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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO CHARLESTON COUNTY
Court of Common Pleas
William H. Seals, Jr., Circuit Court Judge

Appellate Case № 2018-000464
Lower Case No. 2014-CP-10-3019

Jerome Campbell, # 349454, ... Petitioner,

vs.

State of South Carolina, ... Respondent.

APPENDIX
VOLUME III

C. RAUCH WISE

Attorney at Law
305 Main St.
Greenwood, SC 29646
(864) 229-5010
Rauchwise@gmail.com
S. C. Bar № 06188
Attorney for Petitioner

MEGAN HARRIGAN JAMESON

SC Attorney General Office
P.O. Box 11549
Columbia, SC 29211
(803) 734-3319
mjameson@scag.gov

Attorney for Respondent

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1 haven't seen you in a long time. There is no indication that
2 they discussed anything about this case.

3 I have no reason to question that she would mislead the
4 Court about it, but perception as I've indicated is often
5 reality for people and I'm going to dismiss her just out of --
6 And we still have two alternates, so I don't think we're in
7 any jeopardy of losing -- Well, you never know. Stranger
8 things have happened. People get sick and other things. I
9 hope I didn't just speak something horrible over my case --
10 over the case. Stranger things have happened, but we'll -- we
11 should be able to get through the rest of this trial hopefully
12 still having twelve jurors remaining and being able to
13 continue to try the case.

14 If you could bring out Miss -- let's see here, I can't
15 remember this lady's number, number 70, Miss Givens for me,
16 please.

17 BAILIFF: Miss Givens?

18 (Whereupon, juror number 70, Robin Givens, is brought
19 into the courtroom.)

20 THE COURT: Miss Givens, out of an abundance of caution,
21 I do not believe you have misled the Court in any way. I
22 believe you have been candid and I believe the person you
23 interacted with in the snack bar was an innocent interaction
24 with somebody you hadn't seen in a while. But out of an
25 abundance of caution, I'm going to excuse you as a juror in

1 this case so that there can never be any question regarding
2 the impartiality of the verdict. We appreciate your candor
3 and your time.

4 JUROR: Yes, ma'am.

5 THE COURT: And I know you're probably happy to go. You
6 can go on back to work.

7 JUROR: I am.

8 THE COURT: You have a good day. I would ask that you
9 not discuss this, however, with anyone.

10 JUROR: Okay.

11 THE COURT: And you're free, of course, to discuss your
12 experience as a juror at the conclusion of the week when
13 everyone is excused, but I would just ask that you call the
14 jury information line after 6 o'clock this evening for further
15 instructions and you have a wonderful day.

16 JUROR: You, too. Thank you.

17 THE COURT: You're welcome, ma'am.

18 JUROR: Woooo.

19 THE COURT: She's ready to go.

20 (Whereupon, juror number 70 is excused from the jury and
21 leaves the courtroom.)

22 BAILIFF: Judge, do you want the second juror?

23 THE COURT: Actually, you can leave her in the hall and
24 you can bring the rest of the panel down the hall for me. Ms.
25 Shealy, did they figure out -- Ms. Shealy left? She probably

1 got tired.

2 MR. HARRIS: Your Honor?

3 THE COURT: Mm-hmm.

4 MR. HARRIS: For the record, can I just -- I mean object
5 to the ---

6 THE COURT: You've noted your exception.

7 MR. HARRIS: Okay.

8 THE COURT: Yeah.

9 MR. HARRIS: I just wanted to note my exception for the
10 record.

11 THE COURT: You've already noted your exception for the
12 record when you made your argument.

13 MR. HARRIS: Thank you.

14 THE COURT: You're welcome.

15 (Whereupon, Ms. Shealy enters the courtroom and has a
16 brief discussion with the Court regarding another
17 matter.)

18 THE COURT: You can give that to the court reporter.

19 THE LAW CLERK: What about the statements?

20 THE COURT: Oh, no, she can have those as well.

21 (Whereupon, Court's Exhibits 2, 3 and 4 are passed to the
22 court reporter.)

23 THE COURT: Who is the State's next witness?

24 MR. VOIGT: Dr. Presnell, Your Honor.

25 THE COURT: Is she here?

1 MR. VOIGT: Yes, she is.

2 THE COURT: Could you get her so that we don't have to
3 hunt for her?

4 MR. VOIGT: My investigator has gone to get her.

5 THE COURT: Thank you, sir, appreciate it.

6 (Whereupon, the bailiff returns to the courtroom to
7 indicate the jury is present in the hall.)

8 THE COURT: Ready? Wait a minute, wait, wait, wait.
9 Where is Dr. Presnell?

10 (Whereupon, the witness enters the courtroom.)

11 THE COURT: Dr. Presnell, if you could, come on up front
12 for me, please, so that you'll be ready to be sworn when the
13 jury comes in. I appreciate you being so patient with us.
14 You can bring in the jury, Mr. Robinson.

15 (Whereupon, the jury enters open court at 11:41 a.m.)

16 THE COURT: Oh, we're supposed to do it by lot. I just
17 realized that. Approach for me, please. I completely forgot
18 about that.

19 BAILIFF: The jury is present, Your Honor.

20 THE COURT: You may be seated.

21 (Whereupon, a bench conference is held in the presence of
22 the jury but out of the hearing of the jury.)

23 THE COURT: I completely forgot about that.

24 MR. VOIGT: About what?

25 THE COURT: According to statute, you're supposed to seat

1 the alternates by lot. So I'm going to get them to put the
2 two names in a box. We need to juggle them up and have
3 somebody pick one. Where did Mike go?

4 MR. VOIGT: I can get somebody to do it.

5 THE COURT: I forgot to do something. I'm sorry. You
6 know we're supposed to pick the alternate by lot. Do you have
7 like two slips of paper we can just ---

8 THE CLERK: I can make one.

9 THE COURT: Would you do that for me real quick? And
10 then y'all can stand back. Do you want the numbers?

11 THE CLERK: No, no.

12 THE COURT: Okay.

13 (Whereupon, the bench conference ends and a tissue box
14 with two slips of paper is prepared for drawing the
15 alternate juror and the drawing is made by the clerk.)

16 THE COURT: Number 132 will be seated. If you could --
17 if y'all could slide -- from this way slide down for me one
18 and then have -- Mr. Latimer, if you would come be seated
19 right in this first chair for me? Thank you so much.

20 Ladies and gentlemen, I hope that you all had a pleasant
21 and restful evening. We appreciate your patience. We have
22 had to deal with some matters of law this morning that took us
23 a little bit longer than we anticipated. As you all are now
24 aware, Mr. Latimer has now been seated as a member of the
25 panel and he is no longer an alternate but a member of your

DIRECT EXAMINATION OF DR. SUSAN ERIN PRESNELL BY MR. VOIGT

1 twelve. We have for legal reasons sufficient to the Court had
2 to remove number 70, one of your fellow jurors, and I will get
3 into some further instructions regarding that before we retire
4 for the luncheon recess.

5 I will -- We will now resume the testimony and I would
6 ask that you give the attorneys your undivided attention. You
7 may proceed.

8 THE CLERK: Do you swear or affirm that your testimony
9 will be the truth, the whole truth and nothing but the truth,
10 so help you God?

11 DR. PRESNELL: Yes, sir.

12 THE CLERK: Be seated. If you would, please state your
13 full name and spell your last name for the record.

14 DR. PRESNELL: My name is Susan Erin Presnell, P-R-E-S-N-
15 E-L-L and I do apologize I have a cold, so I'll try to not
16 cough too much.

17 THE COURT: You may proceed.

18 MS. RIDDLE: Thank you, Your Honor.

19 THE COURT: You're welcome.

20 DR. ERIN PRESNELL, being first duly sworn,
21 testifies as follows:

22 DIRECT EXAMINATION

23 BY MS. RIDDLE:

24 Q: Dr. Presnell, please tell us about your current job
25 title?

1 MR. VOIGT: Yes, Your Honor.

2 THE COURT: Okay. Now that the defense has rested their
3 case, are there any motions?

4 MR. HARRIS: From the State, Your Honor?

5 MR. VOIGT: Not from the State, Your Honor.

6 THE COURT: From the defense, are there any motions?

7 MR. HARRIS: Your Honor, I would renew all previous
8 motions and objections.

9 THE COURT: Again, the Court would deny the motions based
10 on its previous ruling. Without belaboring time, the Court is
11 concerned with the existence or non-existence of evidence and
12 not its weight and there is direct and substantial
13 circumstantial evidence reasonably tending to prove the
14 defendant's guilt and therefore, the motion is denied.

15 Enjoy your break. I'll see y'all in about ten minutes.
16 It is 11:19, so I guess -- Well, you might as well just round
17 it out to 11:30.

18 MR. VOIGT: Thank you, Your Honor.

19 MR. HARRIS: Thank you, Your Honor.

20 (Whereupon, there is a break in the proceedings from
21 11:20 a.m. until 11:43 a.m.)

22 THE COURT: Is the State ready to proceed?

23 MR. VOIGT: Yes, Your Honor.

24 THE COURT: Is the defense ready to proceed?

25 MR. HARRIS: Yes, Your Honor.

1 lunch, it should arrive by 12:30. So what I'm going to do, I
2 need to debate a little bit about what I'm going -- how --
3 what we're going to do. I might let you all just go walk
4 around for 30 minutes and then when your lunch comes, you'll
5 -- you know, you can eat and then we can resume with the
6 proceedings, but if you all could indulge me for a moment
7 while I figure that out, I appreciate it. During this break,
8 please do not discuss the case and please leave your notepads
9 in your seats.

10 (Whereupon, the jury leaves the courtroom at 11:59 a.m.
11 While the jury is exiting, the sound of a cell phone
12 ringer is heard.)

13 THE COURT: Was that a phone? Was that your phone?

14 MR. HARRIS: I don't have a phone on me.

15 THE COURT: That's okay. You may be seated. Now that
16 the State has rested, are there any motions?

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

18 THE COURT: Any from the defense?

19 MR. HARRIS: Your Honor, I'll just again renew my motions
20 from before and objections.

21 THE COURT: And the Court will mark those renewed and
22 denied based on its previous ruling.

23 (Whereupon, there is a break in the proceedings as the
24 Court confers with the clerk regarding the lunch
25 delivery.)

1 THE COURT: You may be seated. Madam Forelady, is it
2 correct the jury has reached a verdict?

3 MADAM FORELADY: Yes, ma'am.

4 THE COURT: You can give the verdict forms to the bailiff
5 for me, please.

6 MADAM FORELADY: Okay.

7 THE COURT: Thank you, ma'am. Sir, if you would, stand
8 for the publication of the verdict.

9 THE CLERK: The verdict forms in the matter of The State
10 of South Carolina versus Jerome Renaldo Campbell, defendant.
11 As to Indictment Number 2009-GS-10-6730, we the jury by
12 unanimous consent find the defendant guilty of assault with
13 intent to kill involving Frank Haigler, signed by the
14 foreperson of the jury on January 27, 2012. Ladies and
15 gentlemen of the jury, if this was your verdict, please raise
16 your right hand.

17 (Whereupon, all jurors raise their right hand.)

18 THE CLERK: Thank you. Please let the record reflect
19 that all twelve jurors raised their right hand. As to
20 Indictment Number 2009-GS-10-6731, we the jury by unanimous
21 consent find the defendant guilty of murder, signed -- signed
22 by the foreperson of the jury on January 27, 2012. Ladies and
23 gentlemen of the jury, if this was your verdict, please raise
24 your right hand.

25 (Whereupon, all jurors raise their right hand.)

1 THE CLERK: Thank you. Please let the record reflect
2 that all twelve jurors raised their right hand. As to
3 Indictment Number 2009-GS-10-6732, we the jury by unanimous
4 consent find the defendant guilty of assault with intent to
5 kill involving Anthony German, signed by the foreperson of the
6 jury on January 27, 2012. Ladies and gentlemen of the jury,
7 if this was your verdict, please raise your right hand.
8 (Whereupon, all jurors raise their right hand.)
9 THE CLERK: Thank you. Please let the record reflect
10 that all twelve jurors raised their right hand. As to
11 Indictment Number 2009-GS-10-6733, we the jury by unanimous
12 consent find the defendant guilty of assault with intent to
13 kill involving Michael Allen, signed by the foreperson of the
14 jury on January 27, 2012. Ladies and gentlemen of the jury,
15 if this was your verdict, please raise your right hand.
16 (Whereupon, all jurors raise their right hand.)
17 THE CLERK: Thank you. Please let the record reflect
18 that all twelve jurors raised their right hand.
19 THE COURT: Is there any request to poll the jury from
20 the State?
21 MR. VOIGT: None from the State, Your Honor.
22 THE COURT: From the defense?
23 MR. HARRIS: None, Your Honor.
24 THE COURT: You may take your seats. Madam Forelady,
25 ladies and gentlemen, we thank you for your time and your

1 attention to this matter. I hope that jury service has been
2 educational for you. I say it during jury qualification and
3 people often chuckle that real court is nothing like Judge
4 Judy, Judge Joe Brown or the Peoples Court and it is not and I
5 hope that you all from this experience learned how very
6 valuable you are to the system and that it could not operate
7 without individuals being willing to donate their time to us
8 because really that's what you do. Our system is the only
9 system where twelve individuals sit as fact finders and apply
10 a very complicated set of laws to those facts and render
11 verdicts.

12 You are welcome to discuss this case if you would like.
13 By the same token, if someone should persist in trying to
14 speak with you and it makes you feel uncomfortable, please
15 make us aware of it so that we can take the appropriate action
16 to protect your privacy.

17 If you need a work excuse before you leave today, you can
18 get those on the first floor of the Clerk of Court's office on
19 the Circuit Court side. Any of the deputy clerks at any of
20 those windows can give you a work excuse. Otherwise, they
21 will be mailed to you along with your checks.

22 We will hear post-trial motions and sentencing
23 immediately following this proceeding. If there is anyone
24 that wants to stay for sentencing, please make the bailiffs
25 aware of it and we'll bring you back into the courtroom and

1 seat you in the jury box for that purpose.

2 You are excused with the Court's profound thanks. If you
3 would, go with the bailiffs.

4 (Whereupon, the jury leaves the courtroom at 2:02 p.m.
5 The Court briefly leaves the bench to personally thank
6 the jurors in the hall. Several jurors return to the
7 courtroom and are seated in the jury box.)

8 THE COURT: You may be seated. Are there any post-trial
9 motions for the State?

10 MR. VOIGT: None from the State, Your Honor.

11 THE COURT: From the defense?

12 MR. HARRIS: Your Honor, I would reiterate and renew all
13 objections during the trial and all motions made during the
14 trial.

15 THE COURT: The Court would note those motions and deny
16 them based on its previous rulings. Are we ready? Do we have
17 sentencing sheets?

18 MR. VOIGT: I'm signing those as we speak, Your Honor.

19 THE COURT: Did you want to say something, Mr. Harris?

20 MR. HARRIS: No.

21 THE COURT: Okay.

22 (Whereupon, there is a brief pause in the proceedings.)

23 MR. VOIGT: Your Honor, I have a question.

24 THE COURT: Sure.

25 MR. VOIGT: And as to the AWIKs ---

1 sentencing?

2 MR. VOIGT: None, Your Honor.

3 (Whereupon, there is a brief pause in the proceedings.)

