

ORIGINAL

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STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY

Brooks P. Goldsmith, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

PRESTON RYAN OATES,

APPELLANT

APPELLATE CASE NO. 2014-001404

RECORD ON APPEAL

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JURY CHARGE

1 the jury are satisfied from the evidence of the
2 Defendant's guilt beyond a reasonable doubt.

3 A reasonable doubt has been said to be the kind of
4 doubt to cause a reasonable person to hesitate to act.
5 Some of you may have served on juries in civil cases
6 where you were told that it was only necessary to prove
7 that a fact was more likely true than not true such as
8 by the greater weight of the preponderance of the
9 evidence. But in criminal cases the State's proof must
10 be more powerful than that. It must be beyond a
11 reasonable doubt. Proof beyond that reasonable doubt
12 is proof that leaves you firmly convinced of a
13 Defendant's guilt. But of course there are very few
14 things in this world that we know of with absolute
15 certainty.

16 In criminal cases the law does not require proof
17 that overcomes every possible doubt. If based on your
18 consideration of the evidence you are firmly convinced
19 that the Defendant is guilty of the crime charged you
20 must find the Defendant guilty. If on the other hand
21 you think there's a real possibility the Defendant is
22 not guilty, you must give the Defendant the benefit of
23 the doubt and find the Defendant not guilty.

24 As I told you earlier, ladies and gentlemen,
25 during this trial you and I have had different

JURY CHARGE

1 obligations and responsibilities. I have been
2 obligated to rule on the admissibility of evidence
3 during the trial. And I tell you that you are to only
4 consider the competent evidence before you. And if
5 there was any testimony ordered stricken from the
6 record in this trial you must disregard that testimony.

7 You're to consider only the testimony which has
8 been presented from this witness stand and the exhibits
9 that have been made part of the record in this case and
10 any stipulations which the attorneys may have made.

11 I also have the additional duty to charge you or
12 tell you about the law that applies in the case. And
13 as the presiding Judge I am the sole Judge of the law
14 in this case. And it's your duty as jurors to accept
15 and apply the law as I now state it to you. If you
16 already have any idea as to what the law is or what the
17 law ought to be and it does not agree with what I tell
18 you, you must abandon that idea because you are sworn
19 to accept the laws and apply the law exactly as I state
20 it to you.

21 As you know, you ladies and gentlemen, the jury,
22 are the sole and exclusive judges of the facts in this
23 case. And a trial judge such as myself cannot state,
24 cannot intimate, cannot comment on or make any
25 statement about the facts of the case in the presence

JURY CHARGE

1 of the trial jury. Since you are the sole judges of
2 the facts of the case, you're not to infer from
3 anything that I've said or done during the trial of
4 this case that I have an opinion about the facts of the
5 case. As I told you, the law does not permit me to
6 have an opinion about the facts of the case. This is a
7 matter solely for you. As jurors it is your duty to
8 determine the effect, the value, the weight and the
9 truth of the evidence presented during the trial.

10 Generally speaking there are two types of evidence
11 presented during a trial, direct evidence and
12 circumstantial evidence. Direct evidence is the
13 testimony of a person who claims to have actual
14 knowledge of a fact such as an eyewitness. It's
15 evidence which immediately establishes the main fact to
16 be proven.

17 Circumstantial evidence is proof of a chain of
18 facts and circumstances indicating the existence of a
19 fact. It is evidence which immediately establishes
20 collateral facts from which the main fact may be
21 inferred. Circumstantial evidence is based on
22 inferences and not on personal knowledge or
23 observation.

24 But the law makes no distinction between the
25 weight or the value to be given to either direct or

JURY CHARGE

1 circumstantial evidence. Nor is a greater degree of
2 certainty required of circumstantial evidence than of
3 direct evidence. You should weigh all of the evidence
4 in the case. And after weighing all of the evidence if
5 you're not convinced of the guilt of the Defendant
6 beyond a reasonable doubt you must find the Defendant
7 not guilty.

8 Necessarily, ladies and gentlemen, you must
9 determine the credibility of the witnesses who have
10 testified in this case, and this simply means the
11 believability. It becomes your duty as jurors to
12 analyze and to evaluate the evidence and determine
13 which evidence convinces you of its truth.

14 In determining the believability of the witnesses
15 who have testified you may believe one witness over
16 several witnesses or several witnesses over one
17 witness. You may believe part of the testimony of a
18 witness and reject the remaining part of the testimony
19 of that same witness. You may believe the testimony of
20 a witness in its entirety or reject the testimony of a
21 witness in its entirety. And, of course, you may
22 consider whether the witness has exhibited to you any
23 interest, bias, prejudice or any other motive in the
24 case. And, of course, you may consider the appearance
25 and manner of a witness on the witness stand.

JURY CHARGE

1 The Defendant is charged with murder. The State
2 must prove beyond a reasonable doubt that the Defendant
3 killed another with malice aforethought. And that's a
4 legal term. I tell you that malice is hatred, ill will
5 or hostility towards another person. It is the
6 intentional doing of a wrongful act without just cause
7 or excuse and with an intent to inflict an injury, or
8 under circumstances which the law would infer an evil
9 intent.

10 Malice aforethought does not require that malice
11 exists for any particular time before the act is
12 committed. But malice must exist in the mind of the
13 Defendant just before and at the time of the act --
14 time that the act is committed. Therefore, there must
15 be a combination of previous evil intent and the act.

16 Malice aforethought may be expressed or inferred,
17 and these terms simply mean -- excuse me, the terms
18 expressed and inferred do not mean different kinds of
19 malice but merely the manner in which the malice may be
20 shown to exist, that is either by direct evidence or by
21 inference from the facts and circumstances which are
22 proved.

23 Expressed malice is shown when a person speaks
24 words which express hatred or ill will for another or
25 when a person prepared beforehand to do the act which

JURY CHARGE

1 was later accomplished. Malice may also be inferred
2 from conduct showing a total disregard for human life.

3
4 If you find that the State has failed to prove
5 beyond a reasonable doubt that the Defendant has
6 committed murder, you may consider whether the State
7 has proved beyond a reasonable doubt that the Defendant
8 has committed voluntary manslaughter. To prove
9 voluntary manslaughter the State must prove beyond a
10 reasonable doubt that the Defendant took the life of
11 another in the sudden heat of passion based on
12 sufficient legal provocation. Both heat of passion and
13 sufficient legal provocation must be present at the
14 time of the killing to constitute voluntary
15 manslaughter.

16 Sudden heat of passion may for a time affect the
17 person's self-control and temporarily disturb a
18 person's reason. Sudden heat of passion must be the
19 type which would make an ordinary person unable to cool
20 or reflect on his actions and produce an uncontrolled
21 impulse to do violence.

22 Sufficient legal provocation must be the type that
23 would make a person of ordinary reason and caution
24 become enraged and to lose control temporarily.
25 Provocation needed for voluntary manslaughter must come

JURY CHARGE

1 from some act or related to the victim, whereas alone,
2 though, however vulgar or insulting, are not enough to
3 be legal provocation. Where death is caused by the use
4 of deadly weapon the words must be accompanied by some
5 overt threatening act which could have produced the
6 heat of passion.

7 The exercise of a legal right no matter how
8 offensive it is to another is never sufficient legal
9 provocation for voluntary manslaughter.

10 In time of passion, if the heat of passion had
11 cooled or if there was enough time between the
12 provocation, if any, and the killing or the passion of
13 a reasonable person to cool; the killing would not be
14 voluntary manslaughter. In deciding whether a
15 reasonable person would have had enough time to cool
16 off you should consider all of the circumstances
17 surrounding the killing. You may consider the nature
18 of the provocation, if any. The Defendant's mental and
19 physical state. And the circumstances and relationship
20 between the parties.

21 The Defendant is also charged with possession of a
22 weapon during the commission of a violent crime. The
23 State must prove beyond a reasonable doubt that the
24 Defendant was in possession of a firearm or visibly
25 displayed what appeared to be a firearm during the

JURY CHARGE

1 commission of a violent crime.

2 In order to find the Defendant guilty of
3 possession of a weapon during the commission of a
4 violent crime you must first find the Defendant guilty
5 of either committing a violent crime or attempting to
6 commit a violent crime. Violent crimes are defined in
7 this State, and I will tell you that murder is
8 considered a violent crime in this State, as is
9 voluntary manslaughter.

10 The Defendant has raised the defense of
11 self-defense. And self-defense is a complete defense.
12 And if established you must find the Defendant not
13 guilty of any of the offenses. The State has the
14 burden of disproving self-defense by proof beyond a
15 reasonable doubt. If you have a reasonable doubt of
16 the Defendant's guilt after considering all the
17 evidence, including the evidence of self-defense, then
18 you must find the Defendant not guilty. On the other
19 hand, if you have no reasonable doubt of the
20 Defendant's guilt after considering all the evidence
21 including the evidence of self-defense, then you must
22 find the Defendant guilty.

23 The following elements are required to establish
24 self-defense. First, the Defendant must be without
25 fault in bringing on the difficulty. If the

JURY CHARGE

1 Defendant's conduct was the type which was reasonably
2 calculated to, and did, provoke a deadly assault, the
3 Defendant would be at fault in bringing on the
4 difficulty and would not be entitled to an acquittal
5 based on self-defense.

6 The second element of self-defense is the
7 Defendant was actually in imminent danger of death or
8 serious bodily injury or that the Defendant actually
9 believed that he was in imminent danger of death or
10 serious bodily injury.

11 If the Defendant was actually in imminent danger
12 it must be shown that the circumstances would have
13 warranted -- warranted a person of ordinary firmness
14 and courage to strike the fatal blow to prevent death
15 or serious bodily injury.

16 If the Defendant believed he was in imminent
17 danger of death or serious bodily injury must be shown
18 that a reasonably prudent person of ordinary firmness
19 and courage would have had the same belief. In
20 deciding whether the Defendant actually was or believe
21 he was in imminent danger of death or serious bodily
22 injury you should consider all of the circumstances
23 surrounding the crime, including the physical condition
24 and characteristics of the Defendant and the Deceased.

25 The Defendant does not have to show that he was

JURY CHARGE

1 actually in danger. It is enough if the Defendant
2 believes he was in imminent danger and a reasonably
3 prudent person of ordinary firmness and courage would
4 have had the same belief. The Defendant has the right
5 to act on appearances even though the Defendant's
6 beliefs may have been mistaken. It is for you to
7 decide whether the Defendant's fear of immediate danger
8 of death or serious bodily injury was reasonable and
9 would have been felt by an ordinary person in the same
10 situation.

11 I tell you that words accompanied by hostile acts
12 may, depending on the circumstances may establish
13 self-defense.

14 Threats made by the deceased may be considered in
15 determining whether the Defendant actually was, or
16 believed he was, in imminent danger.

17 The final element of self-defense is that the
18 Defendant had no other probable way to avoid the danger
19 of death or serious bodily injury than to act as the
20 Defendant did in this particular instance.

21 The Defendant had no duty to retreat if by doing
22 so the danger of being killed or suffering serious
23 bodily injury would increase.

24 A person cannot be required to make an exact
25 calculation as to the degree or amount of force which

JURY CHARGE

1 may be needed to avoid death or serious bodily harm.
2 Therefore, in self-defense, the Defendant has the right
3 to use the force needed to avoid death or serious
4 bodily harm. The force used in self-defense does not
5 have to be limited to the degree or amount of force
6 which may be used by the deceased. The Defendant has
7 the right to use so much force as appeared to be
8 necessary for complete self-protection, and which a
9 person of ordinary reason and firmness would have
10 believed to have been needed to prevent death or
11 serious bodily harm.

12 If the Defendant is justified in defending himself
13 in firing the first shot, then the Defendant is also
14 justified in continuing to shoot until it is apparent
15 that the danger of death or serious bodily injury has
16 completely ended.

17 Ladies and gentlemen, I tell you that the fact
18 that the Defendant did not testify in this case is not
19 a fact to be considered by you in any way in your
20 deliberation and in your consideration on the question
21 of the guilt or innocence of the Defendant. It must
22 not be considered by you in any manner whatsoever. The
23 Defendant has a constitutional right to remain silent
24 and if he asserts this right it must not be considered
25 by you in your deliberation. I will repeat, under your

JURY CHARGE

1 oath you are to draw no conclusion whatsoever of the
2 fact that the Defendant in this case did not testify.
3 The fact that the Defendant did not testify should not
4 even be discussed in the jury room.

5 The burden of proof, as I have stated to you
6 before, is upon the State. The Defendant is not
7 required to prove his innocence. The burden of proof
8 remains on the State to prove guilt beyond a reasonable
9 doubt.

10 Ladies and gentlemen, there are different offenses
11 charged against this Defendant. I tell you that each
12 charge is a separate and distinct offense. You must
13 decide each of these charges separately on the evidence
14 and the law applying to it uninfluenced by your
15 decision as to any other indictment. Something I will
16 tell you later.

17 The Defendant may be convicted or acquitted on any
18 or all of the offenses charged. You will be asked to
19 write a separate verdict of guilty or not guilty on
20 these charges. Now in a few minutes, Ladies and
21 gentlemen, you will be asked to retire to the jury room
22 and to begin the deliberations. And you will be given
23 a verdict form.

24 As to what is on the verdict form, count one has
25 two parts to it. The first deals with the issue of

JURY CHARGE

1 murder. And that you must determine -- you must decide
2 that issue first. If you decide that the defendant is
3 guilty of murder you may not consider the issue of
4 voluntary manslaughter. The Defendant cannot be guilty
5 of murder and voluntary manslaughter both. If you find
6 that the Defendant is not guilty of murder you may
7 consider whether the state has proven beyond a
8 reasonable doubt the Defendant was guilty of voluntary
9 manslaughter.

10 The other charge, of course, deals with the charge
11 of possession of a weapon during a violent crime. As I
12 told you earlier, the Defendant cannot be convicted of
13 that if the Defendant has not been convicted of one of
14 the other offenses which are both considered violent
15 crimes.

16 So, before you even address the issue of whether
17 the Defendant is guilty of possession of a weapon
18 during the commission of a violent crime he must first
19 be found guilty of one of the other two charges.

20 For there to be a verdict on any of these charges,
21 the verdict must be unanimous. Of course that means
22 that all of you must agree. The foreperson will act on
23 behalf of the jury in putting a checkmark by the
24 verdict of the jury opposite the words guilty or not
25 guilty and sign it, the verdict form, on behalf of the

JURY CHARGE

1 jury.

2 At this time I will ask you to retire to the jury
3 room. Do not being deliberations. I will send the
4 verdict form along with the exhibits. When that occurs
5 I will ask our alternate jurors to step back out into
6 the courtroom and then you may begin your
7 deliberations. So, ladies and gentlemen, if you will
8 please retire to the jury room. I hope to be with you
9 shortly. And we have ordered lunch for you which
10 should be here shortly.

11 (Jury exits the courtroom at 12:20.)

12 THE BAILIFF: The jury is clear, Your Honor.

13 THE COURT: All right. I realize that both sides
14 may want to renew their previous objections. But are
15 there additional objections that the Court hasn't heard
16 from the State?

17 MR. THORNTON: None from the State, Your Honor.

18 THE COURT: And from the defense?

19 MR. NEWMAN: No exceptions or additions other than
20 to renew our objection and ask that the charges be as
21 requested.

22 THE COURT: The Court understands those
23 objections.

24 MR. THORNTON: Your Honor, I do have one matter.
25 Mr. Newman and I talked about this at the bench. Is

JURY CHARGE

1 Your Honor's intent to send the indictments back?

2 THE COURT: I would not normally do that --

3 MR. THORNTON: That's fine. And that --

4 THE COURT: -- since we have a verdict form.

5 MR. THORNTON: Yes, sir, and that solves the
6 issue. I just wanted to check because we would need to
7 amend something on one of these indictments had you
8 planned to send it back. That's fine with the State.

9 THE COURT: Would you all like to look -- go
10 through the exhibits and make sure we have them all?

11 MR. THORNTON: Yes, sir.

12 (The alternate juror is released.)

