocation, if any, and the killing for
3 the passion to have cooled, then the killing would
4 not be attributed to the heat of passion, but to
5 malice. The sufficiency of cooling time depends
6 upon whether there was time, considering all of the
7 circumstances, for a person of ordinary reason to
8 cool off.

9 And, ladies and gentlemen, that concludes the
10 charge as it relates to murder and as to voluntary
11 manslaughter. I ask, at this time, that you return
12 to the jury room and continue on with your
13 deliberations.

14 Again, if there are any questions that may
15 arise, Mr. Foreman, I ask that you will write
16 another note and again sign your name and give it to
17 the bailiff and we'll try to answer those questions.

18 At this time, I ask that you retire to the jury
19 room and continue with your deliberations.

20 (The jury retires to the jury room at 2:39
21 p.m. to continue its deliberations.)

22 **THE COURT:** We'll stand in recess until we hear
23 from them further.

24 (A recess transpired.)

25 (Court's Exhibit Number 1, jury note, was

1 marked for identification purposes.)

2 **THE COURT:** I understand that the jury has
3 reached a verdict. Is there anything that we need
4 to take up before we bring the jury back?

5 **MS. CAMPBELL:** Nothing, Your Honor.

6 **MR. JOHNSON:** Nothing from the defense, Your
7 Honor.

8 **THE COURT:** And I will caution everyone in the
9 courtroom, there is to be no outburst. If anyone
10 makes such an outburst, they will be removed from
11 the courtroom.

12 You can ask the jury to come in.

13 (The jury returns to open court to report
14 its verdict at 3:37 p.m.)

15 **THE COURT:** Mr. Foreman, I understand that you
16 have reached a verdict; is that correct?

17 **FOREMAN:** Yes, ma'am.

18 **THE COURT:** If you would, please pass it to the
19 bailiff.

20 (The clerk hands the verdict to the Judge.)

21 **THE COURT:** Madame Clerk, if you would, publish
22 the verdict.

23 **THE CLERK:** Indictment number 2002-GS-40-7277,
24 the State of South Carolina versus Ayree Henderson,
25 it's an indictment for murder. We, the jury, find

1 the defendant guilty of murder. This is signed
2 foreperson, Weldon Thompson, September 24th, 2004.

3 Mr. Foreman, is this your verdict and the
4 verdict of the entire jury?

5 **FOREMAN:** Yes, ma'am.

6 **THE COURT:** Do the parties wish to poll the
7 jurors?

8 **MR. JOHNSON:** Yes, Your Honor, I request that
9 you poll the jury.

10 **THE COURT:** Ladies and gentlemen, the clerk
11 will call your name. She will then ask you two
12 questions. The questions are: Was this your
13 verdict and is it still your verdict. And I ask
14 that you please answer according to your conscience.

15 **THE CLERK:** Weldon Thompson, was this your
16 verdict?

17 **JUROR:** Yes.

18 **THE CLERK:** Is it still your verdict?

19 **JUROR:** Yes.

20 **THE CLERK:** Christopher Phillips, was this your
21 verdict?

22 **JUROR:** Yes.

23 **THE CLERK:** Is it still your verdict?

24 **JUROR:** Yes.

25 **THE CLERK:** Garrett Alderman, was this your

1 verdict?

2 JUROR: Yes.

3 THE CLERK: Is it still your verdict?

4 JUROR: Yes.

5 THE CLERK: Marisha Flagg, was this your
6 verdict?

7 JUROR: Yes.

8 THE CLERK: Is it still your verdict?

9 JUROR: Yes.

10 THE CLERK: Tiffany Conelly, was this your
11 verdict?

12 JUROR: Yes.

13 THE CLERK: Is it still your verdict?

14 JUROR: Yes.

15 THE CLERK: Paul Blodgett, was this your
16 verdict?

17 JUROR: Yes.

18 THE CLERK: Is it still your verdict?

19 JUROR: Yes.

20 THE CLERK: Betty Mack, was this your verdict?

21 JUROR: Yes.

22 THE CLERK: Is it still your verdict?

23 JUROR: Yes.

24 THE CLERK: Rolandra Edmonds, was this your
25 verdict?

1 JUROR: Yes.

2 THE CLERK: Is it still your verdict?

3 JUROR: Yes.

4 THE CLERK: Debra Legrand, was this your
5 verdict?

6 JUROR: Yes.

7 THE CLERK: Is it still your verdict?

8 JUROR: Yes.

9 THE CLERK: Regina Wilson, was this your
10 verdict?

11 JUROR: Yes.

12 THE CLERK: Is it still your verdict?

13 JUROR: Yes.

14 THE CLERK: Patricia Smith-Jenkins, was this
15 your verdict?

16 JUROR: Yes.

17 THE CLERK: Is it still your verdict?

18 JUROR: Yes.

19 THE CLERK: Dale McKee, was this your verdict?

20 JUROR: Yes.

21 THE CLERK: Is it still your verdict?

22 JUROR: Yes.

23 THE CLERK: The jury has been polled, Your
24 Honor.

25 THE COURT: Ladies and gentlemen, the Court is

1 not concerned with your verdict, but we're very much
2 concerned with the process by which you reach your
3 verdict. You have listened to the evidence as it
4 was presented throughout the course of this trial
5 and you also listened to my charge of the law to
6 you. You then determined the facts in accordance
7 with your view of what the evidence showed and you
8 applied the law as I charged it to you. And having
9 done so, then no one can complain about the verdict
10 that you have reached and you have fully discharged
11 your duty and your responsibility as jurors in this
12 matter.

13 On behalf of the State of South Carolina and
14 the County of Richland, I would like to thank you
15 very much for your service in this matter. I'm
16 pleased to report that your service has concluded.
17 I would like to thank you very much.

18 If any of you would need to have any return to
19 work forms so that you can return to your work on
20 Monday, if you will just go back to the jury room
21 and the clerk will bring you a form and, otherwise,
22 you're free to go.

23 If you wish to come back in the courtroom,
24 you'll have to go outside and come all the way back
25 around, but, otherwise, you're free to go and have a

1 good weekend. Thank you.

2 (The jury was excused.)

3 **THE COURT:** Are there any post-trial motions at
4 this time?

5 **MR. JOHNSON:** Your Honor, I just renew my
6 original motions. The only additional one that I
7 ask for a judgment notwithstanding the verdict. I
8 do not feel that the State met the requirement --
9 the affirmative requirement of showing that -- that
10 because of our motion for an action of self-defense,
11 the State has not shown any evidence that would
12 dictate that it wasn't self-defense.

13 **THE COURT:** Is there any comments by the State?

14 **MS. CAMPBELL:** We feel that the evidence was
15 overwhelming and the jury reached a verdict well
16 within their means.

17 **THE COURT:** As I stated earlier throughout the
18 other portion of the trial when the motions were
19 raised, I think there was evidence for the jury to
20 consider, that they had to weigh the credibility of
21 the witnesses and the testimony as it was presented.
22 And having done that, I think the State certainly
23 made out a prima facie case and it was up to the
24 jury to weigh that evidence to see whether or not it
25 met the burden of beyond a reasonable doubt. And

1 having weighed the evidence, they've come to their
2 conclusion. I think the evidence supports that
3 verdict in this case. And so I'll deny your motion.

4 Is the defendant ready for sentencing at this
5 time?

6 **MR. JOHNSON:** Yes, he is, Your Honor.

7 **THE COURT:** Is there anything further from the
8 State?

9 **MS. CAMPBELL:** Your Honor, present in the
10 courtroom is Janie Gale and her other son, Calvin
11 Hinton, who is the brother of the victim in the
12 case. They're both a little bit overwhelmed at this
13 point, Your Honor. It's been a rather long week for
14 them. They did want me to put on the record that
15 this has deeply affected them, of course, as you can
16 imagine. I think the facts in this case speak for
17 themselves. And you are also aware of his prior
18 record which we went over extensively during the
19 course of the trial.

20 Let me just double check. Ms. Gale, are you
21 okay?

22 **MS. GALE:** Uh-huh.

23 **MS. CAMPBELL:** And we would just, of course,
24 leave sentencing up to you, Judge.

25 (Pause.)

1 **THE COURT:** Anything further from you,
2 Mr. Johnson?

3 **MR. JOHNSON:** The only thing on behalf of my
4 client, Your Honor, is that I ask that you consider
5 the age of 26. I ask you to consider that since
6 this is a murder conviction, that he would have to
7 serve day for day. The 30 year sentence is, I
8 think, is the minimum that you can offer and I ask
9 that you consider a sentence somewhere in the lower
10 level of the range that you can give him.

11 I have spoken with my client, Your Honor, and I
12 think he does not wish to address the Court. He
13 does not wish to address the Court.

14 (Pause.)

15 **THE COURT:** Mr. Henderson, you understand that
16 it is a mandatory minimum of 30 years imprisonment,
17 up to a term of life imprisonment is the possible
18 range of punishment. I understand that you're 26
19 years old. And I understand from the evidence
20 produced at trial that you've had some history of
21 addictions.

22 And while, as I charged the jury, voluntary
23 intoxication of being under the influence of
24 narcotics or illicit drugs is not a defense or an
25 excuse for your actions, I certainly think that that

1 indicates a state in which you were obviously not
2 clear thinking and you were bent on a life of crime.

3 I also heard from the testimony elicited that
4 during those times in which you were in some type of
5 a stable environment, whether it was at DJJ or
6 within the department of corrections, that you were
7 able to kind of pull yourself together and use your
8 life to some benefit, do something to benefit
9 yourself to make you a better person. And I
10 understand that you've been incarcerated for at
11 least two years, a little bit longer than two years,
12 and I think that you've come a little way from the
13 time when these events occurred. I think that you
14 are still capable of being productive in some form
15 or fashion.

16 And while your actions are not condoned nor are
17 they excused or understood, I can only hope that the
18 sentence to be imposed would be able to provide you
19 some opportunity to get yourself straightened out
20 and to be somewhat productive and perhaps use the
21 experiences that you've had as a tool to teach
22 others to avoid your ways.

23 And I understand that while you may not have an
24 extremely close-knit family, that your family will
25 be deprived of whatever social benefits that you can

1 provide them. So, too, has the family of Alonzo
2 Gale been deprived of his social skills and his
3 benefits and his children have been deprived of
4 having a father.

5 And so balancing all of that and taking into
6 consideration all of what I've heard and seen
7 throughout the course of this trial, I'm going to
8 sentence you to the mandatory minimum of 30 years
9 within the department of corrections. Good luck to
10 you.

11 **MR. JOHNSON:** Thank you, Your Honor.

12 **MS. CAMPBELL:** Thank you, Your Honor.

13 **THE COURT:** Is there anything further?

14 **MR. JOHNSON:** Nothing further from the defense,
15 Your Honor.

16 **THE COURT:** Then we're adjourned.

17 **MS. CAMPBELL:** Thank you, Your Honor.

18 **MR. JOHNSON:** Thank you, Your Honor.

19 (Court's Exhibit Number 2, request to
20 charge, was marked for identification purposes.)
21
22

23 **END OF PROCEEDINGS**
24
25

C E R T I F I C A T E

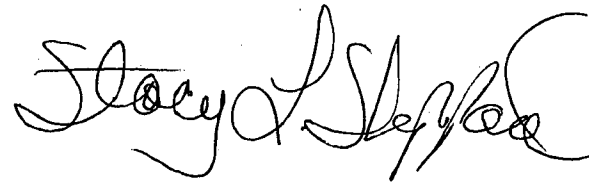
STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

I, the undersigned, Stacy L. Sheppard, Circuit Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the trial of the captioned cause, relative to appeal in the Criminal Court for Richland County, South Carolina, on the 21st of September, 2004.

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

April 6, 2005



Stacy L. Sheppard
Circuit Court Reporter

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County

Alison Renee Lee, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

AYREE HENDERSON,

APPELLANT

FINAL ANDERS BRIEF OF APPELLANT

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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

The judge erred by failing to instruct the jury that the State had the burden of disproving self-defense beyond-a-reasonable-doubt.

STATEMENT OF FACTS

On September 21, 2004, Ayree Henderson stood trial for murder in Richland County before Judge Alison Renee Lee and a jury. Henderson testified that he had killed Alonzo Gale in self-defense when Gale's own gun discharged during a struggle. ROA p. 480, line 17 – p. 483, line 8; ROA p. 528, lines 18-22. The State conceded that Gale had been shot during an altercation. ROA p. 73, lines 23 and 24; ROA p. 76, lines 20-22; ROA p. 158, line 17 – p. 160, line 6; ROA p. 190, lines 4-24. A crime scene investigator found no evidence inconsistent with self-defense. ROA p. 268, line 25 – p. 269, line 3. Finally, an eyewitness to the incident corroborated Henderson's account of the shooting. ROA p. 402, lines 2-16; ROA p. 409, lines 9-11.

Based on the evidence that the gun went off during a struggle, in addition to murder the judge instructed the jury on voluntary and involuntary manslaughter and self-defense. (The adequacy of the self-defense charge is at issue in this appeal.) The jury nevertheless convicted Henderson of murder, and the judge sentenced him to imprisonment for thirty years.

ARGUMENT

The judge erred by failing to instruct the jury that the State had the burden of disproving self-defense *beyond a reasonable doubt*.

As noted, Henderson testified that he killed Gale in self-defense, and the State's evidence was not inconsistent with self-defense. Prior to her final instructions to the jury, the judge announced her intention to charge self-defense and to inform the jury that "the burden to disprove self-defense falls on the State." ROA p. 627, lines 14-16. Defense counsel concurred. ROA p. 627, lines 17-22. The judge then charged just that: "[L]adies and gentlemen, the burden to disprove self-defense falls on the State." ROA p. 651, lines 15 and 16. Defense counsel took no exception to the judge's charge. ROA p. 656, lines 12-16.

The judge erred in failing to instruct the jury that the State bore the burden of disproving self-defense *beyond a reasonable doubt*. "Current law requires the State to disprove self-defense, once raised by the defendant, beyond a reasonable doubt." *State v. Wiggins*, 330 S.C. 538, 500 S.E.2d 489, 493 (1998).

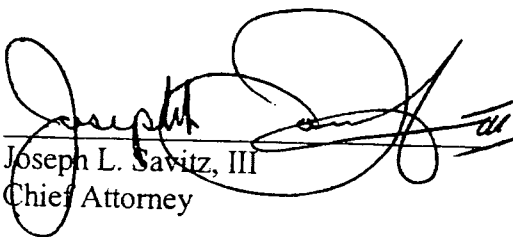
When self-defense is properly submitted to the jury, the defendant is entitled to a charge, if requested, that the State has the burden of disproving self-defense by proof beyond a reasonable doubt.

State v. Addison, 343 S.C. 290, 540 S.E.2d 449, 451 (2000). The jury instructions in this case did not adequately convey that the State had the burden of disproving self-defense beyond a reasonable doubt. See *State v. Burkhart*, 350 S.C. 252, 565 S.E.2d 298 (2002).

However, defense counsel did not object to the charge as given. This omission may require Henderson to file an application for post-conviction relief, alleging that he did not receive effective assistance of counsel due to counsel's failure to request a charge which complied with *Wiggins*, *Addison* and *Burkhart*. See, for example, *Battle v. State*, 305 S.C. 460, 409 S.E.2d 400 (1991).

If not, the Court should reverse Henderson's conviction for murder and remand for a new trial.

Respectfully submitted,



Joseph L. Savitz, III
Chief Attorney

ATTORNEY FOR APPELLANT

This 31st day of August, 2006.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Richland County

Alison Renee Lee, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

AYREE HENDERSON,

APPELLANT

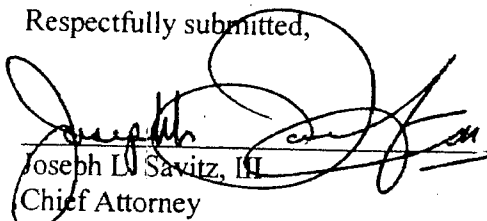
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Ayree Henderson states:

1. He is Chief Attorney for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. He has reviewed the record of appellant's trial before Judge Alison Renee Lee, which was held on 9-24-04, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, he asks the Court to relieve him as counsel for Ayree Henderson.