4 SENTENCE

5 THE COURT: Sir, if you would, stand for sentencing. I
6 think that we've all heard the facts and circumstances of this
7 case and there's no need for the Court belaboring it by making
8 any protracted comments, but I think that both Mr. Voigt and
9 Mr. Harris had summed it up by saying that this is just an
10 utter tragedy, young lives just gone and without any ability
11 really to recoup them because irregardless of what the Court
12 does today, the fact of any sentence --

13 South Carolina -- And it's been interesting to me of late
14 the way our system is perceived because most people are not
15 educated about it and they don't realize that South Carolina
16 is unlike most states in terms of our sentencing structure.
17 So whatever sentence Mr. Campbell receives today will have the
18 net effect of a life sentence irregardless because he will
19 serve it at 85% and at his age, he will be inordinately -- He
20 would have reached a fairly -- because his life expectancy, as
21 much as we don't like like to think about it, is only another
22 41 years. So as a practical matter, the net effect of
23 whatever the Court does today really at some point becomes a
24 nullity because it all has the same net effect when you look
25 at the way our system is structured.

1 However, having made that observation, sir, I find it
2 appropriate under the circumstances that on each of the
3 offenses, that being assault with intent to kill, which is
4 Indictment 2009-GS-10-6732, 2009-GS-10-6730 and 2009-GS-10-
5 6733, that you be sentenced to the State Department of
6 Corrections for a period of ten years.

7 On the offense of murder, which is Indictment 2009-GS-10-
8 6731, you are sentenced to the State Department of Corrections
9 for a period of thirty years.

10 These sentences will run concurrent with one another.
11 You'll get credit for any time that you have served. That
12 will be calculated and applied by the Department of
13 Corrections.

14 I have not heard anything regarding any addictions or
15 other things such that it would be necessary for the Court to
16 order the treatment unit. However, I would encourage you,
17 sir, and again, the Court takes no posture about this or
18 regarding this, that if you know the identity of these other
19 individuals, that you would be forthcoming and provide that
20 information to the State, at least for the benefit of the
21 closure of this family.

22 Thank you very much. Thank you, gentlemen, for a well-
23 tried case. Have a good weekend and if y'all would make sure
24 the court reporter has all of the evidence so that it can be
25 secured in the evidence locker in the event of an appeal.

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(The trial ended at 2:25 p.m.)

--- END REQUESTED TRANSCRIPT ---

843 818 9838

SOLICITOR'S OFFICE
NINTH JUDICIAL CIRCUIT

WITNESS STATEMENT

Statement of Traville German
Date of Birth: 07/21/1986 SSN: [REDACTED] 6243
Home Address: [REDACTED]
Home Telephone#: 843 818 9838 Work Telephone#: [REDACTED]
Employer/Occupation: Verizon Wireless / CSR
Date of Statement: 1/23/2012 Time of Statement: 3:22
Location: Court house
RE: _____

At this time, I, Traville German, desire to make the following voluntary statement:

I witness Candace Ladson speaking with the juror with a yellow shirt, heavy ~~dark~~ set female looks to be about 24, African-American, they talked for about 2 mins.

Q - How do you know they were jurors?

A - AS Jurors were coming out go in court room first time she had on blue/white juror sticker

Q - How do you know ms ^{Gilson} ~~Ladson~~?

A - She the mother of my sister in law and ~~my~~ sister of Jerome Campbell

Q - Where did this conversation take place?

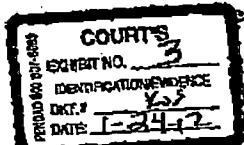
A - Court room snack bar.

I have made the following statement freely and voluntarily without fear, threat, promise, reward or hope of reward of any kind.

Witness: [Signature]

Signed: [Signature]

This is to confirm that the signature above is my own and that before I made my signature I read or had read to me the foregoing statement consisting of 2 page(s). My signature appears on each page. A true copy has been given to me this _____ day of _____, 200__.



Page ____ of ____

Statement of _____

Q - DESCRIBE THE SUSPECT IN QUESTION
THE BEST YOU CAN.

A - ~~She~~ She's an African American female
on the heavier side she has on a yellow
shirt (bright) she has diamond heart earring
in her ears. She has pink nail polish, ^(on nails)
She looks to be 24.

I have made the following statement freely and voluntarily without fear, threat, promise,
reward or hope of reward of any kind.

Witness: _____

Signed: _____

This is to confirm that the signature above is my own and that before I made my signature I read
or had read to me the foregoing statement consisting of 2 page(s). My signature appears on
each page. A true copy has been given to me this ____ day of ____, 200__.

SOLICITOR'S OFFICE
NINTH JUDICIAL CIRCUIT

WITNESS STATEMENT

Statement of Tiffany Pearce
Date of Birth: 7-26-81 SSN: [REDACTED] 4759
Home Address: [REDACTED] Summerville SC 29415
Home Telephone#: 844-631-3258 Work Telephone#: _____
Employer/Occupation: State of SC
Date of Statement: 1-23-2012 Time of Statement: _____
Location: Courthouse.
RE: Campbell trial

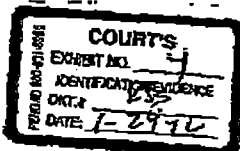
At this time, I, Tiffany Pearce, desire to make the following voluntary statement:

I did on 1-23-2012 observe two of the jury members. The conversation appeared to last approx 2-4 min, and it appeared that the jurors and the Pearce family of the defendant knew each other. During the conclusion of the conversation I observed a black female with a brown jacket + pants casual sweat suit making the statement "I have them on our side". I proceeded to ask Tranelle "I thought we could not have contact with the jury." She stated that she thought the same and that she would speak with Mrs. Dorci. The two jury members that I observed were both black females. One heavier set with a yellow screen print t-shirt

I have made the following statement freely and voluntarily without fear, threat, promise, reward or hope of reward of any kind.

Witness: [Signature] Signed: [Signature]

This is to confirm that the signature above is my own and that before I made my signature I read or had read to me the foregoing statement consisting of 2 page(s). My signature appears on each page. A true copy has been given to me this _____ day of _____, 200__.



Statement of

hair and a heavy jacket that was dark in color.

This conversation took place in the meth house snaff bar
approx. 1:20 PM on 1-23-2012.

Witness:

Signed:

91

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of General Sessions

Deadra Jefferson, General Sessions Court Judge
09-GS-10-6730

Case Tracking Number: 2012208426

The State of South Carolina, ... Respondents,

v.

Jerome Campbell
a/k/a Jerome Coaxum Petitioner.

PETITION FOR REHEARING OR REHEARING *EN BANC*

Appellant, by and through undersigned counsel and pursuant to Rules 219 and 221, SCACR, respectfully submits this Petition for Rehearing or Rehearing *En Banc* and requests this Honorable Court rehear this matter and reconsider its opinion based upon the following arguments:

STATEMENT OF THE CASE

This is an appeal from a murder conviction where Appellant was sentenced to 30 years imprisonment with no possibility of parole. At trial, on January 23, 2012, Appellant and Respondent selected a jury consisting of twelve primary and two alternate jurors. [R. p. 14, line 11 – p. 22, line 4] During the initial *voir dire*, the court asked the venire, “Does any member of

the panel have a close personal or social relationship with [the accused, the victims, or anyone related to the deceased]?” [R. p. 7, lines 14 – 18] No one responded. During the initial *voir dire*, the court neither identified Appellant’s family members nor asked the venire whether any of the jurors were acquainted with Appellant’s family members.

Prior to the selection of Juror # 70 Robin Givens (hereinafter “Juror Givens”), the State exhausted all five of its peremptory challenges. [R. p. 19, line 21; p. 14, lines 11 – 18; p. 15, lines 2 – 8; p. 16, lines 8 – 14; p. 18, lines 13 – 19; p. 19, lines 14 – 20; p. 20, lines 5 – 12] After the jury was sworn in, the court recessed for lunch. [R. p. 25, line 4 – p. 26, line 20] Before recessing, the court instructed the jury panel as follows:

During the break, please do not discuss the case among yourselves or with anyone else. . . . Also, please do not have any contact with anyone in or about the courthouse. There are a lot of witnesses in this case and again, we would not want an innocent conversation to be observed and misinterpreted.

[R. p. 26, lines 3 – 15]

When the trial reconvened, the State asserted that during lunch two jurors conversed with a “family member or friend of the Campbell group” in the courthouse snack bar. [R. p. 27, line 4 – p. 28, line 6] The trial judge performed a *voir dire* of the jury panel and inquired whether any of the jurors had any conversations during lunch with anyone who was not a juror. [R. p. 30, lines 16 – 18; p. 33, lines 15 – 24] Juror Givens and Juror # 63 Erica Gadsden (hereinafter “Juror Gadsden”) did not respond to the court’s questions. The court proceeded with trial.

The next day, on January 24, 2012, the State moved to exclude Juror Givens and Juror Gadsden. [R. p. 1 – 2; p. 48, line 2 – p. 60, line 3] In support of its motion, the State submitted a surveillance video. [Surveillance Video, attached to inside back cover of Record on Appeal] As shown on the video, Juror Givens and Juror Gadsden sat together in the snack bar when a person

who may have been related to Appellant approached these jurors and appeared to speak with them for approximately forty-four (44) seconds. [R. p. 50 lines 22 – 23; Surveillance Video, Time 1:19:54 – 1:20:38]

The trial judge performed *voir dire* regarding the jurors in issue. Juror Givens testified that: (1) a woman approached her in the snack bar, but Juror Givens could not recall her name; (2) she knew this person through a mutual friend and had “hung out” with her a few times at birthday parties; (3) she had not seen this person since June or July of the previous year; (4) she did not know whether this person was involved with the case; (5) the person was not a close friend; (6) she did not discuss the case with this person; (7) she forgot about the court’s instructions not to speak with a non-juror; and (8) she could be fair and impartial. [R. p. 60, line 7 – p. 65, line 7]

Juror Gadsden testified that: (1) a woman approached Juror Givens and her during the break; (2) Juror Gadsden asked the person if they knew each other, but the person responded “no;” (3) there was no reason why she did not respond the previous day when the trial court asked if any jurors had interaction with anyone at lunch; (4) she did not know any members of the victim’s family or Appellant’s family; and (5) she could be fair and impartial. [R. p. 67, line 17 – p. 70, line 24] The State withdrew its motion regarding Juror Gadsden. [R. p. 71, lines 8 – 12] Regarding Juror Givens, the State argued that Juror Givens was not “entitled to any presumption of impartiality” because she did not disclose her conversation to the court during *voir dire* the day before. [R. p. 66, lines 12 – 18]

The trial judge found that Juror Givens had no intention to mislead anyone or to conceal information:

I'm really not troubled by the fact that [Juror Givens] didn't disclose when asked the question because she's a typical juror. They just don't -- The things we think are important they don't think are important and I really don't think she had any intention to mislead the Court and there would have been no reason for her to have disclosed the individuals in *voir dire* because they weren't in the courtroom and their names specifically were not mentioned and in addition to that, she indicated really don't even know this person's name. . . . I do think that the interaction was innocent. I really don't think it amounts to anything I don't even think she really knows the woman. I think it's one of those things because you can tell on the video the lady is very shocked that she sees her. She's like -- It's almost like, "oh, that's you, I haven't seen you in a long time." There is no indication that they discussed anything about this case.

[R. p. 72, line 6 – p. 73, line 2] Nevertheless, the trial judge removed Juror Givens over Appellant's objection. [R. p. 71, line 15 – p. 74, line 3; p. 20, line 6] The trial judge addressed Juror Givens as follows:

Miss Givens, out of an abundance of caution, I do not believe you have misled the Court in any way. I believe you have been candid and I believe the person you interacted with in the snack bar was an innocent interaction with somebody you hadn't seen in a while. But out of an abundance of caution, I'm going to excuse you as a juror in this case so that there can never be any question regarding the impartiality of the verdict. We appreciate your candor and your time.

[R. p. 73, line 20 – p. 74, line 3] The trial judge stated her reason for dismissing Juror Givens as follows: "[O]ut of an abundance of caution I'm going to excuse her just because I don't want there to be any perception that whatever verdict is rendered that it was not fair and impartial. But I really think that anything she did was innocent." [R. p. 72, lines 18 – 22] At the State's request, the court replaced Juror Givens with an alternate juror. [R. p. 74, line 22 – p. 78, line 4; p. 21, line 17]

On January 27, 2012, the jury convicted Appellant of murder and three counts of assault and battery with intent to kill. [R. p. 81, line 9 – p. 82, line 23] The court sentenced Appellant, consecutively, to thirty (30) years for murder and ten (10) years each on the three counts of assault and battery with intent to kill. [R. p. 86, lines 1 – 13] This appeal followed.

ARGUMENTS

- I. This Court should rehear this matter because this Court overlooked the Supreme Court's decision in State v. Stone wherein the Supreme Court remanded the case for a new trial finding that the trial court abused its discretion in removing a juror whose nondisclosure was innocent and overlooked several other authorities to support the same.**

In State v. Stone, 350 S.C. 442, 567 S.E.2d 244 (2002), the state called the defendant's aunt, Ms. Perry, as a witness during sentencing. At that time, a juror indicated that she knew Ms. Perry, that Ms. Perry had lived down the street from the juror five or six years earlier, that they were casual acquaintances, and that the juror's acquaintance with Ms. Perry would not affect the juror's ability to be fair and impartial. Although Ms. Perry had been identified as a witness at the start of *voir dire*, the juror did not recognize Ms. Perry's name. The solicitor objected to the juror's participation and claimed the juror was biased. The lower court removed the juror and replaced her with an alternate juror. Our Supreme Court reversed and remanded the case for a new trial because, in part, the trial court abused its discretion in removing a juror whose nondisclosure was innocent.

Here, the lower court made an extensive factual determination that Juror Givens did not intentionally conceal information. The trial judge personally examined Juror Givens under oath and reviewed Juror Givens' demeanor, conduct in the courtroom, and conduct on the surveillance video. The trial judge noted that Juror Givens seemed surprised on the video when the person approached her in the snack bar. [R. p. 162, lines 6 – 8; p. 71, line 15 – p. 72, line 2; Surveillance Video] The trial judge made an unequivocal finding that Juror Givens' nondisclosure was innocent. The trial judge expressly stated that: (1) the court had no concerns about Juror Givens' impartiality; (2) Juror Givens' interactions were innocent; and (3) Juror Givens did not attempt to mislead the court in any way. [R. p. 71, line 15 – p. 73, line 13; p. 73,

line 20 – p. 74, line 3] Moreover, the trial court recognized that Juror Givens did not act intentionally because the subject matter of the court’s inquiry, a forty-four (44) second encounter, was insignificant. As the trial court observed, Juror Givens was “young,” “a typical juror,” and “[t]he things we think are important they don’t think are important and I really don’t think she had any intention to mislead the Court” [R. p. 71, lines 21 – 22; p. 72, lines 8 – 11] Still, the trial judge removed Juror Givens. Accordingly, pursuant to Stone, the lower court abused its discretion in removing the juror.