13 THE BAILIFF: Judge, I have everything, and I'll
14 hold you until they are finished eating.

15 THE COURT: Do they have the food?

16 THE BAILIFF: Yes, the food is here. And they are
17 eating now?

18 THE COURT: Let me go ahead and mention one thing
19 to the attorneys in this case.

20 THE DEPUTY: Order in the Court please.

21 THE COURT: The jury's food has just been
22 delivered, so they're going to eat, which I guess means
23 the next 20 minutes or so we'll in be in recess. Not
24 around. Is anybody going to leave?

25 MR. THORNTON: No, sir, I'm not.

JURY CHARGE

1 MR. NEWMAN: I'm going to be around. The --

2 THE COURT: We might need phone numbers if the
3 attorneys --

4 MR. NEWMAN: I don't plan on leaving the
5 courthouse. Have the exhibits been sent in?

6 THE COURT: No.

7 MR. NEWMAN: Okay. So we're going to wait
8 until -- I assume that the alternates wanted to stay
9 and eat.

10 THE COURT: They told me that they wanted to
11 leave.

12 MR. NEWMAN: Did they leave?

13 THE COURT: They might be coming to the back of
14 the courtroom.

15 MR. NEWMAN: I thought that was an issue. I mean,
16 I don't mind if they begin to deliberate while they
17 eat.

18 MR. THORNTON: I take no position either way,
19 doesn't matter to me.

20 MR. NEWMAN: I just as soon they start working if
21 they want to.

22 THE COURT: All right. We will be at ease waiting
23 on the jury. Don't stray far.

24 (Jury deliberation in process.)

25 THE BAILIFF: The jury has a question.

JURY CHARGE

1 (Off-the-record discussion held.)

2

3 (Question presented at 1:38 p.m.)

4 MR. THORNTON: The State is ready, Your Honor.

5 MR. NEWMAN: The Defense is ready. And Mr. Oates
6 is ready, along with Mr. Colongeli.

7 THE COURT: I'll give everybody a second to settle
8 down.

9 MR. THORNTON: Yes, sir.

10 THE COURT: All right. I have three notes from
11 the jury. The best I can understand it, they are
12 written one minute apart. They are putting the time
13 that they wrote the notes on the notes. Let's see,
14 first note: May we see the brief video of the shooting
15 again, not the long version? That is one.

16 The next one: May we have a copy of the four
17 points of self-defense law or be briefed on these
18 points again?

19 And lastly: May we hear Preston's 911 call again?

20 THE COURT: Well, let's talk about the video and
21 the call. Is that going to be an issue, Solicitor,
22 putting those together?

23 MR. THORNTON: No, sir, not from the State's
24 perspective. By the -- unless Mr. Newman disagrees, I
25 think what they are asking for would be clip eight,

QUESTIONS FROM THE JURY

1 which is very short. It is basically where the
2 shooting takes place, which we can pull up in a matter
3 of moments. And the 911 call from Mr. Oates, likewise,
4 we can do it very quickly. I will use the actual
5 evidentiary discs that are in evidence that the court
6 reporter has. It should be literally probably two
7 minutes, Judge, once I get the discs.

8 THE COURT: You agree with that, Mr. Newman?

9 MR. NEWMAN: I do, if that's what the jury wants
10 to see. They want to see the short clip, the 911 call
11 of Mr. Oates. And then recharged on the complete law
12 of self-defense.

13 THE COURT: Well, that is my next question. And
14 that is: May we have a copy of or be briefed on those
15 four points of self-defense. I take it based on what
16 you just said is that you agree with the Court just to
17 recharge self-defense?

18 MR. NEWMAN: Yes, sir.

19 THE COURT: Solicitor?

20 MR. THORNTON: No objection from the State, Judge.

21 MR. NEWMAN: You need a minute?

22 MR. THORNTON: Yes, sir, it'll take me. If you
23 will give me time to get the disc and set all of that
24 up, Judge. If you want to bring them in, charge them,
25 and then we can go into the playing.

JURY QUESTIONS

1 THE COURT: Before I bring them in, let me make
2 sure that I can put my hands on that.

3 MR. THORNTON: Since we are all in agreement, Your
4 Honor, can we go off of the record?

5 THE COURT: We can.

6 (Pause.)

7 (Jury enters the courtroom.)

8 THE COURT: Welcome back, ladies and gentlemen. I
9 have three notes from the jury. One requests to hear
10 Preston's 911 call. And we are working on putting that
11 together. Another requests the brief, the brief video
12 of the shooting, not the long version, that should be
13 ready in just a moment.

14 And the third one relates to the law of
15 self-defense. So, bear with me. And I will state to
16 you, once again, the law of self-defense.

17 The Defendant has raised the defense of
18 self-defense. I'll tell you that self-defense is a
19 complete defense and if it is established you must find
20 the Defendant not guilty. The State has the burden of
21 disproving self-defense by proof beyond a reasonable
22 doubt. If you have a reasonable doubt of the
23 Defendant's guilty, after considering all of the
24 evidence, including the evidence of self-defense, then
25 you must find the Defendant not guilty on the charge.

JURY QUESTIONS

1 if you have no reasonable doubt of the Defendant's
2 guilty, after considering all of the evidence,
3 including the evidence of self-defense, then you must
4 find the Defendant guilty.

5 The following elements are required to establish
6 self-defense. First the Defendant must be without
7 fault in bringing on the difficulty. If the
8 Defendant's conduct was the type which was reasonably
9 calculated to and did provoke a deadly assault, then
10 the Defendant would be at fault in bringing on the
11 difficulty and would not be entitled acquittal based on
12 self-defense.

13 The second element of self-defense is that the
14 Defendant was actually in imminent danger of death or
15 serious bodily injury, or that the Defendant actually
16 believed he was in imminent danger of death or serious
17 bodily injury. If the Defendant was actually in
18 imminent danger it must be shown that the circumstances
19 would have warranted a person of ordinary firmness and
20 courage to strike the fatal blow to prevent the serious
21 bodily injury.

22 If the Defendant believed that he was in imminent
23 danger of death or serious bodily injury, it must be
24 shown that a reasonably prudent person of ordinary
25 firmness and courage would have had the same belief.

JURY QUESTIONS

1 In deciding whether the Defendant actually was or
2 believed that he was in imminent danger of death or
3 serious bodily injury, you should consider all of the
4 facts and circumstances surrounding the incident,
5 including the physical condition and characteristics of
6 the Defendant and deceased.

7 The Defendant does not have to show that he was
8 actually in danger. It is enough if the Defendant
9 believed he was in imminent danger and a reasonably
10 prudent person of ordinary firmness and courage would
11 have had the same belief. The Defendant has the right
12 to act on appearances even though a Defendant's belief
13 may have been mistaken. It is for you to decide
14 whether the Defendant's fear of immediate danger or
15 death -- fear of death or serious bodily injury was
16 reasonable and would have been felt by an ordinary
17 person in the same situation.

18 Words accompanied by hostile acts may, depending
19 on the circumstances, establish self-defense.

20 Threats made by the deceased may be considered in
21 determining whether the Defendant actually was or
22 believed he was in imminent danger.

23 The final element of self-defense is that the
24 Defendant had no other probable way to avoid the danger
25 of death or serious bodily injury than to act as the

JURY QUESTIONS

1 Defendant did in this particular incidence. A
2 Defendant has no duty to retreat if by doing so the
3 danger of being killed or suffering serious bodily jury
4 would increase.

5 A person cannot be required to make an exact
6 calculation as to degree or amount of force which may
7 be necessary to avoid death or serious bodily harm.
8 Therefore, in self-defense, the Defendant has the right
9 to use the force needed to avoid death or serious
10 bodily harm. The force used in self-defense does not
11 have to be limited to the degree or amount of force
12 used by the deceased. The Defendant has the right to
13 use so much force as appeared necessary for complete
14 self protection and which a person of ordinary reason
15 and firmness would have believed to be needed to
16 prevent death or serious bodily harm.

17 If the Defendant is justified in defending himself
18 in firing the first shot then the Defendant is also
19 justified in continuing to shoot until it is apparent
20 that the danger of death or serious bodily injury has
21 completely ended.

22 Now, are we able to show the disc?

23 MR. THORNTON: Yes, sir.

24 (Video playing.)

25 MR. THORNTON: That is farther than we played. I

JURY QUESTIONS

1 don't know if they need any farther.

2 THE COURT: The foreperson indicates that that
3 satisfies their request. I thank you and ask you to
4 retire to the jury room and continue your
5 deliberations.

6 THE BAILIFF: Jury is out and door is closed, your
7 Honor.

8 (Deliberations of the jury continue.)

9 THE BAILIFF: The jury has a verdict.

10 MR. THORNTON: We are just getting the family. I
11 didn't want them coming in while you were finishing.

12 THE COURT: I appreciate that.

13 MR. THORNTON: Yes, Your Honor.

14 THE COURT: There is a verdict in this case. I
15 will remind, you must maintain decorum. There must not
16 be any outbursts, from one side or the other. Keep
17 those to yourself, as best as you can. Let's bring the
18 jury in.

19 (Jury enters the courtroom at 3:33 p.m.)

20 THE BAILIFF: Your Honor, the jury is entering.

21 THE COURT: Welcome, ladies and gentlemen.
22 Mr. Cox, as foreperson of the jury, let me ask you:
23 Has the jury reached a verdict in this case?

24 THE FOREPERSON: Yes, Your Honor, we have.

25 THE COURT: Is the verdict unanimous?

VERDICT OF THE JURY

1 THE FOREPERSON: Yes, Your Honor.

2 THE COURT: Did you complete the verdict form and
3 sign it?

4 THE FOREPERSON: Yes, sir.

5 THE COURT: Would you please pass it forward.

6 THE BAILIFF: Your Honor.

7 THE COURT: Madam Clerk, would you like to publish
8 the verdict?

9 THE CLERK: The State of South Carolina versus
10 Preston R. Oates, Indictment Numbers 2014GS-07-0359 and
11 2010GS07-121.

12 As to Indictment 2014GS-07-0359, Murder, we the
13 jury unanimously find the Defendant, Preston Oates, not
14 guilty. As to voluntary manslaughter, we the jury
15 unanimously find the Defendant, Preston Oates, guilty.

16 As to indictment 2011GS-07-121, the charge of
17 possession of a weapon during a violent crime, we the
18 jury unanimously find the Defendant Preston Oates
19 guilty.

20 Mr. Foreman, was this your verdict?

21 THE FOREPERSON: Yes, ma'am.

22 THE COURT: If all agree, would you please raise
23 your right-hand.

24 (All jurors raise their right hand.)

25 THE COURT: Anything further before the jury is

VERDICT OF THE JURY

1 discharged, from the State?

2 MR. THORNTON: Nothing from the State, Your Honor.

3 THE COURT: From the Defense?

4 MR. NEWMAN: Request polling of the jury.

5 THE CLERK: As I call your number, would you stand
6 please.

7 Juror Number 87, was this your verdict?

8 THE JUROR: Yes, ma'am.

9 THE CLERK: Is it still your verdict?

10 THE JUROR: Yes, ma'am.

11 THE CLERK: Thank you. Juror Number 313, was this
12 your verdict?

13 THE JUROR: €øJ€bK+

14 THE CLERK: Is it still your verdict?

15 THE JUROR: Yes, ma'am.

16 THE CLERK: Juror Number 132, was this your
17 verdict?

18 THE JUROR: Yes.

19 THE CLERK: Is it still your verdict?

20 THE JUROR: Yes.

21 THE CLERK: Thank you. Juror Number 5, was this
22 your verdict?

23 THE JUROR: Yes, ma'am.

24 THE CLERK: Is it still your verdict?

25 THE JUROR: Yes, ma'am.

VERDICT OF THE JURY

1 THE CLERK: Juror Number 126, was this your
2 verdict?

3 THE JUROR: Yes, ma'am.

4 THE CLERK: Is it still your verdict?

5 THE JUROR: Yes, ma'am.

6 THE CLERK: Juror Number 15, was this your
7 verdict?

8 THE JUROR: Yes, ma'am.

9 THE CLERK: Is it still your verdict?

10 THE JUROR: Yes, ma'am.

11 THE CLERK: Thank you. Juror Number 402, was this
12 your verdict?

13 THE JUROR: Yes, ma'am.

14 THE CLERK: Is it still your verdict?

15 THE JUROR: Yes, ma'am.

16 THE CLERK: Thank you. Juror Number 11, was this
17 your verdict?

18 THE JUROR: Yes, ma'am.

19 THE CLERK: Is it still your verdict?

20 THE JUROR: Yes, ma'am.

21 THE CLERK: Juror Number 176, was this your
22 verdict?

23 THE JUROR: Yes, ma'am.

24 THE CLERK: Is it still your verdict?

25 THE JUROR: Yes, ma'am.

VERDICT OF THE JURY

1 THE CLERK: Thank you, sir. Juror Number 310, was
2 this your verdict?

3 THE JUROR: Yes, ma'am.

4 THE CLERK: Is it still your verdict?

5 THE JUROR: Yes, ma'am.

6 THE CLERK: Juror Number 370, was this your
7 verdict?

8 THE JUROR: Yes, ma'am.

9 THE CLERK: Is it still your verdict?

10 THE JUROR: Yes, ma'am.

11 THE CLERK: Thank you, sir. And Juror Number 292,
12 was this your verdict?

13 THE JUROR: Yes, ma'am.

14 THE CLERK: Is it still your verdict?

15 THE JUROR: Yes, ma'am.

16 THE CLERK: Thank you.

17 THE COURT: Anything else before the jury is
18 discharged?

19 (No audible response.)

20 THE COURT: Ladies and gentlemen, I previously
21 told you you could not discuss the case with anybody.
22 You are now free to discuss or not discuss the case,
23 including not only what happened here in the courtroom
24 but what happened in the jury room. It is totally up
25 to you whether you wish to discuss this with anybody or

VERDICT OF THE JURY

1 not. People may approach you to ask you why you did
2 what you did, or why you didn't do something.

3 If you want to talk about it you are free to do
4 that. If you don't want to talk about it, tell them
5 that you don't want to talk about it. If anybody
6 really bothers you about it tell them that the Judge
7 told you that you didn't have to talk about it. I
8 don't have any reason to think that that's going to
9 happen. I just try to make sure that every juror knows
10 that they have the right to talk about it or not talk
11 about it. If anyone seriously bothers you, please
12 report them to the Clerk of Court.

13 I want to tell you this, no one is in a position
14 to criticize your verdict. I say that because of this:
15 Only the 12 of you have sat there, saw the witnesses,
16 looked at the evidence, listened to the attorneys,
17 listened to me, and then went to the jury room and
18 discussed it with your fellow jurors.

19 I'm not sure yet whether we are getting ready to
20 proceed with the sentencing in the case, but that is a
21 normal thing that would happen and you are welcome to
22 stay or not stay for that. It's totally up to you.
23 You can leave or stay there or you can get up. I'll
24 let you decide.

25 Maybe the best thing to do is this: I'll tell you

VERDICT OF THE JURY

1 what I'll let you do, let you all exit to the hallway.
2 You may feel more comfortable that way. If you want to
3 come back in, tell the bailiff and he will let you come
4 right back in and you may have your seats.

5 Ladies and gentlemen, does anybody have any
6 questions? I almost had a question. I want to thank
7 you for a service, ladies and gentlemen. You are
8 excused. Thank you for everything, and thank you for
9 your serving.

10 (Jury exits the courtroom.)

11 (Trial concluded.)