Respectfully submitted,



Joseph L. Savitz, III
Chief Attorney

ATTORNEY FOR APPELLANT

This 31st day of August, 2006.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR.

August 31, 2006



Joseph L. Savitz, III
1330 Lady Street, Suite 401
Post Office Box 11589
Columbia, SC 29211-1589
803) 734-1343
Attorney for Appellant

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Richland County

Alison Renee Lee, Circuit Court Judge

THE STATE,

RESPONDENT,

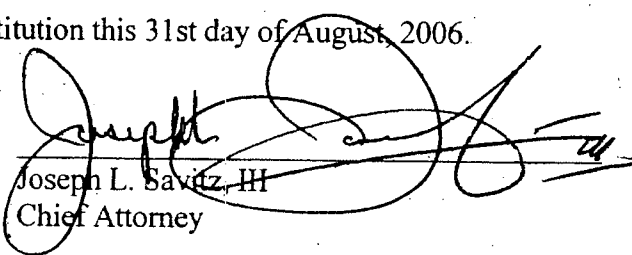
V.

AYREE HENDERSON,

APPELLANT

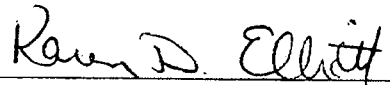
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Anders Brief of Appellant in the above referenced case has been served upon Donald J. Zelenka, Esquire, this 31st day of August, 2006. A copy of the brief and record on appeal have also been served on Ayree Henderson, #237887 at Lee Correctional Institution this 31st day of August, 2006.


Joseph L. Savitz, III
Chief Attorney

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 31st day of August, 2006.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: March 13, 2007

04-4549

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OCT 16 2006

State of South Carolina
In The Court of Appeals

ATTORNEY GENERALS
OFFICE

The State

Respondent

v.

Aryee Henderson

Appellant

ATTORNEY GENERAL'S OFFICE
RECEIVED 10-17-06

ADMINISTRATIVE INSTRUCTIONS

DATE 10/17/06 OPEN END

HAVE COPIES MADE

ROUTE TO

TRANSCRIPT

FILED IN CLERK RECORDS

Re: 02-GS-40-7277

Ground For Appellate Review
"Pro Se"

Ground (a)

Appellate was deprived Due Process of law pursuant to the Fifth and Fourteenth Amendments to the United State Constitution and the Effective Assistance of Counsel pursuant to the Sixth Amendment United States Constitution when the Trial Judge, in the face of a Harbison issue, failed to conduct "an on-the-record inquiry" with the Appellate to determine whether he consented to Counsel's admission of his guilt.

Facts/Analysis

During closing argument before the Trial Court, Trial Counsel began to concede to the trial jury that in his opinion, Appellate was not guilty of murder, but instead something less than that. Cf. Tr. p. 591 line 5 thru 8; Tr. p. 593 line 7 thru 9; Tr. p. 598 line 12 thru 14.

Law holds, when a Trial Court become aware of Defense Counsel's admission of his clients guilt, "duty" is placed upon the Court to determine if the Defendant consent to Counsel's declaration of his guilt. Cf. State v. Harbison, 315 N.C. 173, 337 S.E. 2d 504, (1985) cert. denied 476 U.S. 1123, 106 S.Ct. 1992, 90 L.Ed. 2d 672 (1986).

When there is no South Carolina case directly on point, our Court may look to other jurisdictions for persuasive authority - See Williams v. Morris, 320 S.C. 196, 464 S.E. 2d 97 (applying the

law of foreign jurisdiction in the absence of governing South Carolina law.) The Trial Court neglected to confer with the appellate regarding Counsel's admission of his guilt to something less than murder and the "nonfeasance" had a substantial adverse effect on his Trial Counsel's performance. This erroneous admission of testimony by appellate's Trial Counsel with admission of defendants guilt during closing argument without appellate's consent was an error so egregious that it violated defendant's due process right inherently resulting in complete miscarriage of justice and fundamental fairness since admission of Trial Counsel's testimony was shocking to universal sense of justice. At the on-set of trial, Counsel informed the Appellate they would be pursuing a defense of not guilty by reason of self-defense. Cf. Tr. p. 9 line 23 thru 25. Relying on what was told to him by Counsel, Appellate was looking to be vindicated for the Killing of Alonzo Gale by establishing with a preponderance of the evidence he had killed Mr. Gale in self-defense. Testimony was introduced from the Appellate that he killed Alonzo Gale when Gale's own gun discharged during a struggle. Cf. Tr. p. 480 line 17 thru p. 483 line 8; Tr. p. 528 line 18 thru 22. An eyewitness testimony to the incident corroborated Appellants account of the shooting. Tr. p. 402 lines 2 thru 16; Tr. p. 409 lines 9 thru 11. The States own concession that Gale had been shot during an altercation Tr. p. 73 line 23 and 24; Tr. p. 76 line 20 thru 22; Tr. p. 158 line 17 thru p. 160 line 6; Tr. p. 190 lines 4 thru 24, and no evidence from the crime scene investigator to disprove the heavily relied upon theory of self-defense Tr. p. 268 line 23 thru p. 269 line 3; all weighed heavily in the Appellants favor. Therefore, based on the evidence presented, Counsel's admission during closing argument that the Appellate was guilty of something less than murder was

wholly coincidental to the strategic defense sought and employed. Counsel's concession of guilt was highly prejudicial to the Defense, in that, the inferences could be interpreted by the trial jury to believe Appellate's Counsel - who was before the Court defending him in such a serious matter - had formed his personal opinion regarding his client's guilt. Although he did not believe him to be guilty of murder; he believed him to be guilty of something greater than self-defense. This point is evident when viewed in light of Counsel's failure to argue the Appellate acted in self-defense when there was over-whelming evidence of self-defense and such a conclusion by the trial jury would have required a finding of not guilty. State v. Davis, 282 S.C. 75, 317 S.E.2d 452. Moreover, when culpable with Counsel's other prejudicial statement to the jury; "as I told my client, you made your bed, you have to lay in it," Tr. p. 599 line 3 thru 5 a trier of fact would conclude the Appellate didn't act in self-defense. "A requisite finding of self-defense is the Defendant not being at fault for bringing on the altercation." Davis Supra. Trial Counsel's erroneous admission of the Appellate's guilt was reinforced during the Prosecution's closing argument when the prosecutor placed great emphasis on Trial Counsel's remark; Tr. p. 599 line 10 thru 14, Tr. p. 600 line 18 thru p. 601 line 25, therefore, it is highly probable the trial jury considered this point in returning a verdict of guilty of Murder against the Defendant.

In light of the Trial Court's nonfeasance and the fact that the Court's negligence allowed Trial Counsel to admit the Appellate's guilt to an offense greater than the offense that would have vindicated Appellate, Counsel rendered a deficient performance outside of Strickland and entitles Appellate to relief in the form of a new trial. U.S. v. Cronie, 466 U.S. 648, 104 S.Ct. 2039, 80 L.Ed.2d 657

Ground (b)

Alternatively to ground (a), if the State contests the Appellate's assertion of fact that he did not consent to his attorney's admission of his guilt, and the Court concludes Appellant is not entitled to an automatic retrial in regards to the Trial Court's "nontenancy" that was a direct result of Trial Counsel's deficient performance, the record does not establish a valid consent; thus requiring remand to the Circuit Court for an evidentiary hearing to determine the Appellant knowingly consented to Counsel's confession of his guilt.

cc Mr. Kenneth A. Richstaad Clerk
 Mr. Joseph L. Savitz, III Counsel
 Mr. Argee Henderson Appellant

Sworn and Subscribed
 before me; this _____ day
 of _____ 2006

 NOTARY

Comm.
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Trial Judge committed prejudicial error of law by allowing photo mug shot of defendant to be introduced in trial.

The State sought to introduce Henderson's photo mug shot with their witness without the prerequisites required in U.S. v. Harrington, 490 F.2d 487 (2nd Cir. 1973) and in State v. Tate, 341 S.E.2d 580 (S.C. 1986). Defense Counsel objected. Tr. p. 368 line 23 thru 24

The introduction of the photo mug shot is extremely prejudicial. The record reflects the only reason the prosecution wanted the mug shot placed into evidence is to show how the appellant looked at the time of the incident. Tr. p. 382 line 23 thru Tr. p. 383 line 2. This is not an identification issue. This is a case of self-defense. The prosecution was able to put up evidence of the I.D. taken from the photo line-up. Thus, it seems the only reason the prosecution wanted the mug shot introduced into evidence was to prejudice the jury by depicting the appellant in some light unfavorable to him. This also shows the government did not have a demonstrable need to introduce the photograph.

The witness who the State used its foundation to enter the mug shot, testified that he never saw the defendant; therefore, he would have no knowledge as to how appellant looked at the time of the incident. Tr. p. 371 line 10 thru 11, Tr. p. 371 lines 17 thru 20 and Tr. p. 384 lines 21 thru 25. The prejudicial effect of this photograph outweighs its probative value.

During Prosecution's introduction of photo mug shot, Appellant was not responsible for prosecution placing his character in issue or causing jury to be informed about his previous conviction. The introduction of photo mug shot may well be equivalent to the introduction of direct evidence of a prior criminal conviction. The Fifth Amendment entitles a defendant the right to have the existence of any prior criminal record concealed from the jury. Appellant asserts that when the prosecution sought to salvage his (appellant) identification by confronting their witness with Appellant photograph, it violated his Fifth Amendment right to a knowing and voluntary right to take the witness in his own defense.

The Fifth Amendment privilege against self-incrimination provides that no person... shall be compelled in any criminal case to be a witness against himself. U.S. Const. Amend. V

The privilege against self-incrimination applies to the States through the Fourteenth Amendment. See *Malloy v. Hogan* 378 U.S. 1, 8, 84 S.Ct. 1490

The Due Process Clause forbids compulsion to testify by fear or hurt, torture or exhaustion. It forbids any other type of coercion that falls within the scope of Due Process.

Appellant argue that his photograph should not have been admitted into evidence because the procedures used were unnecessarily suggestive.

This Court has held that the introduction of a "mug shot" is reversible error unless it is shown that: (1) The State had a demonstrable need to introduce the photograph; and (2) the photographs themselves, if shown to the jury, must not imply that the defendant had a prior criminal record; and (3) the photograph must not be introduced in such a manner to draw attention to the source or implication of the photograph. *State v. Robinson*, 274 S.C. 198, 262 S.E.2d 729 (1980); *State v. Denson*, 269 S.C. 407, 237 S.E.2d 761 (1977); citing *United States v. Harrington*, 490 F.2d 487 (2nd Cir 1973)

Fourth Circuit courts have recognized the prejudice that results from admitting evidence of a similar offense under Rule 609:

Admission of evidence of a similar offense does little to impeach the credibility of a testifying defendant while undoubtedly prejudging him. The jury, despite limiting instructions, can hardly avoid drawing the inference that the past convictions suggests some probability that defendant committed the similar offense for which he is charged. The generally accepted view, therefore, is that evidence of a similar offense for impeachment purposes under Rule 609 should be admitted sparingly if at all. United States v. Bachm, 664 F.2d 414, 418-19 (4th Cir. 1981)

Appellant's prior conviction was remote in time, almost falling within the presumptive bar of Rule 609 (b). It was for a similar offense, an odious one likely to inflame the jury and thus prejudice Appellant. Moreover, it was an offense that had minimal if any bearing on the likelihood that defendant would testify truthfully.

Although Henderson's prior conviction was not as remote in time as the prior conviction at issue in Bachm, all of the other reasons for holding the evidence inadmissible in Bachm apply equally well to Appellant. But in any event, Appellant was denied the safeguards of Rule 609 (a) (1) Tr. p. 17 line 17 thru Tr. p. 18 line 6. The Trial court failed to determine as a prerequisite to use of the evidence that the probative value of the conviction for impeachment purposes outweighed its prejudicial effect to the defendant as required by Rule 609 (a) (1)

Trial court erred in admission of Appellant's prior conviction for accessory after the fact of Murder.

Appellant asserts his due process rights were violated through the Fifth and Fourteenth Amendments to the United States Constitution when his prior conviction for accessory after the fact of murder was introduced in trial.

At the time of trial, State and Federal Rule of Evidence 609(a)(1) provided that:

For the purpose of attacking the credibility of a witness, evidence that a witness other than an accused has been convicted of a crime shall be admitted, subject to Rule 403, if the crime was punishable by death or imprisonment in excess of one year under the law under which the witness was convicted, and evidence that an accused has been convicted of such a crime shall be admitted if the court determines that the probative value of admitting this evidence outweighs its prejudicial effect to the accused;

Appellant's conviction for accessory after the fact of murder fall under Rule 609(a)(1), and the trial court therefore was required to balance the probative value of the evidence against its prejudicial effect in assessing its admissibility. State and Federal Rule of Evidence 609(a)(1)

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In The State of South Carolina
In The Court of Appeals

Appeal from Richland County
The Honorable Alison Rene Lee, Circuit Court Judge

Arjee Henderson 237587

Appellant

v.

The State of South Carolina

Respondent

Certificate of Service

The Appellant, Arjee Henderson, hereby certifies that he has served a copy of the attached "Pro Se" brief in the above captioned appeal by depositing the same in the U.S. Mail, postage prepaid, addressed as followed:

Sally W. Elliott, Assistant Attorney
General Office of the Attorney General
P.O. Box 11549
Columbia, S.C. 29211

Joseph L. Savitz, III
Office of Appellate Defense
P.O. Box 11589
Columbia, S.C. 29211

Deposited in the U.S. Mail by use of "yard mailbox" on this
_____ day of _____, 2006



ATTORNEY GENERAL'S OFFICE
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The South Carolina Court of Appeals

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TELEPHONE (803) 734-1800

FAX (803) 734-1839

www.sccourts.org

February 28, 2008

REMITTITUR

The Honorable Barbara A. Scott
1701 Main St
PO Box 2766
Columbia, SC 29202-2766

Re: The State v. Henderson, Ayree
2002-GS-40-07277

Dear Ms. Scott:

The above referenced matter is hereby remitted to the lower court. A copy of the judgment of this Court is attached.

Sincerely,

Renee S. Johnson
Administrative Specialist

cm
KAR/rj

cc: Ayree Henderson #237887
Chief Attorney Joseph L. Savitz, III
Assistant Deputy Attorney General Donald J. Zelenka
Warren Blair Giese, Esquire

04-4549

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ATTORNEY GENERAL'S OFFICE
2-12-08
214

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 239(d)(2), SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State,

Respondent,

v.

Ayree Henderson,

Appellant.

Appeal From Richland County
Alison Renee Lee, Circuit Court Judge

Unpublished Opinion No. 2008-UP-107
Submitted February 1, 2008 – Filed February 12, 2008

APPEAL DISMISSED

Chief Attorney Joseph L. Savitz, III, South Carolina
Commission of Indigent Defense, of Columbia, for
Appellant.

Attorney General Henry Dargan McMaster; Chief
Deputy Attorney General John W. McIntosh;
Assistant Deputy Attorney General Donald J.
Zelenka, of Columbia; and Solicitor Warren Blair
Giese, of Columbia, for Respondent.

PER CURIAM: Ayree Henderson appeals his murder conviction. After a thorough review of the record, Henderson's brief, and counsel's brief pursuant to Anders v. California, 386 U.S. 738 (1967), and State v. Williams, 305 S.C. 116, 406 S.E.2d 357 (1991), we dismiss¹ Henderson's appeal and grant counsel's motion to be relieved.

APPEAL DISMISSED.