Other authority also lends to the conclusion that the trial court abused its discretion removing a juror who innocently and unintentionally did not disclose her insignificant forty-four (44) second encounter at the snack bar with a non-juror. Pursuant to S.C. Code Ann. § 14-7-1020, “[i]f it appears to the court that the juror is not indifferent in the cause, he must be placed aside as to the trial of that cause and another must be called.” “[T]he first inquiry in the juror disqualification analysis is whether the juror intentionally concealed the information in *voir dire*.” State v. Woods, 345 S.C. 583, 588, 550 S.E.2d 282, 284 (2001) (citation omitted). If the juror’s failure to disclose is innocent, no such inference of partiality may be drawn against that juror. Id.

In Woods, during *voir dire*, the trial court asked the potential jurors whether they were “friends or casual acquaintances with any of them [i.e., the attorneys involved in the trial] or business associates or social acquaintances with any of them, that would also include having been represented by any of them in the past.” Id. at 586, 550 S.E.2d at 283. The court also asked whether any of the jurors were “contributors to or supporters of any organization which has as its primary function the promotion of law enforcement or protection of victims’ rights such as MADD, SADD, CAVE, or the like.” Id. The juror in issue did not respond to either

question. When this juror was selected, the defendant had one peremptory challenge remaining. After the jury rendered its verdict, but before sentencing, the defendant moved for a new trial based upon the discovery of the juror's volunteer work as a victims' advocate in the prosecutor's office.

The court held that the defendant was entitled to a new trial because the juror intentionally failed to disclose that she had worked as a volunteer victims' advocate in the prosecutor's office.

We hold that intentional concealment occurs when the question presented to the jury on *voir dire* is reasonably comprehensible to the average juror and the subject of the inquiry is of such significance that the juror's failure to respond is unreasonable. Unintentional concealment, on the other hand, occurs where the question posed is ambiguous or incomprehensible to the average juror, or where the subject of the inquiry is insignificant or so far removed in time that the juror's failure to respond is reasonable under the circumstances.

Id. at 588, 550 S.E.2d at 284. Further, our Supreme Court held that "whether a juror's failure to respond is intentional is a fact intensive determination which must be made on a case by case basis." Id. "The trial judge is in the best position to determine the credibility of the jurors; therefore, this Court should grant [the trial judge] broad deference on this issue." State v. Kelly, 331 S.C. 132, 142, 502 S.E.2d 99, 104 (1998) ; *see also* State v. Harris, 340 S.C. 59, 530 S.E.2d 626 (2000) (holding the trial judge is in the best position to determine the credibility of the jurors); State v. Loftis, 232 S.C. 35, 100 S.E.2d 671 (1957) (refusing to interfere with the trial judge's discretion in matters involving the jury because the trial judge has the opportunity to consider the juror's credibility).

In State v. Guillebeaux, 362 S.C. 270, 607 S.E.2d 99 (Ct. App. 2004), the jurors were asked during *voir dire* whether they had "any personal, business or social relationship either with the defendant, Mr. Guillebeaux or any of the potential witnesses." After both sides exhausted all

of their peremptory strikes, the juror in issue was seated without challenge. During trial, the court learned that: (1) the juror in issue knew the State's lead witness; (2) the juror had no conversations with the witness beyond saying "hi" in passing; (3) the juror went to high school with the witness's brother; and (4) the juror knew what type of car the witness drove because the witness worked across the street from the juror's hairdresser. The lower court denied the defendant's motion for a new trial because it found that the juror had not misled the court. In affirming the lower court, this Court stated, "When allegations arise concerning a juror's failure to reveal information in response to *voir dire* questions, courts look to whether the concealment was intentional and consider the nature of the information concealed." *Id.* at 270, 101 (citation omitted).

When the lower court determined that Juror Givens did not intentionally conceal any information, the court's inquiry should have ended at that point. *Guillebeaux*, 362 S.C. at 270, 607 S.E.2d at 101 (citation omitted). However, the trial judge granted the State's motion to remove Juror Givens "in an abundance of caution" to avoid "any perception that whatever verdict is rendered that it was not fair and impartial." [R. p. 72, lines 17 – 22] By allowing the State to remove Juror Givens without cause on the second day of trial, the lower court acted partially toward the State by granting the State a *de facto* sixth peremptory challenge and thereby prejudiced Appellant as discussed *infra*.

Assuming for argument's sake that Juror Givens intentionally concealed information, the trial court still abused its discretion in allowing the State to challenge Juror Givens. Specifically, if a court finds that a juror intentionally concealed information during *voir dire*, then the court must "determine if the information concealed would have supported a challenge for cause or would have been a material factor in the use of [a party]'s peremptory challenges." *Stone*, 345

S.C. at 590, 550 S.E.2d at 285 (citation omitted). "The inquiry must focus on the character of the concealed information, not on the mere fact that a concealment occurred." Thompson v. O'Rourke, 288 S.C. 13, 15, 339 S.E.2d 505, 506 (1986).

In Stone, the juror was a casual acquaintance with a witness who had lived down the street from the juror. The Supreme Court held that the character of the concealed information did not warrant the removal of the juror:

[The juror's] scant acquaintance would neither have supported a challenge for cause nor would it have been a material factor in the state's exercise of its peremptory challenges. [The juror] clearly indicated her former acquaintance with a witness whose name she did not even know, would not have affected her in any way. Accordingly, we hold the trial court abused its discretion in removing her.

Stone, 350 S.C. at 448, 567 S.E.2d at 247 - 248.

Like the juror in Stone, Juror Givens' "scant acquaintance" with the person in the snack bar would not have supported a challenge for cause. Juror Givens did not know the person's name, she only knew the person "through another friend of [hers] that lives on James Island," she had "hung out" with that person at a birthday party approximately a year before, she was not the person's friend, she was unaware that the person was involved in the case in any way, and she could be fair and impartial. [R. p. 60, line 7 - p. 65, line 7]

Additionally, Juror Givens' "scant acquaintance" with the person in the snack bar could not have been a material factor in the State's exercise of its peremptory challenges because the State had exhausted all of its peremptory challenges by the time Juror Givens was selected for trial. In Woods, when the juror's name was selected from the venire, the respondent had one peremptory challenge remaining. The respondent claimed that had he known of the juror's relationship with the prosecutor's office, he would have used a peremptory challenge to remove

the juror. Accordingly, the court held that the juror's failure to disclose her relationship with the prosecutor's office "prevented the respondent's intelligent exercise of his peremptory challenges." Woods, 345 S.C. at 590, 550 S.E.2d at 286. Here, unlike the party in Woods, the State had exhausted all of its peremptory challenges before Juror Givens' name was selected from the venire. Therefore, the State was not prevented from intelligently exercising its peremptory strikes because it had no remaining strikes to use against Juror Givens.

II. This Court should rehear this matter because it misapprehended the reasoning of the Supreme Court in State v. Simmons where Simmons involved a juror who discussed with his wife during trial the personal effect on the juror that a verdict would have had.

In State v. Simmons, 360 S.C. 33, 599 S.E.2d 448, the jury was sequestered. Juror C had a conversation with his wife regarding the fact that the defendant's sister lived across the street from a piece of property owned by Juror C and his wife where Juror C and his wife intended on building a home. Juror C advised the trial judge of his relation to the defendant's sister and that he was concerned an adverse verdict would perhaps cause "consternation, fear, concern, or whatever." Juror C did not advise the judge of his conversation with his wife until he was asked about it. When the SLED agent who was monitoring the sequestration of the jurors spoke to Juror C's wife, she revealed that she was "upset, fearful, and 'really concerned.'" Juror C was then examined in chambers where he confirmed that he and his wife discussed the personal effect of a verdict in the case. The Supreme Court held that the judge acted within his discretion in removing Juror C.

Here, unlike Simmons, the trial judge expressly stated that: (1) the court had no concerns about Juror Givens' impartiality; (2) Juror Givens' interactions were innocent; and (3) Juror Givens did not attempt to mislead the court in any way. As the trial court observed, Juror Givens

was “young,” “a typical juror,” and “[t]he things we think are important they don’t think are important and I really don’t think she had any intention to mislead the Court” The “scant acquaintance” between Juror Givens and the purported member of Appellant’s family is akin to the acquaintance in Stone. Further, nothing suggests that Juror Givens would experience “consternation, fear, concern, or whatever” from an adverse verdict, nor does anything suggest that she was “upset, fearful, and really concerned.” In fact, Juror Givens did not even realize that the person with whom she spoke in the snack bar may have had any relation to Appellant or to the case.

III. This Court should rehear this matter because it overlooked the arguments of counsel at trial that preserved the issues on appeal.

“Error preservation rules do not require a party to use the exact name of a legal doctrine in order to preserve an issue for appellate review.” State v. Brannon, 388 S.C. 498, 502, 697 S.E.2d 593, 595 (2010). In Brannon, the state argued that the court of appeals violated error preservation rules by using a seizure analysis to determine whether an arrest was being made where the Appellant never used the terms “seizure” or “Fourth Amendment” in his directed verdict motion. The Supreme Court disagreed and held that “a litigant is only required to fairly raise the issue to the trial court, thereby giving it an opportunity to rule on the issue.” Id. at 502, 596 (citation omitted).

Here, Appellant argued that no cause existed to excuse Juror Givens. Appellant argued that the jurors and the defendant’s family had not seen each other prior to the break, that the video did not reflect that Juror Givens and the person in the snack bar knew each other very well, and that the interaction was innocent. [R. p. 50, line 10 – p. 53, line 17] Appellant further argued that any omission to disclose was innocent, that the juror disclosed her conversation in

the snack bar when asked the second time, that Juror Givens did not try to mislead or deceive the court, that she did not even know the name of the person in the snack bar, and that Juror Givens could be fair and impartial. [R. p. 66, line 20 – p. 67, line 16] Finally, Appellant attempted to reiterate his objection on this issue, but the court noted the objection without allowing additional argument:

MR. HARRIS: Your Honor?

THE COURT: Mm-hmm.

MR. HARRIS: For the record, can I just – I mean object to the –

THE COURT: You've noted your exception.

MR. HARRIS: Okay.

THE COURT: Yeah.

MR. HARRIS: I just wanted to note my exception for the record.

THE COURT: You've already noted your exception for the record when you made your argument.

MR. HARRIS: Thank you.

THE COURT: You're welcome.

[R. p. 75, lines 2 – 14] Trial counsel effectively preserved the issue with the arguments he made. Further, the trial court did not allow him to continue arguing the issue after the above-described attempt.

In l'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 526 S.E.2d 716 (2000), the Supreme Court explained the rationale behind the longstanding rule of issue preservation:

Imposing this preservation requirement on the appellant is meant to enable the lower court to rule properly after it has considered all relevant facts, law, and arguments. The requirement also serves as a keen incentive for a party to prepare a case thoroughly. It prevents a party from keeping an ace card up his sleeve--

intentionally or by chance--in the hope that an appellate court will accept that ace card and, via a reversal, give him another opportunity to prove his case.

Here, trial counsel kept no ace card up his sleeve. Counsel argued extensively at trial that there was no cause for removing Juror Givens. The trial judge was given ample opportunity to consider these arguments. Appellant describes in his briefs that the effect of removing a juror without cause is to give the state a sixth peremptory strike. Such is not a new issue from what Appellant's counsel argued at trial. Instead, it is part of the analysis as to whether the trial court's error is reversible.

In addition, even if further argument by trial counsel would have been required to preserve the issue under the general rule, our courts have developed the doctrine of futility, which recognizes that in circumstances where it would be futile to raise an objection to the trial judge, failure to raise the objection will be excused. See State v. Pace, 316 S.C. 71, 74, 447 S.E.2d 186, 187 (1994) (finding "[a]s to counsel's failure to raise an objection, the tone and tenor of the trial judge's remarks concerning her gender and conduct were such that any objection would have been futile."); State v. Higgenbottom, 344 S.C. 11, 542 S.E.2d 718 (2001) (employing the futility doctrine). Here, the trial judge made it clear that she had ruled and did not wish to hear further argument on the matter, and it would have been futile for Appellant to continue arguing the point.

IV. This Court should rehear this matter because Appellant preserved the issues raised on appeal including whether the lower court gave the State a sixth peremptory challenge when the court removed a juror without cause.

The beginning of wisdom is to call a thing by its proper name. On appeal, Appellant has articulated the obvious effect of the trial court's decision to remove a juror without cause at the State's request. In other words, Appellant is not arguing a new ground on appeal. Rather,

Appellant is merely elucidating the end result of the trial court's removal of a juror without cause – such removal gave the State the use of a sixth peremptory challenge on the second day of trial that, in turn, skewed the jury selection process and gave the State unilateral and discretionary control over the composition of the jury during the trial. This fundamental error mandates automatic reversal and a new trial.

Appellant urges this court to rehear the matter in order to reconsider whether the issue was preserved. Clearly the issue of whether the removal of the juror was error was preserved, and this Court acknowledged the same by deciding the issue on the merits. Appellant went further in his brief to characterize the trial court's removal of the juror as a sixth peremptory strike only to explain why such error is reversible. Our courts have never required, in order to preserve an issue, the level of elucidation as set forth in the appellate brief. Here, the underlying issue for the trial judge was not whether the error was reversible. The issue was whether there was cause to remove Juror Givens. See Mizell v. Glover, 570 S.E.2d 176, 351 S.C. 392 (2002) (finding an evidentiary issue was preserved where a party raised an issue despite the absence of discussion as to why the error is reversible); State v. Kromah, 737 S.E.2d 490, 401 S.C. 340 (2013) (same); State v. Russell, 345 S.C. 128, 546 S.E.2d 202 (Ct. App. 2001) (finding issue was preserved even though defendant did not use exact words "corpus delicti" in his request for a directed verdict); S.C. Dep't of Transp. v. First Carolina Corp. of S.C., 372 S.C. 295, 641 S.E.2d 903 (2007) (finding an issue preserved where, although a party did not phrase objection in the exact terms used in the issues on appeal, the party made an objection sufficient enough to allow the trial court to rule on the issue).

"A peremptory challenge is an arbitrary rejection of a juror without cause. The exercise of the right of peremptory challenge affords an accused an opportunity to dismiss jurors who, he

believes, for whatever reason, may be unfavorable to him.” State v. Bailey, 273 S.C. 467, 469, 257 S.E.2d 231, 232 (1979). Peremptory challenges are one of the most important of the rights secured to the accused, and the system of peremptory challenge has traditionally provided the assurance of impartiality in a jury trial. Holland v. Illinois, 493 U.S. 474, 110 S.Ct. 803, 107 L.Ed.2d 905 (1990). Peremptory challenges assure the selection of a qualified and unbiased jury by enabling each side to exclude those potential jurors believed to be most partial towards the other side thereby rejecting extremes of partiality on both sides. Id. at 484, 110 S.Ct. at 806 (citing Batson v. Kentucky, 476 U.S. 79, 106 S.Ct. 1712, 90 L.Ed.2d 69 (1986)). Peremptory challenge is a device that “occupies ‘an important position in our trial procedures,’ . . . and has indeed been considered ‘a necessary part of trial by jury.’” Holland, 493 U.S. at 475, 110 S.Ct. at 804 (quoting Batson, 476 U.S. at 98, 106 S.Ct. at 1724 and Swain v. Alabama, 380 U.S. 202, 85 S.Ct. 824, 13 L.Ed.2d 759 (1965), *overruled on other grounds by Batson*, 476 U.S. 79, 106 S.Ct. 1712, 90 L.Ed.2d 69 (1986)). The goal of an impartial jury is obstructed by procedures that cripple the device of peremptory challenge. Holland, 493 U.S. at 483 – 484, 110 S.Ct. at 809.