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VERDICT OF THE JURY

1
2 CERTIFICATE
3

4 STATE OF SOUTH CAROLINA:

5 COUNTY OF BEAUFORT:

6 I, MONA L. MANLEY, Court Reporter, certify that I was
7 authorized to and did stenographically report the foregoing
8 proceedings and that the transcript is a true and complete
9 record of my stenographic notes.10 DATED this 25th day of November, 2014.
1112 

MONA L. MANLEY

Official South Carolina Court Reporter

Circuit Reporter for the 14th Circuit

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1 In the Court of Common Pleas for the
2 State of South Carolina, County of Beaufort

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4 Case No.: 2014-GS-07-00359

5 State of South Carolina,

6 Plaintiff(s),

7 vs. Transcript of Record

8 Preston Ryan Oates,

9 Defendant(s).

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12 SENTENCING

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16 June 19, 2014

17 Beaufort, South Carolina

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22 BEFORE:

23 The Honorable Judge Brooks P. Goldsmith

24

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APPEARANCE PAGE

1 APPEARANCES

2

3 PLAINTIFF'S ATTORNEY:

4 Sean Paul Thornton, Assistant Solicitor

5 Mary Concannon, Assistant Solicitor

6 Fourteenth Circuit Solicitor's Office

7 Beaufort, SC 29901

8

9 DEFENDANT'S ATTORNEY:

10 Jared Sullivan Newman, Esquire

11 PO Box 515

12 Port Royal, SC 29935

13 and

14 Donald C. Colongeli

15 112 Arrow Road #A

16 Hilton Head Island, SC 29928

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SENTENCING

1 PROCEEDINGS

2 (Jury exits the courtroom.)

3 THE BAILIFF: The jury is clear and the door is
4 closed, Your Honor.

5 THE COURT: Motions?

6 MR. THORNTON: None from the State, Your Honor.

7 MR. NEWMAN: Yes, sir, we have a number of motions
8 to make in this matter, Your Honor, prior to
9 sentencing. First, we renew our motions for the
10 directed verdict under State versus Hendricks, we
11 believe the facts as to issue of self-defense are pretty
12 much on point with State V Hendricks. We renew that
13 motion. We renew our motion and make a motion for a
14 new trial and as to the dismissal of charge for
15 voluntary manslaughter for the reasons that were stated
16 in our objection to the motions on that. We believe
17 that it certainly confuses and it definitely weakens
18 the defense of self-defense, dilutes it by giving the
19 jury two bites of an apple on the same indictment.
20 Particularly when that indictment was dismissed.

21 We also renew all of our other trial motions, and
22 likewise move for a new trial based on that. But
23 critically on the issue of sending two, basically two
24 indictments, one un-indicted to the jury in this matter
25 and the dilution charge. That would be our post trial

SENTENCING

1 motions in this matter, Your Honor.

2 MR. THORNTON: Your Honor, I would stand on the
3 previous arguments made. I think that Your Honor's
4 rulings have been correct in all of those matters and
5 we respectfully request you deny all of those motions.

6 THE COURT: I do, in fact, understand all of the
7 motions and I understand the grounds for the motions.
8 I believe that the grounds have been previously argued
9 and the Court has issued its reasons for its rulings,
10 and therefore would deny all of those motions.

11 Is there any reason that we should or should not
12 proceed with sentencing at this time? What is the
13 State's position?

14 MR. THORNTON: The State's position is that we
15 should go ahead and proceed with sentencing, Your
16 Honor. The State is here, we are ready to go. I have
17 got family that has been here and waiting. I have two
18 family members that wish to speak, Dianne, Carlos'
19 widow and Nelson, Carlos' eldest brother, both wish to
20 speak on behalf of the family. I have the sentencing
21 sheet here, so unless there is a reason not to, the
22 State is ready to proceed.

23 MR. NEWMAN: And Your Honor, with the denial of
24 our motion we are ready to proceed with sentencing.

25 THE COURT: All right. Solicitor.

SENTENCING

1 MR. THORNTON: Thank you, Your Honor. I'm going
2 to pass up the -- I'm going to pass up the sentencing
3 sheets. I have shown them to Mr. Newman. Your Honor,
4 frankly I think at this time if it's all right with the
5 Court, I'll go ahead and have the relatives of the
6 family -- excuse me, relatives of the victim speak.
7 Dianne, if you could come on up. I know that she's on
8 that row right there. And Mr. Nelson Olivera, Mr.
9 Olivera's oldest brother is also here and he will be
10 speaking next, Your Honor.

11 MRS. OLIVERA: On behalf of my four kids, Carlos,
12 Junior, Carlotta, Daniel, Joseph, myself and my
13 husband, formerly, I just want to say thank you because
14 we know that we have justice. And I know that my
15 husband, he is happy that he got justice for what they
16 did -- he did to him. So thank you very much.

17 THE COURT: Thank you, ma'am.

18 MR. THORNTON: This is Nelson Olivera, Your Honor.
19 He was a witness in the case, as you know, and Carlos
20 Olivera's oldest brother.

21 MR. NELSON OLIVERA: The big question, why Carlos
22 Olivera was killed again on Christmas Eve to deliver
23 presents? And just for your knowledge, and many of you
24 knew, but for the Latin culture, Christmas Eve at 12,
25 at midnight, for centuries people always have fire

SENTENCING

1 crackers and fireworks and I know that a lot of people
2 use guns to celebrate. That night I didn't know that
3 my brother have a gun, but I'm 200 percent the reason
4 that he carried that gun was because probably he was
5 going to fire the gun, I think that he was going to
6 fire the gun in the air or on the ground but that was
7 the reason that he had it that night.

8 The great amount of evidence, the fine work of the
9 Solicitor's office, the professional who came over and
10 testified and other witness with the little bit of
11 family we believe that there was enough evidence for a
12 murder conviction.

13 Again, on the other hand, Mr. Newman he is a fine
14 lawyer and the only material that he have is Preston
15 Oates' word. And of course the main question, show the
16 gun to everybody face what you do. We believe that
17 Mr. Oates never intended to tow the -- my brother's
18 mini-van. Why? Because he used a device to demobilize
19 the van. If his intention was to remove the van he
20 could do it right away, but he didn't.

21 Let's remember Carlos, a man who died for no
22 reason, a softly spoken man, a person, hard worker, and
23 a very responsible father. Oates planned to kill
24 Carlos or somebody that night and he did it. He got
25 enough time and the time that he got he used to plan

SENTENCING

1 his evilness. And you can tell that because he never
2 showed any emotions in this courtroom, he never showed
3 any remorse, none in this courtroom, none before. He
4 have a smirky smile since the first day. He shout
5 Feliz Navidad, so he enjoy it.

6 I want to thank the Solicitor, I want to thank
7 Your Honor, I want to thank the Sheriff.. I want to
8 thank everybody for the fine work. And we have seen
9 justice today. And thanks to God. God bless you.

10 THE COURT: Thanks.

11 MR. THORNTON: Your Honor, if it's all right with
12 the Court I'll go ahead and put the State's position on
13 the record. Obviously, Your Honor, any time that you
14 have a trial, I won't belabor the point, you were here
15 and heard all of the evidence. Probably, Your Honor,
16 the most startling thing to me when I began working on
17 the case sometime ago, and Mr. Newman was absolutely
18 correct when he got up when we were arguing this in
19 pre-trial that I was going to harp on the shooting in
20 the back and the short exit wound.

21 I think that is very telling in this case, Your
22 Honor. I understand Mr. Newman's argument, and I
23 absolutely understand why he made it. But everybody in
24 this courtroom knows how you get a short exit wound --
25 there's only one way. And that is because Carlos

SENTENCING

1 Olivera was laying prone, flat, defenseless on the
2 ground. And Nelson -- excuse me, Preston Oates walked
3 up and executed him. I understand the jury's ruling,
4 and I understand that they have convicted him of
5 voluntary manslaughter which carries a maximum term of
6 imprisonment, as you know Your Honor, of 30 years.

7 And because of the nature of this crime, Your
8 Honor, and five shots to the back, the State is
9 requesting a sentence of 30 years along with five for
10 the carrying of a concealed weapon. Thank you, Your
11 Honor. Or, excuse me, not for carrying a concealed
12 weapon, but for use of a weapon in the commission of a
13 violent crime, I apologize. Thank you, Your Honor.

14 MR. NEWMAN: May it please the Court. Your Honor,
15 I think that issue of, just briefly, the short exit
16 wound, that frankly hit us by surprise yesterday. That
17 was absolutely not within the report. But that,
18 notwithstanding, those are issues for argument and all
19 of that. The jury has spoken. We respect their
20 verdict certainly. I think that I said in opening
21 statements, this was a tragedy. Nobody in this
22 courthouse cannot be happy today, certainly not the
23 Olivera family. I appreciate Mr. Nelson Olivera's
24 sentencing statement.

25 And I believe Mr. Oates' was, quirky or not in

SENTENCING

1 facial ticks or mannerisms, don't mistake -- I think
2 what speaks loudly is when you heard on the tape of
3 Sergeant Erick Hardy, if you will recall he is the
4 deputy that detained Mr. Oates initially in this case
5 and talked with him, and you can hear Mr. Oates when it
6 must apparently be a family member that had walked by
7 the car said in an audible but what I believe was a
8 soft and sincere voice that, I'm sorry for your loss,
9 I'm sorry that this had to happen. And I think that he
10 is.

11 Because one exercises their rights of trial
12 doesn't necessarily mean that you are not sorry that
13 the incident happened. That by my advice my client has
14 not been allowed to speak to anybody. You know, many
15 times that I have clients and clients like this that
16 say, Can I send or say something to the family, and I
17 tell them, I have to tell you as a human I would love
18 you to, but as a lawyer you hired me to protect your
19 rights and that can't be done.

20 I know that Mr. Oates would express that as well.
21 I would ask before I go on a little bit further,
22 Mr. Oates is here, he has family here. HE has his mom
23 and dad here. His Mom left the courtroom briefly.
24 Would you like to say anything? They are obviously --
25 they didn't want to be here like nobody else did from

SENTENCING

1 the beginning, quite obviously. I have friends,
2 Mr. Slayball, who I believe is om Charlotte who has
3 come down and sat with him for the whole week to show
4 support for Preston and his family.

5 This is Preston's fiancée seated over there. She
6 is expecting a child sometime in the near future.
7 Mr. Oates was arrested three days after this incident
8 on December 27th. As you can see he immediately made a
9 911 call. He didn't flee the scene. He asked that
10 paramedics and ambulance and firetrucks, whoever, need
11 to come to the scene. He didn't interfere in any way
12 when Nelson and Mrs. Olivera were attempting whatever
13 CPR or whatever aid they could render Mr. Olivera, he
14 did not keep them from doing that. He kept people away
15 from the pistol, Carlos' pistol, which would probably
16 be a good thing, because if somebody angry had gotten
17 that there may have been more bloodshed that night.

18 You heard the facts in this, certainly Mr. Oates
19 did not seek this out. The jury found that indeed he
20 had to respond to the facts. And the jury found that
21 he didn't make the right choices in responding to those
22 facts, or overreacted on those, which is the sudden
23 heat of passion theory that was submitted, which we
24 don't know. I would ask Your Honor to also consider
25 that he came back in voluntarily on December 27th, made

SENTENCING

1 a statement to Captain Bromage for an hour and
2 ten-minute interview. Mr. Oates was arrested at some
3 point after that interview.

4 He was in jail from December 27th, 2011 until
5 August 31st, 2011, so approximately a span of eight or
6 so months. We would ask certainly that he be given
7 credit for any time prior to that. Since August 31st,
8 2011 when Mr. Oates was releases, he's been on an ankle
9 monitor, been under some pretty harsh conditions of
10 bond, on house arrest, he's not been able to live in
11 Beaufort County. His parents have a home in another
12 part of the state. He agreed to that. He necessarily
13 had to give up his business. He's basically been
14 unemployed except for some odd pick-up work and jobs
15 and things like that. So, he's taken a toll
16 financially on him. He's basically just had to live at
17 his dad's house. He was free to travel to attempt to
18 find work, with an ankle monitor on and from an area
19 all the way across the other side of the state where
20 you don't have connections and don't know anybody. It
21 has been difficult. So, the past three years or so
22 have taken a toll.

23 He has been, as I said, on a house arrest
24 situation. Your Honor, the statute in this case
25 carries I believe a minimum of 2 to 30 years. I ask

SENTENCING

1 the Court to look at all of the facts. And I know that
2 the tag-along pistol charge carries five years. But I
3 would ask, Your Honor, when you look at all of the
4 attendant facts in this case, and I understand the
5 tragic loss, but I think that when you balance
6 everything out we are going to ask Your Honor to
7 sentence Mr. Oates to a seven-year sentence because I
8 believe that the five has to run consecutive. And if
9 I'm incorrect in that -- I know that the five has to be
10 five. We would ask that that, if it is five years,
11 that that would be an appropriate sentence in this
12 case. Mr. Colongeli. Mr. Oates.

13 (Pause.)

14 MR. NEWMAN: Mr. Oates is a little bit shaken up.
15 He asked me to express to Mrs. Olivera, Nelson Olivera,
16 and the Olivera family and his regrets in his action
17 and his sorrow for your loss. And I thank y'all.

18 I apologize, Your Honor. Sorry, I did forget one
19 person. I did note that his fiancée wanted to address
20 the Court. You can see by her face she's obviously
21 upset, Your Honor.

22 (Pause.)

23 Thank you. If there's anything else that you wish
24 to hear, I'll address any specific concerns.

25 THE COURT: Did Mr. Oates himself wish to say

SENTENCING

1 anything?

2 MR. NEWMAN: He does not, Your Honor, other than
3 to express his condolences.

4 THE COURT: Mr. Preston Oates, would you please
5 stand. On the charge of possession of a weapon during
6 the commission of a violent crime, I sentence you to
7 the Department of Corrections for a period of five
8 years. Give credit for any time severed.

9 On the charge of voluntary manslaughter I sentence
10 you to the Department of Corrections for a period of 26
11 years, concurrent credit for time severed. Good luck
12 to you.

13 MR. THORNTON: Thank you, Your Honor.

14 THE COURT: The Court will be in recess for ten
15 minutes.

16 (Conclusion of the sentencing.)

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CERTIFICATE PAGE

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CERTIFICATE

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STATE OF SOUTH CAROLINA:

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COUNTY OF BEAUFORT:

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I, MONA L. MANLEY, Court Reporter, certify that I was authorized to and did stenographically report the foregoing proceedings and the transcript is a true and complete record of my stenographic notes.

8

DATED this 6th day of December, 2014.

9

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11



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MONA L. MANLEY

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Official South Carolina Court Reporter

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STATE OF SOUTH CAROLINA)
)
 COUNTY OF BEAUFORT)

IN THE COURT OF GENERAL SESSIONS

Indictment No.: 2014-GS-07-0359
 2011-GS-07-0120 J338458
 2011-GS-07-0121 J338459

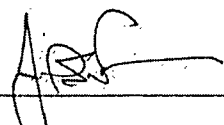
STATE OF SOUTH CAROLINA)
)
 vs.)
)
 PRESTON RYAN OATES,)
)
 Defendant.)

**DEFENDANT'S MOTION TO
 RECONSIDER SENTENCE**

2014 JUN 27 AM 11:10

The Defendant moves before this Court to reconsider the Defendant's sentence. The Defendant was inadequately prepared to argue in mitigation immediately after the trial. The Defendant respectfully requests to be heard on this matter at the Court's convenience.

Respectfully Submitted,



 Jared Sullivan Newman
 Post Office Box 515
 1508 Paris Avenue
 Port Royal, South Carolina 29935
 (843) 522-1313
 Attorney for Defendant

Port Royal, South Carolina

June 26, 2014.

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS

COUNTY OF BEAUFORT)

Indictment No.: 2014-GS-07-0359

2011-GS-07-0120 - 4338658

2011-GS-07-0121 - 4338659

STATE OF SOUTH CAROLINA)

vs.)

PRESTON RYAN OATES,)

Defendant.)

**DEFENDANT'S MOTION TO
ARREST JUDGMENT AND/OR
RECONSIDER DIRECTED VERDICT
AS TO THE CONVICTION OF
VOLUNTARY MANSLAUGHTER**

2014 JUN 27 AM 11:10

The Defendant moves before this Court to reconsider a directed verdict and or arrest judgment on the following grounds: 1) The evidence at trial does not support a jury charge or conviction for Voluntary Manslaughter; 2) The Defendant has been, in effect, tried and convicted on an indictment which was dismissed upon the call of the case to the Court; 3) The Defendant acted in self-defense as a matter of law; and , 4) The Court failed to charge the complete and current law of self-defense.