ANDERSON, SHORT, and THOMAS, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

STATE OF SOUTH CAROLINA

County of RichlandAnyee Henderson 237887

Full name and prison number (if any) of Applicant

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

2008 CP 406-16 96APPLICATION FOR
POST-CONVICTION RELIEF**INSTRUCTIONS - READ CAREFULLY**

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Lee Correctional Institution
990 Wisacky Hwy, Bishopville SC 29010
2. Name and location of Court which imposed sentence Richland County
Judicial Center
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2002 - GS - 40 - 7277 - Murder
 - (b) _____

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) 9-24-04
- (b) ~~9-24-04~~ Mandatory minimum of 30 yrs. Must serve day for day.
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ✓
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
- yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. The Court of Appeals (Direct Appeal)
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Appeal Dismissed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. February 12, 2008
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective Assistance of Trial Counsel
- (b) Ineffective Assistance of Appellate Counsel
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) trial counsel failed to object to trial court's legal standing under Rule 3 SCR Crim P
- (b) trial counsel failed to object my prior conviction being admitted into evidence.
- (c) trial counsel conceded my guilt to the jury in closing arguments. cont. →
12. Prior to this application have you filed with respect to this conviction:
- (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:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

yes

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. my prior conviction being admitted into evidence
- ii. trial counsel conceded my guilt to the jury
- iii. unconstitutionality of photograph being admitted into evidence

(b) the proceedings in which each ground was raised:

- i. Direct Appeal
- ii. II
- iii. II

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) _____
 (b) _____
 (c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? _____
 (b) your trial, if any? yes
 (c) your sentencing? yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

- i. Charlie Jay Johnson - P.O. Box 11212
1634 Main St., Suite 95 Cola, S.C. 29211
- ii. Joseph Savitz, III - P.O. Box 11589
1330 Lady Street, Suite 401 Cola, S.C. 29211-1589
- iii. _____

(b) the proceedings at which each such attorney represented you:

- i. trial
- ii. direct appeal
- iii. _____

19. State clearly the relief you seek in filing this application:

Vacation of sentence

20. Are you now under sentence from any other court that you have not challenged?

NO

STATE OF SOUTH CAROLINA)

County of Richland)

VERIFICATION

I, Aryce Henderson 237887, 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.

X Aryce Henderson

SWORN to and subscribed before me this 19
day of February, 2008.

George B. Surra (L.S.)
Notary Public

My Commission Expires: 12-20-2017

STATE OF SOUTH CAROLINA	)	
COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS
	)	
	)	2008-CP-400-1696
Ayree Henderson, 237887,	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

In response to the post-conviction relief application filed on March 4, 2008, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Richland County Clerk of Court's orders of commitment. The Richland County Grand Jury indicted the Applicant at the November, 2002 term of General Sessions for Murder (2002-GS-40-7277). Charles E. Johnson, Esq. represented the Applicant.¹

The Applicant proceeded to trial before the Honorable Alison R. Lee, judge, and a jury. The Applicant was convicted of the charge and was sentenced to confinement for thirty (30) years.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. Pursuant to an Anders brief, the South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Henderson, Unpublished Op. No. 2008-UP-107 (S.C. Ct. App.

¹ The Respondent notes that the Application for PCR references trial counsel as "Charlie Jay Johnson," the transcript however clearly indicates Charles E. Johnson.

Filed February 12, 2008); Anders v. State of Cal., 386 U.S. 738, 87 S.Ct. 1396 (1967).

Remittitur was issued on February 28, 2008.

II.

In his application for post conviction relief the Applicant alleges that he is being held in custody unlawfully for the following reasons:

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
 - (a) Ineffective Assistance of Trial Counsel
 - (b) Ineffective Assistance of Appellate Counsel
 - (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
 - (a) trial counsel failed to object to trial court's legal standing under Rule 3 SCR Crim P
 - (b) trial counsel failed to object my prior conviction being admitted into evidence.
 - (c) trial counsel conceded my guilt to the jury in closing arguments. cont. →
12. Prior to this application have you filed with respect to this conviction: _____
15. If you answered "yes" to (14) identify:
 - (a) which grounds have been presented:
 - i. my prior conviction being admitted into evidence
 - ii. trial counsel conceded my guilt to the jury
 - iii. unconstitutionality of photograph being admitted into evidence
 - (b) the proceedings in which each ground was raised:
 - i. Direct Appeal
 - ii. II
 - iii. II

Respondent incorporates herein and attaches hereto the transcript, the Clerk of Court records, the South Carolina Department of Corrections' records, the Anders brief, the opinion of

the S.C. Court of Appeals, and the remittitur. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

Respondent asserts that the Applicant's allegation of ineffective assistance of trial counsel is without merit. Respondent asserts that 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 Petitioner 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, 104 S. Ct. 2052 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its reasonableness under professional norms. Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625, *citing* Strickland. 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 v. State, *Id.*

A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997).

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. Moreover, Respondent notes that, contrary to Applicant's claim, our supreme court has ruled that the criminal practice rule respecting disposition of warrants as set forth in Rule 3, SCRCrimP. Also, matters of reasonable trial strategy do not constitute ineffective assistance of counsel. Simpson v. Moore, 367 S.C. 587, 627 S.E.2d 701 (2006). However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. Respondent requests an evidentiary hearing to fully resolve this issue. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

The allegation that appellate counsel was ineffective is without merit. Respondent contends that the Applicant's appellate counsel rendered adequate assistance and provided representation within the range of competence required by appellate attorneys. A defendant is constitutionally entitled to the effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387, 105 S.Ct. 830 (1985). Where ineffective assistance of appellate counsel is alleged, the Applicant must show that appellate counsel's performance was (1) deficient; and (2) that there was prejudice from the appellate counsel's deficiency. Southerland v. State, 337 S.C. 610, 524 S.E.2d 833 (1999). To be effective, appellate counsel must give assistance of such quality as to make appellate proceedings fair. *Id.* Appellate counsel must provide effective assistance but need

not raise every non-frivolous issue presented by the record. Id. Appellate counsel has a professional duty to choose among potential issues according to their merit. Jones v. Barnes, 463 U.S. 745, 103 S.Ct. 3308 (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).

When a claim of ineffective assistance of appellate 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 submits that the Applicant cannot satisfy either requirement of the Strickland v. Washington test with regard to the ineffectiveness claims against appellate counsel. However, the allegation of ineffective assistance of appellate 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. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

Respondent asserts that Petitioner has failed to prove deficient performance or prejudice on the part of appellate counsel. However, deficient performance is not an issue this Court needs to reach, because even assuming that the court concludes that appellate counsel's performance was deficient, Petitioner has not shown the necessary prejudice to succeed on this claim. In this case, to establish prejudice Petitioner would have to show that the South Carolina Supreme Court would have found prejudicial error warranting reversal of his conviction and/or sentence if appellate counsel had not filed an Anders brief. He has failed to do so. The South Carolina Court of Appeals has held under Anders, ... [t]he court ... is obligated to conduct a "full examination" of the record to determine whether the appeal is "wholly frivolous"

according to Anders, the reviewing court is obligated to make a full examination of the proceedings on its own. *See State v. Williams*, 305 S.C. 116, 406 S.E.2d 357 (1991). After such an examination, if the reviewing court agrees with the attorney, it may dismiss the appeal or proceed to a decision on the merits. *See Anders*. On the other hand, if the court disagrees with the attorney's analysis of the appeal, it must afford the defendant 'the assistance of counsel to argue the appeal. *Id.* At 744. The purpose of filing a brief under Anders is to ensure the merits of the appeal are not overlooked. The court has to conclude independently, regardless of counsel's conclusion, whether or not the appeal has merit before it can dismiss the appeal. *State v. McKennedy*, 559 S.E.2d 850, 854-855 (S.C.2002). The Applicant filed a pro se response to the Anders appeal, which was reviewed by the Court of Appeals and determined to be without merit. Consequently, the Appellate Court affirmed the Applicant's conviction and sentence as imposed by the trial court.

V.

The Respondent denies each allegation that is not expressly admitted, qualified or explained.

VI.

WHEREFORE, the Respondent requests an evidentiary hearing solely for the purpose of determining whether the Applicant's trial counsel was ineffective.

Respectfully submitted,

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Attorney General

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Chief Deputy Attorney General

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By: _____

Attorneys for the Respondents

Columbia, South Carolina
January 30, 2009

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

) COURT OF COMMON PLEAS
) 2008-CP-40-1696

Ayree Henderson,

)
)
) Applicant

vs.

) TRANSCRIPT OF RECORD
) (Post Conviction Relief)

State of South Carolina,

)
)
) Respondent.

August 12, 2009
Columbia, South Carolina

BEFORE:

THE HONORABLE G. THOMAS COOPER, JR., JUDGE

APPEARANCES:

CHARLES T. BROOKS, III, ATTORNEY AT LAW
Attorney for the Applicant

BRIAN T. PETRANO, ASSISTANT ATTORNEY GENERAL
Attorney for the Respondent

JENNY H. WILLIAMS
Official Circuit Court Reporter
(803) 576-1743

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1 Wednesday, August 12, 2009

2 **MR. PETRANO:** Judge, next is Mr. Ayree
3 Henderson.

4 **THE COURT:** Ayree Henderson?

5 **APPLICANT:** Yes, Your Honor.

6 **THE COURT:** Just a minute.

7 (Pause)

8 **THE COURT:** Are you ready to proceed?

9 **MR. BROOKS:** Yes, sir, Your Honor.

10 **THE COURT:** Mr. Petrano?

11 **MR. PETRANO:** Thank you, Your Honor. May it
12 please the Court. This is 2008-CP-40-01696, Mr.
13 Ayree Henderson. This was a PCR application filed
14 March 4th, 2008. The Applicant went to a jury trial
15 before Judge Lee on September 21st, 2004. He was
16 represented by Mr. Charlie J. Johnson, Jr. The
17 Applicant was indicted by the November 2002 term of
18 the Richland County Grand Jury. That's
19 2002-GS-40-7277 for murder. The Applicant was
20 convicted and sentenced to 30 years.

21 There was a direct appeal. That was an Anders
22 brief. The South Carolina Court of Appeals remitted
23 that case on February 28th, 2008, and that was
24 2008-UP-107.

25 On that I will turn it over to Mr. Charles T.

1 Brooks, III, the Applicant's current counsel of
2 record. Thank you, Your Honor.

3 **THE COURT:** Mr. Brooks.

4 **MR. BROOKS:** May it please the Court. We
5 would -- if you're ready to proceed, we will go ahead
6 and call Mr. Henderson to the stand.

7 **THE COURT:** Yes, sir. Come around,
8 Mr. Henderson.

9 AYREE HENDERSON, after being duly sworn,
10 testifies as follows:

11 **THE COURT:** All right. Have a seat.

12 **THE BAILIFF:** State your name.

13 **APPLICANT:** Ayree Henderson.

14 **MR. BROOKS:** Are you ready, Judge?

15 **THE COURT:** You may proceed.

16 DIRECT EXAMINATION

17 **BY MR. BROOKS**

18 **Q** Mr. Henderson, how are you doing today?

19 **A** I'm doing all right, sir.

20 **Q** Did mr. Johnson represent you in this matter?

21 **A** Yes, sir.

22 **Q** Was he court appointed or did you pay him?

23 **A** Court appointed.

24 **Q** Okay. Were you in jail the whole time?

25 **A** Yes, sir.

1 Q Do you recall how many times you got a chance to meet
2 with him?

3 A I would have met with Mr. Johnson three times.

4 Q Okay. And this is down at the County?

5 A Yes, sir.

6 Q All right. Now, you are requesting a new trial in
7 this case. Isn't that right?

8 A That's correct.

9 Q And there are a couple of things in your application
10 you talk about Mr. Johnson not doing right. Isn't
11 that correct?

12 A Yes, sir.

13 Q One of those things is when you testified, your
14 conviction came into play. Isn't that correct?

15 A Yes, sir.

16 Q Tell us about that.

17 A As far as --

18 Q What do you think he should have done?

19 A In my representation?

20 Q We're just dealing with the conviction right now.
21 We're coming to the rest of the stuff.

22 A Oh. Well, dealing with the conviction, I mean,
23 number one, he didn't -- Mr. Johnson didn't argue
24 that the prejudicial effect of my prior conviction
25 outweighed its probative value.

1 Q And that's something he should have done?

2 A He should have done. That was prior to trial.

3 Q Okay.

4 A I mean, because the State -- the record reflects that
5 trial transcript page 17, line 21 through page 18,
6 line 4, that's when the solicitor stated to the Court
7 that she was going to impeach me with a prior
8 conviction which was accessory after the fact to
9 murder.

10 Q Okay. And that's when you took the stand and
11 testified in your own defense. Is that right?

12 A That's right.

13 Q And the solicitor brought that up?

14 A She brought that up.

15 Q And based on your application, you're saying that Mr.
16 Johnson should have objected to that coming in. Is
17 that right?

18 A That's correct.

19 Q Okay. Now, and you feel that that prejudiced you in
20 your trial?

21 A Yes.

22 Q Okay. And did you talk with Mr. Johnson about that
23 coming in before you testified?

24 A No. I mean, Mr. Johnson never conferred with me
25 about me being impeached. Well, during the time of

1 trial the Court did question me as far as me going
2 and being impeached. She told me that if I decided
3 to take the stand that my prior record would come out
4 and I would be impeached.

5 But dealing with that, when me and Mr. Johnson
6 was at the county jail, we were discussing trial
7 options. Not once has he brought up the fact that I
8 would be impeached with prior convictions. Neither
9 did he state the meaning of impeachment or never
10 stated that -- he never clarified as far as the
11 specifics dealing with the meaning of impeachment.

12 Q Now, if Mr. Johnson had done these things in regards
13 to a conviction, do you think the outcome of your
14 trial would have been different?

15 A I'm positive it would have been --

16 Q You would have been acquitted?

17 A I would have been acquitted of murder.

18 Q Okay. Now, that brings us to the second thing you
19 talked about, was you made some arguments about Mr.
20 Johnson's closing. Do you remember that?

21 A Right.

22 Q Closing arguments?

23 A Listen. We're moving too fast right now, man. I
24 mean, I want to back up. I just want to back up.

25 Q Okay.

1 **A** I mean, pardon me. I don't mean to interrupt. I
2 just -- I think we're moving too fast right now.

3 **THE COURT:** Why do you say that?

4 **APPLICANT:** Because I want to elaborate on the
5 issues that I'm raising before the Court.

6 **THE COURT:** That is about your prior conviction?

7 **APPLICANT:** Right, right. Well, he was talking
8 about closing arguments, but I just want it on the
9 record to back up.

10 **THE COURT:** He went on past the impeachment.
11 You say you didn't understand the word "impeachment"?

12 **APPLICANT:** Right. What I'm saying was, all
13 right, I was deprived of the effectiveness of
14 assisted counsel, number one, because he didn't argue
15 that the prejudicial effect of my prior conviction
16 outweighed its probative value.

17 **THE COURT:** Right.

18 **APPLICANT:** So the prior conviction was
19 accessory after the fact of murder. All right.

20 **THE COURT:** All right.

21 **APPLICANT:** In addition to counsel failing to
22 object, the Court did not engage in any on-the-record
23 analysis of the probative value of this conviction or
24 the prejudicial impact. Neither did the Court make
25 any ruling on the record which would indicate that

1 the Court had balanced the probative value against
2 the prejudicial impact.

3 Furthermore, the trial court did not properly
4 apply the burden of establishing a basis for the
5 admission. The trial judge did not place the burden
6 of establishing admissibility on the State as
7 required by Rule 609(a). Moreover, the trial judge
8 did not address the similarity of the prior
9 conviction to the current charge for which I was on
10 trial.

11 Since he failed to object to the trial Court not
12 conducting a balancing test to determine whether the
13 prejudicial effect of the prior conviction outweighed
14 its probative value in a murder trial where I
15 asserted self-defense and he knew beforehand that I
16 would be taking the stand, that clearly establishes
17 that his representation fell below an objective
18 standard of reasonableness. Now--

19 **THE COURT:** Okay. So you did take the stand?

20 **APPLICANT:** I did take the stand.

21 **THE COURT:** Okay. And they introduced that
22 evidence?

23 **APPLICANT:** Yes, sir.

24 **THE COURT:** And the judge you say did not make a
25 balancing test in the record?

1 **APPLICANT:** Correct.

2 **THE COURT:** Okay. Now, is that raised in your
3 direct appeal?