The right to peremptory challenges is denied or impaired if the accused does not receive that which state law provides. Ross v. Oklahoma, 487 U.S. 81, 108 S.Ct. 2273, 101 L.Ed.2d 80 (1988). South Carolina law provides the accused with twice as many peremptory challenges as the State. “Any person who is arraigned for the crime of murder . . . is entitled to peremptory challenges not exceeding ten, and the State . . . is entitled to peremptory challenges not exceeding five.” S.C. Code Ann. § 14-7-1110 (emphasis added). South Carolina’s courts have always considered the jury selection process in criminal cases, including the use of peremptory challenges, as sacrosanct.

In State v. Briggs, 27 S.C. 80, 2 S.E. 854 (1887), the state and four defendants collectively challenged thirty-two jurors thereby exhausting the entire jury venire without selecting a single juror for the trial. Under an applicable statute regarding jury selection, the trial court was required to draw additional jurors as “the court may deem necessary to fill such deficiency.” Id., 2 S.E. at 857. However, the lower court failed to order a new venire and continued the case until the following week at which time “a separate and distinct jury had been drawn and summoned.” Id. Further, the lower court held that because the four defendants challenged eight jurors the week before, the defendants were only entitled to challenge twelve more to make the twenty allowed under the law at that time. Our Supreme Court remanded the case for a new trial based on the lower court’s failure to follow statutory procedure even though the defendants may not have been prejudiced by the lower court’s actions:

[The applicable statute set forth] a plain, positive direction as to how to proceed in a criminal case “whenever it shall be necessary to supply any deficiency” as to jurors. After the trial was entered upon in the first week of the term, and the jury was exhausted, we think it was irregular to adjourn it over to the second, and then to present the jurors regularly drawn for that week, instead of those who would have been presented if the above provision of the law had been followed. This may seem technical. It may not be obvious that by this course any injustice was done to the defendants. Theoretically the jurors summoned under one *venire* may be as good as those called under another; but in criminal proceedings, and especially those involving life, it is proper that there should be great care and particularity.

Id. Our Supreme Court also held that the lower court erred in limiting the number of the defendants’ peremptory challenges and that “[t]he right of challenge as allowed [by statute] is regarded sacred.” Id.

There is only one reported decision that is analogous to the present circumstance wherein a court allowed the prosecution to use a peremptory challenge after a jury was selected and impaneled. In U.S. v. Harbin, 250 F.3d 532 (7th Cir. 2001), during the trial of a drug trafficking

case, one of the jurors indicated that he knew a witness's mother. The juror also indicated that he had participated in Narcotics Anonymous. Like South Carolina's courts, the trial court in Harbin could only remove a juror during trial for cause. The court conducted a *voir dire* examination of the juror, and the juror stated that he could be impartial. Although the court declined to dismiss the juror for cause, the court allowed the prosecution to exercise one of its peremptory challenges "left over" from jury selection based on the newly discovered information and replaced the juror with an alternate juror. The Seventh Circuit Court of Appeals held that the lower court violated the accused's right to a fair trial and to the fair and the intelligent use of peremptory challenges. The court held that "the ability to remove jurors with peremptory challenges mid-trial is a significant weapon. At that time, the parties have had the opportunity to observe the demeanor of the jurors and to employ that knowledge in their decision." Id. at 539. The court also observed that the "prosecution was unilaterally granted control over the composition of the jury during the trial stage . . . [which] skewed the jury selection process in favor of the prosecution, and adversely impacted the ability of the peremptory challenge process to fulfill its function as a means of ensuring an impartial jury and a fair trial." Id. at 541. The court further held that this error was "the type of fundamental error requiring automatic reversal." Id. at 547.

As previously indicated, the State had exhausted all five of its peremptory challenges before Juror Givens was selected from the venire. Further, the trial judge did not ask any questions during the initial *voir dire* that would have identified any connection between Juror Givens and the person in the snack bar. [R. p. 7, line 14 – p. 13, line 17] Moreover, although the trial judge gave the State the opportunity to ask additional questions of the jurors during *voir dire*, the State declined to do so. [R. p. 13, lines 21 – 23] However, the State was able to use information it

gleaned after the jury was impaneled to remove a juror without cause during the second day of trial. By removing an impartial juror at the State's request, the lower court unilaterally permitted the State to use a pre-trial jury selection tool to alter the composition of the jury during trial.

Here, the State was not concerned with any concealment by Juror Gadsden or Juror Givens. Rather, the State was solely interested in challenging Juror Givens based upon "any familiarity, however slight, between [her] and a member of the defendant's family" [R. p. 1 – 2] Notably, the State decided not to remove Juror Gadsden although: (1) Juror Gadsden spoke with the non-juror during the lunch break; (2) Juror Gadsden did not reveal this encounter during the court's *voir dire* of the matter during the first day of trial; (3) the State accused Juror Gadsden of "look[ing] in the direction of the defendant's family in the courtroom" during *voir dire*; and (4) Juror Gadsden had absolutely no explanation as to why she concealed her encounter in the snack bar. [R. p. 1 – 2; p. 69, lines 14 – 18] Yet, despite all of the State's professed concern that Juror Gadsden's "mendacity undermine[d] any faith that [she] could fulfill [her] oath fairly," the State withdrew its motion to excuse Juror Gadsden after she indicated that she and the non-juror did not know one another. [R. p. 69, lines 5 – 8; p. 71, lines 8 – 12] As for Juror Givens, the State challenged her after she testified that she had a "familiarity, however slight, between [herself] and a member of the defendant's family." [R. p. 1 – 2]

The State's challenge and removal of Juror Givens during trial was precisely the concern the court in Harbin addressed by granting a new trial. Specifically, here there was a shift in the balance of advantages in the State's favor that deprived Appellant of a fair trial. Like the prosecution in Harbin, the State in this case "was allowed exclusive, discretionary control over the composition of the jury mid-trial, and whether the mechanism for achieving that control was a peremptory challenge or another device is unimportant. . . . [T]he framework in which the trial proceeded

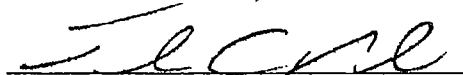
was fundamentally altered, with the jury selection mechanism transported to the trial stage for one party.” Harbin, 250 F.3d at 547 – 548. This Court should not “tolerate a system in which control over the jury rests in the exclusive domain of one party during a particular stage of the proceedings.” Id. at 549. Accordingly, like our Supreme Court in Stone and the court in Harbin, this Court should reverse and remand this case for a new trial.

CONCLUSION

Appellant requests this Court rehear the matter or rehear the matter *en banc* where (1) State v. Stone, along with the other authorities cited, show that the trial judge abused her discretion, (2) State v. Simmons is distinguishable from the case at hand and less akin to the case at hand than Stone, and (3) the issues are preserved in that trial counsel was only required to raise the issue of whether there was cause to remove the juror, regardless of whether trial counsel explained why any such error was reversible.

Respectfully submitted,

FUTERAL & NELSON, LLC



Stephan V. Futeral

S.C. Bar ID 66427

Thomas C. Nelson

S.C. Bar ID 71178

Post Office Box 1543

Mt. Pleasant, South Carolina 29465-1543

Telephone (843) 284-5500

Facsimile (843) 284-5501

email to: sfuteral@charlestonlaw.net

Dated: 8/20/13

Attorneys for Appellant

The South Carolina Court of Appeals

The State, Respondent,

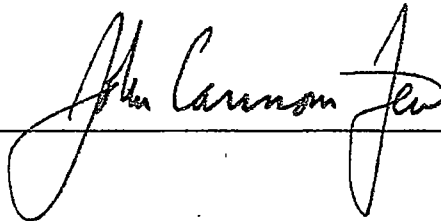
v.

Jerome Renaldo Campbell, Appellant.

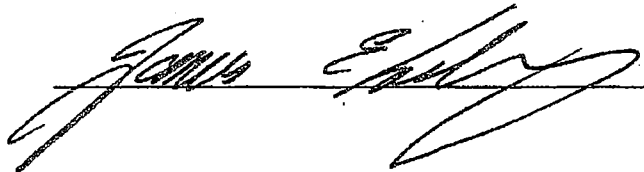
Appellate Case No. 2012-208426

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

 C.J.

 J.

 J.

Columbia, South Carolina

cc: Stephan Victor Futeral
Salley W. Elliott
Deadra L. Jefferson

FILED

23 Oct 2013



RECEIVED
DEC - 4 2013
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OFFICE

The South Carolina Court of Appeals

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CLERK

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COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

December 02, 2013

The Honorable Julie J. Armstrong
100 Broad St Ste 106
Charleston SC 29401-2210

REMITTITUR

Re: The State v. Jerome R. Campbell
Lower Court Case No. 2009GS1006731, 2009GS1006732,
2009GS1006733, 2009GS0900512
Appellate Case No. 2012-208426

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: Stephan Victor Futeral, Esquire
Salley W. Elliott, Esquire

FORM 5

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	
	)	
Jerome Renaldo Campbell	)	
Full name and prison number (if any) of Applicant.	)	
	)	
v.	)	APPLICATION FOR
	)	
State of South Carolina	)	POST-CONVICTION RELIEF
	)	

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention McCormick Correctional Institution
2. Name and location of Court which imposed sentence Court of General Sessions for Charleston County
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2009-GS-10-6730
 - (b) 2009-GS-10-6731
 - (c) 2009-GS-10-6732
 - (d) 2009-GS-10-6733
5. The date upon which sentence was imposed and the terms of the sentence:

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- (a) January 27, 2012, ten years
 - (b) January 27, 2012, thirty years
 - (c) January 27, 2012, ten years
 - (d) January 27, 2012, ten years
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
 - (b) after a plea of not guilty X
 - (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
 - i. South Carolina Court of Appeals for all charges
 - ii. _____
 - iii. _____
 - (b) the result in each such Court to which you appealed:
 - i. Appeal denied as to all charges
 - ii. _____
 - iii. _____
 - (c) the date of each such result:
 - i. August 7, 2013
 - ii. _____
 - iii. _____
 - (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. No. 2013-UP-338
 - ii. _____
 - iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
 - (b) _____
 - (c) _____

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) Trial counsel was ineffective in that he failed to object to the trial judge charging the law of aiding and abetting when the indictment only alleged the applicant acted as a principal.

(b) Trial counsel was ineffective for his failure to object to the trial judge charging the law of one, hand of all charge because the facts did not establish or prove that the occupants of the automobile were acting in concert.

(c) Trial Counsel failed to object to the mutual combat charge as there was no evidence of mutual combat.

(d) Trial counsel was ineffective for not objecting to the failure to charge the law concerning the defense of others.

(e)

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) The indictment in this case only charges that the applicant acted as a principal. At the end of the trial, without objection from trial counsel, the trial judge charged the jury as to the law of aiding and abetting. The indictment did not give the applicant notice that he could be tried for aiding and abetting and therefore is in violation of Article I, §§ 3 and 14 of the Constitution of the State of South Carolina and the due process clause of the Fourteenth Amendment to the Constitution of the United States of America.

(b) The testimony at the trial only established that shots were fired from a moving automobile. No testimony at trial established that the occupants of the automobile were acting in concert or had agreed to use force against the victim in this case.

(c) The trial court on her own motion elected to charge the law of mutual combat. No testimony at this trial established any basis for a charge on mutual combat.

(d) Trial counsel erred in failing to object to the trial judge not charging the defense of others. Such a charge was proper as the person shooting from the automobile would have been shooting to defend the occupants of the automobile and not just himself.

(e)

12. Prior to this application have you filed with respect to this conviction:

(a) any petition in a State Court under South Carolina Law? No

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- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
- (d) any other petitions, motions or applications in this or any other Court? No
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. N/A
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. N/A
- ii. _____
- iii. _____
- iv. _____
- (c) the disposition thereof:
- i. N/A
- ii. _____
- iii. _____
- iv. _____
- (d) the date of each such disposition:
- i. N/A
- ii. _____
- iii. _____
- iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. N/A
- ii. _____
- iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. N/A

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. N/A

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) N/A

(b) _____

(c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? Yes

(b) your trial, if any? Yes

(c) your sentencing? Yes

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? Yes

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

i. William S. Harris, 180 Spring St., Charleston, SC 29403 and Jason T. Mikel,

321 Wingo Way, Ste. 201, Mt. Pleasant, SC 29464

ii. Stephen V. Futeral and Thomas C. Nelson, P. O. B0x 1543, Mt. Pleasant, SC
29465-1543

iii. C. Rauch Wise, 305 Main St., Greenwood, SC 29646

(b) the proceedings at which each such attorney represented you:

i. Trail of case

ii. Appeal of case

iii. Preparation of this Post Convictino Relief Petition

19. State clearly the relief you seek in filing this application:

A new trial on all charges

20. Are you now under sentence from any other court that you have not challenged?

No

STATE OF SOUTH CAROLINA

)
)
)

VERIFICATION

County of McCormick

I, Jerome Campbell, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

SWORN to and subscribed before me this _____
day of _____, 2_____.

(L.S.)

Notary Public

My Commission Expires: _____

Revised 3/2003

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, _____, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Applicant

SWORN or affirmed to and subscribed before me this
_____ day of _____, 2____.

Notary Public

My Commission Expires: _____

Revised 3/2003

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	
	)	
	)	2014-CP-10-3019
	)	
Jerome Renaldo Campbell, #349454,	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

The Respondent, making its Return to the application for post-conviction relief (PCR) filed May 12, 2014, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. The Applicant was indicted at the September 2009 term of the Charleston County Grand Jury for murder (2009-GS-10-6731) and four (4) counts of assault with intent to kill (AWIK) (2009-GS-6730, -6732, -6733). The Applicant was represented by William S. Harris, Esquire, and Jason Todd Mikell, Esquire.

On January 23-27, 2012, the Applicant proceeded to trial and was found guilty. The Applicant was sentenced by the Honorable Deadra L. Jefferson to confinement for a period of thirty (30) years for murder and ten (10) years for each AWIK. The Applicant's sentences are to be served concurrently.

The Applicant filed a timely Notice of Appeal. His appeal was perfected by Stephan Futeral, Esquire, and Thomas Nelson, Esquire. The Applicant's convictions and sentences were

affirmed by the Court of Appeals. State v. Campbell, No. 2014-UP-338 (S.C. Ct. App. August 7, 2013). The Applicant filed a Petition for Rehearing which was denied on October 23, 2013. The Remittitur was issued on December 2, 2013.