I. FAILURE OF PROOF AS TO VOLUNTARY MANSLAUGHTER:

The Court granted the State's request to submit Voluntary Manslaughter over the Defendant's objection. The State's sole claim of evidence that the Defendant acted in sudden heat and passion was that the Defendant acted in "fear." The State offered that the Defendant said that he was in fear several times and at some point was, "freaking out" and was "scared." At no time did the evidence show that the Defendant was so in fear, "such as would naturally disturb the sway of reason, and render the mind of an ordinary person incapable of cool reflection, and produce what,

according to human experience, may be called an 'uncontrollable impulse to do violence.' State v. Gardner, 64 S.E.2d 130, 219 S.C. 97 (S.C. 1951); State v. Dickey, 394 S.C. 491, 716 S.E.2d 97 (2011).

Our appellate courts have uniformly refused to submit Voluntary Manslaughter to the jury if the defendant had any time for cool reflection or made deliberate choices or actions. In State v. Cole, 338 S.C. 97; 525 S.E.2d 511 (2000) our Supreme Court rejected the submission of Voluntary Manslaughter when the defendant went and armed himself after an on-going altercation with the decedent. The Court found that the elapse of three to five minutes from the initial altercation and the fact that the defendant armed himself in the intervening time did not amount to sudden heat and passion. The fact that the defendant was, "scared and appeared to be in shock," was not enough to warrant the charge. Id. In a case where the defendant retrieved a pistol from his glove box prior to shooting the decedent, the Court found that even if acting out of fear, the defendant was not acting in sudden heat and passion. State v. Byrd, 323 S.C. 319, 474 S.E.2d 430 (1996).

The Court stressed that the proper standard when considering a charge on Voluntary Manslaughter is to focus, "on the actions of the defendant in the intervening time between the provocation and killing." State v. Pittman, 373 S.C. 527, 647 S.E.2d 144 (2007). This determination is an appropriate question for the trial court to decide as a matter of law. Id. at 575. *Sudden* heat and passion must cause an uncontrollable impulse to do violence. If there is time for reflective thought, Voluntary Manslaughter must not be charged. Id. Arming oneself and acting immediately after being provoked evidences, "cool reflection." Id.

Much like the facts in Dickey, Starns, Byrd, Cole and Pittman, the Defendant made cool and calculating responses to threats made by an armed attacker. The Defendant first retreated to the cab

of his truck. The Defendant then negotiated with the decedent. The Defendant made an attempt to alert a neighbor (Reba Bryan), The Defendant reached into a glove box and retrieved a pistol when the decedent was distracted. The Defendant took his pistol out of its holster. The Defendant hid the pistol under papers which were in his lap. According to the Defendant, when he was ordered out of the truck, he said to himself, "flip a coin, flip a coin." The State claims that the decedent was walking away. The Defendant made a conscious decision to come out of the truck firing. The State argued that the Defendant had been attacked before and took the opportunity to "take out" the decedent. All of these actions, whether right or wrong, were made out of a deliberative process to take a purposeful course of action. "Even when a person's passion has been sufficiently aroused by a legally adequate provocation, if at the time of the killing those passions have cooled or a sufficiently reasonable time had elapsed so that the passions of the ordinary reasonable person would have cooled, the killing would be murder not manslaughter." State v. Knoten, 347 S.C. 296, 555 S.E.2d 391 (2001).

According to the State's evidence, the decedent was walking away from the Defendant and that the argument had ended. The State argued that the situation was calm and the decedent was walking away when the Defendant fired. The evidence can yield only one conclusion, that the Defendant made deliberate and calculated decisions based upon the circumstances then and there existing. The Defendant had ample time to coolly reflect on his options, did in fact weigh his options, and acted upon them. Fear alone, does not reduce a murder charge to voluntary manslaughter. State v. Starnes, 388 S.C. 590, 698 S.E.2d 604 (2010). Under much the same facts, Justices Pleicones and Beatty, in a concurring opinion in Dickey, found that voluntary manslaughter should not have been presented to the jury. (All Justices found that Dickey was entitled to a directed verdict on self-defense but the majority did not reach the issue of submission of voluntary

manslaughter to the jury). The concurring opinion examined Dickey's actions. Dickey followed the decedent and his friend out of the Cornell Arms and watched them. When the decedent turned to approach Dickey, Dickey fired believing the decedent had a gun. The Justices determined that this was a deliberate act, not sudden heat and passion. (They also found Dickey acted in self-defense as a matter of law).

The plea of self-defense actually requires a defendant to be in immanent fear of death or great bodily injury, or to have a reasonable fear of the same based upon facts and circumstances so presented whether actually existing or not, as long as a reasonable person of ordinary courage and firmness would hold the same belief. Neither rage or uncontrollable desire to do violence was present in this case. There is no evidence in this case that the Defendant snapped or became so enraged as to lose control of his reasoning as to do violence. The evidence shows that the Defendant made a conscious choice to use deadly force under the present circumstances. Whether that decision was right or wrong under the circumstances was the only question for the jury. If that decision was wrong in the jury's view, only murder could be considered; if that decision was right under the attendant facts, it is self-defense.

"The mere fact that a person is afraid is not sufficient, by itself, to entitle a defendant to a voluntary manslaughter charge." State v. Starnes, infra, 388 S.C. at 599. The State, referring to several statements made by the Defendant, produced that the Defendant was in fear only. "To warrant a voluntary manslaughter charge, the defendant's fear must manifest itself in an uncontrollable impulse to do violence." Id. The record is replete with facts that show the Defendant was acting in a controlled deliberate manner. Retreating, negotiating, removing his pistol, removing the pistol from its holster, concealing the pistol and exiting his vehicle firing, all exhibit a controlled

plan of defense. Under these circumstances, our appellate courts have uniformly held that a charge of voluntary manslaughter is not warranted, it is either murder or self-defense.

The concurring opinion in State v. Dickey, *infra*, succinctly states the Defendant's position in this case. Justice Pleicones, along with Justice Beatty, stated,

"the dispositive issue here is that of the voluntary manslaughter charge. Taking the evidence in the light most favorable to the State, it shows that at the request of a tenant, petitioner located the combative, intoxicated victim and asked him to leave. Petitioner endured the victim's [394 S.C. 504] obscenities, insults, and threats of physical violence calmly, and called the local police to report the incident. As the man began to leave the building, petitioner chose not to enter the elevator with him but instead took the stairway. Petitioner then followed the victim and his companion as they exited the building. As one would expect from a security guard who had just escorted such an individual off the premises, petitioner stood outside the building to make sure the men actually left the area. Compare State v. Brooks, *supra* (right to eject patron from business includes following patron outside).

When the victim and his friend turned and approached petitioner, petitioner felt "afraid" and "outnumbered," then shot the victim. In my view, there is no evidence that petitioner was so angry and fearful that he lost control, and was rendered incapable of cool reflection. Instead, the evidence reflects that petitioner retained his composure despite the threats and language directed at him by the victim, and only shot when the victim and his friend turned back and approached petitioner outside the building whose occupants he was paid to guard. After the shooting, petitioner again called 911, and reported the events. I simply see no evidence of fear manifesting itself in an uncontrollable impulse to do violence. In my view, the only evidence is that petitioner, admittedly acting out of fear, nonetheless acted in a deliberate, controlled manner. As such, he could not, as a matter of law, be guilty of voluntary manslaughter. State v. Starnes, 388 S.C. 590, 698 S.E.2d 604 (2010)."

The State requested the unindicted additional charge of Voluntary Manslaughter merely to gain a tactical advantage. "Trial courts often struggle with the difficult interplay between murder and the lesser-included offense of voluntary manslaughter, especially where a defendant claims self-

defense.” Starnes, *infra*, 388 S.C. at 597. The charge was requested to weakened the self-defense considerations and vie for a compromise verdict. Additionally, the Defendant does not concede that sufficient legal provocation existed, but rather sufficient legal justification to act was apparent.

Therefore, the Defendant moves that the Court direct a verdict of acquittal as to the Voluntary Manslaughter charge, or to arrest judgment as to the charge, as there was a complete failure of proof on the element of sudden heat and passion.

II. VOLUNTARY MANSLAUGHTER WAS DISMISSED AT THE CALL OF THE CASE.

The Defendant was initially indicted for Voluntary Manslaughter in January 2011. The State alleged in January 2011 that the Defendant acted without malice aforethought and acted on sudden heat and passion upon sufficient legal provocation (Indictment No. 2011-GS-07-120). Without any change in circumstance, the State sought and obtained an indictment for Murder in March 2014. The State called the Murder indictment (2014-GS-07-359) to trial after the jury venire was qualified. The State dismissed the charge of Voluntary Manslaughter prior to the swearing of the jury. The trial proceeded upon the Murder indictment. Surprisingly, at the close of the evidence, the State requested that the jury be charged the law on Voluntary Manslaughter. The Defendant objected to being held to answer for a charge that the State itself dismissed and for want of evidence that the Defendant acted in sudden heat and passion so as to cause an uncontrollable impulse to do violence.

By submitting Voluntary Manslaughter to the petit jury, the State sought and obtained a conviction on an indictment it had dismissed immediately prior to trial. The State danced the prosecutorial version of the Hokey-Poky in this case. (*Throw an indictment in . . . Throw an*

indictment out . . . Make the the Defendant defend against . . . what he don't know about). Article I, Section 11 of the South Carolina Constitution (1895) mandates that a Defendant is to be provided notice via an indictment of the charge or charges against him. While a murder indictment may generally give a defendant notice that some form of manslaughter, may from the facts adduced at trial, go to mitigate the element of malice aforethought, such is not the case here.

Because the Voluntary Manslaughter indictment was dismissed after the case was called, the Defendant's whole strategy, from opening statements to cross-examination all the way to the closing of evidence, focused solely on the crime of murder. The State announced to the Court, that it was not proceeding on the Voluntary Manslaughter and dismissed that pending charge during the trial. Constitutional notions of due process, fundamental fairness, structure of the trial itself, and concepts of notice all were violated by the State in requesting to charge the jury on Voluntary Manslaughter.

Further, the Court's jury verdict form, supplied by the State to the Court, was constitutionally infirm by allowing both charges. The form of the verdict allowed the State to present two charges, and asked the jury to pass on each. The jury found the Defendant not guilty on the Murder charge. The State got a second bite at the apple by having the jury to then deliberate on a second unindicted charge, which had been dismissed by the State after the case started. This change in position materially prejudiced the Defendant by forcing him to defend against a charge, after the presentation of evidence had ended, that had already been dismissed after the call of the case.

The Defendant found only one case (Dickey)¹ where the State has requested a lesser included

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The defendant in Dickey, much like the case at bar, objected to the submission on the voluntary manslaughter charge.

offense to murder. The State has sole pre-trial control of what charges it will bring. The Defendant is powerless to as to what charge will be brought. The only due process right at that stage is to be informed of the charge or charges he has to defend against, prior to trial. This case presents a subversion of fundamental and structural trial rights.

The State has no Constitutional power to change the elements of an offense upon which a grand jury has passed.² In this case, the grand jury found probable cause to believe that malice existed. The first grand jury found that sudden heat and passion and legal provocation existed, and the element of malice was not present. Necessarily, the second grand jury already passed upon the issues of sudden heat and passion based upon sufficient legal provocation, finding that such did not exist. The State voluntarily dismissed the Voluntary Manslaughter indictment after the case was called, therefore the State elected to proceed on murder only. The jury convicted the Defendant on an indictment for Voluntary Manslaughter which had been dismissed, prior to swearing the jury, but *after* the call of the case. The result was that the Defendant was convicted upon a dismissed indictment and on facts that did not support the legal definition of Voluntary Manslaughter.

III. FAILURE TO FULLY CHARGE SELF-DEFENSE DILUTED THE SELF-DEFENSE CHARGE AS TO VOLUNTARY MANSLAUGHTER:

The law to be charged must be determined from the evidence presented at trial. State v. Cole.

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The only case found by the Defendant where the State has asked for a lesser charge is State v. Dickey, 394 S.C. 491, 716 S.E.2d 97 (2011). The Court avoided the issue, instead reversed the conviction of the grounds that a directed verdict should have been granted on self-defense grounds.

338 S.C. 97, 525 S.E.2d 511 (2000). The trial judge is required to charge the current and correct law of South Carolina. "If there is any evidence to support a jury charge, the trial should grant the requested charge." State v. Santiago, 370 S.C. 153, 634 S.E.2d 23 (SC Ct. App. 2006). "The refusal to grant a requested jury charge that states a sound principle of applicable to the case at hand is an error of law." Id., See also, Clark v. Cantrell, 339 S.C. 369, 529 S.E.2d 528 (2000). The Defendant requested the following jury charge:

"When considering self-defense, it does not necessarily matter where a decedent is struck, the law does not require a decedent to be face to face or on equal terms when the fatal blow is struck so long as the use of force is justified under all the circumstances."

State v. Hendrix, 270 S.C. 653, 244 S.E.2d 503 (1978); State v. Starnes, 340 S.C. at 322, 531 S.E.2d at 913; State v. Rash, 182 S.C. 42, 188 S.E. 435 (1936). The State repeatedly cast the Defendant as a "coward" and harped on the fact the decedent was, "shot in the back." In Hendrix, the armed decedent was shot after he turned away from the defendant. The decedent in this case was likewise armed. The Court failed to charge the current and correct law in this matter. The jury needed to be informed, that as a matter of law, there is no requirement to shoot an assailant in the front. The jury charge on self-defense was wholly lacking on this issue.

Therefore, the Defendant was prejudiced by failing to submit a jury charge, which is a correct statement of the law, that was tailored to the facts of this case. The Defendant is entitled to a dismissal of the voluntary manslaughter when considering this failure of the Court and jury to consider this proposition of law. In the alternative, the Defendant is entitled to a new trial on the

voluntary manslaughter charge.³


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June 26, 2014.

³
The Defendant does not waive any of his arguments as to the impropriety of the voluntary manslaughter charge, failure of proof and constitutional violations in submitting the voluntary manslaughter charge to the jury. The Defendant does not request a new trial on the murder charge, as that would constitute double jeopardy because he was acquitted of that indicted charge.

STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

STATE OF SOUTH CAROLINA)

v.)

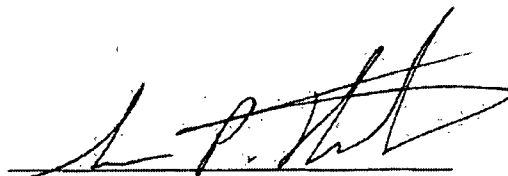
Preston Oates,)

Defendant.)

IN THE COURT OF GENERAL SESSIONS

STATE'S RESPONSE TO DEFENDANT'S
MOTION TO RECONSIDER SENTENCEIndictment No. 2011-GS-07-0120 J338658
2011-GS-07-0121 J338659
2014-GS-07-0359

COMES NOW Deputy Solicitor Sean Thornton in response to the Defendant's Motion to Reconsider Sentence in the above-captioned case. The Defendant has moved before the Court to have his sentence reconsidered. The State asks the Court to deny this motion. Defense counsel stated on the record they were prepared to go forward with sentencing immediately following the publishing of the verdict. Therefore, The State respectfully asks the Court to deny the motion.



Sean P. Thornton

Deputy Solicitor

14th Judicial Circuit

July 7, 2014

BEAUFORT COUNTY, SC

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF BEAUFORT	)	
STATE OF SOUTH CAROLINA	)	STATE'S RESPONSE TO DEFENDANT'S
	)	MOTION TO ARREST JUDGMENT AND/OR
	)	RECONSIDER DIRECTED VERDICT AS TO
	)	THE CONVICTION OF VOLUNTARY
	)	MANSLAUGHTER
v.	)	
	)	Indictment No. 2011-GS-07-0120 3338658
	)	2011-GS-07-0121 3338659
	)	2014-GS-07-0359
Preston Oates,	)	
Defendant.	)	

COMES NOW Deputy Solicitor Sean Thornton in response to the Defendant's Motion to Arrest Judgment and/or Reconsider Directed Verdict as to the Conviction of Voluntary Manslaughter in the above-captioned case. The State asks the Court to deny this motion.