4 **APPLICANT:** It was raised but it was dismissed
5 because it was never objected to at the time of
6 trial.

7 **THE COURT:** Okay.

8 **APPLICANT:** I did raise it in my Anders brief, I
9 mean, in my pro se brief to the Appellate Court.

10 **THE COURT:** I understand. You're saying because
11 he didn't raise it.

12 **APPLICANT:** Right.

13 **THE COURT:** Go ahead.

14 **APPLICANT:** Also I want to say that admission of
15 my prior conviction before the jury was extremely
16 prejudicial since it involved a similar type of
17 conduct for which I was on trial.

18 **THE COURT:** Right. I understand that.

19 **APPLICANT:** At trial I asserted self-defense and
20 my testimony went directly towards credibility, as
21 the jury had to choose between my version of the
22 events and that of the State's. The only witnesses
23 to the shooting were the victim, an eye witness, and
24 myself. The prior conviction was nine and a half
25 years old at the time of trial, approaching the

1 degree of remoteness presumptively barring its
2 admissibility under Rule 609(b).

3 **THE COURT:** Okay. Let me say this. I
4 understand that. I understand what the rule is.

5 **APPLICANT:** All right.

6 **THE COURT:** Just let me ask you a question.
7 Where in the record did you say that that discussion
8 took place with you and the judge?

9 **APPLICANT:** Trial transcript, page 17, line 21.

10 **THE COURT:** Okay.

11 **APPLICANT:** Through page 18, line 4.

12 **THE COURT:** Okay.

13 **APPLICANT:** Now, I'm raising this issue because
14 it was never objected to. It was just a colloquy
15 between the solicitor and the trial judge with my
16 lawyer just agreeing. He never objected at the time.
17 The solicitor stated to the trial court that, well,
18 she was going to make a prior conviction of accessory
19 to murder without Mr. Johnson's objections.

20 **THE COURT:** Okay. I understand. I understand
21 because I do this every day. So I understand that
22 issue and I'm going to read the record on that issue.

23 **APPLICANT:** All right.

24 **THE COURT:** Let's move on to your next issue.

25 **APPLICANT:** Oh, I wanted to -- see, I'm not

1 trying to disrespect you or anything like that, Your
2 Honor. I just want to place my prejudicial prong in
3 there because--

4 **THE COURT:** Well, you did.

5 **APPLICANT:** Well, I was stating that, you know
6 what I'm saying, that it was ineffective. I stated
7 the issue. But I ain't never showed how it could
8 have affected the outcome of the trial.

9 **THE COURT:** I understand all that. I understand
10 how a prior conviction can affect the outcome of a
11 trial. I really do. Go ahead.

12 **APPLICANT:** All right. See, what I was going to
13 tell you was I'm not--

14 **THE COURT:** Go ahead.

15 **APPLICANT:** I just wanted you -- can I have this
16 much, Your Honor, please? I mean, because it's going
17 to be on the record to the Supreme Court and I just
18 wanted it to be on the record because I know if you
19 was to rule against me I was going to appeal or if
20 you rule for me, he --

21 **THE COURT:** You're absolutely right. So go
22 ahead.

23 **APPLICANT:** No disrespect, Your Honor.

24 **THE COURT:** I understand.

25 **APPLICANT:** All right.

1 **THE COURT:** This is your day.

2 **APPLICANT:** All right. Trial transcript page
3 613, line 20 through page 614, line 5, the solicitor
4 was allowed to place emphasis on prior conviction.
5 My defense was that I acted in self-defense and this
6 hinged entirely on the testimony of me and the eye
7 witness.

8 Since the record contained evidence which may
9 have supported my self-defense theory, the
10 transcript, page 73, lines 23 and 24; page 76, lines
11 20 through 22; page 158, lines 17 through page 160,
12 line 6; page 190, lines 4 through 24 is testimony
13 that the victim had been shot during the altercation.

14 Therefore, based on the evidence that the gun
15 went off during the struggle the admission of the
16 prior conviction to the jury was highly prejudicial,
17 especially where my credibility was essential to my
18 defense.

19 I already told you about when he was at the
20 county we were discussing that he never talked to me
21 about the impeachment. But anyway, not only did he
22 fail to inform me about the impeachment of my prior
23 conviction, and not only did he fail to -- but he
24 failed to raise a Rule 5 Brady violation because the
25 solicitor never -- I got a copy of the transcript and

1 the solicitor never told trial counsel that she was
2 going to admit my prior conviction.

3 Your Honor, I've got a copy of -- I have a copy
4 of -- right here, I have a copy of my prior
5 convictions. And when she gave it to Mr. Johnson in
6 the discovery materials, she never submitted it to
7 Mr. Johnson. Therefore, that was a Rule 5 Brady
8 violation, which is a Brady violation, Your Honor.
9 And Mr. Johnson should have objected on the strength
10 of that also.

11 I mean, had he have objected, the trial judge
12 may have allowed -- agreed with him that no prior
13 convictions couldn't have been admitted also due to
14 the fact that she violated a Rule 5 Brady violation
15 also. I have a copy of my prior conviction that she
16 sent with the Brady -- I mean, with the discovery
17 materials if you want a copy of that. I can give
18 this to you right now.

19 **THE COURT:** Well, --

20 **APPLICANT:** I mean, if you--

21 **THE COURT:** -- if you say it was in the
22 discovery material, I understand that.

23 **APPLICANT:** Okay, okay, okay. All right. And I
24 did send a Brady motion to the Solicitor's Office
25 also. So she was well aware that we were seeking

1 this type of information to prepare for trial. And I
2 have -- I'm finished with that issue.

3 **MR. BROOKS:** You ready? Okay. Fine. Now--

4 **APPLICANT:** Are you satisfied, Your Honor,
5 with --

6 **THE COURT:** I understand this issue. I really
7 do.

8 **APPLICANT:** Okay. All right.

9 **Q** (By Mr. Brooks) Mr. Henderson, one of your other
10 allegations dealt with Mr. Johnson's, as you call it,
11 lack of argument or basically conceding your guilt?

12 **A** Correct.

13 **Q** What's that?

14 **A** Correct.

15 **Q** Can you explain to the Court what you were
16 referencing there?

17 **A** Trial counsel's concession of my guilt to the jury
18 was an error so egregious that it violated my due
19 process right that inherently resulted in a complete
20 miscarriage of justice and fundamental fairness.
21 There was a deprivation of my right to the effective
22 assistance of counsel and a fair trial.

23 Now, you could find these comments on page --
24 trial transcript, page 591, lines 5 through 8; page
25 593, lines 7 through 9; page 598, lines 12 through

1 14; and page 599, lines 3 through 5.

2 Q Now, what do you mean by that, Mr. Henderson? Do you
3 mean that he was trying to argue to the jury that
4 something happened, that you were involved but it was
5 something less than murder? Is that what you're
6 referencing?

7 A At the onset of trial counsel informed the Court we
8 would be pursuing a defense of not guilty by reason
9 of self-defense; transcript, page 9, lines 23 through
10 25. However, Mr. Johnson chose to solicit comments
11 that significantly departed from my defense, which
12 was that I killed Mr. Gills in self-defense.
13 However, Mr. Johnson -- in fact, his actions proved
14 that he was burdened by conflict between my interest
15 and his own sympathies to the prosecution's position.

16 The representation afforded by trial counsel
17 undermines the basis of an adversarial system. His
18 concessions of my guilt to the jury only served to
19 highlight the inference that I did not kill the
20 victim in self-defense. Furthermore, this form of
21 argument did not advocate in my favor but rather
22 tended to support the State's theory of murder.

23 Once Mr. Johnson conceded to the jury that I
24 wasn't guilty of murder but something less than that,
25 he ceased to function as a defense counsel.

1 Moreover, trial counsel failed to observe that his
2 obligation is not to be an independent observer and
3 fact finder but instead an advocate for me.

4 Q Okay. Now, one of your next issues you talked about
5 was the judge's self-defense instruction and failure
6 of Mr. Johnson to object to that. Is that correct?

7 A Yes. Well, listen, this is what I want to say
8 because I just want to -- Your Honor, I'm not -- I
9 don't want you to think I'm disrupting the PCR
10 because I'm not. I just want to get some say. This
11 right here--

12 **THE COURT:** Did you read this transcript?

13 **APPLICANT:** Yes, sir. I read it, sir.

14 **THE COURT:** Okay. Because I'm reading it now.
15 You just told me he did not argue that this was not a
16 murder. But I'm reading, it says: One thing I can
17 tell Your Honor, I honestly believe he's proven to
18 you that this is not a murder.

19 I'm not going to argue about it, but that's the
20 quotation that you said to me three minutes ago that
21 he did not argue in your favor and I see that he did
22 argue in your favor. But go ahead.

23 A All right. All right. What I want to say was this
24 argument, when trial counsel conceded my guilt to the
25 jury, this argument would never be deemed harmless

1 because it caused a breakdown in the adversarial
2 system of justice, the integrity of the trial, and it
3 lessened the State's burden of persuading the jury
4 that I wasn't guilty of murder.

5 And he engaged in an abandonment of my defense
6 at a critical stage of the criminal proceeding. The
7 emphasis could be interpreted by the jury to believe
8 trial counsel who was before the court defending me
9 in such a serious matter had formed his personal
10 opinion regarding my guilt. And although he did not
11 believe me to be guilty of murder, he believed me to
12 be guilty of something greater than self-defense.

13 This point is evident when viewed in light of
14 counsel's failure to argue that I didn't act in
15 self-defense when there was adequate evidence of
16 self-defense and such a confusion by the trial jury
17 would have required a finding of not guilty.

18 Since this was a self-defense case, counsel was
19 required to hold the State to its heavy burden of
20 proof beyond a reasonable doubt. Instead, he
21 informed the jury that it's his view of the evidence
22 I was guilty.

23 Moreover, when coupled with counsel's other
24 prejudicial statement to the jury: As I told my
25 client, you made your bed; you have to lay it in; the

1 transcript, page 599, lines 3 through 5, a trier of
2 fact would conclude that I didn't act in
3 self-defense.

4 Now, due process demands that no man shall lose
5 his liberty unless the government has borne the
6 burden of producing the evidence and convincing the
7 fact finders of his guilt. Since the penalty of a
8 conviction for murder is 30 years to life, the fate
9 of my existence was placed in the balance of his
10 representation.

11 His concession of my guilt invaded the province
12 of the jury, demonstrating an actual breakdown in the
13 adversarial process at trial, which compels belief
14 established that counsel exhibited a deficient
15 performance outside of Strickland by engaging in
16 abandonment of my defense at a critical stage of the
17 proceeding.

18 When Mr. Johnson subjected his statements to the
19 jury conveying his belief that I was guilty, there is
20 a reasonable probability that the State did not
21 convince the fact finder of my guilt that is
22 sufficient to undermine confidence in the outcome of
23 the trial. Furthermore, neither of those statements
24 interjected by trial counsel improved my chances of
25 favorable adjudication or burden.

1 The jury was in doubt between murder and
2 manslaughter; transcript, page 657, line 8 through
3 659, line 17, which confirms that trial counsel's
4 statements had a profound impact upon the jury's
5 decision in reaching a verdict.

6 Therefore, since counsel argued guilty of
7 something less than murder before the jury and the
8 solicitor argued that the defense counsel is arguing
9 for manslaughter; transcript, page 600, lines 10
10 through 20; page 601, lines 23 through 25, the
11 manslaughter was a consideration in the jury's
12 deliberation.

13 And since counsel never objected to the
14 solicitor's inferences of defense counsel's
15 summation; transcript, page 599, lines 10 through 14;
16 page 600, lines 10 through 20; page 601, lines 23
17 through 25, that there is a reasonable probability
18 that the jury took these statements as to be facts.

19 In conclusion of this evidence, the jury was
20 unable to assess a fair evaluation of the evidence I
21 presented for self-defense; and, furthermore, these
22 statements discouraged and impaired the jury's
23 ability to interpret whether it was self-defense or
24 not.

25 **MR. PETRANO:** Your Honor, if I may?

1 **THE COURT:** Sir?

2 **MR. PETRANO:** I believe the witness is just
3 reading an argument. If we could just submit that.

4 **APPLICANT:** No, no. This is what I want to say.

5 **MR. PETRANO:** If I may, it would be easier to
6 correlate the actual page numbers to the claims that
7 are made if we had this argument in writing rather
8 than--

9 **THE COURT:** He's got it in writing.

10 **MR. PETRANO:** Right. Rather than have him read
11 it all, if he could just introduce that.

12 **APPLICANT:** Your Honor, now--

13 **THE COURT:** Did you hear what he said? Did you
14 hear what he said? No, you didn't. He said you're
15 just reading this. If you want to submit what you're
16 reading rather than read it, it will still be part of
17 the record.

18 **APPLICANT:** Well, this is what I want to tell
19 you. I mean, I'd rather say it to you, Your Honor.
20 I mean, --

21 **THE COURT:** I'm the one that's going to read it.

22 **APPLICANT:** Oh, okay.

23 **THE COURT:** Do you see what I'm saying?

24 **APPLICANT:** I see.

25 **THE COURT:** Do you want to hand that up? I

1 mean, what you're reading. I mean, you're reading
2 something.

3 **APPLICANT:** I mean, this-- no. What it was is
4 that I had questions for my attorneys. Right? I had
5 questions. See, what I was basically saying was I
6 was just reading the prejudicial prongs and the--

7 **THE COURT:** But you've got all this.

8 **APPLICANT:** -- the transcript pages.

9 **THE COURT:** You've got it typed up?

10 **APPLICANT:** Yeah. It's written down on paper.
11 It's written on paper.

12 **THE COURT:** Okay.

13 **APPLICANT:** All right. Now, some of it -- now,
14 he ain't reading you the questions that I had already
15 presented for the Court, you know what I'm saying,
16 for him to read to me. You know what I'm saying? So
17 I'm just reading what he didn't ask me and this is
18 what I want to tell you.

19 **THE COURT:** All right. I've been following
20 along on Mr. Johnson's final argument. I've read his
21 right along with you.

22 **APPLICANT:** All right. Now, this is what I want
23 to tell you. This is what I want to tell you. On
24 transcript, page 599, lines 10 through 14--

25 **THE COURT:** But that's Ms. Campbell.

1 **APPLICANT:** That's Ms. Campbell. She stated:
2 You made your bed; you have to lay in it.

3 **THE COURT:** All right.

4 **APPLICANT:** And I'm just reading it just so I
5 can let you know.

6 **THE COURT:** I'm reading it. I am reading it.
7 I've got it right here.

8 **APPLICANT:** What she stated right there was
9 not -- what she stated right there, Your Honor, is
10 not what she said in trial.

11 **THE COURT:** That's what the transcript says.

12 **APPLICANT:** I mean, it has been altered. And I
13 told -- I submitted a letter to Mr. Brooks to get
14 the--

15 **THE COURT:** This transcript has been altered?

16 **APPLICANT:** That's what -- I wrote a letter to
17 Mr. Brooks asking him to get the trial transcript
18 tape because what she said was as soon as she got up:
19 I told you he's guilty. I told you he's guilty.
20 Even his lawyer said he's guilty. That's what she
21 really said.

22 **THE COURT:** Well, that's not what I've got.

23 **APPLICANT:** I told--

24 **MR. PETRANO:** Your Honor, I'm going to have to
25 object to this allegation. One, it's not in the

1 application.

2 **THE COURT:** Sure.

3 **MR. PETRANO:** Number two, any claims that
4 there's errors in the transcript should have been
5 made within the time period. That would have been
6 during his direct appeal when he got a copy of the
7 transcript years ago, way before the PCR. Thank you,
8 Judge.

9 **THE COURT:** Right. I'm not going to --

10 **APPLICANT:** All right.

11 **THE COURT:** Listen. She said on the record:
12 You made your bed; you have to lay in it. That's
13 what it said on the record.

14 **APPLICANT:** All right.

15 **THE COURT:** That's what the court reporter,
16 Stacy Shepherd, wrote in the record. That's all I've
17 got.