Attached herewith and incorporated herein are the records of the Charleston County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, and the Applicant's appellate records. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
 - a. Trial counsel was ineffective in that he failed to object to the trial judge charging the law of aiding and abetting when the indictment only alleged the applicant acted as a principal.
 - i. The indictment in this case only charges that the applicant acted as a principal. At the end of trial, without objection from trial counsel, the trial judge charged the jury as to the law of aiding and abetting. The indictment did not give the applicant notice that he could be tried for aiding and abetting and therefore is in violation of Article I, §§3 and 14 of the Constitution of the State of South Carolina and the due process clause of the Fourteenth Amendment to the Constitution of the United States of America.
 - b. Trial counsel was ineffective in that he failed to investigate and establish that the cell phone found in the automobile was not an operational cell phone. The prosecuting attorney made reference to the cell phone in his closing argument to establish that the applicant could have been sitting in the back seat of the automobile from which the bullets were allegedly fired.
 - i. During closing arguments the prosecuting attorney made reference to a cellphone found in the back seat of the automobile. This cellphone was not useable. Had trial counsel properly investigated the case, testimony could have been presented that showed that the cell phone was not operable and had not been operable for some time. The claim by the state that the cellphone belonged to the applicant and therefore the

applicant had been in the back seat of the automobile was prejudicial to the applicant and not factually correct.

- c. Trial counsel failed to adequately develop an alibi defense for the applicant when the facts established that such defense had been established under the facts of the case as proven by the state.
 - i. The testimony presented by the state established that the applicant turned himself in to the police on James Island and his automobile was found some distance away in the West Ashley area of Charleston, SC. Trial counsel did not investigate how applicant traveled to James Island and therefore was not effective in investigating the case.
- d. Trial counsel failed to develop a coherent theory of defense for use at trial.
 - i. At no time did trial counsel develop a coherent theory of defense in this case. Trial counsel apparently sought to defend the case on some alibi and some self-defense. Had trial counsel properly interviewed all witnesses he would have been able to establish an alibi defense for the applicant.
- e. Trial counsel failed to properly investigate the case as to witnesses who testify about threats against the applicant.
 - i. Trial counsel ailed to investigate threats that had been made against the applicant by one or more individuals who were involved with the victim. Had these witnesses been investigated, the evidence would have established a motive for the witness to lie about the applicant.

III.

The Applicant alleges he received ineffective assistance of counsel. In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel

rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Each and every allegation contained within the application not herein before either expressly admitted, qualified or explained is hereby denied.

V.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

[Signature on the following page.]

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

ASHLEIGH R. WILSON
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

March 4, 2015

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF CHARLESTON) Court of Common Pleas
3 _____) Case No. 2014-CP-10-3019
4 JEROME RENALDO CAMPBELL,)
5 Applicant,)
6 vs.) Transcript of Record
7 STATE OF SOUTH CAROLINA,)
8 Respondent.) DATE: January 12, 2017
9 _____)

10 B E F O R E:

11 THE HONORABLE WILLIAM SEALS

13 A P P E A R A N C E:

14 C. RAUCH WISE
15 Attorney for the Applicant

16 ALICIA OLIVE
17 Attorney for the Respondent

18 Karen V. Andersen, RMR, CRR
19 Circuit Court Reporter

25

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1 THE COURT: Which one do we want to do first?

2 MS. OLIVE: We are going to do Jerome Campbell.

3 MR. WISE: Your Honor, I would like to hand up to
4 the Court an amended PCR. We've changed allegations. I've
5 sent a copy, I think, earlier this week, if not last week.

6 MS. OLIVE: I received it earlier this week. No
7 objection.

8 MR. WISE: That eliminated some and added some.
9 They are basically more legal issues.

10 THE COURT: Go ahead and call the case. Introduce
11 it.

12 MS. OLIVE: Thank you, Your Honor. May it please
13 the Court. This is Jerome Campbell, 2014-CP-10-3019.
14 Mr. Campbell was indicted in September of 2009 for murder and
15 four counts of assault with intent to kill. He was
16 represented on those charges by William Harris and Jason
17 Mikell. He proceeded to trial on January 23rd through 27th,
18 2012, after which he was found guilty.

19 He was sentenced by Judge Jefferson to imprisonment
20 for 30 years for murder and 10 years for each count of the
21 assault with intent to kill. Those were to be served
22 concurrently.

23 He filed a timely notice of appeal. His appeal was
24 perfected and his conviction of sentence was affirmed by an
25 unpublished opinion dated August 7th, 2013. He filed a

1 petition for rehearing, which was denied on October 23rd,
2 2013. The remittitur was issued on December 2nd, 2013.

3 He filed this application on May 12th, 2014,
4 alleging ineffective assistance of counsel. And as Mr. Wise
5 just stated, he has amended that application. And Your Honor
6 has that before him.

7 Mr. Campbell is present in the courtroom today and
8 represented by Rauch Wise. I will turn it over to Mr. Wise.

9 MR. WISE: Mr. Harris is going to be our first
10 witness. And he is in the restroom. We basically allege
11 that the -- in the amended petition, that there was some
12 charges to the jury that we think were improper. They deal
13 with the charge of aiding and abetting. They deal with the
14 charge of mutual combat. And they deal with the charge of
15 failure to charge defense of others. Gave a self-defense
16 charge, but did not charge the "defense of others", which we
17 think prejudices the defendant in this case.

18 Mr. Harris should be back shortly.

19 THE COURT: Okay.

20 MR. WISE: In lieu of Mr. Harris, actually, we can
21 start with the applicant.

22 THE COURT: Come around.

23 JEROME CAMPBELL,

24 having been duly sworn, testifies as follows:

25 THE CLERK: Sir, for the record, if you will please

1 state your name, spelling your last name.

2 THE WITNESS: Jerome Campbell, C-a-m-p-b-e-l-l.

3 DIRECT EXAMINATION

4 BY MR. WISE:

5 Q. Mr. Campbell, where are you from?

6 A. Charleston, South Carolina.

7 Q. And where were you born?

8 A. Right here in Charleston.

9 Q. In Charleston?

10 A. Yes, sir.

11 Q. And how long did you live in Charleston?

12 A. All my life, 17 years before I went to school.

13 Q. Before you went to school? And where did you go to
14 school?

15 A. I went to college -- I started off at Anderson
16 College.

17 Q. How did you go to Anderson College?

18 A. Well, I was recruited for basketball. I actually
19 wasn't on a scholarship. I ended up walking on and,
20 eventually, I earned a scholarship.

21 Q. And then after that, where did you go?

22 A. I transferred to Spartanburg Methodist College.

23 Q. That was a junior college also?

24 A. Yes, sir. That's where I earned my associate's
25 degree.

1 Q. After --

2 A. After --

3 Q. -- where did you go?

4 A. Actually, I got recruited for a basketball
5 scholarship by several schools. And I chose the University
6 of South Alabama. I went there '96-'97, '97-'98. I played
7 basketball two years there. And actually graduated with a
8 bachelor's degree in business administration in '99.

9 Q. You've had the rare distinction of playing in a
10 couple of tournament games?

11 A. Yes, sir. I had a chance to play in the NCAA
12 tournament two years. First year we actually got to play
13 against the national champs, Arizona, first round of term.
14 Yes, sir.

15 Q. Did you graduate from South Alabama?

16 A. Yes, sir.

17 Q. After you graduated, don't go into great detail, but
18 generally, what did you do?

19 A. I moved back to Charleston, worked a few jobs, kind
20 of searching for a career. It didn't pan out. Made a couple
21 of calls back to South Alabama. My coach helped me get a job
22 at an engineering firm back in South Alabama. I moved back
23 there, worked that for a while. It didn't work out. Ended
24 up moving back to Charleston and stayed there for a couple of
25 years, worked a couple of jobs, you know.

1 Actually, after I graduated, when I moved back to
2 Charleston, I actually got back with my then-girlfriend, now
3 wife.

4 Q. She's here in the courtroom?

5 A. Yes, she's here, yes.

6 Q. On the far end on the right?

7 A. Yes, sir. So I worked a couple of jobs. We got
8 back together. And, eventually, I worked at the Boys and
9 Girls Club as a unit manager in Mount Pleasant for a while.
10 And eventually moved to Charlotte. My dad got sick in around
11 2004, 2005. And my wife, she moved to Charlotte and I stayed
12 around. My dad eventually passed, and I moved to Charlotte
13 with her.

14 Q. Where did you work in Charlotte?

15 A. Actually, I started off working as a one-on-one
16 counselor working with kids, you know, still searching for
17 that career job. And then I got into mortgages. I worked
18 for Ameriquest Mortgage for a while. And, eventually, I
19 ended up at Wachovia Bank.

20 Q. And how long had you been at Wachovia Bank when this
21 incident occurred?

22 A. About three years.

23 Q. Okay.

24 A. I was working there when I got -- when this
25 happened.

1 Q. Let's go back and focus a little bit more on this
2 incident. You didn't testify at the trial?

3 A. No, sir.

4 Q. Okay. Do you know the background behind this
5 incident? I assume you do.

6 A. Well --

7 Q. Part of it anyway.

8 A. Yeah. I could remember coming to Charleston and,
9 you know, just hanging out with my friends, hanging out in
10 the yard, like I normally do.

11 Q. Let me back up. Why were you in Charleston? This
12 was in January?

13 A. January, 2009. I believe I ran out of paid time off
14 at the bank. And I believe either was the first time I could
15 get off or I had a new paid time off. It was the first
16 weekend. I didn't get to go home for the holidays in 2008.
17 So I wanted to go down to see my family. So I did go down.
18 I had that planned for actually about a week.

19 Q. So when this occurred, you were living where?

20 A. In Charlotte.

21 Q. In Charlotte?

22 A. Yes.

23 Q. And had been there about how long?

24 A. About six years, six years or so.

25 Q. Go ahead.

1 A. Okay. And I really didn't remember how everything
2 started, but I thought back to while I was in Charlotte to a
3 conversation that I had with my mom on the phone. And she
4 was talking to somebody in the background. It was Michael
5 Allen. And they were having words, her and my sister. Him
6 and my sister actually had, you know, something going on, a
7 feud between them. And I never actually talked to Mike on
8 the phone, but I knew -- I kind of asked my mom what was
9 going on. And I did tell her I would be down there, because
10 I had already planned on coming down here.

11 So I go down there. I go down to Charleston, doing
12 my normal routine. I stay across the street from a store.
13 And where I'm located at --

14 Q. When you say you stay across the street from a
15 store, who actually lives there?

16 A. My mom.

17 Q. Your mother's house?

18 A. Uh-huh, my mamma's house.

19 Q. When you come back to Charleston, you stay with your
20 mother?

21 A. Yes, sometimes my mom; sometimes my sister. So I'm
22 actually across the street from the store. And we would come
23 back in the yard, me and a couple of friends, because we
24 would all get together. Sometimes there would be maybe 10,
25 15 of us in my mom's yard having a good time. You know what

1 I'm saying? Friends hadn't seen me in a while and they would
2 stop by.

3 So that particular day, it was me and Aaron Burn
4 (ph), a friend of mine, we were hanging together.

5 Q. Is he kin to you?

6 A. Yes, uh-huh. And that is when I -- I actually
7 received a text message from my sister saying -- from Michael
8 Allen that she forwarded to me.

9 Q. There was testimony about that at the trial too?

10 A. Yes, uh-huh. Uh-huh. Saying that -- so I got the
11 text message. And I really didn't think anything of it right
12 then, because I really didn't know where it was coming from,
13 because I never actually talked to him up until -- we never
14 had a heated argument or anything. So I received the text
15 message, and I kind of shrugged it off.

16 Going back, when I first got home, normally what I
17 do is, I get with all my nieces and nephews and I get them
18 all together. And sometimes I will take them to Walmart or I
19 will take them to Burger King or whatever the case might be.
20 Having a new niece, my niece, she just had a baby and I
21 wanted to see her, but I already heard that they were
22 feuding.

23 Q. When you say "they", I'm sure the judge is not
24 up-to-date on who "they" are.

25 A. Okay. I guess my sister, something to do with the

1 baby and them wanting to see the baby --

2 Q. Who was your sister married to?

3 A. My niece was married to Anthony German.

4 Q. That was the brother of the man that was killed?

5 A. Yes, sir, uh-huh. I don't know the extent of what
6 was going on, but I knew I wanted to see my niece, my new
7 grandniece or whatever. So I called him. And he was saying,
8 basically, no, that ain't going to happen. And I'm asking
9 him why. And he said he didn't have to explain. And we had
10 a couple of words. I hung the phone up. He called me back
11 saying something. And I hung the phone up on him again.
12 That was pretty much the only conversation I ever had with
13 him.

14 Q. Okay.

15 A. And that's it. So we were carrying on with our day,
16 about to have a good time out in the yard. Then I get a call
17 from my sister saying that --

18 Q. Who is your sister?

19 A. My sister is Cheryse Coaxum. She's married to
20 Michael Allen.

21 Q. She's married to Michael Allen, who is one of the
22 witnesses in this case?

23 A. Yes, sir. Saying that Michael Allen and the Germans
24 and Frank all were over there looking for me and making
25 threats --

1 Q. When you say "over there", over where?

2 A. I'm sorry. My sister's house.

3 Q. And that's where?

4 A. That's West Ashley. I'm on James Island at my mom's
5 house. They over there at West Ashley.

6 Q. And your sister's house was what apartment complex?

7 A. That was, I think, the Plantation apartment complex,
8 yes, sir, uh-huh.

9 Q. You get a call saying they are over at the
10 Plantation?

11 A. Yes, looking for me.

12 Q. What did you do?

13 A. I kind of ignored it at first. Then I got another
14 call from my other sister saying that they were over there
15 looking for me. And I kind of didn't, you know, pay it any
16 attention. But, so, basically, what we did was, we rode
17 over, me and Aaron Burn, we rode over there. We rode over
18 there. We rode through --

19 Q. Anybody in the car with you?

20 A. Not at this point.

21 MS. OLIVE: Your Honor, I'm going to object to the
22 testimony, because it's not germane to the issues presented.
23 Mr. Campbell didn't testify at trial. We have to go by
24 what's in the record.

25 THE COURT: Sustained. Let's go ahead and get to

1 the facts and allegations.

2 BY MR. WISE:

3 Q. You ultimately were charged?

4 A. Yes, sir.

5 Q. And who did you hire as your lawyer?

6 A. Steven Harris.

7 Q. Steven who?

8 A. Steven Harris.

9 Q. And did you meet with him?

10 A. Yes, sir.

11 Q. And you are not here complaining that he didn't meet
12 with you enough, are you?

13 A. No, I met him.

14 Q. You had a pretty good relationship with him?

15 A. Yes, sir. Yes, sir.

16 Q. Now, during the trial, there was some -- there was a
17 comment about some of the jury charges?

18 A. Yes, sir.

19 Q. And did he raise any objection to some of the jury
20 charges that you perhaps think should have been raised?

21 A. No, sir.

22 Q. And I believe you and I discussed the charge about
23 mutual combat.

24 A. Yes, sir.

25 Q. And was there objection raised to that?

1 A. No, sir.

2 Q. And what do you understand there about mutual combat
3 and why it's not right?

4 A. From what I understand, it's when two people have an
5 agreement to meet up somewhere and, say, have a gun fight or
6 knife fight, or they agree that we both taking part in this,
7 we are going to meet up and duke it out. That's what I
8 understand.

9 Q. Is that consistent or inconsistent with
10 self-defense?

11 A. Inconsistent.

12 Q. And also during the course of the trial, there
13 was -- you were originally indicted in an indictment -- let
14 me back up.

15 Did your indictment allege that you aided and
16 abetted anybody?

17 A. No, sir.

18 Q. The indictment alleged what?

19 A. That I killed somebody with malice aforethought.

20 Q. Did you ever shoot a gun that day?

21 A. No, sir.

22 Q. Now, there was also a charge about the "hand of one
23 is the hand of all"?

24 A. Yes, sir.

25 Q. Did you ever that day ever agree with anybody to do

1 any shooting?