I. Motion to Reconsider Directed Verdict

Defendant wants this Court to reconsider its ruling on Defendant's motion for a directed verdict. However, the State respectfully submits that it is improper for a trial court to reconsider its ruling on a directed verdict after a jury has returned a verdict of guilty.

In State v. Scurry, the South Carolina Court of Appeals held that the trial judge erred in vacating the defendant's armed robbery conviction and sentencing the defendant as if he had been convicted of common law robbery. State v. Scurry, 322 S.C. 514, 518, 473 S.E.2d 61, 63 (Ct. App. 1996). In reaching its holding, the Court of Appeals reasoned: "We know of no precedent, and [the defendant] has cited none, that gives the trial court authority to change its

mind after a guilty verdict has been returned and thereafter . . . grant a directed verdict of innocence . . .” Id.

Accordingly, this Court should deny Defendant’s motion for this Court to reconsider its directed verdict ruling.

II. Motion to Arrest Judgment

In addition, Defendant moves for this Court to arrest judgment based on four grounds. However, this Court should deny Defendant’s motion for an arrest of judgment because the charging document was sufficient and the court had jurisdiction over the matter.

“‘A ‘motion for arrest of judgment’ is a postverdict motion made to prevent the entry of a judgment where the charging document is insufficient or the court lacked jurisdiction to try the matter.’” State v. Follin, 352 S.C. 235, 259, 573 S.E.2d 812, 824 (Ct. App. 2002)(quoting State v. Taylor, 348 S.C. 152, 160, 558 S.E.2d 917, 920-21 (Ct. App. 2001)). However, insufficiency of evidence is not a basis for a trial judge to grant a motion for arrest of judgment. Id. Further, an “[a]rrest of judgment occurs before a sentence is imposed.” 23A C.J.S. Criminal Law § 1984 (2013).

First, Defendant argues that the evidence at trial did not support a jury charge or conviction for voluntary manslaughter. However, our Court of Appeals has made it clear that the insufficiency of evidence is not a basis for a trial judge to grant a motion for arrest of judgment. Id.

Second, Defendant argues that he is entitled to an arrest of judgment because the State dismissed the voluntary manslaughter charge before trial and proceeded with the murder charge. However, as discussed in part III, the murder indictment put the defendant on notice of all lesser-

included offenses of murder, which includes voluntary manslaughter, as long as there is evidence of the lesser-included offense. The State's decision to dismiss the voluntary manslaughter indictment is irrelevant to the determination of whether or not voluntary manslaughter should be charged to the jury.

Third, Defendant argues that he is entitled to an arrest of judgment because this Court failed to fully charge self-defense. However, as stated above, an arrest of judgment is only proper when the charging document is insufficient or the court does not have jurisdiction.

Accordingly, Defendant's motion for an arrest of judgment should be denied.

III. Motion for a New Trial

In the alternative, Defendant wants this Court to grant a new trial. However, this Court should deny Defendant's motion for a new trial because of the following reasons: a) The State presented evidence at trial that supported a voluntary manslaughter; b) Defendant's indictment for murder put him on notice of the lesser-included offense of voluntary manslaughter; and c) this Court properly charged the jury on the law of self-defense.

A motion for a new trial was the only post-trial motion available to address the sufficiency of the evidence in a criminal proceeding. Follin, 352 S.C. at 258, 573 S.E.2d at 824; Scurry, 322 S.C. at 518, 473 S.E.2d 61, 63 (Cl. App. 1996). "Where there is no evidence to support a conviction, an order granting a new trial should be upheld." Taylor, 348 S.C. at 159, 558 S.E.2d at 920. "However, where there is competent evidence to sustain the jury's verdict, the judge may not substitute his judgment for that of the jury." State v. Prince, 316 S.C. 57, 63, 447 S.E.2d 177, 181 (1993).

A. Proof of Voluntary Manslaughter

The Court granted the State's request to submit Voluntary Manslaughter to the jury. Voluntary manslaughter is the unlawful killing of a human being in sudden heat of passion upon sufficient legal provocation. State v. Wharton, 381 S.C. 209 (2009). Voluntary manslaughter must be charged when there is any evidence whatsoever tending to reduce the crime from murder to manslaughter. Dempsey v. State, 363 S.C. 365 (2005). The law requires that both heat of passion and sufficient legal provocation be present for the jury charge to be appropriate. State v. Wharton, 381 S.C. 209 at 215 (2009).

a) Sufficient Legal Provocation:

As our Supreme Court pointed out in State v. Starnes, (388 S.C. 590, 597 (2010)), whether or not a trial judge should charge voluntary manslaughter turns on the facts of each case. State v. Starnes, 388 S.C. 590 (2010). In State v. Pittman, our Supreme Court held that an overt, threatening act or physical encounter may constitute sufficient legal provocation. State v. Pittman, 373 S.C. 527 (2007). In this case, the defendant's own statements satisfy the sufficient legal provocation prong of the voluntary manslaughter test. According to the Defendant, two men surrounded his truck, yelled at him, and threatened to get a shotgun. Thereafter, the defendant heard a "round being chambered." Under Pittman, this evidence is sufficient to prove the legal provocation prong of the voluntary manslaughter test.

b) Heat of Passion:

A person's fear immediately following an attack or threatening act may cause the person to act in a sudden heat of passion. However, the mere fact that a person is afraid is not sufficient, by itself, to entitle a defendant to a voluntary manslaughter charge. Consistent with South Carolina

law on voluntary manslaughter, in order to constitute sudden heat of passion upon sufficient legal provocation, the fear must be the result of sufficient legal provocation and cause the defendant to lose control and create an uncontrollable impulse to do violence. Succinctly stated, to warrant a voluntary manslaughter charge, the defendant's fear must manifest itself in an uncontrollable impulse to do violence. State v. Starnes, 388 S.C. 590 (2010). In Starnes, the Defendant only testified that he was "scared" and "frightened" when he saw one of the victims pointing a gun at his friend. The Supreme Court stated in Starnes, that while there was testimony that the defendant was in fear, there was no evidence that he was out of control as a result of this fear or was acting under an uncontrollable impulse to do violence. The Court ruled this evidence was not enough to warrant a voluntary manslaughter charge. Notably, the Court pointed out that a person's fear immediately following an attack or threatening act may cause the person to act in a sudden heat of passion. But the mere fact that the person was afraid is not by itself enough to warrant a voluntary manslaughter charge. Id.

This case is clearly distinguishable from Starnes. Here we have more than just the Defendant saying he was "scared" and "frightened." During the Defendant's two sit down interviews with law enforcement, the Defendant made multiple statements which support the heat of passion prong of voluntary manslaughter: Defendant said he was acting in the "heat of the moment." He stated he was "trying to stall to gain his composure." He stated he was "scared and freaking out." He went on to add he "got really scared" and that's when he felt that "little pain, right by (his) sternum which kind of presses inward." Defendant stated "he (victim) was in motion, he (victim) was in draw and I (defendant) reacted." Defendant described the incident as a "panic situation" and a "high stress environment." Defendant added he was "fumbling around and shaking." Defendant said he "remembered a voice in the back of (his) head." Defendant remembers thinking "I'm going to die." Defendant said then he saw the muzzle flash (of the Victim's gun—which never went off). The Defendant remembers shutting his eyes and it all happened in a "snap, instant." Defendant described his firing of his gun as "panic fire."

Taking all of these statements into account, there is evidence that the defendant's fear was manifested itself in an uncontrollable impulse to do violence as required by Starnes. This warranted the Voluntary Manslaughter charge.

In combining Defendant's rendition of the facts alleging two men approached his truck and one demanded a shotgun with the follow up statements made by the defendant to law enforcement, there is evidence to support both sufficient legal provocation and heat of passion to warrant a Voluntary Manslaughter charge.

B. Dismissal of the Voluntary Manslaughter Indictment Prior to Trial:

An indictment for Voluntary Manslaughter was True Billed by the Beaufort County Grand Jury in 2011. Subsequently, in March 2014, the Beaufort County Grand Jury True Billed an indictment against Defendant for Murder.

The South Carolina Constitution requires that a person be indicted by a Grand Jury of the county in which the crime was committed before standing trial for a crime. S.C. Const. Art. I Section 11. An indictment is a charging instrument, an accusation found and presented by a Grand Jury stating that a person has done some act, or been guilty of some omission, which by law is a public offense. An indictment is a condition precedent to a criminal trial and every element of the crime must be set forth in the indictment and must be proved at the trial beyond a reasonable doubt before a defendant may be convicted. The trial court does not have subject matter jurisdiction to hear a case unless: (1) there is an indictment, (2) the charge is a lesser included offense of the crime charged in the indictment, or (3) there is a written, knowing and intelligent waiver of the indictment. S.C. Code Sections 17-23-130, 140; State v. McNeil, 314 S.C. 473, 445 S.E.2d 461 (1994).

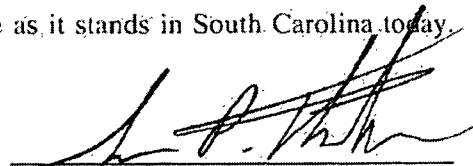
An indicted offense necessarily includes all lesser-included offenses, which may properly (if supported by the evidence) be presented to the jury. State v. Smith, 406 S.C. 215, 220, f.n. 6, 750 S.E.2d 612, 614 (2013). The South Carolina Supreme Court recognizes Voluntary Manslaughter

as a lesser included offense to Murder. State v. Starnes, 388 S.C. 590 (2010). Because, Voluntary Manslaughter is a lesser included of Murder the trial court had subject matter jurisdiction to hear the case and ultimately charge the lesser included offense. The discovery in the case was timely turned over to defense and remained the same from the True Billed Voluntary Manslaughter indictment to the True Billing of the Murder indictment. The defendant was adequately put on notice of the case and facts against him and the charge and ultimate conviction were proper.

Regarding the verdict form, the State argues it too was proper. When including the option of guilt of a lesser included offense, the jury must have the opportunity to vote "guilty" or "not guilty" on each. In the event a jury does not find a defendant guilty of the original offense they may consider a lesser included. Here, the jury found the Defendant not guilty of the original offense of murder, but did feel the State proved beyond a reasonable doubt his guilt of the lesser included of Voluntary Manslaughter. Therefore, the verdict form was proper.

C. Self-Defense Jury Charge

The Defense argues the Court's charge to the jury on self-defense was improper. Prior to charging the jury, both sides argued their preferred jury charges. Regarding self-defense, the Court denied both the State's proposed charge as well as the Defense's proposed charge. As required by law, the court charged the law of self-defense as it stands in South Carolina today. The State agrees this was proper.



Sean P. Thornton
Deputy Solicitor
14th Judicial Circuit

7/7, 2014

BEAUFORT COUNTY, SC

1 In the Court of Common Pleas for the
2 State of South Carolina, County of Beaufort
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4 Case No.: 2014-GS-07-00359
5 State of South Carolina,
6 Plaintiff(s),
7 vs. Transcript of Record
8 Preston Ryan Oates,
9 Defendant(s).

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MOTION HEARING

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July 7, 2014

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Beaufort, South Carolina

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23 BEFORE:

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The Honorable Judge Brookes P. Goldsmith

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APPEARANCES

PLAINTIFF'S ATTORNEY:

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1 PROCEEDINGS

2 THE COURT: This is the case of the State of South
3 Carolina versus Preston Oates, Defendant. Indictments
4 2011GS070120, 0121, and 2014GS070359. It's my
5 understanding that we are here today pursuant to
6 several motions of the Defendant; is that correct?

7 MR. NEWMAN: Yes, sir.

8 THE COURT: Is the State ready to proceed?

9 MR. THORNTON: The State is ready, Your Honor.
10 Yes, sir.

11 THE COURT: Proceed with your motions.

12 MR. NEWMAN: Thank you, Your Honor. Good morning.

13 THE COURT: Good morning.

14 MR. NEWMAN: First of all, did the Court have a
15 chance to read -- I believe that I sent you and the
16 Solicitor a copy of our written motion.

17 THE COURT: You did. I read it, yes.

18 MR. NEWMAN: Yes, sir, I just wanted to make sure
19 that you had a copy of that.

20 Your Honor, as to the motion to reconsider the
21 directed verdict as to the voluntary manslaughter and
22 to the charge itself, the State had taken several
23 statements of the Defendant. Out of two hours' worth
24 of interviews that he said, I think I'm going to die, I
25 was fumbling around and shaking, and this was a high

1 stress environment. I'm stalling to try and gain my
2 composure, these type of things. As to the voluntary
3 manslaughter it has to be, of course, the two elements:
4 Sudden, sudden heat and passion -- heat of passion upon
5 sufficient legal provocation.

6 Of course our first argument on the legal
7 provocation, we believe that chambering a round in the
8 gun is sufficient legal justification to act. However,
9 this case presented under the case law of South
10 Carolina presents two things: Mr. Oates is either
11 guilty of murder for deliberately shooting and aiming
12 and firing and placing six rounds into the decedent or
13 he had a right to act in self defense. The jury has
14 passed on the murder charge by finding the Defendant
15 not guilty under the verdict form.

16 The voluntary manslaughter, which was dismissed
17 immediately before the jury was picked by the State.
18 And the State went on the theory of murder. The State
19 argued the murder to the jury. I don't recall the
20 State arguing anything that would mitigate the crime
21 except hoping for a compromised verdict of the jury.
22 The cases that the State actually cites, one of them is
23 State versus Pittman, of why it should have been proper
24 to go to the jury on voluntary manslaughter.

25 And Pittman, while they found sufficient legal

1 provocation, they found that there was a time of
2 cooling off. In the cases of -- Pittman it sets out.
3 Starnes mentions it, that the focus on looking at
4 voluntary manslaughter is on the actions of the
5 Defendant in the intervening time between the
6 provocation and killing.

7 I found no case, and in fact will cite four cases
8 to the Court where a defendant, where there's
9 sufficient legal provocation, has actually armed
10 himself during the time of the provocation and the time
11 of the killing did, in all of those cases, Pittman
12 included and Starnes, that the arming of one's self is
13 a deliberate act and therefore there is no element of
14 sudden heat of passion because of that deliberate act.

15 I think that the case most on point are the State
16 versus Starnes case that the Court even commented prior
17 to our charge conference that Starnes was almost
18 exactly on point with this. And Justice Pleicones and
19 Justice Beatty in their concurring opinion in State
20 versus Dickie quoted from the Starnes' case. And it's
21 interesting in State versus Dickie that that is the
22 only other case that I found when the State over a
23 defendant's objection has asked for a lesser charge of
24 voluntary manslaughter because it knew that it could
25 convict the defendant on a compromised verdict.

1 Dickie was convicted. He was tried on a murder
2 indictment. He was convicted on voluntary
3 manslaughter. It went to the jury over his objections.
4 He was sentenced to 16 years in prison. All five of
5 the Justices in that case found that he acted in self
6 defense as a matter of law. But the interesting thing
7 in Dickie that Beatty and Pleicones went on to say was
8 that the trial court was absolutely wrong in charging
9 voluntary manslaughter under those circumstances.
10 Because they found that Dickie committed -- there was
11 provocation but committed rational acts, such as
12 following the decedent out of the building and standing
13 at the corner to watch to see that the trespassers did
14 in fact leave. They found those to be deliberative
15 acts.