18 **APPLICANT:** I understand. But on the record, I
19 want to put on the record that --

20 **THE COURT:** Well, you're not --

21 **APPLICANT:** -- I asked Mr. Brooks to pull up the
22 trial tape, but I ain't never heard nothing about
23 that.

24 **THE COURT:** Well, you don't get that.

25 **APPLICANT:** Oh. I just wanted him to pull it up

1 so -- because I wanted to be ready for you.

2 **THE COURT:** It's probably destroyed. Once these
3 things are made, that's it.

4 **APPLICANT:** All right.

5 **THE COURT:** I'm not saying it even exists. I
6 can't base any decision in your case on what you
7 remember, but the transcript says something
8 different. That's just the way it is. And whatever
9 Ms. Campbell said on her final argument, she said it.
10 If Mr. Johnson objected, that's fine. If he didn't
11 object--

12 **APPLICANT:** See, he didn't. And I was going to
13 say, see that right there would have confirmed my
14 allegation and also the ineffectiveness I'm raising.

15 **THE COURT:** Okay.

16 **APPLICANT:** And because I'm--

17 **THE COURT:** I'm not going to go through her
18 entire--

19 **APPLICANT:** No, no. It was just that's when she
20 started off her argument. All right. The reason I'm
21 bringing this up to you, Your Honor, is because I was
22 saying that that right there also had a profound
23 impact upon the jury's decision to convict.

24 **THE COURT:** It probably did. Well, that was her
25 job.

1 **APPLICANT:** And I was saying, you know, and that
2 was prejudicial on my part, I mean, on the defense
3 because this is a self-defense case. And for her to
4 get up and tell the jury: I told you he's guilty. I
5 told you even his lawyer said he's guilty. Without
6 Mr. Johnson objecting, the jury took that as fact.

7 **THE COURT:** All right. I understand. Okay.

8 **APPLICANT:** I mean, --

9 **THE COURT:** I wasn't there.

10 **APPLICANT:** Yes, sir.

11 **THE COURT:** I'm trying to look at it today. All
12 right. What else?

13 **Q** (By Mr. Brooks) Mr. Henderson?

14 **A** My next issue is self-defense. Now, Your Honor, on
15 my PCR application I've got -- I only got three
16 issues.

17 **THE COURT:** That's right.

18 **APPLICANT:** But I got continued and I wrote some
19 issues on the back but it's on the original
20 application. And I sent Mr. Brooks a letter asking
21 him to get the Clerk of Court to give me a copy of
22 this with the copy, with what I was reading on the
23 back but I ain't never got it. Because I wrote
24 additional issues on the back of the original PCR
25 application.

1 **THE COURT:** Are you aware of that?

2 **MR. BROOKS:** (Shakes head negatively).

3 **APPLICANT:** I got a letter that I wrote. I got
4 a letter right there that I wrote Mr. Brooks asking
5 him.

6 **THE COURT:** What did you write on the back?

7 **APPLICANT:** Oh. I wrote on the back that trial
8 counsel failed to object to the erroneous
9 self-defense instruction. And I wrote -- and I
10 submitted an amended application and the issue of
11 counsel failed to further investigate and re-examine
12 all the State's evidence.

13 **THE COURT:** I don't have any amended
14 application. Do you?

15 **APPLICANT:** I submitted it with the court.

16 **MR. BROOKS:** If I may, Judge, that was part of
17 the questions I was asking him.

18 **THE COURT:** All right. Go ahead.

19 **Q** (By Mr. Brooks) One of the other claims you made
20 about Mr. Johnson is he failed to hire an
21 investigator, failed to get an independent witness to
22 re-examine the State's evidence. Isn't that correct,
23 Mr. Henderson?

24 **A** Yes.

25 **Q** And that's pretty much your final issue in your

1 application in regards to Mr. Johnson other than the
2 other things you already discussed. Isn't that
3 correct?

4 **A** Yeah. We ain't never discussed the self-defense
5 issue.

6 **Q** Mr. Henderson, I think for the last 20 minutes we
7 talked about self-defense.

8 **A** No. We talked about trial counsel assuming guilt.
9 We talked about impeachment. But we never talked
10 about --

11 **Q** And we also talked about the judge not giving a
12 self-defense instruction you said your counsel didn't
13 object to.

14 **A** Yeah. But we never discussed that issue on the
15 record.

16 **Q** Okay. Tell us about that.

17 **A** Trial counsel failed to object to the trial judge's
18 erroneous self-defense instruction which failed to
19 comply with Wiggins, Addison, Burkhardt; transcript,
20 page 627, lines 17 through 22.

21 **THE COURT:** That was never raised in the direct
22 appeal either, was it?

23 **APPLICANT:** It was never raised. I mean, it was
24 never -- I never argued it at the Court of Appeals
25 because it was never objected to. Well, it was

1 raised, but the Court of Appeals dismissed it because
2 trial counsel never objected.

3 **THE COURT:** Okay. Go ahead.

4 **Q** (By Mr. Brooks) And that's an allegation in regards
5 to Mr. Johnson's representation of you. Is that
6 correct, Mr. Henderson?

7 **A** Correct.

8 **Q** Okay. Now, you also stated that he did not hire an
9 independent person to evaluate the State's case in
10 regards to what their position is as far as what
11 could have happened or what their theory is about
12 what happened. No investigator. Is that correct?

13 **A** You're losing me right now. I mean, --

14 **Q** Here, Mr. Henderson. This is what you wrote down
15 that you handed to me.

16 **A** All right.

17 **Q** Trial counsel failed to further investigate and hire
18 an independent expert?

19 **A** I mean, but we never discussed the prejudicial prong
20 of my trial counsel never failing to object to the
21 self-defense instruction. Your Honor, the only thing
22 I'm up here doing, Your Honor, I'm stressing the
23 issue that the only reason is I guess I'm reading it,
24 because I want to explain to you how it prejudiced my
25 defense.

1 I mean, you may understand it from your point of
2 view, but if I don't state it on the record, then the
3 Supreme Court won't have nothing for the record as
4 far as their ruling. I just -- I mean, I'm just
5 trying to get the prejudicial prong stated to you,
6 Your Honor.

7 **THE COURT:** If there was an improper instruction
8 to the jury, --

9 **APPLICANT:** Right.

10 **THE COURT:** -- I understand that that's
11 prejudicial.

12 **APPLICANT:** Oh, you understand? I mean, if--

13 **THE COURT:** And I understand that if he didn't
14 object to an improper instruction to the jury that
15 could be prejudicial to you. I understand that.

16 **APPLICANT:** Yes, sir.

17 **THE COURT:** I'm just trying to get through all
18 your issues. Is that it?

19 **APPLICANT:** Well, do you want me to explain to
20 you how it's prejudicial? Right? Or you're saying--

21 **THE COURT:** I just told you I understand.

22 **APPLICANT:** You're telling me you already
23 understand?

24 **THE COURT:** I think I do. I do this for a
25 living. Sure, it's prejudicial if there was an

1 improper instruction and it was not objected to.

2 **APPLICANT:** Right. See, well, all right. I was
3 just going to say that due to the fact that this is a
4 self-defense case, all right, I argued self-defense
5 at trial. The reason I was saying it was erroneous
6 self-defense was because she was supposed to charge
7 the jury that self-defense, that the State must
8 disprove self-defense beyond a reasonable doubt, but
9 she never gave the beyond a reasonable doubt standard
10 to the jury.

11 **THE COURT:** Okay.

12 **APPLICANT:** And I was just going to say that --

13 **THE COURT:** I'll read it. I'll read it.

14 **MR. BROOKS:** Ready, Judge?

15 **THE COURT:** Yes, sir. I'm ready.

16 **Q** (By Mr. Brooks) Now, Mr. Henderson, Mr. Johnson
17 didn't hire an expert in your case. Is that correct?

18 **A** Investigator.

19 **Q** An investigator. And he didn't hire an expert to
20 kind of go back through the State's position, your
21 blood and spatter and things of that nature. Is that
22 correct?

23 **A** That's correct.

24 **Q** And that prejudiced you. Is that correct?

25 **A** That's correct.

1 Q Okay. Now, is there anything else, any other claims
2 that we haven't covered here that you want to tell
3 the judge about?

4 A Well, this is what I want to get the judge to
5 understand. When he failed to interview Diane
6 Crawford, one of the State's witnesses, to determine
7 the substance of her testimony before trial, he
8 failed to impeach another one of the State's
9 witnesses, Kathy Wilson, with the Richland County
10 Coroner's Office Death Scene Investigation concerning
11 her testimony about the victim only coming out of the
12 hillside door. Now, she was asked about this on
13 transcript, page 196, line 24 through page 197, line
14 2.

15 And he also failed to hire an independent
16 investigator to re-examine all the State's witnesses.
17 Number one, the projectile found at the corner of
18 building 2-1, this dealing with the forensic evidence
19 right here, the projectile found at the building 2-1,
20 that's -- well, me and the victim got into a struggle
21 at -- and the actual projectile that he was killed
22 with was found at that same corner.

23 And what I wanted to say was that he never -- he
24 failed to have that projectile or the actual bullet
25 examined for DNA to see if that was the actual bullet

1 that entered and exited the victim, because the
2 victim was only shot and killed one time.

3 I see the evidence presented by the State where
4 she argued that I killed the victim at his back door,
5 right at the back door. But I've got a photo right
6 here, if you want to see them. But from the distance
7 of, say, Mr. Brooks to where I'm at, this is where he
8 actually was killed, shot and killed at right here.
9 But she tried to say that I killed him right there on
10 his back porch. You know what I'm saying?

11 So when the testimony came up during the State's
12 argument and from the witnesses, they were saying
13 that when I went to the victim's house I just shot
14 and killed him right there on the spot. But the
15 actual projectile that the victim was killed with was
16 found right here at the corner of the building of
17 Apartment 2-1. Well, it was actually at the corner
18 of the whole building, period, right here. And there
19 was a puddle of blood found.

20 One of the State's witnesses, the first officer
21 to reach the scene of the crime, testified that it
22 was a considerable amount and a puddle of blood found
23 at the corner along with the projectile, the actual
24 bullet that killed the victim. But he never had the
25 projectile examined for DNA and he never presented

1 argument to the jury to say, hey, if this is the
2 bullet that was found at the corner of the building,
3 then obviously this is where the altercation arise
4 [sic] from. You see what I'm saying?

5 And what I was saying is that had that bullet
6 been examined for DNA, then the jury would have
7 been -- would have had more evidence to consider my
8 self-defense theory, because I did argue
9 self-defense.

10 Also I wanted to talk about Diane Crawford.
11 Now, she was one of the State's witnesses, Your
12 Honor, that gave testimony. She gave testimony, Your
13 Honor, about I came to her house 2:30 in the morning
14 asking me to call the victim and talking about -- she
15 said I came to her house at 2:30 in the morning
16 asking her to call the victim, and she also stated at
17 trial that in a loud voice in a crowd of people she
18 heard me say that I'm going to rob the mother fucker
19 tonight. Pardon my language, but that was testified
20 to at trial.

21 Now, the part about she said -- now, this is
22 found on transcript, page 201, line 13 through page
23 202, line 8; page 203, lines 14 through 23. Now, had
24 counsel have known this, had counsel have known what
25 the substance of her testimony was going to be, he

1 could have had her testimony excluded under Rule
2 801(d)(1)(a) because--

3 **MR. PETRANO:** Your Honor, if I may, I'm going to
4 have to object. I tried to give him a little leeway
5 if you're going to tie this into A, B or C, but we
6 are going way beyond that. And the State is
7 prejudiced for not being prepared for a very specific
8 argument we could have made.

9 **APPLICANT:** I did submit one to the Attorney
10 General's office, Your Honor.

11 **MR. PETRANO:** Yes, he did, Your Honor. However,
12 it's very clear that hybrid representation is not
13 allowed. So whatever pro se event that they
14 accomplished should be stricken from the record. It
15 is not part of the pleadings.

16 **THE COURT:** All right.

17 **APPLICANT:** The only thing, okay, what I was
18 going to say was--

19 **THE COURT:** Well, he's objecting to it. You
20 can't say it if he's objecting to it. I've got to
21 rule on it. I'm going to agree with him. If you
22 filed an amended one and didn't go through your
23 lawyer, they haven't had a chance to-- you just can't
24 bring up whole new issues right now.

25 **APPLICANT:** He never told me I couldn't file no

1 amended application. I mean, I did put him on
2 notice. I put the Attorney General on notice, Your
3 Honor.

4 **THE COURT:** All right. I'm not going to --
5 you've got to bring this to a conclusion. You don't
6 get the whole day. There are a lot of other people
7 waiting to be heard also. I want you to wrap it up.

8 **APPLICANT:** Well, if I -- I mean, that was
9 basically my arguments right here. I mean, I was
10 just--

11 **THE COURT:** I mean, I've been listening to your
12 arguments for about an hour and a half now.

13 **APPLICANT:** Well, this is it, Your Honor. I
14 mean, like you say, you say you understand. But, I
15 mean, I had a -- I was just explaining about how her
16 testimony prejudiced my defense because he failed to
17 object.

18 **THE COURT:** Well, you've told me that.

19 **APPLICANT:** I mean, I just ain't never explained
20 the prejudicial prong.

21 **THE COURT:** Well, we've been through this about
22 four times. You've told me that these things are
23 prejudicial to your case and I understand that they
24 are prejudicial to your case. What's your next
25 issue?

1 **APPLICANT:** Subject matter jurisdiction.

2 **MR. PETRANO:** Your Honor, once again, that's not
3 in the application. I object. Sorry, Your Honor.
4 Thanks.

5 **THE COURT:** I sustain it. It's not in the
6 application. What's your next thing?

7 **APPLICANT:** The application states that --

8 **THE COURT:** No, I'm not even going to get into
9 it.

10 **APPLICANT:** No. I was just going to say the
11 application stated that--

12 **MR. BROOKS:** Your Honor, I don't have any other
13 questions. Answer any questions for Mr. Petrano.

14 **APPLICANT:** -- I stated that trial counsel
15 failed to object to trial Court's legal standard
16 under Rule 3.

17 **THE COURT:** Okay. Do you have any questions,
18 Mr. Petrano?

19 **MR. PETRANO:** No questions, Your Honor.

20 **THE COURT:** All right. I understand. That's
21 not in your application.

22 **APPLICANT:** No. I'm talking about what I just
23 said about the trial Court's legal standard under
24 Rule 3. I've got that on my application.

25 **THE COURT:** All right. I beg your pardon. You

1 do have that. What's your argument there on that
2 issue?

3 **APPLICANT:** The trial Court -- trial counsel
4 knew but failed to object that the State failed to
5 meet my procedural due process under Rule 3.

6 **THE COURT:** Why is that?

7 **APPLICANT:** I was arrested -- an arrest warrant
8 was sent for my arrest on August the 3rd, 2002. I
9 turned myself into the authorities August the 4th,
10 2002. But according to Barbara Scott, she did not
11 receive my arrest warrant until January the 13th of
12 2003.

13 Now, Rule 3 states that once I'm arrested the
14 magistrate or the municipal judge got [sic] 15 days
15 to forward my arrest warrant to the Clerk of Court
16 within 15 days of my arrest. But I got my arrest
17 warrant right here, and it wasn't forwarded to the
18 Clerk of Court until January the 13th, 2003. Your
19 Honor, that right there was a violation of my due
20 process dealing with the Rule 3 violation.

21 And I also will state that on my indictment it
22 states that the Grand Jury convened on November 13th,
23 2002. Now, the Grand Jury scheduling for Richland
24 County is -- I've got it right here -- is the second
25 Monday in January for two weeks; the second Monday in

1 April for two weeks; the third Monday in June for two
2 weeks; the Tuesday following the first Monday in
3 September for three weeks; and the second Monday in
4 December for two weeks.

5 Now, if my trial counsel knew the Grand Jury
6 schedule for Richland County and for him to receive
7 an indictment that states that the Grand Jury
8 convened on November of 2002, during the November
9 term, then he should have objected that either this
10 indictment is a sham, illegal process, or he should
11 have objected that a hearing should have been
12 convened to confirm whether a Grand Jury convened or
13 not.