2 A. No, sir.

3 Q. Encourage anybody to do any shooting?

4 A. No, sir.

5 Q. Was there any real evidence that you encouraged
6 anybody to do any shooting?

7 A. No, sir.

8 Q. There was no objection to that?

9 A. No, sir.

10 Q. Also, there was a charge to the jury about if
11 someone, not you, but if someone else fired a shot, and that
12 she did not charge what we call the "defense of others". Do
13 you remember that?

14 A. Yes, sir.

15 Q. She did charge self-defense?

16 A. Yes, sir.

17 Q. Was there some testimony in the trial that would
18 lead a reasonable jury to conclude that someone may have shot
19 from the group that was by the store?

20 A. Yes, sir.

21 Q. And that was placed --

22 A. From video.

23 Q. Video, sound on the video?

24 A. Sound, yes, sir.

25 Q. And also, was there gunshot residue testimony --

1 A. Yes.

2 Q. -- on the hands of any of the people at the store?

3 A. I believe on two people at the store.

4 Q. And no gun was found -- well, a gun was found at the
5 store, but they say it was not operable?

6 A. Correct.

7 Q. And there was no objection to -- there was no
8 objection to charging -- excuse me.

9 There was no objection to the trial judge not
10 charging that "defense of others" could be part of
11 self-defense?

12 A. Correct.

13 Q. And do you think that was important?

14 A. Yes, sir.

15 Q. And if those charges had been made, do you think it
16 could have been affected the outcome of the trial?

17 A. Yes, sir.

18 Q. Now, on June -- January of 2009, when this occurred,
19 you never shot anybody?

20 A. No, sir.

21 Q. Ever plan on shooting anybody?

22 A. No, sir.

23 Q. Ever involved in shooting anybody?

24 A. No, sir.

25 Q. Who was in the car with you when you all left the

1 scene?

2 A. It was Aaron Burn and John Watson.

3 Q. John Watson?

4 A. Yes, sir.

5 Q. And was there testimony at the trial about other
6 individuals being with you that day?

7 A. Yes, sir.

8 Q. I believe at the Plantation --

9 A. Yes, sir.

10 Q. -- Apartments; is that correct?

11 A. Yes, sir.

12 MR. WISE: Thank you. Answer any questions the
13 State may have.

14 MS. OLIVE: Thank you, Your Honor. May it please
15 the Court.

16 CROSS-EXAMINATION

17 BY MS. OLIVE:

18 Q. Do you recall your attorney did actually make -- he
19 did actually ask the judge to charge the "defense of others";
20 do you remember that?

21 A. I don't recall.

22 Q. Would you agree if it appears in the record that it
23 happened?

24 A. Yes, if it appears in the record.

25 MS. OLIVE: And for Your Honor's reference, I'm

1 referring to pages 660 through 669 of the trial transcript.

2 BY MS. OLIVE:

3 Q. Do you remember the judge decided that she was not
4 going to charge "defense of others"?

5 A. She did?

6 Q. She decided she was not going to charge "defense of
7 others"; do you remember that?

8 A. I don't recall. I don't have that in front of me.

9 Q. Going to trial, you knew that you were charged --
10 you knew what charges you were facing going to trial?

11 A. Yes, sir, as far as what the indictment says, yes,
12 sir -- yes, ma'am. I'm sorry.

13 Q. And there was testimony at trial that there were
14 others with you? There were several people that were -- at
15 least two people that had guns, right?

16 A. Yes, there was testimony at trial.

17 Q. Frank Heyward had testified that there were two
18 people with shotguns; do you remember that?

19 A. Yes, ma'am.

20 Q. And you had the opportunity to testify at trial and
21 tell the jury that you never shot anyone that day?

22 A. Yes, ma'am.

23 Q. You didn't?

24 A. No, ma'am.

25 MS. OLIVE: Thank you. That's all the questions I

1 have.

2 THE COURT: Any redirect?

3 MR. WISE: I don't have any redirect, Your Honor.

4 WILLIAM HARRIS,

5 having been duly sworn, testifies as follows:

6 THE CLERK: Sir, for the record, if you will please
7 state your name, spelling your last name.

8 THE WITNESS: William Steven Harris, last
9 H-a-r-r-i-s.

10 DIRECT EXAMINATION

11 BY MR. WISE:

12 Q. DID you represent Jerome Campbell?

13 A. I did, yes.

14 Q. I believe we talked about this case earlier.

15 A. Yes, sir.

16 Q. About a year's or so ago?

17 A. About a year, yes.

18 Q. Unfortunately, the file was not available?

19 A. Right. I moved offices from a historic building in
20 downtown to another historic building downtown, and we lost
21 some files in that move based on -- I can't remember if it
22 was water or just damage, but I believe this was one of
23 them.

24 Q. Notwithstanding that, how is your recall of this
25 case?

1 A. A case like this, very well. It really is. It is
2 one of the cases that the outcome upset me personally, so I
3 remember it well.

4 Q. Now, I'm going to ask you a little background
5 questions about this. In this case, what was the testimony
6 about a shooting by the people by the store? For the judge's
7 identification, this was a shooting that occurred from a car
8 speeding out of an apartment complex?

9 A. Yes, sir.

10 Q. And the victim was over by a store?

11 A. He was standing by the wall at a gas station in West
12 Ashley, yes, sir.

13 Q. He was wounded with a ricochet bullet?

14 A. That's what the State was claiming, yes.

15 Q. And there's some evidence of that, that the bullet
16 was badly mangled?

17 A. Badly mangled and there's a big hole in a brick wall
18 right next to it. But, again, that was their expert's
19 testimony, yes.

20 Q. Was there evidence that the shooting could have
21 occurred -- could have been made by the people standing by
22 the store?

23 A. Evidence that could have been made by them? They
24 all had gunshot residue on their person in some way.

25 Q. Did anybody have any gunshot residue on their hand?

1 A. Yes.

2 Q. Did the State try to explain that away?

3 A. They did.

4 Q. And what was their explanation?

5 A. That the bullet from the gun in a car 80 to 100 feet
6 away, if I remember correctly -- I haven't refreshed on the
7 case. I've been extremely busy. I apologize. -- 80 to 100
8 feet away, I believe, that the residue stayed on the bullet;
9 the bullet hit the wall and the gunshot residue sprinkled
10 down from the wall onto his shooting hand.

11 Q. You weren't on the jury, but is that credible?

12 A. Not at all, from what I know, no.

13 Q. Now, Mr. Campbell did not testify?

14 A. He did not.

15 Q. I think you urged him to?

16 A. I did. And can I clarify that answer?

17 Q. Sure.

18 A. I urged Jerome to testify, Mr. Campbell to testify.

19 The way this trial was going and had gone with certain
20 things, there were certain parts of this -- and stop me if
21 I'm expanding too much.

22 Q. She will do it. Don't worry.

23 A. Sorry?

24 Q. She will stop you. Don't worry.

25 A. Okay. There was a point I felt that he had a story

1 to tell. And on a defense-strategy type of way, I also
2 didn't want him to open himself up to certain things.
3 Because when a client testifies, they are opening themselves
4 up. They can tell their story, but they are opening
5 themselves up to the prosecutor asking them about things that
6 may not be related to that. And there's parts of it that I
7 don't believe at the time he wanted to disclose. And under
8 oath, he would have to do that on the stand. So that was a
9 decision that was made.

10 Q. That part was relatives --

11 A. That part was who really shot the person.

12 Q. Relatives of his?

13 A. Yes.

14 Q. Now, during the course of the trial -- let me back
15 up a second. If there was testimony that would lead a
16 reasonable jury to believe that shots were fired by the
17 people at the store, was that the basis on which you got the
18 self-defense charge?

19 A. Yes.

20 Q. And during the charge conference, the judge urged --
21 and you've got the transcript?

22 A. I do.

23 Q. The judge said they were not going to charge
24 "defense of others"?

25 A. Right.

1 Q. And that's on page 669, line 15 through 18 of the
2 transcript.

3 A. You want me to read that?

4 Q. You don't have to read it, but is that correct?

5 A. Yes.

6 Q. After she said that, do you recall on the following
7 pages making a real objection to that charge, statement on
8 that fact?

9 A. From me? I don't see an objection from me.

10 Q. At the end of the testimony -- excuse me, end of the
11 charge to the jury, does the record also reflect there was
12 not another objection made?

13 A. Right.

14 Q. Now, Mr. Campbell was indicted. In his indictment,
15 they allege that he did the shooting?

16 A. I'm sorry?

17 Q. In the indictment, they allege that he did the
18 shooting?

19 A. Yes, yes.

20 Q. The indictment did not allege that he was part of a
21 conspiracy or "hand of one is the hand of all" or anything
22 like that?

23 A. No.

24 Q. When the State went on the theory of "hand of one is
25 the hand of all", did you make an objection that that wasn't

1 what the indictment said?

2 A. Does the record reflect that?

3 Q. No?

4 A. No.

5 Q. In your defense, that's probably the law in South
6 Carolina, just whether or not it should be the law in South
7 Carolina?

8 A. Right. And I think -- again, I think I flashed back
9 to that point to my public defender days and remembered that
10 that's a fruitless argument.

11 Q. The judge did charge "hand of one is the hand of
12 all", correct?

13 A. Yes.

14 Q. Was there any real testimony of a conspiracy or an
15 agreement between Mr. Campbell and the other two people in
16 the car to do a shooting together?

17 A. No.

18 Q. No, there wasn't?

19 A. No. If I recall correctly, there was testimony
20 about some confrontations that happened earlier in the day,
21 earlier in the hour. And there was some -- Jerome was
22 selling shoes out of a car. And there was a problem with his
23 niece being -- who was underage -- being with an adult, is
24 what I remember it being about.

25 Q. And, obviously, the two people in the car,

1 Mr. Campbell didn't testify?

2 A. Right.

3 Q. But you didn't raise an objection to the charge of
4 "hand of one is the hand of all"?

5 A. I did not.

6 Q. Now, also, there was a charge on mutual combat?

7 A. Yes.

8 Q. Do you know -- and I believe the mutual combat
9 charge is found on page 759, if you turn to it. Do you
10 remember that, lines 11 through 13?

11 A. Yes.

12 Q. All right. Did you raise an objection to mutual
13 combat?

14 A. No, I did not. And this is -- let me see. I don't
15 know if I took -- was there -- this is again -- yeah, I
16 didn't object there. But was there anywhere in the record
17 that reflects a, "Your Honor, may I approach?"

18 Q. Not that I recall, but don't hold me to it either.
19 Did you request a charge of mutual combat?

20 A. No. I requested the self-defense charge, if I
21 remember correctly. And after she gave the self-defense
22 charge, I regretted asking for the self-defense charge
23 because of the way she worded it.

24 Q. Because of the "mutual combat" in there?

25 A. Yes. Because it made it sound like, if it wasn't

1 self-defense, then they had to find him guilty. The way she
2 phrased it was -- and if it's -- because that's the one
3 problem I walked away from, just trying to figure out why it
4 was phrased that way, why you put those two things together.

5 Q. Are you familiar with the case of *State v. Taylor*
6 decided in 2002?

7 A. Can you refresh me on it? I'm sure I am.

8 Q. I will give it to you to review it. And the cite on
9 that, for the record, is 356 S.C. 227, 589 S.E. 2nd 1.

10 A. Is this the case where the weapon's presumed --

11 Q. No. That's the one where the court said you don't
12 charge mutual combat and self-defense at the same time.

13 A. Okay. No, I am not. Obviously, if I was familiar
14 with this case, I could have made a better argument on that.
15 But, no, I wasn't familiar with this case.

16 Q. Now, do you believe that the mutual combat charge in
17 with self-defense confused the jury?

18 A. Yes. That was -- like I said, that was the -- one
19 of the bigger problems I had with the charge the way it was.
20 I believe I spoke to the appeals lawyer on that. That's why
21 I was asking if I could ask to approach, because I know that
22 you can't have a speaking objection in front of the judge
23 that we have on the bench there. I tried many cases in front
24 of Judge Jefferson, and you can't have a speaking objection.
25 You have to approach. So I don't know -- again, I remember

1 saying something to her. I don't remember what it was, but
2 it was probably at the bench, because the jury was seated and
3 those don't go on the record. So I don't know what was said.
4 I can't recall what was said.

5 Q. But with no real evidence of Mr. Campbell acting in
6 concert with others in the car, do you think the judge -- you
7 should have objected to the charge of "hand of one is the
8 hand of all"?

9 A. In hindsight, yes.

10 Q. And you did not object. While you suggested that
11 she charge "hand of one is the hand of all", when she refused
12 to do it, you didn't make an objection to that, according to
13 the record?

14 A. When I suggested she charge "hand of one is the hand
15 of all"?

16 Q. You made a suggestion about it on page -- let me see
17 if I can find it.

18 A. I thought I suggested that she make this a "defense
19 of others".

20 Q. Right, on page 661, line 16 through 22.

21 A. Right. Well, if you look at 660, again, this is --
22 she had just -- I don't want to say embarrassed me, but
23 intentionally brought up that she has a tendency of lawyers
24 not to answer questions. And if you said -- kind of asked
25 me, like, what I was basically asking. And I said, yes, I'm

1 asking you to charge that this is "defense of others". This
2 is not just the alter ego part of it, this is "defense of
3 others".

4 And, again, she said, you are not answering my
5 question. And that's when I tried to go through without
6 giving up my defense -- my closing arguments, I tried to go
7 through and tell what we were going to be arguing.

8 Q. But after she ruled that she wasn't going the charge
9 that, you didn't raise -- you didn't raise an objection?

10 A. No, I did not.

11 Q. And, certainly, did not raise it in the end of the
12 jury argument either?

13 A. No, I did not.

14 Q. And was that prejudicial to Mr. Campbell with her
15 not charging that?

16 MS. OLIVE: Your Honor, I object. That's a legal
17 conclusion.

18 THE COURT: Sustained.

19 MR. WISE: Excuse me?

20 THE COURT: Sustained.

21 MR. WISE: I don't think it's a legal conclusion,
22 but it is a factual conclusion under his view of the facts.

23 THE COURT: Rephrase your question. Let me hear
24 it.

25 BY MR. WISE:

1 Q. You were at the trial, obviously?

2 A. Uh-huh.

3 Q. Do you have an opinion as to whether or not her not
4 charging "defense of others" was prejudicial to your case?

5 THE COURT: I think that's my decision, not his.

6 MR. WISE: Well, let me rephrase it.

7 BY MR. WISE:

8 Q. When she failed to charge "defense of others", did
9 that hurt your closing argument?

10 A. Yes.

11 Q. And why is that?

12 A. Because I couldn't make that argument, that I had to
13 make the argument under the alter ego rule, which the alter
14 ego rule, you basically have to admit that person. Again,
15 it's one where we never said who that person was. We were
16 arguing that it's based on it being a stranger, because we
17 didn't have testimony on who the shooter was. So to say, I'm
18 stepping in as the alter ego under self-defense for this
19 person, you need -- you have to know what's in that person's
20 mind. But under "defense of others", you -- the rule -- I
21 mean, the test, the four-part test is not stripped on
22 "defense of others" as it is alter ego under the self-defense
23 rule.