16 In this case you have a myriad of deliberative
17 acts when you look at it, when you look at the time of
18 the provocation and the racking of the gun and several
19 minutes later the shooting. Mr. Oates retreated. It
20 is a rational act. He negotiated with the armed
21 assailant. He attempted to make a cell phone call, or
22 fained making a cell phone call to try and calm the
23 situation. He removed the pistol from the glove box.
24 He unholstered the pistol. He hid a pistol under some
25 papers. He shuffled papers while he was negotiating

1 hiding the pistol. And made a controlled plan of
2 defense to exit the vehicle, quote, I am coming out
3 firing. And did come out firing, striking the
4 decedent.

5 All of those are deliberately cool, reflective
6 acts. It's either murder or it's self defense. The
7 State is trying to come in between showing that I was
8 scared or freaking out. The Defendant in a number of
9 these cases appear to be scared, in shock, afraid for
10 my life. And in fact to -- in order to get a self
11 defense charge one must be in reasonable fear of
12 suffering great bodily injury or death if he doesn't
13 act.

14 Fear is not the element. You have to have an
15 uncontrollable impulse to do violence. In this case
16 there was no rage, there was no uncontrollable impulse.
17 They were cool, rational, calculated acts, whether they
18 were right or wrong. Whether they were murder or self
19 defense is the only question. I believe the Dickie and
20 Starnes are exactly on point.

21 As I said, two of the concurring Justices wanted
22 to make that point, that voluntary manslaughter under
23 these type of circumstances should not be charged to
24 the jury, therefore we renew our motion for a directed
25 verdict and renew our objection that manslaughter be

1 submitted to the jury on those grounds based on
2 absolutely clear case law of Dickie, Starnes, Byrd,
3 Cole and Pittman.

4 In the Pittman case they found the loading of a
5 shotgun, although there was sufficient legal
6 provocation, that that was a cool reflection and a
7 rational and deliberate act. So, I think that the
8 Court needs to focus on the time of provocation to the
9 time of the act. If there was a sufficient amount of
10 time and a sufficient cooling off, if there ever was
11 passion, sudden passion, we believe that that is
12 absolutely nonexistent.

13 The other problem in this case is that I have run
14 into no other case where a defendant was actually
15 indicted for a charge, i.e., voluntary manslaughter
16 under indictment 2011GS070120, and the State decided to
17 up the ante and up the charge to murder. We have no
18 control over that. They have complete control over the
19 Grand Jury, and went to the Grand Jury. We are kind of
20 wondering what facts they would have taken to the Grand
21 Jury to say, Your 2011 Grand Jury indicted for
22 voluntary manslaughter but we don't believe that is the
23 correct charge, we want a murder charge.

24 I mean, just quite frankly, we were thrown for a
25 loop when the State wanted to ask this Court for a

1 voluntary manslaughter charge. Because after the case
2 had been called the voluntary manslaughter had been
3 dismissed by the State and went forward on the murder
4 charge. So, we are in a position that we have a
5 structural trial defect that we are defending against a
6 murder case. We know the State dismissed the voluntary
7 manslaughter charge. The State didn't argue the
8 voluntary manslaughter in its closing argument, but yet
9 we were forced to defend, after the close of evidence,
10 a charge for which we were on notice of that had been
11 dismissed by the State. And we believe that that
12 caused serious prejudice in the case that the State, if
13 it wanted a murder charge it needed to stick to its
14 murder charge.

15 So on those two grounds, Judge, we believe that
16 the voluntary manslaughter charge cannot stand. We are
17 asking the Court to withdraw that charge and/or direct
18 a verdict on that charge because there is no evidence
19 from which a jury could find, particularly in this case
20 when you have all of these acts of retreat,
21 negotiation, faining cell phone call, even according to
22 the witnesses notifying a neighbor, He's got a gun, and
23 then arming himself, going into a glove box, taking a
24 gun out of the holster, chambering a round and hiding a
25 weapon under a stack of paper, those are all rational

1 deliberate acts that are either murder or acting in
2 self defense. I'll be happy to answer any question
3 that the Court may have on those issues.

4 THE COURT: If you would, please, a couple of
5 things. And you are asking the Court at this stage in
6 the proceedings, though, to do what?

7 MR. NEWMAN: To withdraw the manslaughter charge
8 or direct a verdict on it as there is no evidence as to
9 the voluntary manslaughter. It's our -- we are
10 renewing our motion. We objected to the Court charging
11 the jury on manslaughter.

12 THE COURT: Right.

13 MR. NEWMAN: Basically we are renewing that
14 objection. Because these are post-trial motions and we
15 are renewing that objection. And we believe that the
16 Court should not have allowed the jury to consider the
17 charge of voluntary manslaughter. It's either murder
18 or self defense.

19 THE COURT: All right. Now, I really have a
20 couple of questions. One is, what you are really
21 asking the Court to do is -- well, tell me specifically
22 what it is that you want me to do, specifically. I
23 understand that you want me to reconsider my decision
24 and, therefore, grant a motion for directed verdict.

25 MR. NEWMAN: As to the voluntary manslaughter

1 charge.

2 THE COURT: Voluntary manslaughter charge.

3 MR. NEWMAN: For lack of evidence. We don't.
4 believe that it should have been charged, respectfully
5 sir, to the Court, based on the evidence. We believe
6 that there's no evidence from which it should have been
7 submitted. So, therefore, we are asking and we move
8 for a directed verdict on that charge.

9 THE COURT: All right. Now, if the Court were to
10 do that what would be the practical implication of such
11 a ruling by the Court?

12 MR. NEWMAN: That that charge would be withdrawn.

13 THE COURT: And?

14 MR. NEWMAN: Ended.

15 THE COURT: All right. My recollection is that --
16 did we not hear these same motions at the conclusion of
17 the trial?

18 MR. NEWMAN: We did.

19 THE COURT: Didn't you make a motion for directed
20 verdict at the end of the trial?

21 MR. NEWMAN: Yes, sir. These are a renewal of it.

22 THE COURT: After the jury verdict, I mean?

23 MR. NEWMAN: That is correct. As a renewal of it,
24 and also in looking at the Dickie case, which we
25 believe was on point, at some point prior to the charge

1 conference I believe that the Court was concerned with
2 the State versus Starnes case. It was pretty much on
3 point. The cases that the Solicitor cited and also I
4 cited all say that voluntary manslaughter should not
5 have been charged to the jury.

6 THE COURT: So, help me again. My recollection is
7 after the jury verdict we heard these motions, or
8 similar motions, at that time the Defense was asking
9 for a new trial?

10 MR. NEWMAN: At that time -- let me also state
11 that at the close of the State's evidence we objected
12 to the voluntary manslaughter.

13 THE COURT: Right.

14 MR. NEWMAN: And at the close of the verdict we
15 renewed those objections. And this is basically an
16 amplified renewal of all of the objections as to the
17 submission of that charge. And the remedy that we are
18 asking for is that it should not have been submitted to
19 the jury, much like the Justices stated in a concurring
20 opinion in Dickie, that it just shouldn't have been
21 submitted to the jury. We believe that that amounts to
22 an error of law in this case and that, therefore, the
23 charge should be a nullity. Because it was, one,
24 dismissed. And then you have the, we believe, the
25 clear evidence from Dickie, Starnes, Cole, Pittman and

1 the other cases that we have cited.

2 THE COURT: But at the end of the trial you were
3 asking for a new trial is my recollection; but you are
4 not asking for that today?

5 MR. NEWMAN: That is correct.

6 THE COURT: You are asking, in essence, for an
7 acquittal?

8 MR. NEWMAN: That is correct, a directed verdict
9 of acquittal based on lack of evidence as we don't
10 believe should have been submitted to the jury.

11 THE COURT: Let me ask one more question.

12 MR. NEWMAN: Yes, sir.

13 THE COURT: I guess this really goes to the
14 Defense as well as to the State. In the documents that
15 were forwarded to me there was also an appeal, a notice
16 of intent. Does this Court still have jurisdiction to
17 hear the motions if the case is on appeal?

18 MR. NEWMAN: It does, Your Honor. I looked that
19 up because no defense lawyer wants to make law on when
20 something can be filed and not filed, obviously. The
21 law that I looked up the fact that an appeal is filed
22 does not stay the Court's, I guess for lack of a better
23 term, clean-up position. And that is the file -- the
24 motions for the directed verdict, the Defendant's
25 motions were filed, and I did this purposely if you

1 will look on the time stamps, filed prior to the notice
2 of appeal. That was done merely to protect Mr. Oates'
3 rights.

4 I think, in other words, when you are talking
5 about serious things -- don't like to think -- that
6 whatever your ruling is on these motions that I would
7 have ten days from that ruling because the trial has
8 become final. But the rules in cases that I looked up
9 says basically you have ancillary jurisdiction because
10 anything that you do here will not affect the appeal.
11 If you rule in Mr. Oates' favor that would end it and
12 the appeal would be withdrawn. If you rule in the
13 State's favor then at the trial level this case is
14 ended and his appeal begins.

15 THE COURT: All right. Thank you, sir.

16 MR. NEWMAN: Yes, sir.

17 THE COURT: Mr. Thornton.

18 MR. THORNTON: Thank you, Your Honor. Your Honor,
19 first of all, as a procedural matter I would ask the
20 Court respectfully to deny Mr. Newman's motion. Your
21 Honor, I am going to hand up State of South Carolina
22 versus Scurry which is 322 South Carolina 514. It is a
23 1996 case. Basically it stands for the proposition,
24 Judge, that the trial court, once you submit a charge
25 to the jury, that acts as a final denial of a directed

1 verdict motion as to the sufficiency of evidence. And
2 once a jury verdict has come in it's improper for the
3 Court to substitute what, in essence Mr. Newman is
4 asking you to do, substitute your judgment for the
5 jury's.

6 So that Mr. Newman -- the only proper motion after
7 a jury verdict has come in like that, Your Honor, would
8 be for -- at this stage of the game would be a motion
9 for a new trial. Which I believe Mr. Newman had
10 already made at the close of everything after this
11 trial, which Your Honor has already denied. So, just
12 as a procedural matter, Your Honor, and I don't think
13 that it's proper under Scurry for you to even entertain
14 anything other than a motion for a new trial, which you
15 have already done and denied.

16 Your Honor, I would rely, frankly, on all of the
17 arguments the State has already made. We litigated the
18 motion for directed verdict thoroughly as far as what
19 the evidence was and came in. And I keep coming back
20 to the same thing, Your Honor, which is, it is not
21 which evidence Mr. Newman wants to talk about, it is is
22 there any evidence. Did the Defendant say things and
23 do things that could be consistent with acting on
24 purpose or purposefully? Absolutely. But he also said
25 things that were not. We pointed them out.

1 I pointed them out again, Your Honor, in the
2 response that I filed. I apologize, we didn't know
3 that we were going to be doing it on Monday morning. I
4 was hoping to be able to email it to you, but it is up
5 there for your reconsideration, Your Honor, and it is
6 filed with the Court. But it basically rehashes the
7 arguments we have already made. This, you know, the
8 Starnes case doesn't stand for the proposition that,
9 that you can't get a voluntary manslaughter charge.
10 What it says is is that every case is to be judged on
11 its own facts.

12 I think we, the State, set out many items which
13 were different. It went far above and beyond just I am
14 scared or I am frightened. There were things like it
15 was panic fire, it all happened in an instant, it was a
16 flash. And Mr. Newman keeps talking about there was a
17 cooling off period by the racking of the gun. By his,
18 the Defendant's own statement -- excuse me, his
19 client's own statement he says, in one of his
20 interviews, Well couldn't you have driven off after
21 they -- and you know, according to him he saw the gun
22 and heard it being racked and all of that stuff. And
23 his response was, Yeah, but I wasn't in any danger
24 then, I wasn't scared then. It was on after, what he
25 says, the victim approaches his vehicle, grabs the

1 door, I see him draw, it all happens in an instant, it
2 was panic fire. There's arguably not sufficient
3 cooling off when you do that.

4 So, again, I realize Mr. Newman is picking out
5 pieces that he thinks are best for him. But it's not
6 which evidence is better or which is more, it is is
7 there any evidence. That is what a directed verdict
8 motion is all about. And the State thinks that there
9 is -- the record is replete with evidence for which
10 this Court could have and should have charged the
11 directed verdict -- excuse me, Your Honor, could have
12 denied the directed verdict and charged voluntary
13 manslaughter.

14 The only other thing that I wanted to say again,
15 Judge, and I'm happy to go into more detail. I am just
16 relying on the arguments that we have already
17 extensively done in this case, is two quick points.
18 One, Mr. Newman keeps bringing up the fact that the
19 State dismissed the voluntary manslaughter charge, you
20 know, on the day -- on the morning of trial. As I said
21 on the record then, Mr. Newman made the request that
22 the new murder indictment be sealed. The State had no
23 objection. I didn't want any extensive pretrial
24 publicity, neither did Mr. Newman. I wanted to get in
25 here and try the case in front of an impartial jury,

1 which I think that we did.

2 But then to turnaround -- if I had dismissed it
3 ahead of time, Your Honor, of course that would have
4 just generated more media coverage that he was trying
5 to avoid by filing his -- or by requesting that the
6 indictment be sealed. So it's a little disingenuous to
7 make that request and have it granted and then complain
8 that the State waited until the morning of trial to
9 dismiss the voluntary manslaughter. Procedurally Your
10 Honor knows, Mr. Newman knows, I can't go forward on
11 both a murder indictment and a voluntary manslaughter
12 indictment at the same time. So, that is just a
13 procedural issue. And waited until that day, Your
14 Honor, because it would kind of defeated the purpose to
15 allow the murder indictment to be sealed if I was going
16 to then turn around and dismiss a voluntary
17 manslaughter indictment.

18 Finally then, Your Honor, the issue as to the
19 murder indictment and then arguing for voluntary
20 manslaughter charge under -- and I apologize I do not
21 have this for the Court, Your Honor, but I believe that
22 it is the Smith case. I'll have the cite for you in
23 just a second.

24 State versus Smith, Your Honor, 406 South Carolina
25 215. If you are indicted for murder you are on -- you

1 are always on notice of any lesser includeds if the
2 evidence brought forth -- brings it to a point where
3 the Judge charges it. So, to claim that he was somehow
4 structurally put in a position where he didn't know
5 that he was going to face voluntary manslaughter is
6 completely opposite to the case law. If you are
7 charged -- and by that logic, Judge, you would never be
8 on notice because if you are charged with murder you
9 are always on notice that voluntary manslaughter is a
10 potentially lesser included offense as are other lesser
11 included offenses.

12 Under Mr. Newman's logic the State would have to
13 charge you in an indictment separately for the offense
14 and every lesser included offense, otherwise you would
15 never be put on notice for it. So, clearly the
16 Defendant was on notice as to all of the potential
17 charges that he could have faced. It was nothing more
18 than a procedural matter that I dismissed the voluntary
19 manslaughter. And I did it on the morning of trial so
20 that we could honor Mr. Newman's request to keep the
21 murder indictment sealed.

22 Finally, Judge, with regard to my argument, what I
23 argue to the jury so long as this Court deems it proper
24 is not Mr. Newman's concern. He doesn't get to
25 structure it. And the fact that I chose to argue it,

1 you know, to be honest Judge I was going to talk about
2 voluntary manslaughter and noticed how long I was
3 running with clips and decided to cut it short. That
4 is not Mr. Newman's concern. He doesn't have any right
5 to tell me what I can or cannot argue to a jury in a
6 closing argument because that is not evidence.

7 The only thing that the Court is concerned with in
8 closings is is it proper. There was no objection, as I
9 recall, except one. The Court ruled in my favor and it
10 had nothing to do with me not arguing voluntary
11 manslaughter. Thank you, Your Honor. If you want me
12 to go into more detail, I can Judge, but I would just
13 rely on all of the things that we have already talked
14 about.

15 THE COURT: Thank you, Mr. Thornton.

16 MR. THORNTON: Yes sir.

17 THE COURT: Mr. Newman.

18 MR. NEWMAN: Yes, sir, in response to that, Your
19 Honor, if the Court rules that procedural I think that
20 it's covered in my motion that we would move for a new
21 trial as to the voluntary manslaughter if that is the
22 way to do it to protect the insufficiency of the
23 evidence in the case. You know this thing with the
24 indictment is just really strange.