14 Now, I have submitted letters to the Clerk of
15 Court asking whether a special Grand Jury convened
16 since the scheduling of the Grand Jury does not
17 convene in November, and she sent me -- she gave me a
18 copy. I can give this to you. And she just put a
19 sticker on it saying that she's going to forward it
20 to the Solicitor's Office.

21 I wrote my attorney asking my attorney to
22 forward a letter to the administrative law court to
23 find out whether a special Grand Jury convened on
24 November 13th, without a reply. Your Honor, I never
25 received a reply on that neither, Your Honor. And I

1 can send all these documents to you right here.

2 Now --

3 **THE COURT:** Is that it?

4 **APPLICANT:** Yes, sir.

5 **THE COURT:** Thank you very much. Come down. He
6 has no questions.

7 **MR. BROOKS:** We would call Charlie Johnson to
8 the stand.

9 **THE COURT:** Come around.

10 CHARLIE J. JOHNSON, JR., after being duly sworn,
11 testifies as follows:

12 **THE COURT:** State your full name for the record.

13 **THE WITNESS:** Charlie J. Johnson, Jr.

14 **MR. BROOKS:** Ready?

15 **THE COURT:** Yes, sir.

16 DIRECT EXAMINATION

17 **BY MR. BROOKS**

18 **Q** How are you today, Mr. Johnson?

19 **A** Doing good.

20 **Q** You represented Mr. Henderson in this matter?

21 **A** Yes, I did.

22 **Q** Court appointed?

23 **A** Yes.

24 **Q** Okay. Did you get any type of independent experts to
25 kind of evaluate the State's theory in the case to

1 make sure that it would jibe with the evidence?

2 A No. I didn't feel it was necessary. In talking to
3 the experts themselves, I thought that I could use
4 their own testimony to help in this area of the case.

5 Q Now, it was your defense that this was self-defense.
6 Is that correct?

7 A That's correct.

8 Q And you put that forth to the jury?

9 A Yes, I did.

10 Q Now, one of the things that came out when Mr.
11 Henderson testified was his criminal record. Is that
12 right?

13 A That's correct.

14 Q Did you object to that in any way?

15 A Well, no, not to that degree, because it was
16 accessory after the fact of murder. It was a felony.
17 It was within a ten-year period. And I didn't see
18 any reason that I had a basis to object to it.

19 Q Okay. Did you object to any remarks by the solicitor
20 in her closing?

21 A I didn't see anything the solicitor says in the
22 closing argument that required me to object to it.

23 Q Can you surmise what the State's case was in your
24 opinion?

25 A The State's case was that Avery [sic] and his

1 girlfriend went over to the victim's house sometime
2 around 4 to -- I think it was 4 or 5 that morning.
3 It might have been even later than that, maybe 6 in
4 the morning -- and were trying to get some drugs from
5 the victim.

6 Well, the State's case was that they were either
7 coming to get some drugs or coming to rob the victim.
8 And there was something that happened at the back
9 door where the victim there was shot and that Avery
10 [sic] left.

11 Q Okay. And do you recall how long you had been on his
12 case preparing?

13 A I don't remember. But it was maybe six months to a
14 year.

15 Q Okay. Was there ever any negotiations in this case?

16 A Oh, yes. I had gotten the State to agree to a
17 sentence of 15 years.

18 **THE COURT:** For a plea?

19 **THE WITNESS:** For a plea.

20 Q Did you relay that to Mr. Henderson?

21 A Yes, I did; on numerous occasions.

22 Q And he declined?

23 A He declined.

24 Q Now, did you go over with him the elements of
25 self-defense?

1 **A** I went over the elements of self-defense. I went
2 over with him the complete discovery, everything that
3 I had. He indicated that he felt -- Avery [sic] came
4 to me and he had a witness, a young lady that was
5 with him. From talking to Avery [sic] and talking to
6 the witness, Avery [sic] basically said that they was
7 [sic] out that night. Avery [sic] even testified on
8 the stand and I told him to be truthful.

9 So he testified on the stand that he was
10 actually out, they would have been out later that
11 night. They always sell drugs at a location not too
12 far from the house, that they were on their way home.
13 They wanted to get some marijuana, and the victim
14 sold marijuana, that they stopped by the victim's
15 house, went to the back door and knocked.

16 Because of the time of night somebody yelled
17 from the upstairs: Who is that? And Avery [sic]
18 identified himself. The victim came downstairs, was
19 apparently mad. Avery [sic] said that they had a few
20 words and as he was walking away the victim shut the
21 door.

22 Avery [sic] said he said something about the
23 victim. The victim apparently got mad, went through
24 the front door. I guess he went back in the house
25 and got the gun, was our position, went back into the

1 house and got a gun, came out the front door and met
2 Avery [sic] and the witness at the corner of the
3 building where they was [sic] walking away, and that
4 there was a struggle there. And in the struggle the
5 victim was shot in the neck and in his artery and he
6 basically bled to death later on.

7 But it was our position that the victim then
8 came back in, went from that corner -- he came back
9 to the back side of the apartment and knocked on the
10 door to get back into his house where he was bleeding
11 to death and he bled at the doorway. And then he
12 walked -- he went through the house out to the front
13 of the lawn where he fell on the front of the lawn
14 and that's where he died. And it was basically our
15 position that that's what happened.

16 The State's position was that he was actually
17 shot at the door and that he left from that door and
18 then went to the front, that nothing happens on the
19 corner. But in the evidence there was some evidence
20 that there was a struggle. There was blood found at
21 the corner of the house and the jury just choose
22 [sic] to believe -- it was a case of what do you
23 believe, that it was a self-defense or whether you
24 believed that it was a robbery. And it came down to
25 which side the jury believed.

1 Q You did argue along the lines that this was not
2 murder. Is that correct?

3 A I argued everything I could argue. I argued that it
4 wasn't murder. I argued that it was self-defense. I
5 actually got a charge of voluntary manslaughter
6 because I was able to show that there was a struggle.
7 So there was also a charge of voluntary manslaughter.

8 Q And the jury came back on murder?

9 A They came back for murder.

10 Q Beg the Court's indulgence. What evidence did the
11 State present you that it was a robbery?

12 A The evidence that was given to me that he saw is all
13 the evidence they had. That was the State theme.
14 That is what they say that it was for. And it was up
15 to a jury to believe it. There was no evidence that
16 he ever stole anything. I don't believe that that's
17 why Avery [sic] went there. I actually believe that
18 it was self-defense.

19 But as I explained to Avery [sic] when we was
20 talking about whether to take the plea or not, I told
21 him, I don't want you to plead to anything that you
22 didn't do, but you've got to understand that you
23 never know what the jury is going to do. I explained
24 to him that if he was convicted that he would be
25 looking at a minimum of 30 years and that, you know,

1 it was his call, that I work for him, if he wants to
2 go to trial, I will go and do my best.

3 **MR. BROOKS:** No other questions, Your Honor.

4 **THE COURT:** Mr. Petrano?

5 **MR. PETRANO:** No questions, Judge.

6 **THE COURT:** All right, sir. You may come down.
7 Thank you very much.

8 **THE WITNESS:** Thank you, Your Honor.

9 **MR. PETRANO:** Your Honor, may this witness be
10 excused? I think he wanted to leave.

11 **THE COURT:** Without objection.

12 **THE WITNESS:** Thank you, Your Honor.

13 **THE COURT:** Anything further from the defense?

14 **MR. BROOKS:** That's the Applicant's case, Judge.

15 **THE COURT:** Anything from the State?

16 **MR. PETRANO:** No. We just wanted to -- we stand
17 by our return for the allegations made. The ones
18 that were not made, specifically the prior record,
19 the accessory after the fact I think is generally
20 described as actively suppressing evidence. Whatever
21 evidence that may be, that is a crime of dishonesty,
22 and it would fall under the exceptions of 609(a)(2).
23 There was an allegation that --

24 **THE COURT:** Do you happen to know where that
25 colloquy took place in the record? I've been looking

1 for that.

2 **MR. PETRANO:** That was my next point, Judge. I
3 don't think an actual balancing is required. That's
4 on 609(a)(1).

5 **THE COURT:** I know that.

6 **MR. PETRANO:** Thanks, Judge. No, I do not have
7 that in the record.

8 **THE COURT:** Do you know if there was any
9 colloquy in the record regarding his prior record?

10 **MR. PETRANO:** There was at the beginning. I
11 think page 17 the Applicant had mentioned it. But I
12 don't want to define it as colloquy, just as a back
13 and forth.

14 **THE COURT:** Well, there had to be a ruling on it
15 one way or the other I would think.

16 **MR. PETRANO:** It was offered. There was no
17 objection.

18 **MR. BROOKS:** That's part of the Applicant's
19 case, Judge, that obviously that's something that Mr.
20 Johnson should have objected to.

21 **THE COURT:** I understand his case. I am just
22 looking for some verification of that in the record.
23 All right. Thank you very much, counsel.

24 **MR. PETRANO:** Thank you, Judge.

25 (Whereupon, the proceedings are concluded)

CERTIFICATE OF REPORTER:

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

I, Jenny H. Williams, Official Court Reporter for the Fifth 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 Post Conviction Relief Hearing of the captioned case, relative to appeal, in the Court of Common Pleas for Richland County, South Carolina, on the 12th day of August, 2009.

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

September 3, 2010

Jenny H. Williams
Jenny H. Williams, Court Reporter

From: Brian Petrano
To: Charles Brooks; gcooperlc@sccourts.org
Date: 9/11/2009 4:41 PM
Subject: Henderson, Ayree - Order of Dismissal (2008CP4001696)
Attachments: Henderson, Ayree - Order of Dismissal (2008CP4001696).doc

Ms. Lindsay:

Please accept the attached proposed Order of Dismissal for Mr. Ayree Henderson's PCR (2008CP4001696).
Please let me know if you need anything further.

Thanks,
Brian

cc. Law Office of Charles T. Brooks, III

Brian T. Petrano
bpetrano@scag.gov
Assistant Attorney General
Office of the Attorney General
State of South Carolina
Post Office Box 11549
Columbia, SC 29211-1549
803.734.3731
803.734.4113 Fax
Current Roster:
<http://scag.gov/inside/pdf/5th.pdf>

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
	)	
	)	2008CP4001696
	)	
Henderson, Aryee, 237887,	)	
	)	
Applicant,	)	
	)	
v.	)	ORDER OF DISMISSAL
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

PROCEDURAL HISTORY

This matter comes before the Court by way of an Application for Post-Conviction Relief filed March 4, 2008. The Respondent made its Return on February 5, 2009. An evidentiary hearing into the matter was convened on August 12, 2009 at the Richland County Courthouse. The Applicant was present at the hearing and was represented by Charles T. Brooks, III, Esquire. Brian T. Petrano of the South Carolina Attorney General's Office represented the Respondent.

At the hearing, the Applicant testified on his own behalf. The Applicant's trial counsel, Charlie J. Johnson Jr., Esquire also testified. This Court had before it the records of the Richland County Clerk of Court, the transcript of the proceedings against the Applicant, and the Applicant's records from the South Carolina Department of Corrections.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Richland County Clerk of Court's orders of commitment. The Applicant was convicted by a jury and sentenced by the Honorable Alison R. Lee on September 21, 2004 to the following:

Henderson, Aryee - proposed Order of Dismissal (2008CP4001696)
Page 1 of 10

Grand Jury Term	Indictment Number	Charged Offense:	Sentence Received	Sentenced to Lesser Offense?
11-02	02GS407277	CDR - S.C. Code § 16-3-020 * 30 - L/D * Murder / Murder	30	No
NOTES			TOTAL	POSSIBLE
			30	Life

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. Pursuant to an Anders brief, the South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Henderson, Unpublished Op. No. 2008-UP-107 (S.C. Ct. App. Filed February 12, 2008); Anders v. State of Cal., 386 U.S. 738, 87 S.Ct. 1396 (1967). Remittitur was issued on February 28, 2008.

In his application for post conviction relief the Applicant alleges that he is being held in custody unlawfully for the following reasons:

10.	State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
(a)	<u>Ineffective Assistance of Trial Counsel</u>
(b)	<u>Ineffective Assistance of Appellate Counsel</u>
(c)	
11.	State concisely and in the same order the facts which support each of the grounds set out in (10):
(a)	<u>trial counsel failed to object to trial court's legal standing under Rule 3 SCR Crim P</u>
(b)	<u>trial counsel failed to object my prior conviction being admitted into evidence.</u>
(c)	<u>trial counsel conceded my guilt to the jury in closing arguments.</u>
12.	Prior to this application have you filed with respect to this conviction: cont. →

15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
 - i. my prior conviction being admitted into evidence
 - ii. trial counsel conceded my guilt to the jury
 - iii. unconstitutionality of photograph being admitted into evidence
 - (b) the proceedings in which each ground was raised:
 - i. Direct Appeal
 - ii. II
 - iii. II

At the evidentiary hearing, Applicant proceeded in part on the allegations stated in the application for post-conviction relief.

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 at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. § 17-27-80 (1985).

The Applicant testified that he met with appointed trial counsel a total of three (3) times. The Applicant testified that trial counsel was ineffective for failing to object to the use of his prior conviction of accessory-after-the-fact for impeachment purposes. The Applicant testified that trial counsel was ineffective for pursuing a self-defense claim because he basically admitted to shooting the victim. The Applicant also claimed that trial counsel failed to investigate and/or failed to interview witnesses. The Applicant also made numerous references and read into the

record some sort of brief that he may have prepared. For instance, the Applicant complained that the court lacked subject matter jurisdiction because the indictments were a sham legal process.

Trial counsel testified that he was court appointed. Trial counsel testified that he did not utilize the services of an expert of his own because the defense was self-defense and that they could simply utilize the State's experts/evidence to substantiate that claim because the evidence supported self-defense. Trial counsel testified that he saw no reason to object to the State's closing argument, that he is not aware of any reason even now to warrant an objection. Trial counsel testified that he did not have any reason to object to the use of the Applicant's prior record of accessory-after-the-fact of murder. Trial counsel testified that he did get the State to agree to a plea offer of fifteen (15) years but that the Applicant would not agree to plea. Trial counsel testified that he reviewed the discovery and the elements of the crime and of self-defense with the Applicant. Trial counsel testified that their goal was to present a self-defense case and that the shot occurred in the lawn whereas the State's version was that it occurred just outside the door of the house. Trial counsel testified that he did request a voluntary manslaughter charge because there was evidence of a struggle. Trial counsel testified that he explained to the Applicant that robbery was just a theme and self-defense was a possible outcome.

In a post-conviction relief action, the Applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). 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 upon as having produced a just result." Strickland v. Washington,

466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). When there has been a guilty plea, the applicant must prove that counsel's representation was below the standard of reasonableness and that, but for counsel's unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59 (1985); Alexander v. State, 303 S.C. 539, 542, 402 S.E.2d 484, 485 (1991).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625, (citing Strickland). 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. As discussed above, the Applicant has failed to carry his burden in this action. Therefore, this Court finds that the application must be denied and dismissed.

This Court finds Applicant's testimony is not credible, while also finding Applicant's counsel's testimony is credible. Accordingly, this Court finds Applicant has failed to prove the first prong of the Strickland test – that counsel failed to render reasonably effective assistance under prevailing professional norms. This Court also finds Applicant has failed to prove the second prong of Strickland – that he was prejudiced by counsel's performance.

This Court paid particular attention and extends the following detailed analysis regarding the use of his prior conviction of accessory-after-the-fact as an impeachable offense. Regarding the Applicant's claim that trial counsel should have objected to the State's planned introduction of the Applicant's prior conviction for accessory-after-the-fact of murder as an impeachable offense, this Court finds the Applicant's claim to be without merit. (Trial transcript, p. 18 L. 1 – 4). This Court finds that the Applicant failed to satisfy his burden of proof and demonstrate that trial counsel's performance fell below any standard of reasonableness within our professional norms. Specifically, the prior offense is admissible as an impeachable offense. The trial court need not even conduct a balancing test for crimes of dishonesty.