24 And that's why, yes, I think it was different,
25 because that's why I made the argument to her. And she

1 rejected it.

2 Q. You listened to the audiotape in this case?

3 A. Yes.

4 Q. And, unfortunately, lost your copy that you had?

5 A. Yes.

6 Q. From listening to the audiotape, where does it sound
7 like the shots were first fired from --

8 A. From the --

9 Q. -- and why do you say that?

10 A. It's in my closing and was in the evidence I
11 presented and my expert presented. The shots, the noise of
12 the shots, is two specific loud booms. There's a camera
13 right by the gas station. So they can pick up what's going
14 on right by the cash register, two loud booms. Then you hear
15 a faint "pop, pop", which is what we argued, what I believe
16 the evidence showed, was a person shooting from right under
17 the camera, "bam, bam," and then two shots firing back.

18 And that was 95 percent of the reason we argued
19 self-defense in this case and "defense of others", was they
20 were being shot at first.

21 Q. So your argument about the "defense of others" would
22 have been what exactly?

23 A. That even if you don't know the person sitting there
24 that's being shot at, even if you didn't shoot back, that
25 whoever was shooting back to defend the people in that car

1 was immune from prosecution.

2 Q. And that would have been your argument?

3 A. Yes.

4 Q. You were not able to make that argument?

5 A. I was not.

6 MR. WISE: Thank you. Answer any questions the
7 State may have been.

8 THE COURT: Cross.

9 CROSS-EXAMINATION

10 BY MS. OLIVE:

11 Q. But you did request the "defense of others" charge,
12 right?

13 A. I did.

14 Q. And the judge simply refused to charge it?

15 A. Yes.

16 Q. Do you recall whether you objected to the mutual
17 combat charge?

18 A. Is it in the record? I'm just asking because that
19 one I don't recall. And if I can explain, you know, I don't
20 know how -- I haven't done one of these in five years.

21 Different judges do different things. I've tried a
22 lot of cases in front of the ones here in Charleston, Judge
23 Jefferson, Judge Dennis, Judge Young. Judge Jefferson has a
24 lot of different rules than other judges.

25 On a defense, strategy-wise, I don't like to make

1 her angry by continuously objecting or continuously bringing
2 things up. She won't let you renew objections, for instance,
3 after the case in chief. She says, don't worry, it's covered
4 if you do it. So I don't recall if I did. And I don't
5 recall why I wouldn't have. It may have had something to do
6 with that, because when I'm trying to get things -- I was in
7 sales for a long time. When I'm trying to get something in,
8 I try not to make the person mad that I'm trying to sell
9 something to.

10 Q. So you have no specific recollection of why you
11 would not have objected to the mutual combat charge?

12 A. No. And looking at the transcripts, it's probably
13 because, like I said, she had just kind of read me the riot
14 act on why I didn't answer specifically "yes" to a question
15 she asked, as opposed to giving my version of the answer,
16 according to her. So I don't know if it was because I was
17 flustered or what. I have no idea. Like I said, it looks
18 like I was a little flustered, to be honest at that point.
19 Because she's basically comparing me to every other lawyer in
20 town and why I'm not answering the question.

21 Q. Did you see any reason to object to the "hand of one
22 is the hand of all" charge?

23 A. Based on facts, yes. I didn't, but based on the
24 facts, yeah. Again, hindsight, I should have objected to the
25 "hand of one is the hand of all" charge.

1 Q. What would --

2 A. What would my reason be?

3 Q. But you didn't object at the time?

4 A. No.

5 Q. Do you know why?

6 A. It would be a guess, a little bit of recollection on
7 why. A lot of it had to do with the fact that we didn't have
8 testimony on who the actual shooter was. So if you are
9 arguing in a case where you don't have the person that's the
10 shooter -- everybody in the room, including the prosecutor,
11 knew he was not the shooter. The prosecutor even told me
12 that. So when you don't have the shooter and you are saying,
13 if this person did this for this reason, it's hard to make
14 objections because you don't have backup -- you are using a
15 hypothetical individual. And you are trying to get into
16 their mind. But you don't know what's in their mind because
17 you don't know who they are.

18 So that's probably the reason I didn't object to
19 "hand of one", because I would get questions like, well, how
20 do you know he didn't collude with this person, we don't even
21 know who that person is. So it might have been summarily
22 objected, like my "defense of others".

23 Q. But there was some testimony presented at trial.
24 Testimony was that this car drove by and there were three
25 individuals in the car?

1 A. Uh-huh.

2 Q. And at least one person in the car shot?

3 A. Right.

4 Q. And there was also testimony that Mr. Campbell
5 earlier in the day had driven by, I believe it was Frank
6 Heyward's house or somewhere where Frank Heyward was, in that
7 same car. And Frank testified that he saw what he thought to
8 be a gun pointed out of the car. And Mr. Campbell said
9 something from the car and he ducked down. Do you remember
10 that?

11 A. I do recall that. And can I explain why I didn't
12 think that mattered? Because I thought we had presented
13 Frank Heyward as a compulsive liar.

14 Q. But in terms of what to charge to the jury --

15 A. Right. I understand that.

16 Q. -- you have to go by what evidence is presented at
17 trial, right?

18 A. I understand, yeah. And I want to say in closing,
19 we talked about Mr. Heyward pretty regularly. I can't
20 remember if we did or not, but I do remember talking about --
21 you know, like I said, this was -- I don't know how many
22 years ago now.

23 Q. So based on that fact that the evidence was
24 presented at trial, do you believe that an objection to "hand
25 of one is the hand of all" charge would have been successful?

1 A. Would have been successful?

2 Q. I mean, right, do you think that Judge Jefferson
3 would have --

4 A. On my legal basis, a person saying somebody came by
5 with a gun earlier in the day, does that mean that they
6 planned to go out and kill somebody that night? I think
7 that's a jury question.

8 Q. Right. Exactly. But it is evidence that can go
9 towards proving the elements of what he's charged with,
10 right?

11 A. I mean, again, that's concluding what the judge
12 would do. I know the judge would have denied it if I would
13 have asked for it, but just because -- again, I know the
14 judge I'm in front of. I know I'm going to get denied.
15 Hindsight, I should have. I don't know if I would have been
16 successful or not.

17 Q. Okay. And in your directed verdict motion, you did
18 argue that there's no one that said they saw Mr. Campbell
19 fire a gun?

20 A. Right. I said that? Is that in there?

21 Q. Yes.

22 A. I didn't think you asked me if it was, but, yeah.

23 Q. Page 484 of the transcript.

24 Did you see any basis to object to the indictment?

25 A. Not at the time, no.

1 Q. And that would have been prior to trial that you
2 would have to raise an objection to the indictment, right?

3 A. Right.

4 Q. And, actually, I think your testimony on that was
5 that it would have been a frivolous argument?

6 A. I said that when?

7 Q. Previously, when you were just testifying.

8 A. Object to the indictment?

9 Q. Right.

10 A. Our Grand Jury here indicts most cases. It's a
11 rubber stamp. I never made an objection to an indictment in
12 Charleston County.

13 Q. And you said you urged Mr. Campbell to testify, but,
14 ultimately, he decided not to testify?

15 A. Yes. It was -- again, that goes to -- I mean, part
16 of it goes to privilege. I can't tell you what our specific
17 conversation was, because I don't want to say what he told
18 me, but it was a mutual decision in the end, based on what he
19 was telling me. He never told me who. I deducted and I knew
20 who it was. And I told him I knew who it was. But it was
21 his decision not to testify.

22 And, again, part of that had to do with, if you are
23 sitting in a car, you know who the person is, they are
24 sitting right behind you, you won't talk about who it is, but
25 the prosecution can ask you who is that person. And so,

1 therefore, if he was to testify, the prosecution could have
2 said, who fired the gun. And if he says, I don't know, then
3 it makes my case look horrible.

4 Q. And were you retained in this case?

5 A. I was.

6 Q. And how long have you been practicing law?

7 A. 12 years.

8 Q. How much of that practice has been criminal?

9 A. 92 percent, 93 percent. Used to be 99. Now it's
10 going down a little bit.

11 Q. Did you meet with Mr. Campbell to discuss the
12 charges against him prior to trial?

13 A. Yes.

14 Q. Do you recall how many times you would have met with
15 him?

16 A. No. I do recall we had a lot of phone
17 conversations. And we had meetings at my office for trial
18 prep. We had initial meetings. No more than 10 or 15; no
19 less than 5 or 6. Like I said, I don't recall. A lot of
20 them blended into each other. The days before trial, you
21 meet five or six times to go over trial strategy. So I don't
22 recall.

23 Q. So you went over trial strategy with him?

24 A. Yes, we went over evidence and trial strategy, yes.

25 MS. OLIVE: Beg the Court's indulgence. That's all

1 the questions I have.

2 MR. WISE: Couple of questions on redirect.

3 REDIRECT EXAMINATION

4 BY MR. WISE:

5 Q. I don't know the precise wording of the indictment,
6 but you mentioned the indictment alleged that Mr. Campbell
7 did the shooting?

8 A. Yes. I think I have a copy of it here.

9 Q. Okay. You are better prepared than I am.

10 A. Probably not. When they sent me the box, I just
11 opened it up. I believe I have it.

12 Q. Let me at least redeem myself a little bit. Here's
13 a copy of the indictment. And on its face, it alleges what?

14 A. That Jerome Renaldo Campbell did kill and murder by
15 means of shooting the victim, Michael.

16 Q. On its face, that indictment is fine, correct?

17 A. Right.

18 Q. The problem is, again, he didn't do the killing, but
19 somebody else did, and he aided and abetted?

20 A. Not based on this.

21 Q. Right. But you could not have filed a motion to
22 quash that indictment because it's valid on its face?

23 A. Right.

24 Q. Now, they say indictments are notice documents. Do
25 you think that's notice that they are going to go with aiding

1 and abetting?

2 A. Do I think that document is? No, because it's two
3 sentences that says he shot him.

4 MR. WISE: Thank you.

5 THE COURT: Anything further?

6 MS. OLIVE: Nothing further.

7 THE COURT: You may step down. Call your next
8 witness.

9 MR. WISE: That's all for the applicant.

10 THE COURT: Anything from the State?

11 MS. OLIVE: Nothing from the State, Your Honor.

12 THE COURT: I will take it under advisement and let
13 y'all know something very soon. Have a good day.

14 (Whereupon, proceedings are adjourned.)

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STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Jerome Campbell, SCDC # 349454,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

Case No.: 2014-CP-10-3019

ORDER OF DISMISSAL

2016 JAN 17 AM 9:48
JULIE A. HARRIS
CLERK OF COURT

This matter comes before the Court by way of an application for post-conviction relief filed May 12, 2014, by Jerome Campbell (Applicant) alleging ineffective assistance of counsel. Respondent made its Return on March 4, 2015, requesting an evidentiary hearing be held. Thereafter, Applicant amended his application. An evidentiary hearing into the matter was convened January 12, 2017, at the Charleston County Courthouse. Applicant was present at the hearing and represented by C. Rauch Wise, Esquire. Assistant Attorney General Alicia Olive from the South Carolina Attorney General's Office appeared on behalf of the State. Following the evidentiary hearing, this Court denied the application. This order follows.

PROCEDURAL HISTORY

The records before this Court establish Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. During its September 2009 term of court, the Charleston County Grand Jury indicted Applicant for assault with intent to kill (Frank Haigler) (2009-GS-10-6730); murder (Michael German) (2009-GS-10-6731); assault with intent to kill (Anthony German) (2009-GS-10-6732); and assault with intent to kill (Michael Allen) (2009-GS-10-6733); all charges arose

from an incident on January 9, 2009. Applicant was represented by William Stephen Harris and Jason Todd Mikell. The prosecution was handled by Assistant Solicitors Gregory Voigt and Elizabeth B. Riddle of the Ninth Circuit Solicitor's Office.

On January 23, 2012, the matter was called to trial in the Charleston County Court of General Sessions before a jury and the Honorable Deadra Jefferson, circuit court judge. On January 27, 2012, the jury convicted Applicant on all four indictments. Judge Jefferson sentenced Applicant to concurrent terms of imprisonment of thirty years for murder, and ten years for each of the assault with intent to kill verdicts.

Applicant filed a timely notice of appeal and his appeal was perfected by Stephan Futeral, Esquire, and Thomas Nelson, Esquire. On appeal, Applicant argued the trial court abused its discretion by allowing the State to challenge and remove a juror without cause on the second day of trial, which he also asserted amounted to a de facto sixth preemptory challenge. Following briefing, the South Carolina Court of Appeals affirmed Applicant's convictions and sentences in an unpublished opinion. State v. Campbell, No. 2014-UP-338 (S.C. Ct. App. filed August 7, 2013). Applicant filed a Petition for Rehearing, which was denied on October 23, 2013. The Remittitur was issued on December 2, 2013.

ALLEGATIONS RAISED

In his amended application, Applicant alleged he is being held in custody unlawfully based on allegations of:

1. Trial counsel was ineffective in that he failed to object to the trial judge charging the law of aiding and abetting when the indictment only alleged the applicant acted as the principal.
2. Trial counsel was ineffective for his failure to object to the trial judge charging

the hand of one, hand of all charge because the facts did not establish or prove the occupants of the automobile were acting in concert.

3. Trial counsel failed to object to the mutual combat charge as there was no evidence of mutual combat.
4. Trial was ineffective for not objecting to the failure to charge the law concerning the defense of others.

SUMMARY OF TESTIMONY PRESENTED AT THE EVIDENTIARY HEARING

Applicant testified first at the evidentiary hearing. He testified he was living in Charlotte at the time of the incident but was in Charleston visiting family and friends. He testified his niece was married to the brother of the man that was killed and there was a dispute about wanting to see her baby. He testified he hired counsel and that they had a good relationship. However, Applicant believed counsel should have objected to jury instructions on mutual combat, aiding and abetting, and the hand-of-one, hand-of-all jury instructions. Applicant testified he did not shoot a gun and did not encourage or conspire with anyone else to shot a gun. He testified he was in the car with Aaron Burn and John Watson when he left the scene. He also testified counsel failed to request a jury instruction on defense of others, although he acknowledged the trial court instructed the jury on self-defense. Applicant testified there was some evidence presented that his group was shot at, including sound from a surveillance video that was played during trial and gunshot residue on two of the people that were at the store. Applicant testified he was aware of the allegations against him. Applicant testified there was testimony presented at trial that at least two people with him had guns. Applicant testified he had an opportunity to testify at trial and he elected not to testify.

Trial counsel William Harris testified next. He testified Applicant's case file has been destroyed due to damage after trial, but that he remembers the case very well. He testified the case involved shots fired from a car speeding away from an apartment complex and decedent, who was standing by a gas station wall, was wounded by a ricochet bullet. He testified all the people at the store had gunshot residue on their persons, including on their hands. He elaborated that the State's expert explained the residue likely sprinkled down from the bullet as it traveled overhead, which he characterized as not credible. Counsel testified that he urged Applicant to testify so that he could tell his side of the story, but against counsel's advice, Applicant elected to testify because he did not want to be questioned by the prosecution, particularly about who was the shooter—a relative of Applicant's. Counsel testified he discussed this numerous times with Applicant and Applicant ultimately made the decision not to testify in his defense.