25 Yeah, I agree with the State that if a defendant

1 is charged with murder you look at the facts.
2 Typically, as I said, I only found one case where the
3 State asked for voluntary manslaughter and that was
4 overturned with Dickie. Typically that's something
5 that a defendant tries to put in evidence to the Court
6 asking for a lesser charge, whether it's voluntary
7 manslaughter or involuntary manslaughter, those type of
8 things. But we are on specific notice that the State
9 after 3½ years changed its mind and said, We don't want
10 voluntary manslaughter, we want a murder conviction, we
11 are dismissing the voluntary manslaughter. That is a
12 notice document. That is a hell of a notice document
13 that you have an actual indictment the State dismisses
14 after the call of the case

15 And that's where you have a problem. I agree with
16 the State's proposition, we were indicted 3½ years ago
17 for murder or we were indicted, you know, in sufficient
18 time for murder. That's fine. But we were indicted
19 for voluntary manslaughter for 3½ years. And the State
20 talked to another Grand Jury, telling them that they
21 have evidence that the case is a murder case, not a
22 voluntary manslaughter case. And it's particularly
23 disturbing that the voluntary manslaughter was
24 dismissed after the call of the case. And I just don't
25 see how we are on notice of that.

1 As I said, we were quite in shock when the State
2 says -- because they didn't, they didn't put it up in
3 their evidence. They didn't argue it. And then they
4 asked for -- or prior to argument they asked for
5 voluntary manslaughter. Mr. Colongeli and I were
6 thrown for a loop on that. We were defending a murder
7 case. We had, all through trial, set up the cross
8 examination and the evidence of one of two possible
9 things, Mr. Oates murdered Carlos Olivera in cold blood
10 or he acted in cold blood in self defense. Those were
11 the two choices. And then we get hit with this
12 compromised verdict situation.

13 And, of course, it bent on them. If you recall
14 the jury stayed out four hours. I wouldn't hesitate to
15 say that they came back in about ten minutes with a not
16 guilty on the murder. But under all of these
17 circumstances, they played upon material prejudice and
18 material change in their position. We believe that
19 they should be estopped from that. And the only other
20 thing that I could say is that if we have to do it by
21 vehicle of asking for a new trial on the voluntary
22 manslaughter, then we do so. Thank you, Your Honor.

23 THE COURT: All right. Thank you, Mr. Newman. As
24 I indicated earlier, I have in fact received the
25 Defendant's motion relating to these issues. And the

1 arguments for the most part were set forth in the
2 written motion. For the most part what we have heard
3 here today is in fact set forth in the written motion.
4 And for the most part everything that's been argued
5 here today was previously argued before the Court.

6 I find that Scurry does settle the issue of
7 directed verdict on the voluntary manslaughter charge.
8 But even if it didn't, you know, the Court has already
9 heard a post-trial motion on the directed verdict
10 motion as it relates to the voluntary manslaughter and
11 the Court denied it. For all of those reasons, as well
12 as the reasons set forth and argued by the State today
13 and set forth in the State's response to the
14 Defendant's motion, I'm compelled to deny the motion to
15 reconsider. Is there another motion then?

16 MR. NEWMAN: Yes, sir. As I stated to the Court,
17 so found and I believe that it's under Scurry, it is
18 proper to make a motion for a new trial based on the
19 addressing of the sufficiency or insufficiency of the
20 evidence. That is what I believe this Scurry case that
21 the Solicitor had, and to that extent, based on the
22 issues raised, we are requesting a new trial in this
23 matter.

24 THE COURT: But wasn't that already requested at
25 the close? Excuse me, after the verdict of the jury?

1 MR. NEWMAN: We did that as a bear-bones, and as
2 the -- as we told the Court. You know, we have 10 days
3 to file post-trial motions, and for both the State and
4 the Defendant you have a lot of things to think about
5 after a verdict comes in, so we are renewing this. We
6 believe that we made a bear-bones motion to do that and
7 preserve the record, but these are the articulated
8 reasons after having time to be able to do some
9 research and reflective thought on it. So the record
10 is clear, we are procedurally asking for a new trial.

11 THE COURT: All right. I think that the State has
12 already responded to that sufficiently well. And the
13 Court agrees with the arguments set forth by the
14 Solicitor and deny that motion. Are there additional
15 motions?

16 MR. NEWMAN: There is. And Mr. Colongeli will
17 argue that. The Solicitor kind of addressed this in
18 his written motion and I don't believe that the State
19 is correct in its proposition. The case that they
20 cited was a reconsideration of a sentence under Scurry,
21 but it was actually a reconsideration where the Judge
22 said, I don't think that it's armed robbery, I think it
23 is common law robbery and I'll re-sentence accordingly.
24 We are not asking for that for the reasons that
25 Mr. Colongeli will bring before the Court.

1 As Your Honor knows, you do have authority to
2 reconsider your sentence within the motions filed
3 within the ten-day period. And we are asking that,
4 under the circumstances, and Mr. Colongeli will state
5 more to that, to reconsider the sentence. As Your
6 Honor knows, voluntary manslaughter carries from 10
7 years to 30 years and I would ask that you hear from
8 Mr. Colongeli on that.

9 THE COURT: I would be glad to.

10 MR. COLONGELI: May it please the Court. Your
11 Honor, you haven't heard much from me, if any, since
12 the inception of the trial in this case, but I can tell
13 you my history as far as my involvement in it has
14 been -- the call came to me, I believe, December 27,
15 over three and a half years ago, from Mr. Oates as to
16 what had transpired that Christmas Eve. And I can tell
17 you over the course of that time, unfortunately it's
18 sad to say that I have seen more of the worst in people
19 than the best. But what I would like to say on behalf
20 of Mr. Oates, and personally, on behalf of me to the
21 Olivera family, sympathy that goes out to you for the
22 loss of your family. This has troubled me as it has
23 troubled Mr. Oates. He has relayed that same thing to
24 me over meeting with him over the duration of this
25 time.

1 I think one of the sad things to look at here, and
2 one of the things that has been missed through the
3 course of this trial is the actual human tragedy here
4 on both sides. How you weigh human lives, I am not in
5 that business and my respect goes out to you, Your
6 Honor, and other Honor's that unfortunately have the
7 business of rendering such sentences that they think go
8 appropriately with that said crime. And the jury has
9 spoken here, and we respect the jury's verdict.

10 But with all due respect, what I have to ask you
11 here today is to show mercy to Mr. Oates and the
12 Olivera family in bringing closure to this more so than
13 the jury verdict did and more so than actually anyone
14 can do but you, Your Honor. Mr. Stone himself in one
15 of the media clips at the outset of this case I think
16 hit it right on the nail. And I will never forget
17 this, and there was some speculation whether we would
18 even use this at trial. But Mr. Stone himself outside
19 of the Ridgeland courthouse back over three years ago
20 said to me that he thought that this was a classic
21 example of why people should not use guns to solve
22 problems, solve problems in South Carolina, or for that
23 matter anywhere else in the country. And I think that
24 Mr. Stone is absolutely correct, and I think sadly
25 enough that is something that has gotten lost in the

1 emotion, in the feeling, and quite frankly the hatred
2 towards Preston Oates, more so as his character than
3 what actually occurred that day.

4 And with all due respect to the Olivera family,
5 even Nelson Olivera quite frankly admitted from the
6 outset of this case, Your Honor, there is no denying
7 that, that his brother had a gun. His brother brought
8 a gun to a dispute. Through the testimony that you
9 heard throughout the trial a few weeks ago here, there
10 was no dispute that he went so far on the stand during
11 the trial to say that he actually heard the racking,
12 the chambering of that weapon. He didn't lie about
13 that.

14 Now, should Mr. Oates have reacted the way that he
15 did? That's already been spoken upon by a jury. And
16 yes, Your Honor, with all due respect to you and your
17 ultimate and infinite wisdom and the years that you
18 have done this, as far as sentencing goes, you decided
19 to render the sentence that you did. As Mr. Newman
20 mentioned here recently, and I do believe that it's
21 quite proper as law, forgive me if I'm wrong, I stand
22 to be corrected, as far as standing before you now and
23 ask mercy from the Court and reconsideration of your
24 sentence, rather -- regardless whether we had done it
25 the day of sentencing or not, the voluntary

1 manslaughter statute in South Carolina does carry
2 between 2 and 30 years.

3 It's one of those rare type of offenses where
4 there's such a broad range in sentencing. And
5 obviously I think that your Judge -- Your Honor would
6 agree with me that that in itself, logic and rational,
7 would tell us that facts would dictate the sentence
8 given because of such a wide range of number of years
9 that can be levied out by Your Honor. I'm sure Your
10 Honor has seen, as I know that I have seen and the
11 State has seen in my 18 to 20 year career, facts much
12 more heinous where the result is death.

13 In State v. Dickie as Mr. Newman has brought up
14 and argued, not to beat a dead horse. Your Honor,
15 obviously in that situation you had a security guard
16 that followed two individuals out of the building after
17 the dispute had ended just to make sure that the
18 building was safe. That individual only had a bottle
19 and this man unloaded and received 16 years for
20 voluntary manslaughter for a guy that had a bottle.
21 And obviously we know the history and outcome of that.
22 Obviously that is a big argument that has been going on
23 with this case, and there has been immunity hearings
24 held which are separate and apart from what we did here
25 over the course of this past month.

1 But with all due respect, Your Honor, not to
2 belabor this issue, I want to be clear that obviously a
3 great deal of the sympathy has come -- whether they
4 have seen it or not I want them to know today, from the
5 Defense to the Olivera family. It has troubled me
6 since the day that I become involved in this case. And
7 growing to know Preston -- I have known Preston
8 probably 12 to 15 years, whether professionally or
9 acquaintance-wise. And I can tell you from a character
10 standpoint, obviously by -- if I were his friend and
11 not his lawyer I would probably tell him, there are
12 issues that I would have with him as a friend. And I
13 can tell you during my relationship as a lawyer with
14 him there have been some very rocky moments where we
15 have had tenuous situations, whether it be in person or
16 on the phone, as far as things I believed he needed to
17 change as far as his outward appearance, his apparent
18 lack of remorse as far as maybe how the general lay
19 person would see him, but I can tell you knowing the
20 real person, which the State never has the opportunity,
21 nor do they have to, and obviously the victims only see
22 one side of the Defendant, the accused. But in me
23 growing to know this man as a human being he will
24 undoubtedly, obviously have his life, whereas Carlos
25 won't have his. And his family will have to live with

1 the agony and the heartache and the memories every
2 Christmas for the rest of their lives. But I can tell
3 you that the horrors that go along with a trial and a
4 verdict and punishment, obviously, also will live
5 undoubtedly with him.

6 If this man were to be found not guilty I can
7 undoubtedly tell you that he would still live with that
8 pain, with never a normal life again, and all of the
9 other things that fall out of a terrible situation like
10 this. Granted whether he will toil with the actions
11 that he took that night, I can tell you personally as
12 an Officer of this Court that I think he will.

13 His family is, once again, present in the
14 courtroom behind us. They were here during the week of
15 trial, his father, mother, friends of the family, and
16 his fiancée who I believe is pregnant with his child.
17 I don't tell you these things to make you feel sorry, I
18 tell you these things to show the ravages of what a
19 tragedy this actually was on both sides of the fence.

20 And I stand up here and find it extremely
21 difficult to try to make any type of self everything or
22 justification on what Preston's actions were or were
23 not in light of them losing a life in the Olivera
24 family. It is very difficult for me. But I think that
25 this Court realizes that ravages and pain go far beyond

1 whatever you could sentence.

2 And I could only respectfully as, and in coming to
3 know you as a Judge, this is the first time that I have
4 had the honor to actually be in a trial with you, but
5 in coming to know you I have found you to be one of the
6 lenient, fairest sentencing judged in the short period
7 of time that I have gotten to know you. And I have a
8 great deal of respect for you, not only because of that
9 but because of the position and the role that you have
10 to play.

11 I found it very interesting that you found the
12 sentence that you did. And for many days now since
13 that verdict I have tried to put myself in your shoes
14 and how you came up with the 26 years, which almost
15 obviously was the minimum for what murder would have
16 been if he was found guilty of murder. And I think,
17 without disrespecting you at all, in trying to attempt
18 to put myself in your shoes I think that I know why you
19 possibly did do that, and I have nothing but the upmost
20 respect for you.

21 But however, in letting the dust settle and us
22 having this little bit of time to regroup, so to speak,
23 I would respectfully ask you to reconsider that.
24 Obviously the Defense's position is that this was a
25 compromised verdict. There's nothing that takes away

1 from the horror and the tragedy and the waste of life
2 that occurred that evening. One would only hope that a
3 higher court possibly would have a chance to put its --
4 to chime in, so to speak, and maybe add its -- a
5 clearer eye or an indifferent eye as to what has
6 occurred here based on motions that Mr. Newman has
7 made.

8 And, like I said, there's no disrespect to the
9 State intended nor this Honorable Court, but I would
10 respectfully ask you to consider a sentence much lower.
11 And I don't do this with disrespect to anyone here. I
12 think what is done is done and no one can take what
13 happened that Christmas Eve back. But in this case
14 consider a 10-year sentence for Mr. Oates.

15 He -- I can tell you, this case is one of the very
16 few that probably drained me and my law office more
17 than any other. I personally received death threats
18 because of this case. And that is not something new.
19 It is something that has happened before. But the more
20 I thought about the length of whatever sentence you
21 gave Mr. Oates, I can tell you in my dealings with
22 criminal defendants in the Department of Corrections,
23 that unfortunately as good as a job that Department of
24 Corrections does, the hostility that arose out of this
25 case, the fact that the Island Packet media outlet shut

1 down within the first six weeks of the news breaking
2 was some of the most hateful things come out towards a
3 man who I knew, but never knew quite that side of him
4 that I was seeing from bloggers or people from the
5 press that hated him. Not for what he did that night,
6 but hated him for other acts or character that he had
7 displayed on prior occasions, that he not be crucified
8 or punished to an extent that a pound of flesh is equal
9 to a pound of flesh. Because, in my opinion Your
10 Honor, I'm very concerned that a 26-year sentence would
11 be just that, a pound of flesh for a pound of flesh.

12 I beg the Court's indulgence, Your Honor, the
13 other thing that the cocounsel points out to me that I
14 think is very important for this Court to know and I
15 was going to mention, I think that you heard he is 30
16 years of age, Your Honor. He did spend eight months
17 and now 12 days incarcerated prior to trial. I'm not
18 sure if the Court was aware of that.

19 But after Mr. Newman and I getting him bonded out,
20 eventually, after that first eight months he did spend
21 the last 3½ years on electronic monitoring, house
22 arrest which was in a safe house. It was somewhere
23 else in the state. At great expense to my client and
24 his family to the point that finances have been -- were
25 depleted. He had to wear an ankle monitor. There were

1 some small issues throughout the course of that that
2 were resolved. There is nothing pending against my
3 client at this point in time. We cleared that with the
4 State. And I stand to be corrected by Mr. Thornton if
5 I'm wrong.

6 He did everything that he could to find a job.
7 I'm not sure there in the last few months, I didn't
8 speak with him as much as I had, whether he had found
9 one, but my guess would be no. Because of the
10 notoriety of this case a job was almost out of the
11 question. He had had his own gainful employment for
12 years, whether it be the tow truck business or other
13 endeavors he had gone into, but the loss of a job
14 itself, the loss of life as we know it. I mean, he
15 would text me and wanted to talk to me on a personal
16 level, and it got to the point I had to put a stop to
17 it because of the fact that he was at a almost
18 basically, literally as close to arrest as you can be
19 at a safe house without being able to do much of
20 anything. I know that that is a heck of a lot better
21 than being dead, but this is what he's suffered also.
22 And in all fairness and equity, as far as humanity
23 goes, Your Honor, I know that you look at that and
24 weigh that when you are judging and sentencing an
25 individual, that everyone has suffered here. Everyone

1 has suffered a great deal.