While crimes punishable by death or imprisonment in excess of one year require the court to determine whether the probative value of such evidence outweighs the prejudicial effect, **no such balancing need occur when the crime is one involving dishonesty or false statement.** These crimes are automatically admissible for impeachment purposes because they have the greatest probative value on the issue of truth and veracity.... Rule 609(a) (1) mandates for non-“dishonesty crimes” that, prior to admission, the court must determine the probative value outweighs prejudicial effect to the accused. Rule 609(a)(2), by contrast, clearly limits the discretion of the court by mandating the admission of crimes involving dishonesty without any determination as to a balancing test. See United States v. Morrow, 977 F.2d 222 (6th Cir.1992). State v. Al-Amin, 353 S.C. 405, 426-427, 578 S.E.2d 32, 43 - 44 (S.C. App. 2003) (emphasis added).

The only issue is whether accessory-after-the-fact to murder falls under Rule 609(a)(2), SCRE because “it involved dishonesty or false statement.” This Court finds that while a murder charge may not involve any dishonesty, accessory-after-the-fact is a crime of dishonesty.

South Carolina does not interpret Rule 609(a)(2), SCRE narrowly. “We decline to follow the federal courts' restrictive interpretation of the phrase “dishonesty or false statement” in Rule 609(a)(2).” State v. Al-Amin, at 416. Rule 609(a)(2), SCRE states “evidence that any witness has been convicted of a crime shall be admitted if it involved dishonesty or false statement, regardless of the punishment.” The test is not simply whether the prior conviction involved “dishonesty,” our rule also extends automatic admission if the prior conviction involves a “false statement.” Clearly accessory-after-the-fact involves such for the purposes of Rule 609(a)(2), SCRE. The elements of accessory-after-the-fact to a crime are 1) the felony has been completed, 2) the accused must have knowledge that the principal committed the felony, and 3) the accused must harbor or assist the principal felon. State v. Fuller, 346 S.C. 477, 552 S.E.2d 282 (2001). This Court finds that because the principal purpose of accessory-after-the-fact is to evade public justice and/or to actively suppress evidence there exists “obvious bearing on a defendant's credibility.” State v. Al-Amin, at 417.¹ Being convicted of actively assisting/harboring a known felon obviously bears heavily on the credibility of such a person and implies a general disposition toward dishonesty. Because our State interprets “dishonesty” broadly this Court has little latitude and cannot conclude that a prior conviction for accessory-after-the-fact does not

¹ CJS CRIMLAW § 179. *See also* U.S. v. Anthony, 145 F.Supp. 323, 339 (D.C.Pa. 1956).

represent “a disregard for the rights of others which might reasonably be expected to express in itself in giving false testimony whenever it would be to the advantage of the witness.” State v. Al-Amin, at 419 (citing State v. Thomas, 220 Kan. 104, 551 P.2d 873 (1976)). After all, if a witness has no reservations in helping harbor or assist a known felon it is difficult to imagine such a person would hesitate to obtain an advantage for himself (or friend) in a trial by giving false testimony. While such a criminal conviction may only represent a single act, the breach of sanctioned conduct represents a reasonable basis of future prediction upon credibility. Once again, this Court only makes such a broad conclusion due to the interpretation our State mandates for the purposes of a Rule 609(a)(2) analysis per State v. Al-Amin.

This Court finds that the Applicant’s other allegations also fail. This Court takes judicial notice of the fact that our Supreme Court from time to time issues administrative type orders that explain that the grand jury may be convened when the public interest may necessitate.² This Court also finds trial counsel’s testimony credible and explanatory that the case necessitated admitting to the shooting if they were to utilize a self-defense strategy.

The Applicant’s remaining claims were not developed and consisted merely of rote recitation of generic claims that the Applicant was reading into the record during his “testimony.” The Applicant must make a *prima facie* showing that he is entitled to relief. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Accordingly, the Applicant’s remaining allegations are without merit.

² For example, S.C. Sup. Ct. Order dated July 17, 2009.

<http://www.sccourts.org/courtOrders/displayOrder.cfm?orderNo=2009-07-17-01>.

Henderson, Ayree - proposed Order of Dismissal (2008CP4901696)

CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Counsel was not deficient in any manner, nor was Applicant prejudiced by counsel's representation. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

Except as discussed above, this Court finds that the Applicant failed to raise the remaining allegations set forth in his application at the hearing and has, thereby, waived them. As to any and all allegations that were or could have been raised in the application or at the hearing in this matter, but were not specifically addressed in this Order, this Court finds Applicant failed to present any probative evidence regarding such allegations. Accordingly, this Court finds that Applicant waived such allegations and failed to meet his burden of proof regarding them. Accordingly, they are dismissed with prejudice. A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384 (1992). A waiver may be express or implied. "An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable." Lyles v. BMI, Inc., 292 S.C. 153, 158-59, 355 S.E.2d 282 (Ct. App. 1987). The Applicant's failure to address these issue at the hearing indicates a voluntary and intentional relinquishment of his right to do so. Therefore, any and all remaining allegations are denied and dismissed.

This Court cautions the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the

appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant and counsel are directed to Rules 203, 206, and 227 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 must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this _____ day of _____, 2009.

The Honorable G. Thomas Cooper, Jr.
Presiding Judge
Fifth Judicial Circuit

_____, South Carolina.

THE BROOKS LAW OFFICES, LLC

CHARLES T. BROOKS, III,
Attorney

309 Broad Street
Sumter, South Carolina 29150
Post Office Box 3512, Sumter, SC 29151
Post Office Box 291226, Columbia, SC 29229
OFFICE: (803) 418-5708
FAX: (803) 934-9618 TOLL FREE: (877) 770-8792
Email: cbrooks@ctbrooks.com

IRMA R. BROOKS
Attorney

November 18, 2009

The Honorable G. Thomas Cooper, Jr.
Post Office Box 192
Columbia, South Carolina 29202

RE: Ayree Henderson vs. The State

Dear Judge Cooper:

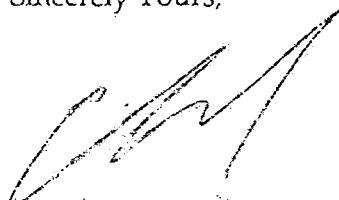
Enclosed please find the Order Granting PCR in the above matter.

Please review this document; and if it meets with your approval please affix your signature to the Order and return to me the same. I would like to thank you for your consideration of these matters.

Should you have any questions, or if I can be of assistance to you, please do not hesitate to contact my office at the number listed above.

With kindest personal and professional regards, I am

Sincerely Yours,



Charles T. Brooks, III
CTB,III/jlm
Enclosed as stated
cc: Brian Petrano

STATE OF SOUTH CAROLINA	)	IN THE COMMON PLEAS COURT
	)	FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	CASE NUMBER: 2008-CP-40-1696
	)	
Ayree Henderson, #237887	)	
	)	
	)	
Applicant,	)	
	)	
-versus-	)	ORDER OF GRANTING
	)	POST CONVICTION RELIEF
STATE OF SOUTH CAROLINA	)	
	)	
Respondent.	)	

PROCEDURAL HISTORY

This matter comes before the Court by way of an application for post-conviction relief filed March 4, 2008. The Respondent made its Return on February 2, 2009. An evidentiary hearing into the matter was convened on August 12, 2009 at the Richland County Courthouse. The Applicant was represented by Charles T. Brooks, III, Esq. Brian T. Petrano, Esq. of the South Carolina Attorney General's Office represented the Respondent.

At the hearing the Applicant testified on his own behalf. The Court also heard testimony from the Applicant and Applicant's Trial Counsel. This Court had before it the records of the Richland County Clerk of Court, the transcript of the proceedings against the Applicant, and the Applicant's records from the South Carolina Department of Corrections.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. The Applicant was convicted of Murder (2002-GS-40-7277) during the September 2004 Term of General Sessions for County Courts, the Applicant was tried and convicted by a Jury of Murder. The Applicant was sentenced by The Honorable Alison R. Lee and was represented by Charles E. Johnson, Esq. Applicant was sentenced to confinement for thirty (30) years for the Murder charge.

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 at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. § 17—27-80 (1985).

The Applicant was sentenced by the Honorable Judge Lee for a charge of Murder. The Court finds that during the General Sessions trial that the Applicant's prior criminal arrest for Attempted Murder came into evidence and that Applicant's counsel failed to object to this matter and as such his case should be remanded for a new trial in the General Sessions Court.

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be granted;
and
2. The Applicant is granted a new criminal trial in the
General Sessions Court in this matter.

AND IT IS SO ORDERED this ____ day of _____, 2009

Honorable G. Thomas Cooper

_____, South Carolina

784137 ✓

STATE OF SOUTH CAROLINA

JUDGMENT IN A CIVIL CASE

COUNTY OF RICHLAND

CASE NO: 2008CP4001696

IN THE COURT OF COMMON PLEAS

Aryee #237887 Henderson

vs.

Plaintiff

RICHLAND COUNTY
 Defendant
 2010 JUL 5 PM 8:42
 JEANETTE W. ACBRIDGE
 C. P. & G. S.

CHECK ONE:

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other:
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:

☒ See attached order;☐ Statement of Judgment by the Court:

Dated at Columbia, South Carolina, this _____ day of _____, 2010.

PRESIDING JUDGEThis judgment was entered on the _____ day of _____, 2010, and a copy mailed first class this 16th day of July, 2010, to attorneys of record or to parties (when appearing pro se) as follows:

Aryee #237887 Henderson
 Charles T Brooks III
 Aryee #237887 Henderson

State of South Carolina
 Brian T Petrano
 State of South Carolina

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Jeanette W. Acbride
 Clerk of Court

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

2008-CP-40-01696

Henderson, Ayree, 237887,

Applicant,

v.

State of South Carolina,

Respondent.

ORDER GRANTING POST
CONVICTION RELIEF

JEANETTE W. MCBRIDE
C.C.P. & C.S.

2010 JUL 14 PM 3:56

RICHLAND COUNTY
FILED

I. PROCEDURAL HISTORY

This matter comes before the Court by way of an Application for Post-Conviction Relief filed March 4, 2008. The Respondent made its Return on February 5, 2009. An evidentiary hearing into the matter was convened on August 12, 2009 at the Richland County Courthouse. The Applicant was present at the hearing and was represented by Charles T. Brooks, III, Esquire. Brian T. Petrano of the South Carolina Attorney General's Office represented the Respondent.

At the hearing, the Applicant testified on his own behalf. The Applicant's trial counsel, Charlie J. Johnson Jr., Esquire also testified. This Court had before it the records of the Richland County Clerk of Court, the transcript of the proceedings against the Applicant, and the Applicant's records from the South Carolina Department of Corrections.

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Grand Jury Term	Indictment Number	Charged Offense:	Sentence Received	Sentenced to Lesser Offense?
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NOTES			TOTAL 30	POSSIBLE Life

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. Pursuant to an Anders brief, the South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Henderson, Unpublished Op. No. 2008-UP-107 (S.C. Ct. App. Filed February 12, 2008); Anders v. State of Cal., 386 U.S. 738, 87 S.Ct. 1396 (1967). Remittitur was issued on February 28, 2008.

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(b)	<u>trial counsel failed to object my prior conviction being admitted into evidence.</u>
(c)	<u>trial counsel conceded my guilt to the jury in closing arguments.</u>
12.	Prior to this application have you filed with respect to this conviction... cont. →

CR-2

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. my prior conviction being admitted into evidence
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- iii. unconstitutionality of photograph being admitted into evidence

(b) the proceedings in which each ground was raised:

i. Direct Appeal

ii. "

iii. "

At the evidentiary hearing, Applicant proceeded in part on the allegations stated in the application for post-conviction relief.

II. 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 at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. § 17-27-80 (1985).

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and read into the record a brief that he prepared. The Applicant complained that the court lacked subject matter jurisdiction because the indictments were a sham legal process.

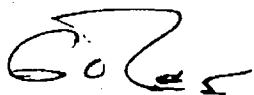
Trial counsel testified that he was court appointed. Trial counsel testified that he did not utilize the services of an expert because the defense was self-defense and he could simply utilize the State's experts/evidence to substantiate that claim because the evidence supported self-defense. Trial counsel testified that he saw no reason to object to the State's closing argument, that he is not aware of any reason even now to warrant an objection. Trial counsel testified that he did not have any reason to object to the use of the Applicant's prior conviction of accessory-after-the-fact of murder. Trial counsel testified that he did get the State to agree to a plea offer of fifteen (15) years but that the Applicant would not agree to plea. Trial counsel testified that he reviewed the discovery and the elements of the crime and of self-defense with the Applicant. Trial counsel testified that their goal was to present a self-defense case and that the shooting occurred in the lawn, whereas the State's version was that it occurred just outside the door of the house. Trial counsel testified that he did request a voluntary manslaughter charge because there was evidence of a struggle. Trial counsel testified that he explained to the Applicant that self-defense was a possible outcome.

In a post-conviction relief action, the Applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). 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 upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). When there has been a guilty plea, the applicant must prove that counsel's representation was below the standard of reasonableness and that, but for counsel's unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59 (1985); Alexander v. State, 303 S.C. 539, 542, 402 S.E.2d 484, 485 (1991).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625, (citing Strickland). 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.

This Court finds that the Applicant has proven both prongs of the Strickland test and is entitled to a new trial. The first prong of the test, that counsel failed to render reasonably effective assistance under prevailing professional norms, is met because trial counsel failed to object to the introduction of the Applicant's prior conviction. Applicant has a prior conviction for accessory-after-the-fact of murder, which was brought out during the Applicant's testimony at trial.



Accessory-after-the-fact of murder is not a recognized impeachable offense for dishonesty in South Carolina. Prior convictions for crimes of dishonesty can be automatically admitted and used to impeach a witness under Rule 609(a)(2). State v. Al-Amin, 353 S.C. 405, 578 S.E.2d 32 (S.C. App. 2003). However, if the prior conviction is not for a crime of dishonesty, the trial judge is required by Rule 609(a)(1) to conduct a balancing test to ensure that the probative value of the prior offense outweighs the prejudicial effect. Id. Although South Carolina has a broader definition of crimes of dishonesty than the federal courts, accessory-after-the-fact of murder has not been specifically recognized in this category of impeachable offenses. Id. Not all accessory after the fact crimes necessarily involve dishonesty (i.e. failure to report out of fear, unwitting participation, compelled participation, a plea to a lesser offense for less culpable defendants, etc.).

The trial court did not do an independent investigation into the details surrounding the Applicant's accessory-after-the-fact of murder conviction. However, when the Applicant testified about his record, he said that he had not come forward with information about the murder because he was in fear for his life. (Trial transcript, p. 471 L.3-17). Doing or not doing something out of fear for one's personal safety does not necessarily indicate dishonesty. Assuming the Applicant's testimony is accurate, his prior conviction would not be for a crime of dishonesty.

Because the Applicant's prior conviction could not be automatically admitted as a crime of dishonesty, the trial judge was required to conduct the balancing test of Rule 609(a)(1). Courts often consider the following factors in weighing the probative value of a prior conviction against the prejudicial effect: the impeachment value of the prior conviction, the point in time of the prior crime and the defendant's subsequent history, the similarity between the prior crime

and the crime charged, the importance of the defendant's testimony, and the centrality of the credibility issue. State v. Colf, 337 S.C. 622, 525 S.E.2d 246 (2000). The Applicant's attorney never requested that the test be done or argued that the prior conviction be excluded. (Trial transcript, p. 18 L.1-4). This failure meets the standard for ineffective assistance of counsel.