Counsel testified he requested a jury instruction on self-defense and defense of others, but the trial court declined to instruct the jury on defense of others. Counsel testified the trial court's refusal to charge defense of others hurt his argument during closing. He elaborated the video from the surveillance camera indicates people at the store shot towards Applicant and his group first, and the shots from Applicant's group were in response. However, counsel testified he did not make an objection to the trial court's refusal to charge defense of others following the jury charge. He testified he later regretted requesting a self-defense charge because of the particular instruction the trial court gave, including mutual combat language.

Counsel testified the indictment alleged Applicant was the shooter, not an accomplice, but the trial court instructed the jury on accomplice liability and the hand-of-one, hand-of-all. He testified there was evidence and testimony presented that there had been an altercation or dispute

earlier that day, but no evidence that Applicant or the two people in the car with him conspired to shoot anyone. However, he testified he did not object to this jury instruction. He testified he believes he did not object to this instruction because although everyone agreed Applicant was not the shooter, they were unsure who the actual shooter was, and therefore, it was not practical to argue Applicant did not conspire with the shooter when the specific shooter was unclear. Counsel testified the evidence presented showed Applicant was in the car with at least two other individuals and at least one individual from the car fired a shot. He testified there was also testimony from Frank Heyward that Applicant had driven by his house earlier the same day and said something to him while pointing a gun at him. He testified this is likely enough evidence to get a jury instruction on accomplice liability. However, counsel elaborated he believed he established to the jury that Heyward was a compulsive liar.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearings. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

In a post-conviction relief action, an applicant has the burden of proving the allegations in his or her application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant alleges ineffective assistance of counsel as a ground for relief, he or she must prove "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v.

Washington, 466 U.S. 668 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813. The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813. The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

After careful review of the entire record, including the testimony presented at the evidentiary hearing, based on the standard discussed above, this Court finds Applicant has failed to carry his burden in this action in regards to his allegations of ineffective assistance of counsel. Below are the findings in regards to each specific allegation of ineffective assistance of counsel raised by Applicant.

Allegation: Trial counsel failed to object to the jury charge on aiding and abetting and hand-of-one, hand-of all

Applicant asserts trial counsel was ineffective for failing to object to the trial judge charging the law of aiding and abetting when the indictment only alleged the applicant acted as

the principal. Additionally, Applicant alleges trial counsel was ineffective for failing to object to the trial judge charging the hand of one, hand of all charge because the facts did not establish or prove the occupants of the automobile were acting in concert.

Counsel testified there was evidence presented that there had been an altercation or dispute earlier that day and that Applicant had driven by Heyward's home with a gun drawn, but no evidence was presented that Applicant or the two people in the car with him conspired to shoot anyone. He acknowledged it was a question for the jury as to whether Applicant and the others in the car had conspired or acted in concert to shoot the victims, and therefore, the jury instructions likely would have been given even if he had objected.

During a trial, the law to be charged is determined by the evidence presented. State v. Holland, 385 S.C. 159, 165, 682 S.E.2d 898, 901 (Ct. App. 2009). When instructing the jury on the law, the trial judge is required to charge only the current and correct law of South Carolina. State v. Buckner, 341 S.C. 241, 246, 534 S.E.2d 15, 18 (Ct. App. 2000). A trial judge's jury instructions are appropriate if they are substantially correct and adequately cover the law applicable to the particular case. State v. Foust, 325 S.C. 12, 16, 479 S.E.2d 50, 52 (1996); see State v. Adkins, 353 S.C. 312, 318, 577 S.E.2d 460, 464 (Ct. App. 2003) ("A jury charge is correct if, when the charge is read as a whole, it contains the correct definition and adequately covers the law.").

This Court agrees and finds the jury instructions on aiding and abetting and hand-of-one, hand-of-all were properly given, and any objection made by counsel would have been denied. Therefore, this allegation must be denied and dismissed with prejudice.

Allegation: Trial counsel failed to object to the jury charge on mutual combat

Applicant asserts trial counsel was ineffective for failing to object to the trial judge charging the law mutual combat when there was no evidence presented of mutual combat.

“Mutual combat exists when there is ‘mutual intent and willingness to fight.’ ” Jackson v. State, 355 S.C. 568, 571, 586 S.E.2d 562, 563 (2003) (quoting State v. Graham, 260 S.C. 449, 450, 196 S.E.2d 495 (1973)). Mutual intent is “manifested by the acts and conduct of the parties and the circumstances attending and leading up to the combat.” Id. Mutual combat bars a claim of self-defense because it negates the element of “not being at fault.” Id.

In this case, the State asserted that Applicant was not entitled to a self-defense charge based on mutual combat during the charge conference and again made similar arguments during its closing. As discussed above, the law to be charged at trial is determined by the evidence presented. See Holland, 385 S.C. at 165, 682 S.E.2d at 901. Here, there was some evidence presented that Applicant engaged in a mutual willingness to fight throughout the day of the incident. Therefore, the trial court’s instruction on mutual combat was supported by the evidence presented at trial and any objection would not have been successful. Therefore, this allegation is denied and dismissed with prejudice.

Allegation: counsel failed to object to the court’s failure to charge the law concerning the defense of others.

Applicant asserts trial counsel was ineffective for failing to object to the trial court’s refusal to instruct the jury on the law of defense of others. Counsel testified and the record reveals that counsel requested the trial court instruct the jury on defense of others during the charge conference. See Tr. P. 660-69. Ultimately, the trial court declined to instruct the jury on

the defense of others, noting there was no testimony presented that Applicant shot in defense of someone else. See Tr. P. 669. However, the trial court did instruct the jury on self-defense, which was supported by the evidence. Although Applicant acknowledges counsel requested and argued in support of a jury charge on defense of others, he alleges trial counsel was ineffective for failing to object to the lack of this particular charge at the conclusion of all jury instruction. This Court finds this argument must be denied and dismissed, as counsel acted in accordance with reasonable professional standards in requesting the defense of others instruction and arguing vigorously in support of the charge. Moreover, this Court finds Applicant cannot establish any requisite prejudice from counsel's alleged deficiency, as there is no reasonable likelihood the result of the proceeding would have been different, i.e., Applicant would have been acquitted, had counsel objected. Therefore, this allegation must be denied and dismissed with prejudice.

CONCLUSION

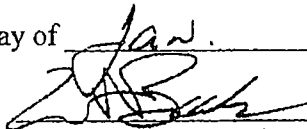
Based on all the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for is denied and dismissed with prejudice.

This Court notes Applicant must file and serve a notice of appeal within thirty days from the receipt of this Order by counsel of record to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. This application for post-conviction relief must be denied and dismissed with prejudice; and
2. Applicant Jerome Campbell shall remain in the custody of the State.

AND IT IS SO ORDERED this 9 day of Jan, 2018.


WILLIAM H. SEALS, JR.
Presiding Judge
Ninth Judicial Circuit

Maurice, South Carolina

STATE OF SOUTH CAROLINA)
CHARLESTON COUNTY)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

Jerome Campbell, # 349454)

Case No. 2014-CP-10-3019

Applicant,)

Vs.)

MOTION TO ALTER OR AMEND

State of South Carolina)

Respondent.)

Pursuant to Rule 59 (e) S.C. Rules of Civil Procedure, the Applicant, Jerome Campbell requests the Court to Alter or Amend his Order in the following particulars:

1. The Court failed to discuss *State vs. Taylor*, 356 S.C. 227, 589 S.E.2d1(2003) which held that it is improper for a trial court to charge both self-defense and mutual combat. As the Court pointed out in *Taylor* mutual combat negates self-defense. The Court failed to consider and rule upon the fact that trial counsel, by not objecting to the mutual combat charge, in essence permitted a charge to the jury that negated his self-defense charge. This was contrary to the holding in *Taylor* and prejudicial to the Applicant.

January 31st, 2018



C. Rauch Wise
Attorney at Law
305 Main Street
Greenwood, SC 29646
(864) 229-5010

Attorney for Applicant

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

Case No.: 2014-CP-10-3019

RETURN TO APPLICANT'S MOTION TO ALTER OR AMEND JUDGMENT

v.

Respondent.

I. Procedural History

On January 23, 2012, the matter was called to trial in the Charleston County Court of General Sessions before a jury and the Honorable Deadra Jefferson, circuit court judge. On January 27, 2012, the jury convicted Applicant on all four indictments. Judge Jefferson

sentenced Applicant to concurrent terms of imprisonment of thirty years for murder, and ten years for each of the assault with intent to kill verdicts.

Applicant filed a timely notice of appeal and his appeal was perfected by Stephan Futeral, Esquire, and Thomas Nelson, Esquire. On appeal, Applicant argued the trial court abused its discretion by allowing the State to challenge and remove a juror without cause on the second day of trial, which he also asserted amounted to a de facto sixth preemptory challenge. Following briefing, the South Carolina Court of Appeals affirmed Applicant's convictions and sentences in an unpublished opinion. State v. Campbell, No. 2014-UP-338 (S.C. Ct. App. filed August 7, 2013). Applicant filed a Petition for Rehearing, which was denied on October 23, 2013. The Remittitur was issued on December 2, 2013.

II. Current Post-Conviction Relief Action

On May 12, 2014, Applicant filed an application for post-conviction relief, alleging ineffective assistance of counsel. Respondent made its Return on March 4, 2015, requesting an evidentiary hearing be held. Thereafter, Applicant filed an amended application alleging the following grounds for relief:

1. Trial counsel was ineffective in that he failed to object to the trial judge charging the law of aiding and abetting when the indictment only alleged the applicant acted as the principal.
2. Trial counsel was ineffective for his failure to object to the trial judge charging the hand of one, hand of all charge because the facts did not establish or prove the occupants of the automobile were acting in concert.
3. Trial counsel failed to object to the mutual combat charge as there was no evidence of mutual combat.
4. Trial was ineffective for not objecting to the failure to charge the law concerning the defense of others

An evidentiary hearing into the matter was convened January 12, 2017, at the Charleston County Courthouse. Applicant was present at the hearing and represented by C. Rauch Wise, Esquire. Assistant Attorney General Alicia Olive from the South Carolina Attorney General's Office appeared on behalf of the State. Testimony was taken from Applicant and trial counsel. Following the evidentiary hearing, this Court denied the application. A formal order of dismissal was filed on January 17, 2018. On January 31, 2018, Applicant served a copy of his "Motion to Alter or Amend" on Respondent. This Return follows.

III. Applicant's Motion to Alter or Amend

In the Court's order of dismissal, the Court found there was evidence in the record to support a jury instruction on mutual combat and the trial court properly gave a mutual combat instruction, and therefore, counsel was not ineffective for not objecting to this jury instruction. In his "Motion to Alter or Amend," Applicant asserts "the Court failed to discuss State v. Taylor, 356 S.C. 227, 589 S.E.2d 1 (2003), which held that it is improper for a trial court to charge both self-defense and mutual combat." He argues the Court failed to consider and rule upon his claim that trial counsel was ineffective for failing to object to the mutual combat jury charge, thereby negating his self-defense charge in light of Taylor.

In response, Respondent submits this Court's ruling is both supported the record and applicable case law. The present case is distinguishable from Taylor. In Taylor, a murder prosecution, the defendant admitted to killing the decedent and relied entirely on self-defense at trial. Id. at 235, 589 S.E.2d at 5. The trial court gave jury instructions on both self-defense and mutual combat. Id. On appeal, South Caroline Supreme Court held there was insufficient evidence to warrant a jury charge on mutual combat, where there was no evidence that victim

was willing to engage in an armed encounter with defendant, there was no evidence victim knew that defendant was armed with a knife, and there was no pre-existing ill-will or dispute between the parties. Taylor, 356 S.C.at 234, 589 S.E.2d at 5. Moreover, the Court held if a defendant is engaged in mutual combat, self-defense is unavailable unless the defendant withdraws from the conflict before the killing occurs. Id. The Taylor Court held because the trial court erroneously gave an unwarranted mutual combat instruction, the properly given self-defense charge was negated by the trial court's unwarranted mutual combat charge which acted as a limitation on the defendant's ability to prove self-defense and prejudiced the defendant to such an extent that a new trial was warranted. Id.

In the present case, there was evidence to support a mutual combat jury instruction in Applicant's case, a crucial distinction from Taylor. Additionally, Applicant did not freely admit to firing a weapon and rely exclusively on self-defense, as Taylor did, but rather, denied ever firing a weapon. Based on these crucial distinctions, Taylor is not controlling on the present case. Respondent submits this Court's ruling are legally correct and supported by the record, and that this Court should deny Applicant's request to alter or amend its ruling as to this issue.

IV.

WHEREFORE, having made its Return to the motion, Respondent requests the relief requested in the motion be denied and that said motion be dismissed.

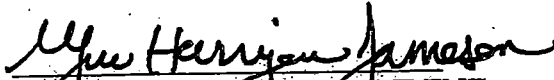
Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

BY:


ATTORNEYS FOR RESPONDENT
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3737

February 20, 2018

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Jerome Campbell, SCDC # 349454,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

Case No.: 2014-CP-10-3019

**ORDER DENYING APPLICANT'S
MOTION TO ALTER OR AMEND
JUDGMENT**

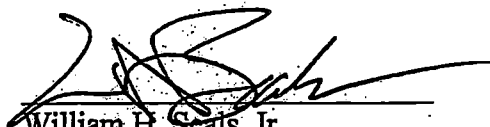
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JUDICIAL CIRCUIT
CLERK OF COURT

This matter comes before the Court by way of Applicant's "Motion to Alter or Amend."

The Respondent made its Return to this motion requesting it be denied and dismissed.

This Court's Order of Dismissal denying and dismissing Applicant's post-conviction relief application was filed on January 17, 2018. Based upon careful reconsideration of all the evidence in this case and upon full consideration of Applicant's motion and Respondent's return, this Court is not persuaded to alter or amend the judgment. This Court further finds that oral argument would not aid in the reconsideration of the original judgment. Therefore, this Court finds that the original Order of Dismissal shall stand as it was written.

AND IT IS SO ORDERED this 2 day of March, 2018.


William H. Seals, Jr.
Presiding Judge
Ninth Judicial Circuit

Marron, South Carolina

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

William H. Seals, Jr., Circuit Court Judge

Case No 2014-CP-10-3019

Jerome Campbell, # 349454, ... Applicant,

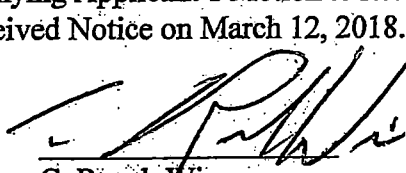
vs.

State of South Carolina, ... Respondent.

NOTICE OF INTENT TO APPEAL

Jerome Campbell appeals the Order of the Honorable William H. Seals, Jr. dated January 9, 2018, and filed on January 17, 2018 and the Order Denying Applicant's Motion to Alter or Amend Judgment filed on March 7, 2018. Applicant received Notice on March 12, 2018.

March 12th, 2018



C. Rauch Wise
Attorney at Law
305 Main Street
Greenwood, SC 29646
(864) 229-5010

Attorney for Applicant

OTHER COUNSEL OF RECORD

Megan Harrigan Jameson
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211-1549