2 And I think that there are so many but fors, but
3 for Mr. Olivera used a weapon that faithful evening,
4 would we be here. But for Preston not dialing 911
5 immediately or trying to hit the pedal, the gas pedal
6 on that tow truck and just leave it. There are so many
7 unanswered questions that we will never have. And
8 those are things that they will have to live with,
9 unfortunately, for the rest of their lives. And to the
10 extent that I have been exposed to it, I will also have
11 to live with it.

12 We are all human and we all have certain things
13 that we have to take home with us, whether we decide to
14 or not. And having said that, I won't belabor the
15 issue anymore. I'm not sure whether the Court would
16 entertain hearing from the family. I'm not sure if
17 they want to speak at this point. Obviously this has
18 been very difficult for them. I'm not sure how they
19 supported a son through this to the extent that they
20 have.

21 And I only hope that the family as well as the
22 other families, I have a family too and I can only hope
23 and pray that my children one day don't get in a
24 situation like Mr. Oates here. But I know that they
25 have had nothing but sympathy also towards the Oliveras

1 that has gone out to them. But because of the media
2 restrictions and a lot of other things, logistics that
3 go on with a case, unfortunately that's never been able
4 to be relayed. So, it's important to me today that I
5 relay that to both families here and all parties.

6 As I said, Your Honor, I would respectfully ask
7 you to reconsider the sentencing. I think, with all
8 due respect to you, it came as a big surprise to me and
9 Mr. Newman. I can understand it. I can appreciate it,
10 and obviously I am not going to disagree with it, but I
11 am here in front of you, as a matter of law, in front
12 of you in a matter of asking for your mercy in
13 reconsidering that 26 years. Possibly give him some,
14 some tunnel of light that Carlos Olivera will not have,
15 but maybe in the redemption of things in the total
16 spectrum of light here, that at the end that the
17 Oliveras can be forgiving and then maybe in doing so
18 can find even more closure for themselves.

19 I know, whether you are Christian or not, not to
20 bring religion into this, that somewhere, somewhere
21 down the line we all have to pay the price for the
22 things that we have done, whether they be right or
23 wrong. And obviously this is a court of law and you
24 have spoke, and I am only here to help you understand
25 why you should lessen that sentence, and I'm

1 respectfully asking you to do so. Thank you, Your
2 Honor.

3 THE COURT: Solicitor.

4 MR. THORNTON: So that the record is clear. And
5 please forgive me if I was inartful when I was talking
6 about the Scurry case. The Scurry case stands for the
7 proposition that the motions that Mr. Newman was
8 arguing earlier, except for a motion for new trial,
9 were improper. I was not in any way saying that the
10 Scurry case prevents them from asking you in a motion
11 to reconsider sentence.

12 Obviously the State strongly disagrees and would
13 ask that you deny that motion, but I do think that it's
14 proper for them to bring that motion. The Scurry case
15 stands for the proposition that the only procedure
16 motion is with regard to the insufficiency of evidence.
17 Anything else would be a motion for a new trial.

18 Your Honor, as with regard to the sentence, I'll
19 be pretty brief. I think that it was -- I'll try to
20 choose my words carefully. I think it was a little bit
21 of a cheap shot to try to use what my boss, the
22 Solicitor, said in a media clip and then try to use
23 that against us in a sentencing proceeding. I think
24 that everybody, Judge, from you to the State to
25 Mr. Newman, Colongeli, certainly the Oliveras, I think

1 that everybody agrees that we would hope folks would
2 not try to settle disputes on their own with guns.

3 But here is the thing, Judge, Carlos Olivera
4 didn't fire a shot and Preston Oates gave him the death
5 penalty. Preston Oates fired six shots, five of them
6 into Carlos Olivera's back, and he got 26 years. I
7 think that is a perfectly reasonable sentence, Judge.
8 It was a minimum of two and with both charges a maximum
9 of 35. You didn't give him the minimum, you didn't
10 give him the maximum. I think that it was a
11 reasonable, well thought-out sentence and the State
12 would ask that it stand, that you respectfully deny
13 their motion to reconsider because Mr. Oates got 26
14 years for six bullets. Carlos Olivera got the death
15 penalty and he never fired a shot. Thank you.

16 THE COURT: Let me ask you to do one thing. One
17 of the things that the Defense is asking for is credit
18 for the time that he was on electronic monitoring in
19 the safe house.

20 MR. THORNTON: Judge, they call it a safe house.
21 It was at a house that they, that his parents were
22 doing. The State didn't tell him where to go live, he
23 chose where to go live. There's no -- that I'm aware
24 of, Your Honor -- I realize that Your Honor can give
25 credit. Usually that's determined by the South

1 Carolina Department of Corrections pursuant to statute.
2 We ask that the statute be followed. There is no
3 credit that I am aware of for house arrest.

4 MR. COLONGELI: Your Honor.

5 THE COURT: Sir.

6 MR. COLONGELI: If I may, one of the things that I
7 think needs to be cleared up. He did have to be
8 outside of Beaufort County. And I stand to be
9 corrected by Mr. Thornton if that wasn't the case. I
10 believe that was one of the stipulations. Also very
11 briefly, and I know we are here in court and obviously
12 there is media here, but I want Mr. Thornton to
13 understand that by no means did I take a cheap shot at
14 his boss, Mr. Stone, as far as saying what Mr. Stone
15 said. I am asking you for the humanity end of things
16 here. And I think Mr. Stone, the fact that he said
17 that doesn't take away from what Mr. Thornton tried a
18 couple of weeks ago. It doesn't take away from that by
19 the fact of what he had said. I think what he said is
20 true. It doesn't take away what Mr. Thornton's beliefs
21 are here today. I think it's something that this
22 community should understand and any Solicitor in their
23 right mind would tell people that you don't use guns to
24 solve problems.

25 And in retrospect, the dangerousness of this case,

1 the precedence of this case that scares me is that
2 people may think that it's okay to do so at this point.
3 And I know that's going beyond my motion to reconsider.
4 But I do want Mr. Thornton to understand, there was no
5 cheap shot intended. I have nothing but the upmost
6 respect for his office and I always have and always
7 will. Thank you.

8 THE COURT: Mr. Newman, do you want to say
9 something else? I saw you stand a moment ago.

10 MR. NEWMAN: Yes, sir, just in relationship to the
11 three or so years on the electronic monitoring, yes, I
12 do agree with the State that you could not technically
13 count that. I think that Mr. Colongeli's point was in
14 that is that we are asking you to consider that. And I
15 will tell you in negotiations with the State when we
16 were doing the bond hearing was, the State took a hard
17 line on it and I fought them. That is certainly their
18 prerogative. But one of the things that they did want
19 if Mr. Oates made bond is not to be in Beaufort County
20 because of the largeness, I guess, of the Olivera
21 family and with the press and things like that, that it
22 would be better. And Mr. Oates stuck with that
23 condition and basically was banished.

24 I don't know if you remember in the old days
25 judges used to put people on probation as long as you

1 don't come back to the state of South Carolina. But
2 the Supreme Court said that is not a proper thing to
3 do. But we consented to it is the point on that. And
4 it was certainly a major disruption in life.

5 I do agree with what Mr. Colongeli said, Preston
6 has reached out to me, he has my direct cell phone
7 number, a number of times. He was basically in a place
8 where he had nobody to talk to you. So, there is a
9 hardship on it. There was a cost. The electronic
10 monitoring wasn't free. And that was paid for almost
11 to the depletion of -- we were going to try this in
12 April and Mr. Oates told me, I may have to go back to
13 jail, I don't know if I can afford the next couple of
14 months of electronic monitoring. I actually offered to
15 pay for it so he could do that. But we do ask that as
16 a consideration.

17 Statutorily, yes, you know, I agree that that time
18 out on bond doesn't count on how SCDC calculates time.
19 We are asking the Court, because it has a wide
20 discretion, to consider those factors as they are a
21 huge disruption on a person's life. Thank you, Your
22 Honor.

23 THE COURT: Anything further, Mr. Thornton?

24 MR. THORNTON: No, Your Honor. Thank you.

25 THE COURT: All right. As to the issue of

1 reconsidering the sentence time frame, the Court does
2 reconsider and reduces the sentence from 26 to 24
3 years. The reason being I give him two years of credit
4 for the three and a half years that the Defendant was
5 on electronic monitoring. Solicitor, could you prepare
6 an order pursuant to the Court's ruling today?

7 MR. THORNTON: Yes, sir.

8 THE COURT: Of course let Defense counsel review
9 it before it is submitted to me for signature. The
10 court is adjourned.

11 (Whereupon, the hearing was concluded.)

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CERTIFICATE

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STATE OF SOUTH CAROLINA:

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COUNTY OF BEAUFORT:

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I, MONA L. MANLEY, Court Reporter, certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true and complete record of my stenographic notes.

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DATED this 17th day of December, 2014.

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MONA L. MANLEY

Official South Carolina Court Reporter

Circuit Reporter for the 14th Circuit

(850) 893-6662

mmanley@scccourts.org

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF
GENERAL SESSIONS

STATE

Indictment Nos: 2011GS0700121 - 5338459
2014GS0700359

Preston Oates v.

ORDER AMENDING SENTENCING

Upon motion of the Defense for reconsideration of sentencing in the above-captioned case, it is

ORDERED AND ADJUDGED that the term of imprisonment to which the defendant was originally sentenced be amended to twenty-four (24) years.

Entered this 7th day of July, 2014.

Hon. Brooks Goldsmith
Presiding Judge
14th Judicial Circuit

2014 JUL 11 AM 10:47
AMERICAN
SOUTHERN COUNTY, S.C.
CLERK OF COURT

WITNESSES

Viens - BCSO

ARREST WARRANT NUMBER

J338658

ACTION OF GRAND JURY

Burt Wolfe
Foreperson of Grand Jury
Date: FEB 17 2011

VERDICT

Foreperson of Petit Jury
Date:
INDICT

DOCKET NO. 2011GS0700120

The State of South Carolina

County of Beaufort

COURT OF GENERAL SESSIONS

February Term 2011

THE STATE

vs.

Preston Ryan Oates

NP'd 6/19/2014 *[Signature]*

Indictment for

Voluntary manslaughter

SC Code: 16-03-0050
CDR Code:0217

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I _____
Hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. and G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

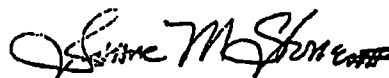
INDICTMENT
2011GS0710120

At a Court of General Sessions, convened on February 17, 2011, the Grand Jurors of Beaufort County present upon their oath:

Voluntary manslaughter

That in Beaufort County on or about December 24, 2010, Preston Oates did upon legal provocation and in the heat of passion unlawfully kill Carlos Olivera by means of shooting him with a gun, and that Carlos Olivera did die in Beaufort County as a proximate result thereof on December 24, 2010; in violation of Section 16-3-50 of the South Carolina Code of Laws (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



Solicitor

WITNESSES

Viens - BCSO

ARREST WARRANT NUMBER

J338659

ACTION OF GRAND JURY

True Bill

Brett Wolf

Foreperson of Grand Jury
Date:

FEB 17 2011

VERDICT

Foreperson of Petit Jury
Date:

INDICT

DOCKET NO. 2011GS0700121

The State of South Carolina

County of Beaufort

COURT OF GENERAL SESSIONS

February Term 2011

THE STATE

vs.

Preston Ryan Oates

Indictment for

Weapons / Poss. weapon during violent crime

SC Code: 16-23-0490
CDR Code:0549

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

Hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. and G.S.

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

INDICTMENT
2011GS0700121

At a Court of General Sessions, convened on February 17, 2011, the Grand Jurors of Beaufort County present upon their oath:

Weapons / Poss. weapon during violent crime

That in Beaufort County, South Carolina, on or about December 24, 2010, the Defendant, Preston Ryan Oates, did possess a weapon or visibly display what appeared to be a weapon during the commission, or attempted commission, of voluntary manslaughter, a violent crime. This is in violation of 16-23-490 of the South Carolina Code of Laws, (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



Solicitor

WITNESSES

Viens-BCSO

ARREST WARRANT NUMBER

2014GS0700359

ACTION OF GRAND JURY

True Bill

Jennifer Sander
Foreperson of Grand Jury

Date: FEB 9 2014

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2014GS0700359

The State of South Carolina

County of Beaufort

COURT OF GENERAL SESSIONS

February Term 2014

THE STATE

vs.

Preston Ryan Oates

Indictment for

Murder / Murder

SC Code: 16-03-0010; 16-03-0020

CDR Code:0116

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I
Hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. and G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

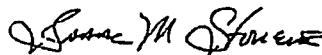
INDICTMENT
2014GS0700359

At a Court of General Sessions, convened on February 20, 2014, the Grand Jurors of Beaufort County present upon their oath:

Murder / Murder

That in Beaufort County on or about December 24, 2010, with malice aforethought, Preston Ryan Oates did kill and murder Carlos Olivera by means of shooting him, and that Carlos Olivera did die in Beaufort County as a proximate result thereof on December 24, 2010; in violation of Section 16-3-10 of the South Carolina Code of Laws (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



Solicitor

FILED

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Beaufort
 STATE VS.
Preston Ryan Oates

INDICTMENT/CASE#: 2011GS0700121A/W#: J338659Date of Offense: 12/24/2010S.C. Code § : 16-23-0490CDR Code #: 0549

AKA:

Race: W Sex: M Age: _____

DOB: _____ SS#: _____

Address: _____

City, State, Zip: _____

DL#: _____ SID#: _____

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Weapons / Poss. weapon during violent crime☒ CONVICTED OF or ☐ PLEADS

SENTENCE SHEET

in violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
 w/minor 1st or Lewd Act)
The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Swanson, Hunter

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ 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)	\$100	\$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ <u>5.00</u>
3% to County (if paid in installments)	\$	\$ <u>3.90</u>
TOTAL	\$	\$ <u>133.90</u>

PTUP

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/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,
 § 47.12 requires \$500 be paid to Clerk
 during probation.

Clerk of Court/ Deputy Clerk

Court Reporter: Monica

SCCA/217 (03/2011)

Presiding Judge

Judge Code: 2139Sentence Date: JUNE 19, 2014

STATE OF SOUTH CAROLINA

ypts 30 yrs

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Beaufort
STATE VS.

Preston Ryan Oates

INDICTMENT/CASE#: 2014GS0700359

A/W#: 2014GS0700359

Date of Offense: 12/24/2010

S.C. Code § : 16-03-0010; 16-03-0020

CDR Code #: 0116

AKA:

Race: W Sex: M Age:

DOB: SS#:

Address:

City, State, Zip:

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Voluntary Manslaughter

☒ CONVICTED OF or ☐ PLEADS

SENTENCE SHEET

in violation of § 16-03-0050 of the S.C. Code of Laws, bearing CDR Code # 0217 ST
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC) ☐ §17-25-45
w/minor 1st or Lewd Act)The charge is: ☐ As Indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Swanson, Hunter

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 26 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/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: _____

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/cv	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)	\$	\$ 3.90
TOTAL		\$ 133.90

☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/ Deputy Clerk

Court Reporter: *Mona M...*

SCCA/217 (03/2011)

Presiding Judge

Judge Code: 2139

Sentence Date: June 19, 2014

STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

vs.)

Preston Oates)INDICTMENT # 2011-6S-07-0120WARRANT # J338658THIS INDICTMENT IS NOLLE PROSSED ON June 19th, 2014Sean Thornton FOR THE FOLLOWING REASON:Chg. upgraded to Murder.

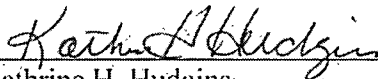
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Antony Saksasaw14th Circuit Solicitorfor
Deputy Solicitor Sean Thornton

CERTIFICATE OF COUNSEL FOR APPELLANT

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

March 11th, 2016


Kathrine H. Hudgins
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

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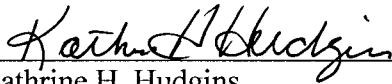
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MAR 11 2016

SC Court of Appeals
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