The second prong of the Strickland test, that the Applicant was prejudiced by counsel's performance, is met because admission of the Applicant's prior conviction was much more prejudicial than probative. In this case, the risk of prejudice is heightened by the lack of direct evidence in the State's case against the Applicant. The evidence against the Applicant was not overwhelming, and he claimed self-defense. He testified that the victim had a gun, made threats, a tussle ensued, and the gun discharged on accident. (Trial transcript, p. 481 L. 20-25 and p. 482 L. 1-24). The State did not admit any direct evidence to disprove the Applicant's version of the events. As a result, it is likely that the jury used the evidence of the prior conviction for accessory after the fact of murder to prove "action in conformity therewith." S.C. Rules of Evidence, Rule 404(a). There is a "reasonable probability" that without the admission of the prior conviction, the jury would not have believed that the Applicant committed murder beyond a reasonable doubt and could have found him not guilty or guilty of a lesser offense. Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. Therefore, the Applicant was prejudiced by trial counsel's performance in failing to object to its admission.

III. CONCLUSION

Based upon the foregoing, this Court orders that the Application for Post Conviction Relief is hereby granted. This Court further finds that no other allegations were raised at the PCR hearing. Therefore, any additional allegations are deemed waived because no evidence was

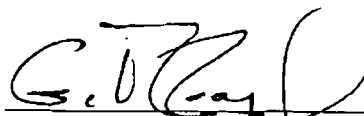


presented.

IT IS THEREFORE ORDERED:

1. That Applicant has met his burden of proof as to his allegations of ineffective assistance of counsel;
2. That the Application for Post Conviction Relief be granted;
3. That Applicant's convictions be vacated and granted a new trial;
4. That Applicant be released from the custody of South Carolina Department of Corrections and transferred to the custody of Richland County pending the disposition of his case.

AND IT IS SO ORDERED this 12 day of July, 2010



The Honorable G. Thomas Cooper, Jr.
Judge, Fifth Judicial Circuit

COLUMBIA

, South Carolina

WITNESSES

⑤ Investigator Vinson, CPD /5

cert

ARREST WARRANT NO. H258760

ACTION OF GRAND JURY

TRUE BILL

Wilbur

Foreman of Grand Jury

VERDICT

Guilty of
Murder

W. H. Jones
Foreman of Petit Jury

2/24/64
Date

DOCKET NO. 65-40-7277

The State of South Carolina,

County of RICHLAND

COURT OF GENERAL SESSIONS

#42 NOVEMBER TERM 2002

THE STATE

vs.

AYREE HENDERSON

Indictment for Murder

S. C. Code Section 16-3-10 Felony
0116

RECEIVED
AT THE CLERK'S
OFFICE

James H. Jones
C. C. P. A. R. S.

FORM 5 (12/87)

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT FOR MURDER

At a Court of General Sessions, convened on November 13, 2002,
the Grand Jurors of RICHLAND County present upon their oath:

COUNT ONE — MURDER

That AYREE HENDERSON
did in Richland County on or about August 3, 2002,
feloniously, wilfully and with malice aforethought, kill one Alonzo Gale
by means of a gunshot wound
and that the said victim died as a proximate result thereof.

Against the peace and dignity of the State, and contrary to the statute in such case made and
provided.

Warren B. Jones
SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF
STATE

VS.

INDICTMENT/CASE#:

AKA

Race

Sex

Age

DOB

SSN

Address:

City, State, Zip

C. #

SID#

AWW:

Date of Offense:

S.C. Code §

CDR Code #:

☐ CASE RESTORED

SENTENCE

☐ PLEA ☒ TRIALIn disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS TOin violation of § 16-3-10 of the S.C. Code of L. vs. bearing CDR Code # 0 1 1 1 6☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ 17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 30 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.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine:

\$14-1-206 (Assessments 107.5%)

\$14-1-211(A)(1) (Conv. Surcharge)

\$14-1-211(A)(2) (DUI Surcharge)

\$58-5-2995 (DUI Assessment)

\$35-13 (Public Def./Prob)

\$73-3-1B TP (Law Enforce. Funding)

\$33-7-1B TP (Drug Court Surcharge)

\$50-21-114 (BUI Breath Test Fee)

\$58-5-2942(J) (DUI Assessment)

3% to County (for partial payments)

TOTAL

Clerk of Court/Deputy Clerk

Court Reporter:

PTUP

days/hours Public Service Employment

Obtain: CED

Attend Voc. Rehab. or Job Corp.

May serve V/E beginning

Substance Abuse Counseling

Random Drug/Alcohol Testing

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ _____ beginning

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, §35-13-1P Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code:

Sentence Date:

White - Clerk

Green - Corrections

Cyan - Probation

Pink - Defendant

SCCA/2:7 (7/2000)

ARREST WARRANT

H258760 H-258760 0224961

STATE OF SOUTH CAROLINA

☐ County/ ☐ Municipality of
COLUMBIATHE STATE
against

ARYEE HENDERSON

Address: COLUMBIA SC 00000

Phone: SSN:

Sex: M Race: B Height: 5 10 Weight: 195

DL State: DL:

DOB: 4/29/1978 Agency ORI: SC0400100

Prosecuting Agency: CITY OF COLUMBIA

Prosecuting Officer: VINSON MW/GASSER

Offense: MURDER

Offense Code: HQM

Code/Ordinance Sec: 16-3-10

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of
COLUMBIAThe accused
is to be arrested and brought before me to be
dealt with according to law.

Signature of Judge

(L.S.)

Date:

RETURN

A copy of this arrest warrant was delivered to
defendant ARYEE HENDERSON
on 8-6-02

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

STATE OF SOUTH CAROLINA

☐ County/ ☐ Municipality of
COLUMBIA

AFFIDAVIT

Form Approved by
S.C. Attorney General
July 26, 1990
SCCA 518Personally appeared before me the affiant MW VINSON who
being duly sworn deposes and says that defendant ARYEE HENDERSON
did within this county and state on 08/03/2002 violate the criminal laws of the
State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of COLUMBIA)
in the following particulars:

DESCRIPTION OF OFFENSE: MURDER

16-3-10

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:THE DEFENDANT DID AT 921 MARLBORO ST., COLUMBIA, S.C. SHOOT THE
VICTIM ALONZO GALE AT LEAST ONCE WITH A PISTOL CAUSING THE VICTIM'S
DEATH. THE DEFENDANT HAS BEEN IMPLICATED IN THIS CRIME BY WITNESSES
AND HE HAS BEEN IDENTIFIED BY A WITNESS IN A PHOTO LINE-UP.Sworn to and subscribed before me
on 08/03/2002
Signature of Issuing Judge (L.S.)

Signature of Affiant

Affiant's Address #1 JUSTICE SQ

COLA, SC 29201

Affiant's Telephone 7338415

STATE OF SOUTH CAROLINA

☐ County/ ☐ Municipality of
COLUMBIA

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that
on 08/03/2002 defendant ARYEE HENDERSON
did violate the criminal laws of the State of South Carolina (or ordinance of☐ County/ ☐ Municipality of COLUMBIA) as set forth below:

DESCRIPTION OF OFFENSE: MURDER

16-3-10

Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before
me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the
defendant at the time of his execution, or as soon thereafter as is practicable.Signature of Issuing Judge
Judge Code: 403003Judge's Address CITY OF COLUMBIA, SC
MUNICIPAL COURT, P.O. BOX 644 29202

Judge's Telephone

Issuing Court: ☐ Magistrate ☒ Municipal ☐ Circuit

ORIGINAL

CLASSIFICATION SUMMARY REPORT DATED 03/18/08

C024686

SCDC# 237887 HENDERSON, AYREE -
 OFFENDER TYPE.: ADULT-STRAIGHT SENTENCE
 INSTITUTION ...: LEE CORR INST
 SECURITY/CUST.: 3 CODE NOT IN TABLE
 CURR INCARC SENT...: 30 YRS 0 MOS 0 DYS
 CENTRAL MONITORING.: YES SEPREQ
 MED CLASS: 1 NO MED PROB/NO WORK RESTRICT
 MENTAL CLASS: NMH (NO MENTAL HEALTH TRE
 CURRENT PROGRAM...: NO CURRENT PROGRAM
 AGE...: 29

FBI# 785527CB5

DORM.....: ASU0035Z
 TOBACCO USER....: N
 PROJ MAXOUT DATE: 07/27/2032
 PROJ PAROLE DATE: 00/00/0000
 EWC JOB...: NO CURRENT JOB
 EDUC PGM.: NO CURR EDUC PROGRAM
 EWC LEVEL: 0 EEC LEVEL:
 ASSIGNMENT...: LOCKED - UP

PREVIOUS NUMBERS:

Y00237887

CURRENT OFFENSES	SENTENCE YRS MOS DYS COUNTY	SENTENCE START V/NV CAT INDICT
MURDER	30 0 0 RICHLAND	08/04/2002 V 5 026S407277
OFFENSES UNDER PREVIOUS NUMBER: Y00237887		
VEHICLE THEFT	4 0 0 RICHLAND	05/09/1996 N 2 974014589
POSSESS STOLEN VEHICLE	4 0 0 RICHLAND	05/07/1996 N 2 974014457

PRIOR COMMITMENTS OVER 90 DAYS:

NO PRIOR COMMITMENTS OVER 90 DAYS

DETAINEES (HOLD, WANTED, NOTIFY):

ESCAPES:

NO ESCAPE HISTORY

CRIMINAL CHARGES:

NO CRIMINAL CHARGES HISTORY

ASSAULTIVE DISCIPLINARIES:

02/10/08 STRIKING AN INMATE WITH/	CONVICTED	MAJOR INMATE
01/20/08 POSSESSION OF A WEAPON	CONVICTED	MAJOR
05/27/07 STRIKING AN EMPLOYEE WIT	CONVICTED	MAJOR STAFF
11/25/97 POSSESSION OF A WEAPON	CONVICTED	MAJOR
11/03/97 STRIKING AN EMPLOYEE WIT	DROPPED	CHARG STAFF

NON-ASSAULTIVE DISCIPLINARIES:

12/07/07 UNAUTHORIZED AGENCY UNIF	DROPPED	MAJOR
12/02/07 UNAUTHORIZED AGENCY UNIF	CONVICTED	MAJOR
09/17/07 SEXUAL MISCONDUCT	CONVICTED	MAJOR
04/17/07 OUT OF PLACE	CONVICTED	ADMIN
08/11/06 REFUSING OR FAILING OBEY	CONVICTED	ADMIN
01/02/05 SEXUAL MISCONDUCT	CONVICTED	ADMIN
04/06/01 SEXUAL MISCONDUCT	CONVICTED	MAJOR
02/18/01 SEXUAL MISCONDUCT	CONVICTED	MAJOR
10/02/00 FIGHTING WITHOUT A WEAPON	CONVICTED	MINOR
09/30/00 SEXUAL MISCONDUCT	NOT GUILTY	MAJOR
07/06/00 THREATENING TO INFLICT H	CONVICTED	MAJOR
07/06/00 SEXUAL MISCONDUCT	CONVICTED	MAJOR
06/24/00 SEXUAL MISCONDUCT	CONVICTED	MAJOR
06/20/00 OUT OF PLACE		OTHER
05/31/00 SEXUAL MISCONDUCT	CONVICTED	MAJOR
05/22/00 SEXUAL MISCONDUCT	CONVICTED	MAJOR
03/23/00 REFUSING OR FAILING OBEY	NOT GUILTY	MAJOR
01/27/00 SEXUAL MISCONDUCT	CONVICTED	MAJOR
01/18/00 SEXUAL MISCONDUCT	DROPPED	MAJOR
01/13/00 SEXUAL MISCONDUCT	CONVICTED	MAJOR
05/03/98 SEXUAL MISCONDUCT	NOT GUILTY	MAJOR
01/12/98 SEXUAL MISCONDUCT	CONVICTED	MAJOR
01/04/98 SEXUAL MISCONDUCT	CONVICTED	MAJOR
12/08/97 POSSESSION OF CONTRABAND	CONVICTED	MAJOR
11/03/97 USE OBSCENE, VULGAR, PROFA	DROPPED	CHARG
11/03/97 THREATENING TO INFLICT H	DROPPED	CHARG

SCDC# 237887 HENDERSON, AYREE -

(CONTINUED)

09/17/97 SEXUAL MISCONDUCT

CONVICTED

MAJOR

HISTORY OF MOVEMENTS:

01/28/08	LEE	INCARCERATED	RETURN FROM COURT
01/28/08	RICHLAND CO	AUTH ABSENCE (AWL)	TO COURT
02/23/07	LEE	INCARCERATED	RETURN FROM COURT
02/23/07	RICHLAND CO	AUTH ABSENCE (AWL)	TO COURT
10/19/04	LEE	INCARCERATED	ADMINISTRATIVE
09/28/04	KIRKLAND	INCARCERATED	NEW ADMISSION

HISTORY OF EARNED WORK CREDIT ASSIGNMENTS:

JOB DESCRIPTION	START DATE	END DATE	TERMINATION REASON	JOB LVL
GENERAL WORKER	02/17/05	05/29/07	PLACED IN ST/SP CUSTODY	3F5
WASH RACK ATTENDANT	10/21/04	02/16/05	INMATE REQUEST	3F5
WARDKEEPER ASSISTANT	12/28/00	05/07/01	RELEASED/PAROLED	3F5
WARDKEEPER ASSISTANT	07/27/00	12/27/00	LATERAL TRANSFER	3F5
CUSTODIAN HELPER	05/25/00	07/26/00	INMATE REQUEST	3F5
COOK	02/29/00	05/22/00	UNSAT JOB PERFORM	3F5
FOOD SERVICE AIDE	11/24/99	02/28/00	PROMOTION	2F5
FOOD SERVICE AIDE	11/23/99	11/23/99	MI ELIGIBLE FOR LEVEL 2	3F5
HORTICULTURIST (GRND	09/22/99	11/22/99	LATERAL TRANSFER	2F5
HORTICULTURIST (GRND	09/21/99	09/21/99	CUSTODY REVIEW	5F5
FOOD SERVICE AIDE	03/16/98	06/30/98	LATERAL TRANSFER	7F5
FOOD SERVICE AIDE	03/11/98	03/15/98	CUSTODY REVIEW	5F5
HORTICULTURIST (GRND	01/16/98	02/24/98	PLACED IN ST/SP CUSTODY	5F5
WARDKEEPER ASSISTANT	09/16/97	11/03/97	PLACED IN ST/SP CUSTODY	2F5
OFFICE CLERK	04/16/97	09/11/97	INSTIT TRANSFER	2P5
OFFICE CLERK	02/06/97	04/15/97	CUSTODY REVIEW	5P5

HISTORY OF EARNED EDUCATION CREDITS:

EEC DESCRIPTION	START DATE	END DATE	TERMINATION REASON
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NO SCHOOL ASSIGNMENTS

***** END OF REPORT *****

CMTI330D SCDC OFFENDER MANAGEMENT SYSTEM 03/18/08
OMCOMITA RELEASE DATE SCREEN C024686
SCDC# > 237887 LOC: LEE
HENDERSON, AYREE - SCDC CLASSIFICATION... VIOLENT
OFFENDER TYPE...: ADULT-STRAIGHT SENTENCE SEXUAL REGISTRY... N
SEXUAL PREDATOR...: NOT APP
DNA STATUS...: COMPLETED
GPS REQUIREMENT...: N
CURRENT SENTENCE: 030-00-000 CONSECUTIVE SENTENCE ...: N
030-00-000 CURRENT SENT START DATE: 08/04/2002
PROJECTED COMPLETION DATES
MAXOUT DATE: 07/27/2032 CURRENT EWC ..: NOT CURRENTLY EARNING EWC
YOA SIX YEAR DATE: / / CURRENT EEC ..: NOT CURRENTLY EARNING EEC
INITIAL PAROLE DATE: 00/00/0000 NEXT PAROLE HEARING DATE: 00/00/0000

TOTAL GT DAYS EARNED: 000000 LABOR CREW/WORK PROG DATE: 99/99/9999
TOTAL EARNED WORK CREDITS ...: 000000 LABOR CREW DISQ REASON:
TOTAL EDUCATION CREDITS: 000000 CATEGORY 4 OR 5 OFFENSE
TOTAL EXTRA EARNED CREDITS ..: 000
TOTAL SERVICE TIME EARNED ...: 002024

PFKEYS: 5:HISTORY OF DATE CHANGES

4-© 1 Sess-1 167.7.50.33 TNET1488 3/11